

# Dickenson County Public Schools

P.O. Box 1127, 309 Volunteer Avenue  
Clintwood, Virginia 24228  
Phone (276) 926-4643 Fax (276) 926-6374

Haydee L. Robinson, Superintendent



MAY 29 2025 4:13:20

05/22/2025

**Auditor of Public Accounts  
PO Box 1295  
Richmond, VA 23218**

**To whom it may concern:**

**Please find enclosed the Interim and Comprehensive Agreements for a Classroom Wing Addition at Ridgeview Elementary School.**

**Should you have any questions, or require further documentation, please let us know.**

**Thank You,**

A handwritten signature in cursive script that reads "Haydee L. Robinson".

**Haydee Robinson, Superintendent**

## **INTERIM AGREEMENT**

This Interim Agreement, made this 26<sup>th</sup> day of April, 2023, by the Dickenson County School Board, (aka Dickenson County Public Schools) a political subdivision of the Commonwealth of Virginia, 309 Volunteer Avenue, P.O. Box 1127, Clintwood, VA 24228 (hereinafter called the "Owner"), and Quesenberry's, Inc. (dba Quesenberry's Construction) of P.O. Drawer Q, 104 E. 19<sup>th</sup> Street, Big Stone Gap, VA 24219 (hereinafter called the "Design-Builder"). The term Design-Builder shall be synonymous with Private Entity or PPEA Firm or Contractor.

WITNESSETH that the parties hereto agree as follows:

### **(A) THE DESIGN-BUILD DOCUMENTS**

This Interim Agreement consists of this agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Terms and Conditions included herein; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria.

The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Agreement may be amended or modified only by a Modification. A Modification is a written amendment to the Agreement signed by both parties.

### **(B) SERVICES TO BE PERFORMED**

The Design-Builder will perform the following services:

Design and construct an approximately 8,000 SF classroom addition to Ridgeview Elementary School on the Ridgeview Campus that would include additional classrooms, pullout classrooms, and associated support spaces. The scope of the classroom wing shall comply with the Guidelines for School Facilities in Virginia's Public Schools document, latest version, and include all associated sitework, utilities and/or utility relocations.

Services included within this Interim Agreement shall also consist of design-build services including, but not limited to, those required to coordinate the efforts of the design-build team; budgeting and cost estimating involved with development of a

Guaranteed Maximum Price (GMP), and scheduling. Design-Builder will commence work by upon execution of the Interim Agreement and services will conclude with completion of 100% design documents or written notice of termination of this Agreement by Owner consistent with section 2.2 of the Terms and Conditions, whichever occurs first. No construction services or related fees are included within the scope of this contract. It is the intent of all parties to reach a mutually agreed upon Guaranteed Maximum Price (GMP) at or before 100% design and enter into a Comprehensive Agreement for construction services.

It is understood by both Parties that this Interim Agreement establishes a Contract Cost Limit (CCL) for the design and construction of the project of \$5,039,200. The CCL is inclusive of Reimbursable Cost of the Work items to include general conditions, general requirements, and trades work, subcontractor bonds and insurances, Private Entity insurances, performance and payment bonds, fixed design fees, fixed Private Entity fee (overhead and profit), and Private Entity Contingency as outlined in letter to Quesenberry's Construction dated March 6, 2023. The mutually-agreed upon GMP shall not exceed the CCL. The CCL is established as follows:

Construction (Building & Site):	\$3,722,000
Canopy @ Middle & High School	\$ 195,000
Construction & Estimate Contingency (5%):	\$ 195,900
Cost Escalation to Construction Midpoint (5%):	\$ 205,600
Bonds & Insurance (1.5%)	\$ 64,800
Building Design Fees (6%):	\$ 275,200
Site Design & Permit Updates (.6%)	\$ 29,200
Private Entity Fee (7.5%)	<u>\$ 351,500</u>
Total:	\$5,039,200

**(C) PAYMENT FOR SERVICES**

The Owner will make payments as follows:

Services noted above shall be provided for a **Not-to-Exceed (NTE) Budget of Two Hundred Eighty Six Thousand Three Hundred Sixty and 00/100 dollars (\$286,360.00)**. This amount includes topographic survey provided by the design team.

For NTE Budget for services provided under this Interim Agreement is as follows:

Site and Utilities Design:	\$ 29,200
90% Construction Documents:	\$198,144
100% Construction Documents:	\$ 22,016
Design-Build Preconstruction Services:	\$ 35,000
Owner Printing Allowance:	<u>\$ 2,000</u>
Total:	\$286,360

The NTE Budget above shall include costs for all required insurance.

## FIXED FEES

The Owner shall pay Fixed Fees, which consist of the architecture and engineering fees and Design-Builder's Fee for this phase of the project. The Design-Build Fixed Fee is intended to compensate the Design-Builder for home office support, overhead costs, and profit. The Fixed Fees noted above will not vary with either the estimated cost or actual cost of construction of the Project.

a. A-E Services for Design Phase Services: This component of the Fixed Fees covers the design and preparation of Construction Documents. The A-E will provide coordination with all jurisdictions, authorities, planning and zoning, and building officials to obtain all necessary input, approvals and permits. This Fixed Fee also includes the cost of professional liability insurance required to be carried by Design-Build team. Fees associated with services following development of an agreed-upon Guaranteed Maximum Price (GMP) to include construction administration will be incorporated into an intended Comprehensive Agreement.

b. Contractor Fee during pre-construction: This component of the Fixed Fees covers all pre-construction services, including design reviews, cost estimates, value management, preparation of a GMP, home office support (including project manager, project engineer, estimator, and purchasing agent), labor, fees, and overhead costs.

## ALLOWANCES

An Allowance has been established for printing of copies of sets of design documents for owner review. The Design-Builder will be responsible for managing the allowance to ensure the amount of the allowance is not exceeded without prior approval of the Owner.

Partial payments in the amount of 100% of the value of the services rendered will be made in monthly installments. The value of the services rendered shall be as estimated by the Design-Builder and approved by the Owner prior to payment. Upon acceptance by the Owner of all services required hereunder, and compliance by the Design-Builder with all terms and conditions of this contract, the amount due the Design-Builder will be paid. Payment will be made based on services rendered. No retainage will be withheld.

Provided that an Application for Payment, in the format approved by Owner, is received not later than the 25<sup>th</sup> day of month, the Owner shall make payment to the Design-Builder not later than the 25<sup>th</sup> day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.

Payments due and unpaid under this Agreement shall bear interest from the date payment is due at the legal rate prevailing from time to time at the place where the Project is located, unless waived by both Parties.

**(D) SCHEDULE AND DELIVERABLES**

The Design-Builder shall reach the following milestones, unless otherwise approved in writing by the Owner, and comply with the Project Milestone Schedule included within the letter from Quesenberry's Construction, Inc. dated March 10, 2023 as included in Exhibit C.

April 26, 2023:	Execution of Interim Agreement
May 31, 2023:	Site & Utility Design Complete
June 12, 2023:	Building Design 90% Complete
June 21, 2023:	Execution of Comprehensive Agreement
June 26, 2023:	Building Design 100% Complete
July 3, 2023:	Commence Construction
July 31, 2024:	Substantial Completion
August 30, 2024:	Final Completion

**(E) DISPUTE RESOLUTION**

If the parties cannot resolve any dispute through good-faith negotiations, the method of binding dispute resolution shall be the following:

- Arbitration pursuant to American Arbitration Association procedures
- Litigation in a court of competent jurisdiction
- Other (Specify)

This Agreement shall be construed and governed by the applicable laws of the Commonwealth of Virginia. Any disputes arising hereunder, resulting in litigation, shall be resolved by bench trial in the Circuit Court for Dickenson County, Virginia.

**(F) MISCELLANEOUS**

The Owner's Designated Representative/Project Manager:

Curtis Elswick  
Sr. Vice President  
Skanska USA Building Inc.  
4309 Emperor Blvd., Suite 200  
Durham, NC 27703  
Mobile: 540-423-2860  
[curtis.elswick@skanska.com](mailto:curtis.elswick@skanska.com)

Design-Builder's Designated Representative:

Abran Quesenberry  
President  
Quesenberry's Inc. (dba Quesenberry's Construction)  
P.O. Drawer Q  
104 E. 19<sup>th</sup> Street  
Big Stone Gap, VA 24219  
Direct: 276-523-0411  
[aquesenberry@quesenberrys.com](mailto:aquesenberry@quesenberrys.com)

The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project. Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:

Architect/Engineer of Record (Architecture and MEP Engineering):

ZMM Architects and Engineers  
200 Country Club Drive SW  
Plaza One Building E  
Blacksburg, VA 24060  
Tel: 540-552-2151  
Contact: Randy Jones (license number: 0407003304)

Civil Engineering:

The Lane Group  
310 West Valley Street  
Abingdon, Virginia 24210  
Tel: 276-233-7167  
Contact: Kevin Heath (license number: 0411000355)

Audio-Visual and Security:

Gibson Engineering  
2100 Lubna Drive  
Christiansburg, Virginia 24073  
Tel: 540-998-6069  
Contact: Frankie Kantsios, PE

**(G) EXHIBITS**

Exhibit A, Quesenberry's, Inc. PPEA Conceptual Phase Proposal dated January 13, 2023  
(attached by reference)

Exhibit B, Letter to Quesenberry's Inc. dated March 6, 2023 requesting additional  
information, modifications and clarifications

Exhibit C, Letter from Quesenberry's Inc. dated March 10, 2023 (Revised April 18,  
2023) providing additional information, modifications and clarifications to Conceptual  
Phase Proposal

Exhibit D, Clarifications and Additional Information

Exhibit E, Design Standards and Processes dated April 2023

Exhibit F, Guidelines for School Facilities in Virginia's Public Schools latest edition as  
of date of this Agreement (attached by reference)

Exhibit G, Guidelines for Implementation of the Public-Private Education Facilities &  
Infrastructure Act of 2002 adopted by the Dickenson County School Board on July 25,  
2012 (attached by reference)

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the date  
first above written.

**Design-Builder:**

 \_\_\_\_\_  
(Signature) 4-26-23  
(Date)

Printed Name: Abran Quesenberry

Its: President

**Owner:**

 \_\_\_\_\_  
(Signature) 4-26-23  
(Date)

Printed Name: Haydee Robinson

Its: Division Superintendent

## **TERMS AND CONDITIONS**

### **1. GENERAL PROVISIONS**

#### **1.1 BASIC DEFINITIONS**

##### **1.1.1 THE DESIGN-BUILD DOCUMENTS**

The Design-Build Documents are identified in Section (A) of the Agreement.

##### **1.1.2 PROJECT CRITERIA**

The Project Criteria are identified in Exhibit A, Exhibit B, Exhibit C and Exhibit D attached to the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

##### **1.1.3 ARCHITECT**

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

##### **1.1.4 THE WORK**

The term "Work" means the design and services required to complete the design documents, whether completed or partially completed, and may include review and approval of any submittals or shop drawings. The "Work" as it pertains to this Agreement shall mean design and design-build project management/project coordination services only, not actual construction work.

### **1.2 COMPLIANCE WITH APPLICABLE LAWS**

**1.2.1** If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation.

**1.2.2** The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and

codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner.

### **1.3 CAPITALIZATION**

**1.3.1** Terms capitalized in these Terms and Conditions include those which are (1) specifically defined or (2) the titles of numbered articles and identified references to sections in the document.

### **1.4 INTERPRETATION**

**1.4.1** In the interest of brevity, the Design-Build Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**1.4.2** Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

### **1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS**

**1.5.1** The Design-Build Documents shall be signed by the Owner and Design-Builder.

**1.5.2** Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

### **1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA**

**1.6.1** Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder shall, upon payment for the associated services, become the sole and exclusive property of Owner. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to this Project by the Owner.

**1.6.2** If this Agreement is terminated for any reason, upon payment for services rendered, each of the Design-Builder’s design professionals, including the Architect, shall be contractually required to convey to the Owner a non-exclusive license to use that design professional’s design documents for the completion and use of the Project.

## **1.7 INDEMNIFICATION**

**1.7.1** To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property other than the Work itself, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described within herein.

**1.7.2** In claims against any person or entity indemnified under this section of the Agreement by an employee of the Design-Builder, Architect, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Architect under workers' compensation acts, disability benefit acts or other employee benefit acts.

**1.8 Claims for Consequential Damages.** Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Agreement. This mutual waiver includes:

**.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

**.2** damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination. Nothing contained in this section shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

## **1.9 INSURANCE**

The Design-Builder shall purchase and maintain such insurance as will protect it from claims which may arise out of, or result from, the Design-Builder's execution of the work, whether such execution be by the Design-Builder, any

Subconsultant or Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

The insurance shall be written for not less than the following limits, or greater if required by law:

.1 Workers' Compensation:

- (a) State: Statutory
- (b) Applicable Federal Statutory (e.g. Longshoremen's)
- (c) Employer's Liability: \$ 1,000,000 per Accident  
\$ 1,000,000 Disease, Policy Limit  
\$ 1,000,000 Disease, Each Employee

.2 Comprehensive or Commercial General Liability (Including Premises-Operations; Independent Design/Builders' Protective; Products and Completed Operations; Broad Form Property Damage):

- (a) Bodily Injury: \$ 1,000,000 Each Occurrence  
\$ 2,000,000 Aggregate
- (b) Property Damage \$ 1,000,000 Each Occurrence  
\$ 2,000,000 Aggregate
- (c) Products and Completed Operations to be maintained for years after final payment: \$ 2,000,000 Aggregate
- (d) Property Damaged Liability Insurance shall provide X, C and U coverage.
- (e) Broad Form Property Damage Coverage shall include Completed Operations.

.3 Contractual Liability:

- (a) Bodily Injury \$ 1,000,000 Each Occurrence  
\$ 2,000,000 Aggregate
- (b) Property Damage \$ 1,000,000 Each Occurrence  
\$ 2,000,000 Aggregate

.4 Personal Injury, with Employment Exclusion deleted: \$ 1,000,000 Aggregate

.5 Business Auto Liability (including owned, non-owned and hired vehicles):

- (a) Bodily Injury \$ Each Person  
\$ Each Occurrence
- (b) Property Damage \$ Each Occurrence
- (c) Combined Single Limit \$ 1,000,000 Combined Single Limit

.6 If the General Liability Coverages are provided by a Commercial Liability policy, the:

- (a) General Aggregate shall be not less than \$2,000,000 and it shall apply, in total, to this Project only.
- (b) Fire Damage Limit shall be not less than \$1,000,000 on any one fire.
- (c) Medical Expense Limit shall be not less than \$5,000 on any one person

.7 Umbrella Excess Liability:           \$5,000,000 over primary insurance  
  \$10,000 retention for self-insured hazards  
  each occurrence.

.8 If an exposure exists, Aircraft Liability (owned and non-owned) and Watercraft Liability (owned and non-owned) with limits approved by the Owner shall be provided.

.9 The Contractor shall not commence Work under this Contract until he has obtained all the insurance required hereunder from an insurer authorized to do business in Virginia and such insurance has been approved by the Owner; nor shall the Contractor allow any Subcontractor to commence Work on his subcontract until the same types of insurance in an appropriate amount have been obtained by the Subcontractor and approved by the Contractor. Approval of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

.10 The Design Professional(s) Team Member(s) shall obtain and maintain in force during the contract period and for a period of 5 years after the final completion of the Work professional liability and errors and omission insurance in the amount of \$2,000,000 per claim and minimum of \$2,000,000 specific project excess limit. The Contractor Team Member shall obtain and maintain in force during the contract period and for a period of 5 years after the final completion of the Work professional liability and errors and omission insurance in the amount of \$1,000,000 per claim and \$1,000,000 specific project excess limit. See Exhibit I, Certificate(s) of Insurance.

## **2.0 WRITTEN NOTICE**

**2.1** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

## **2.2 TERMINATION OR SUSPENSION OF DESIGN/BUILD CONTRACT**

## **2.3 TERMINATION BY THE DESIGN-BUILDER**

**2.3.1** The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1** issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2** an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3** the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or
- .4** the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required herein.

**2.3.2** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner as provided herein.

## **2.4 TERMINATION BY THE OWNER FOR CAUSE**

**2.4.1** The Owner may terminate the Design-Build Contract if the Design-Builder:

- .1** persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2** fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors;
- .3** persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
- .4** otherwise is guilty of substantial breach of a provision of the Design-Build Documents.

**2.4.2** When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1** take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2** accept assignment of contracts; and

.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

**2.4.3** When the Owner terminates the Design-Build Contract for one of the reasons stated above, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

**2.4.4** When the Owner terminates the Design-Build Contract for one of the reasons stated above and the costs and damages exceed the unpaid balance of the Contract, the Design-Builder shall pay the difference to the Owner.

## **2.5 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**2.5.1** The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**2.5.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described herein. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible;
- or
- .2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

## **2.6 TERMINATION BY THE OWNER FOR CONVENIENCE**

**2.6.1** The Owner may, at any time, terminate the Agreement for the Owner's convenience and without cause.

**2.6.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

**2.6.3** In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable

overhead and profit on design services not completed. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## Dickenson County Public Schools

P.O. Box 1127, 309 Volunteer Avenue  
Clintwood, Virginia 24228  
Phone (276) 926-4643 Fax (276) 926-6374

*Haydee L. Robinson, Superintendent*



Mar. 6, 2023

Abran Quesenberry, PE  
President  
Quesenberry's Construction  
P O Drawer Q  
104 E. 19th St N  
Big Stone Gap, VA 24219

**RE: Dickenson County Public Schools  
New Classroom Addition to Ridgeview Elementary School  
PPEA Conceptual Phase Proposal**

Dear Mr. Quesenberry:

As a follow up to the letter dated February 3, 2023 acknowledging receipt of your Conceptual Phase PPEA proposal, DCPS is requesting that Quesenberry's Construction provide revised design documentation and additional information as follows:

### **Proposed Modifications and Clarifications:**

1. No renovations are anticipated in Ridgeview Middle School to accommodate 5<sup>th</sup> grade students. The current 6th grade classrooms will be utilized and should meet the needs of 5<sup>th</sup> grade students without any modifications.
2. Add group/gang restrooms to the second floor.
3. Add a custodial office and resource room to the first floor.
4. Based upon expected enrollment, ensure that grade levels are clustered together as best as possible. For example, keep all 4<sup>th</sup> grade classrooms in Area "B" of the second floor.
5. Show proposed logistics plan to include laydown and staging areas, location of jobsite trailer(s), dumpsters, etc. for new classroom addition following substantial completion of the New Ridgeview Elementary School and classroom wing addition currently under construction. It is anticipated that construction of the classroom addition could occur summer 2023.

### **Cost Estimate and Schedule:**

1. Provide an updated estimate of cost for design and construction based upon the information requested above. The cost estimate should be of sufficient detail to include anticipated design fees and estimated construction costs (direct trade costs/cost of work, general conditions and general requirements, bonds and insurance, contractor overhead and profit ("fee"), contractor contingency, and any other indirect costs assuming that the Owner anticipates entering into an interim agreement that establishes a contract cost limit with fixed design fees to finalize plans and specifications with a follow-on contract with a

guaranteed maximum price (GMP) for construction and remaining design team construction administration).

2. Remove costs for modification of existing space from estimate.
3. Remove Owner Contingency of 5% from estimate.
4. Confirm any needed survey work is included in the Private Entity proposed costs.
5. Acknowledge that any loose FF&E and construction materials testing & special inspections are by Owner. In addition, please clarify which low voltage systems are proposed to be provided by Owner vs. Private Entity.
6. DCPS is anticipating an approach that includes an Interim Agreement for design and preconstruction services only that establishes a contract cost limit that cannot be exceeded and a follow-on comprehensive agreement that establishes a GMP or multiple GMPs that will be at or less than the contract cost limit established in the interim agreement. Please provide your thoughts on this contracting approach.
7. Provide an updated schedule that includes milestones for both design and construction activities that assumes execution of an Interim Agreement on April 24, 2023.

### **Business Terms and Structure of the Comprehensive Agreement**

1. The Owner intends to enter into an Interim Agreement which will establish a Contract Cost Limit (CCL) for the design and construction of the project and authorize the design to progress in order to develop a GMP for the work. The Owner intends to use the AIA A141-2014, Agreement between Owner and Design-Builder, form of contract as the basis for the Comprehensive Agreement which will follow the execution of the Interim Agreement. The Comprehensive Agreement will include a mutual agreement on the scope, level of quality, schedule, design approval process, a Guaranteed Maximum Price (GMP) that does not exceed the CCL, along with other terms and conditions. Please confirm you are in agreement with the intended approach and provide any suggested modifications to this approach for consideration.
2. The Owner is interested in a partnering approach throughout the life of the project. This approach includes a transparent, "open book" process whereby the Private Entity will provide copies of bids, subcontractor/vendor/supplier contracts and other procurement documentation, invoices and accounting records and the like upon the request of the Owner. Please provide your thoughts on effective means of partnering and establishing a transparent process.
3. The Private Entity will be required to bid out all major trade packages and obtain a minimum of 3 bids for each major trade package unless agreed upon in writing along with providing the Owner with copies of bid tabs and all bids/quotes at time of presentation of the GMP. Is the Private Entity in agreement with this approach?
4. The proposed structure of the GMP includes the following items. Please provide a response on whether or not you are willing to accept this structure as-is or with any modifications.
  - **Reimbursable Cost of the Work** up to the amount of the GMP including general conditions, general requirements, and trades work.
  - **Subcontractor Bonds / Insurances**
  - **Private Entity Insurances**

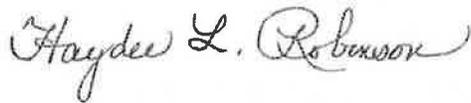
- **Performance and Payment Bond**
  - **Fixed Design Fee**
  - **Fixed Private Entity Fee** (overhead and profit)
  - **Private Entity Contingency:** The Private Entity Contingency may be used by the Private Entity for scope gaps between trade contractors, contract default by a trade's contractor, and unforeseen field conditions (not to include unforeseen unsuitable materials, rock or other obstructions not assumed in estimated quantities included in the cost of the work). Any other proposed use must be approved by the Owner in writing before the Private Entity commits funds from the Private Entity Contingency. The Private Entity Contingency is for use by the Private Entity; however, the Private Entity must provide the Owner notice of each use of this contingency within a reasonable amount of time, but no later than three work days after occurrence. This includes changes that result in a credit to the Private Entity Contingency. Owner approval to use the Private Entity Contingency shall not be unreasonably withheld. The Private Entity may use the Private Entity contingency to cover the cost of any needed repairs that need to be made during the construction process; however, costs for repair work will need to be back-charged to subcontractors or covered out of the Private Entity's fee. The Owner will not be responsible for the cost of repairs made during construction. At the conclusion of the project, the remaining balance of the Private Entity Contingency is to be returned, 100%, to the Owner.
5. Provide suggestion of proposed shared savings split for cost of work savings as well as contractor contingency savings. The Owner proposes a 50/50 split for buyout/cost of work savings with 100% of contractor contingency savings reverting to Owner at completion.
  6. The Private Entity will not be allowed to mark-up any change orders funded through the contractor contingency. Any owner-requested change orders to be funded out of the Owner's contingency will be allowed to be marked-up a fair and reasonable amount, however, the Owner is interested in establishing a maximum amount for subcontractor and Private Entity mark-ups for overhead and profit. Please propose what you believe should be the maximum allowable mark-ups by subcontractors and the Private Entity for owner requested changes.
  7. Liquidated damages will be established at the time of Comprehensive Agreement negotiations. The amount of liquidated damages has not been determined at this time. Please provide your thoughts on liquidated versus actual damages for damages for delay and how this affects your approach to establishing a GMP.
  8. Allowances may be established for scopes of work that cannot be fully defined at the time of agreement of the GMP. The Private Entity will be responsible for managing each allowance to ensure the amount of the allowance is not exceeded without prior approval of the Owner. Please provide your thoughts.
  9. Private Entity may self-perform up to 10% of the cost of construction provided the Private Entity's price for the work can be demonstrated to be lower than competitive bids from trade's contractors. Please elaborate on your interpretation of this statement.
  10. The cost of all warranty work will be the responsibility of the Private Entity, including time spent coordinating warranty work by the Private Entity's project manager, superintendent or other team members. Please elaborate on your interpretation of this statement.

Upon considering the information noted above, please provide your written response by **2:00 PM on Monday, March 13, 2023**. We are requesting an electronic copy of your response be emailed to [curtis.elswick@skanska.com](mailto:curtis.elswick@skanska.com) by the deadline as well as four (4) hardcopies be delivered to:

Mrs. Haydee Robinson, Superintendent  
Dickenson County Public Schools  
309 Volunteer Avenue  
Clintwood, VA 24228

If you have any questions at this time, please contact Curtis Elswick at (540) 423-2860 or [curtis.elswick@skanska.com](mailto:curtis.elswick@skanska.com).

Sincerely,

A handwritten signature in cursive script that reads "Haydee L. Robinson".

Mrs. Haydee L. Robinson  
Division Superintendent

## EXHIBIT C



March 10<sup>th</sup>, 2023 (Revised 4-18-23)

Haydee Robinson  
Division Superintendent  
Dickenson County Public Schools  
309 Volunteer Avenue  
PO Box 1127  
Clintwood, VA 24228

Re: Dickenson County Public Schools  
New Classroom Addition to Ridgeview Elementary School  
Quesenberry's receipt letter response (Revised 4-18-23)

Dear Mrs. Robinson,

We have received your 3-6-23 response letter to our PPEA Conceptual Phase Proposal submission for the above referenced project. Below are our responses to the requests within that letter:

### **Proposal Modifications and Clarifications**

1. We have removed costs for modifications to the existing Ridgeview Middle School. Please see revised cost breakdown in Item 1. of Cost Estimate and Schedule below.
2. Group/gang bathrooms have been added to the second floor of the addition as requested. See attached revised floor plans for review.
3. A custodial office and resource room has been added to the first floor of the addition as requested. See attached revised floor plans for review.
4. We have included our recommended grade assignments on the attached revised floorplans both for the '23-'24 school year (during proposed construction) and the '24-'25 school year after the proposed addition is complete. Grades were clustered as best as possible given the layout of existing facilities and restroom access. See attached revised floorplans for review.

5. Attached you will find a sketch outlining our proposed laydown, staging, trailer, and access for construction of the proposed addition. Highlights of this proposed plan include:

- Jobsite trailers for Quesenberry's and Skanska's use will remain in current location and will continue to be used once current Ridgeview Elementary School and addition projects are complete.
- Storage trailers will remain in current location.
- Access road will enter at its current location and continue around the proposed new addition to allow access to all sides.
- Construction fencing will be moved to align with back of the curb on the western edge of the new access and parking pavement. The fence will then terminate against the existing addition and will resume on the south side of this addition, extending southward to the edge of the sidewalk and then running west along this sidewalk to a point where proper access and clearance can be attained around the proposed addition. The fence will then continue northeast to meet the current inflection point adjacent to the existing softball facilities. Screening can be used on this fence as needed to block view of the jobsite from student occupied areas.
- Egress of the existing spaces will be maintained around the construction area. The existing school addition will exit out of the building at the north staircase and into the parking lot.
- A temporary barrier wall or other agreeable enclosure will be installed at the west end of the existing addition to separate it from the construction area. We propose to not install storefront and curtainwall systems in these areas as originally designed to save costs on installation and demolition, as these systems will not be needed once proposed addition is complete.
- This laydown and access plan is preliminary and is open to input from DCPS and other applicable parties. We will work with your team to ensure that construction activities have a minimal effect on operations of adjacent spaces and that student safety remains the top priority throughout construction.

### **Cost Estimate and Schedule**

1. Below is an updated breakdown of conceptual costs as requested, including changes noted above:

<b>Ridgeview Classroom Addition Conceptual Estimate</b>	
Addition - Classrooms (7,300 SF x \$450/sf)	\$ 3,285,000
Addition - Gang Restroom (684 SF x \$500/sf)	\$ 342,000
Canopy @ Middle & High School (1300sf x \$150/sf)	\$ 195,000
Utility & Foundation Additions and Revisions	\$ 95,000
Construction & Estimate Contingency (5%)	\$ 195,900
Cost Escalation to Construction Midpoint (5%)	\$ 205,600
Bonds & Insurance (1.5%)	\$ 64,800
Building Design (6.0%)	\$ 275,200
Site Design & Permit Updates (0.6%)	\$ 29,200
Private Entity Fee (7.5%)	\$ 351,500
<b>Total Cost =</b>	<b>\$ 5,039,200</b>

These costs have been updated to reflect the current size and layout of the new addition based on the attached sketches. Please note that these costs are conceptual at this time. Given that the floorplan appears to be finalized, we will begin the process of getting more detailed pricing from subcontractors and suppliers and will submit this additional information as it becomes available. Prior to entering into an Interim Agreement and providing a CCL, we feel that we can provide updates to these numbers based on additional input from subcontractors and suppliers to ensure the most accurate and up to date budget is being used moving forward.

2. Costs for modification of existing spaces have been removed from the cost breakdown outlined in Item 1. above.
3. Owner Contingency has been removed from the cost breakdown above.
4. Any required survey work has been included in the cost breakdown above.
5. We acknowledge that loose FF&E and construction materials testing & special inspections are by Owner. We have included in our scope the pathways for low voltage systems; all other low voltage scope is to be provided by Owner. This matches the arrangement currently in place for the Ridgeview Elementary School & Addition.
6. We are familiar with the process of entering into an Interim Agreement for design and preconstruction services that establishes a contract cost limit that cannot be exceeded with a follow up comprehensive agreement that establishes a GMP(s). This approach matches what was utilized for the Ridgeview Elementary School & Addition projects as well as others we have completed in the region while working with Skanska. Given our recent experience with the process and its execution with key team members, we feel that this is an appropriate contracting approach for this project.
7. Below is an estimated timeline based on our current understanding of the conceptual phase of this project. Please note that milestone dates noted below

are based on assumptions and subject to change as additional information becomes available. Once we have enough information regarding the scope of design and construction, a detailed CPM schedule will be drafted and presented for approval. Please also note that the milestone dates below are subject to ongoing supply chain issues related to the ongoing COVID-19 pandemic.

<b>Execution of Interim Agreement</b>	<b>April 24<sup>th</sup>, 2023</b>
<b>Site &amp; Utility Design Complete</b>	<b>May 31<sup>st</sup>, 2023</b>
<b>Building Design 90% Complete</b>	<b>June 12<sup>th</sup>, 2023</b>
<b>Execution of GMP Contract</b>	<b>June 21<sup>st</sup>, 2023</b>
<b>Building Design 100% Complete</b>	<b>June 26<sup>th</sup>, 2023</b>
<b>Construction Start</b>	<b>July 3<sup>rd</sup>, 2023</b>
<b>Completion of Classroom Addition</b>	<b>July 31<sup>st</sup>, 2024</b>

As noted above, a more detailed CPM schedule will be drafted once additional information regarding lead times and activity durations are received from other team members. We will work with DCPS and Skanska to help arrive at a schedule that meets your needs and allows a smooth transition to your use of the proposed addition.

### **Business Terms and Structure of the Comprehensive Agreement**

1. Our Team is familiar with the process of entering into an Interim Agreement, establishing a Contract Cost Limit, development of a GMP, and use of an AIA A141-2014 as the basis for the Comprehensive Agreement. This approach matches what was utilized for the Ridgeview Elementary School & Addition projects as well as others we have completed in the region while working with Skanska. Given our recent experience with this process and its execution with key team members, we do not propose any modifications to this approach.
2. Our Team is agreeable to an “open book” process of partnership and recommend this approach be utilized throughout the life of the project. We feel this approach creates an inherent trust among stakeholders and fosters teamwork while at the same time avoiding the potential for adversarial situations. In order to help make information more readily available to individual team members, we will utilize Procore project management software throughout construction. This platform enables real-time access to critical project information and facilitates seamless communication among key stakeholders. We have utilized this same approach on the Ridgeview Elementary School & Addition projects with this team with good results.
3. Our Team has a great deal of experience in managing the buyout of complex design build projects in our region, and for larger trades we do not see an issue obtaining a minimum of 3 bids for trade packages. We do acknowledge, however, that there is a potential shortage of contractors in this region for some trades, particularly those smaller in size. These include miscellaneous finishes,

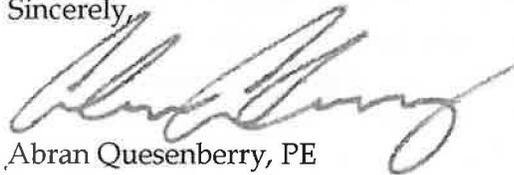
concrete, masonry, door & hardware installation, and general trade packages. To minimize impacts, we will work with subcontractors throughout preconstruction to build interest and gauge the anticipated bid day response. Where needed, we will reach out to additional subcontractors to ensure adequate bid coverage and competitive pricing. We also have the capacity to provide bids for self-performing certain trades to help provide additional competitiveness and resources to the buyout process. We are agreeable to sharing bid tabulations and quotes with the Owner in a collaborative effort to assemble the best team possible for execution of the construction phase of the project.

4. Our Team has no issue with the proposed structure of the GMP and accept it as-is. We utilized a similar approach on the Ridgeview Elementary School & Addition projects as well as others done in collaboration with Skanska with good results. Given our experience with this structure and its execution with key team members, we do not propose any modifications to the outlined approach.
5. Our Team does not take issue with the proposed 50/50 split of cost savings for buyout as this provides our team with incentive to reduce costs while still providing the owner a significant benefit to the project budget. We also take no issue with reverting 100% of the remaining construction contingency back to the owner at the conclusion of the project.
6. While our team will work to minimize the need for changes in the work sequence to the greatest extent possible throughout preconstruction and construction, we understand that some change orders will likely occur. We take no issue with additional markup not being allowed on changes funded through the contractor contingency. For other changes, we believe that a maximum markup of 15% combined overhead and profit for subcontractor and self-performed work and 10% Private Entity markup on subcontractor work is reasonable. These amounts allow for fair profit as well as coverage of direct and indirect overhead associated with implementing and managing the changed work sequence. Markup less than this amount typically forces subcontractors to inflate the costs of the work to cover their margins, and we feel the stated markups will allow for better transparency and more accurate pricing.
7. Our Team prefers the establishment of liquidated versus actual damages for use in addressing damages for delays. In consideration of the proposed liquidated damages, our approach to establishing a GMP will be to ensure that adequate time is included in the construction schedule to account for the period of performance with allowances for reasonably foreseeable delays. We also will work with the project team to define excusable delays and how they are to be identified and reported to ensure clarity and timely acknowledgement by the project team. Our goal is to complete the project within the final construction schedule and avoid delays, and we have a proven track record of doing this on complex projects in our region.

8. Our Team feels that establishing allowances as needed for scopes of work that are not fully defined can be advantageous to the project. We will work to minimize the need for allowances to the greatest extent possible during preconstruction, however if needed we have a great deal of experience in successfully managing allowances and minimizing their impact on project budgets. We have no issue with managing established allowances as part of our scope of work.
9. Our Team feels that a 10% self-perform limit for trade packages is adequate for this project. Our intent would be to propose on self-perform work only where we have issues getting additional competitive pricing and/or where it would be advantageous to the project budget, schedule, or quality parameters. We have experience in successfully self-performing concrete work, door and hardware installation, miscellaneous finishes, and general trades packages among others. We will work closely with the project team to ensure any work self-performed will be executed in the best interest of the project.
10. While we will minimize the need for callbacks and defective work by executing our quality control plan and providing thorough owner training and project closeout, our Team understands that we may experience warranty claims at the conclusion of this project. We have no issues being responsible for the cost of all warranty work per our standard warranty.

We hope this response addresses any questions you had related to our Conceptual Phase Proposal. We will provide additional information and supporting documentation as we continue to develop the design and program of this project. Should you have any additional questions please feel free to reach out to me.

Sincerely,



Abran Quesenberry, PE  
President  
Quesenberry's Construction

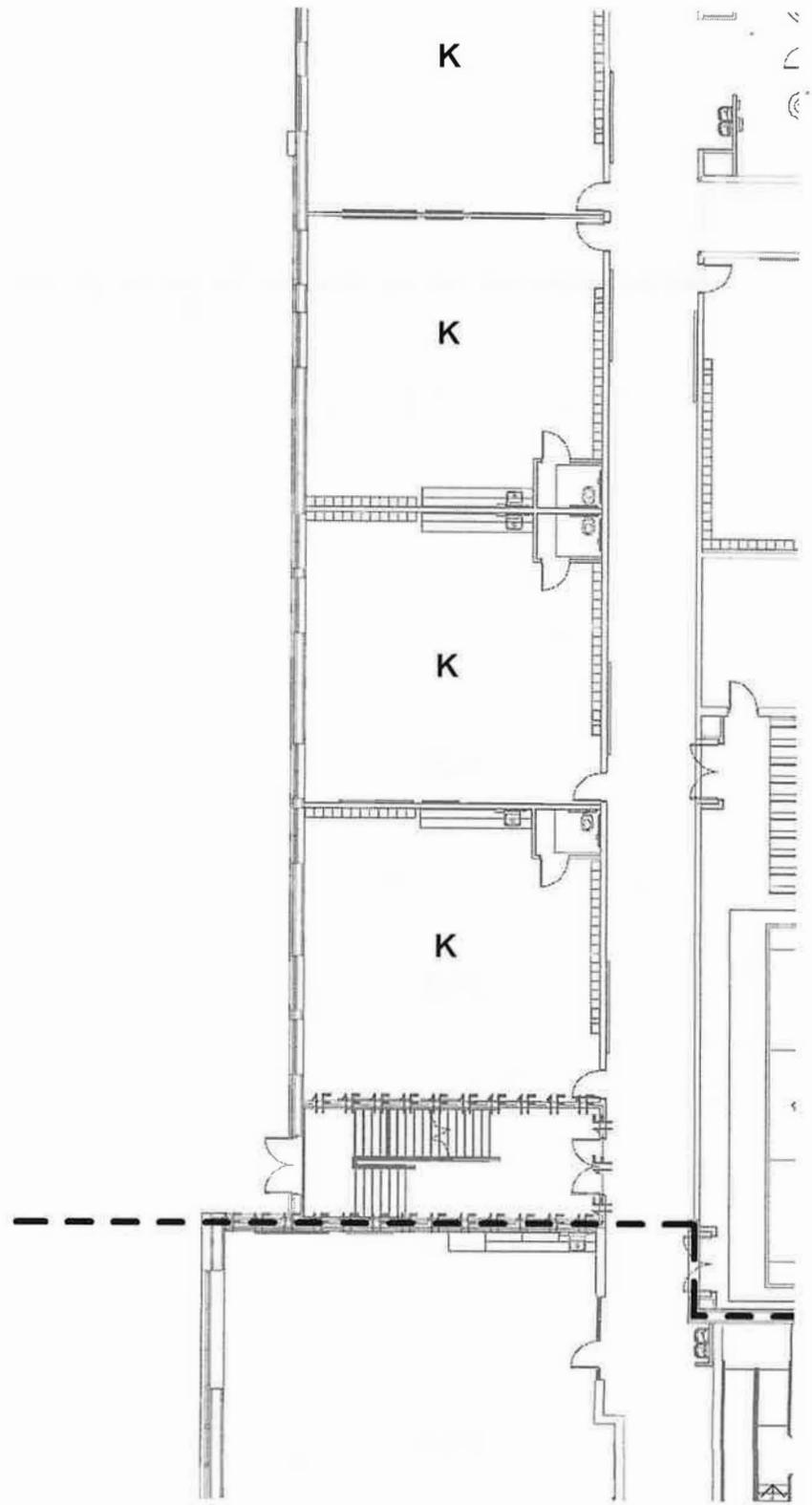
Encl: Revised addition sketches  
Laydown area sketch

# 2024 ROOM ASSIGNMENTS 1<sup>ST</sup> FLOOR

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IG FIRST FLOOR: 51,003 SF  
SESSION FIRST FLOOR: 3,992 SF  
TOTAL FIRST FLOOR SF: 54,995 SF

IG TOTAL SF: 78,093 SF  
SESSION TOTAL SF: 7,984 SF  
TOTAL BUILDING SF: 86,077 SF

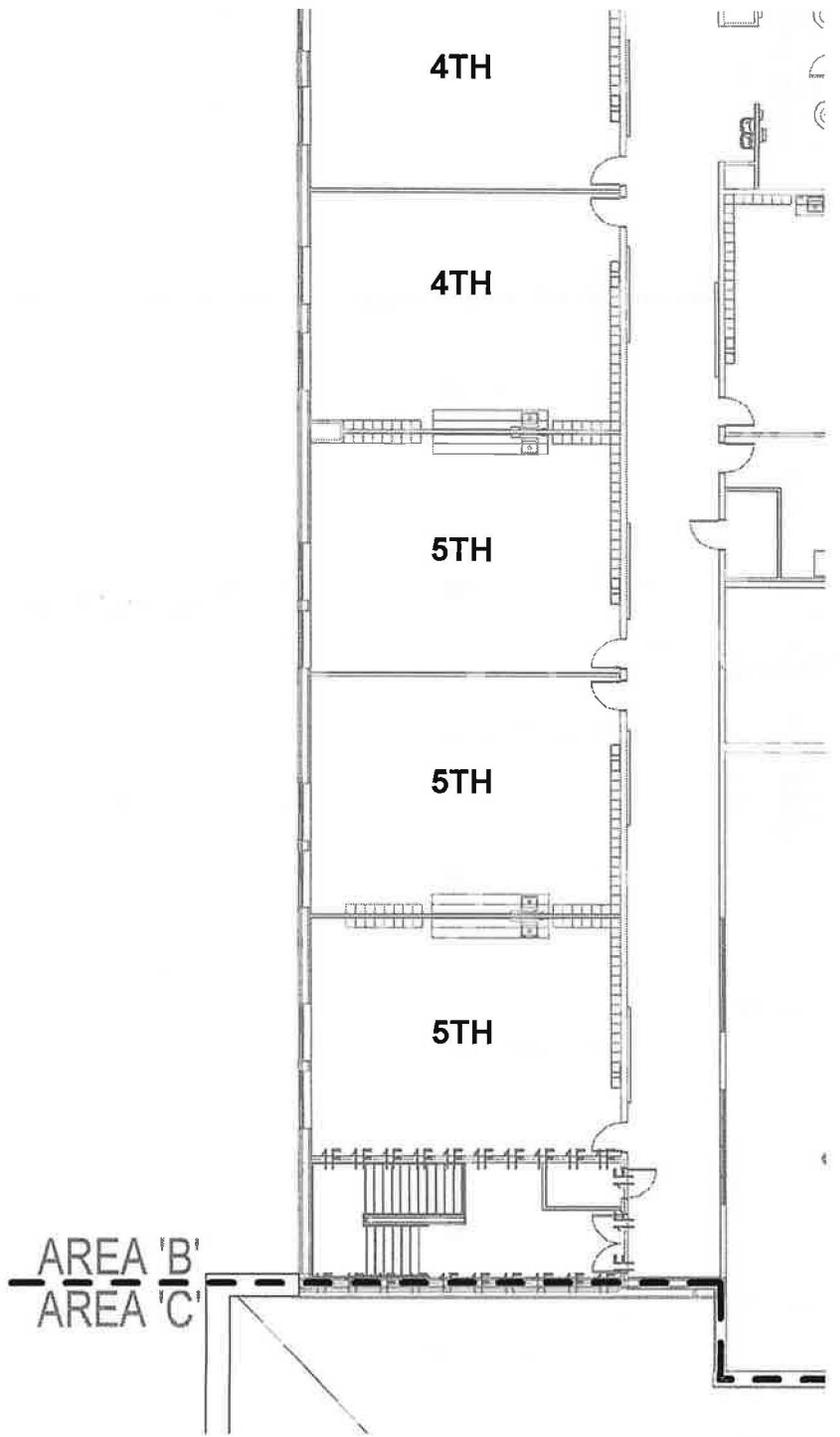


# 2024 ROOM ASSIGNMENTS SECOND FLOOR

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REG SECOND FLOOR: 27,090 SF  
ADDITION SECOND FLOOR: 3,992 SF  
REG TOTAL SECOND FLOOR SF: 31,082 SF

REG TOTAL SF: 78,093 SF  
ADDITION TOTAL SF: 7,984 SF  
REG TOTAL BUILDING SF: 86,077 SF

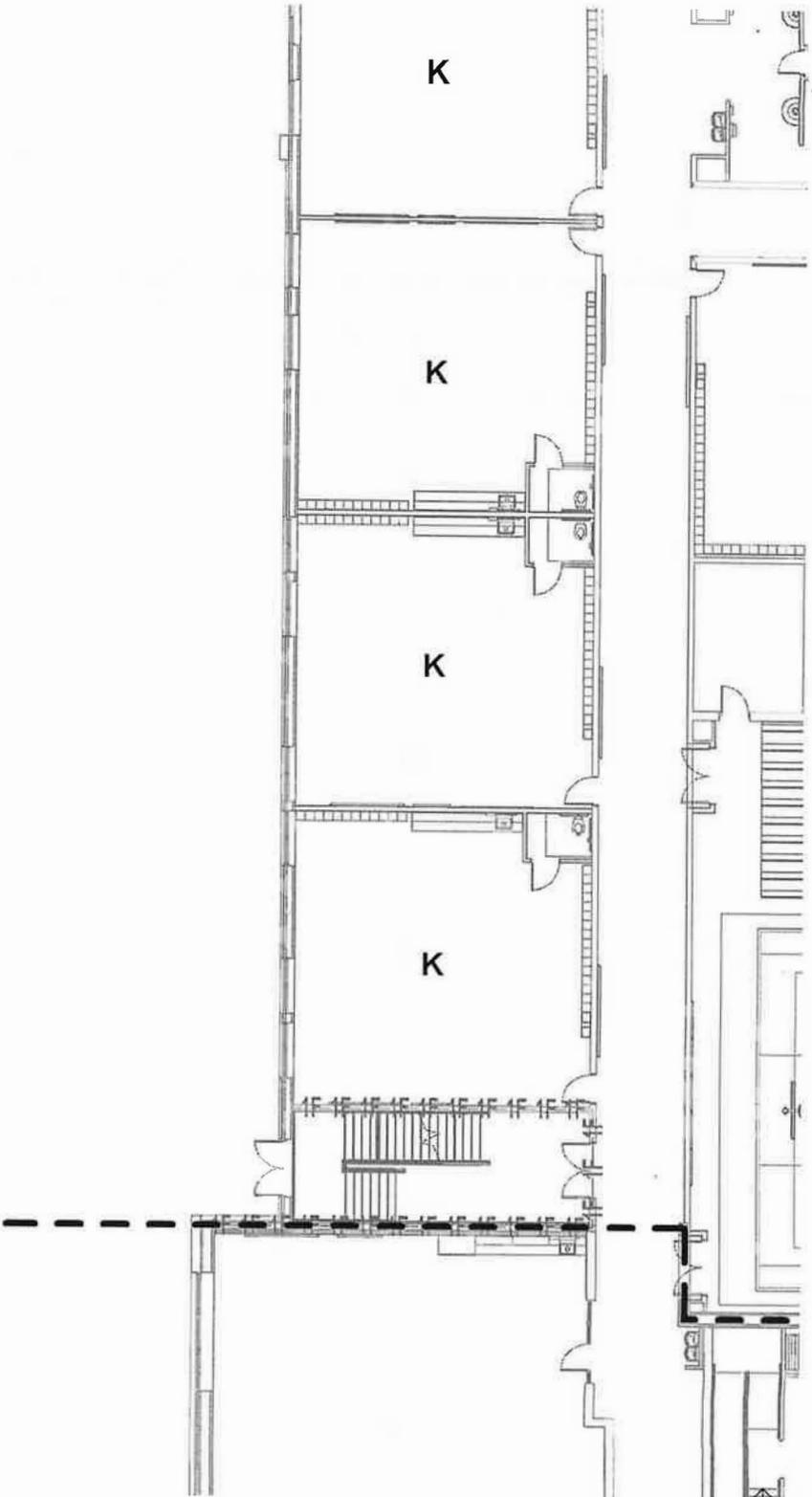


# 2025 ROOM ASSIGNMENTS FLOOR

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REGULAR FIRST FLOOR: 51,003 SF  
EXHIBITION FIRST FLOOR: 3,992 SF  
TOTAL FIRST FLOOR SF: 54,995 SF

REGULAR TOTAL SF: 78,093 SF  
EXHIBITION TOTAL SF: 7,984 SF  
TOTAL BUILDING SF: 86,077 SF

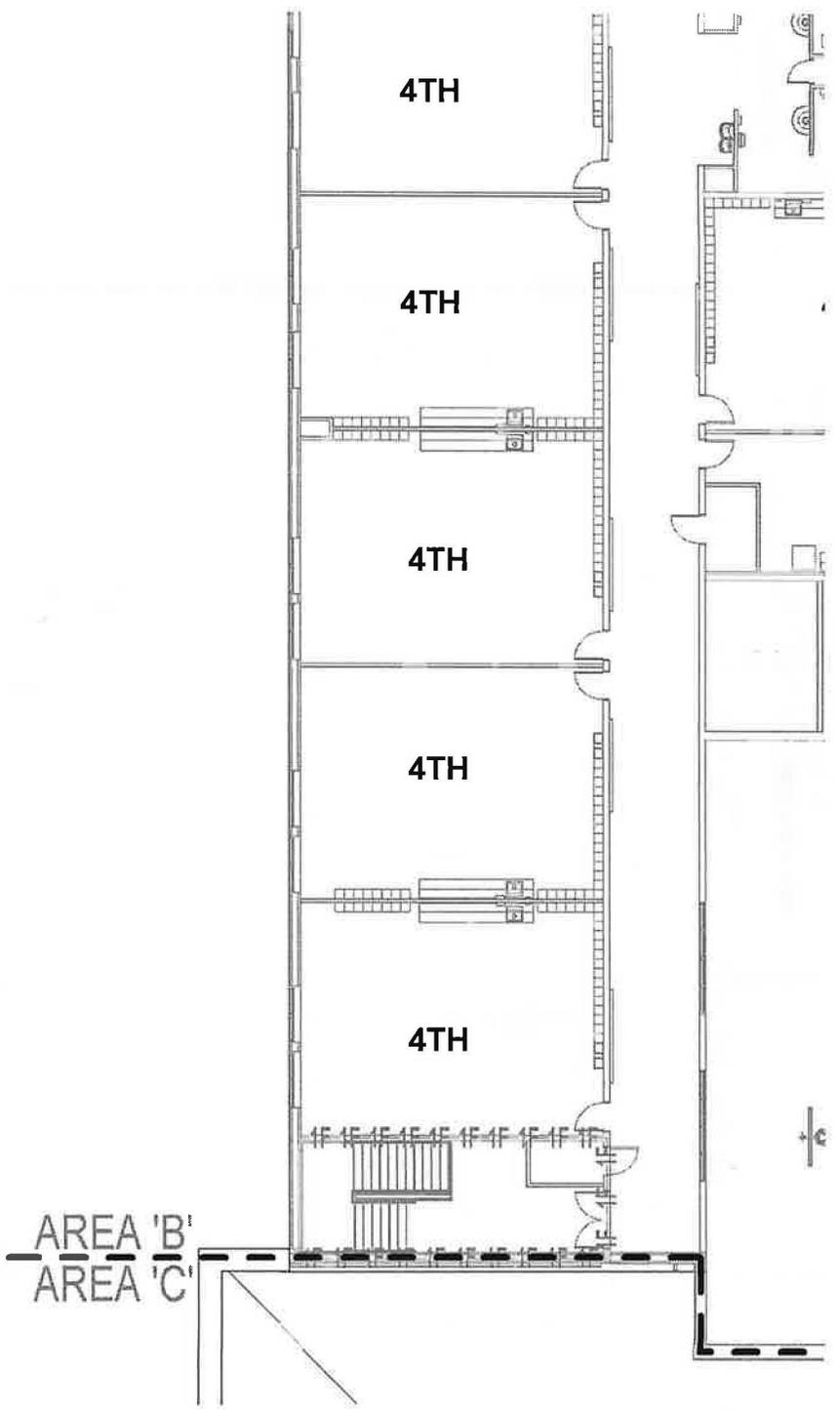


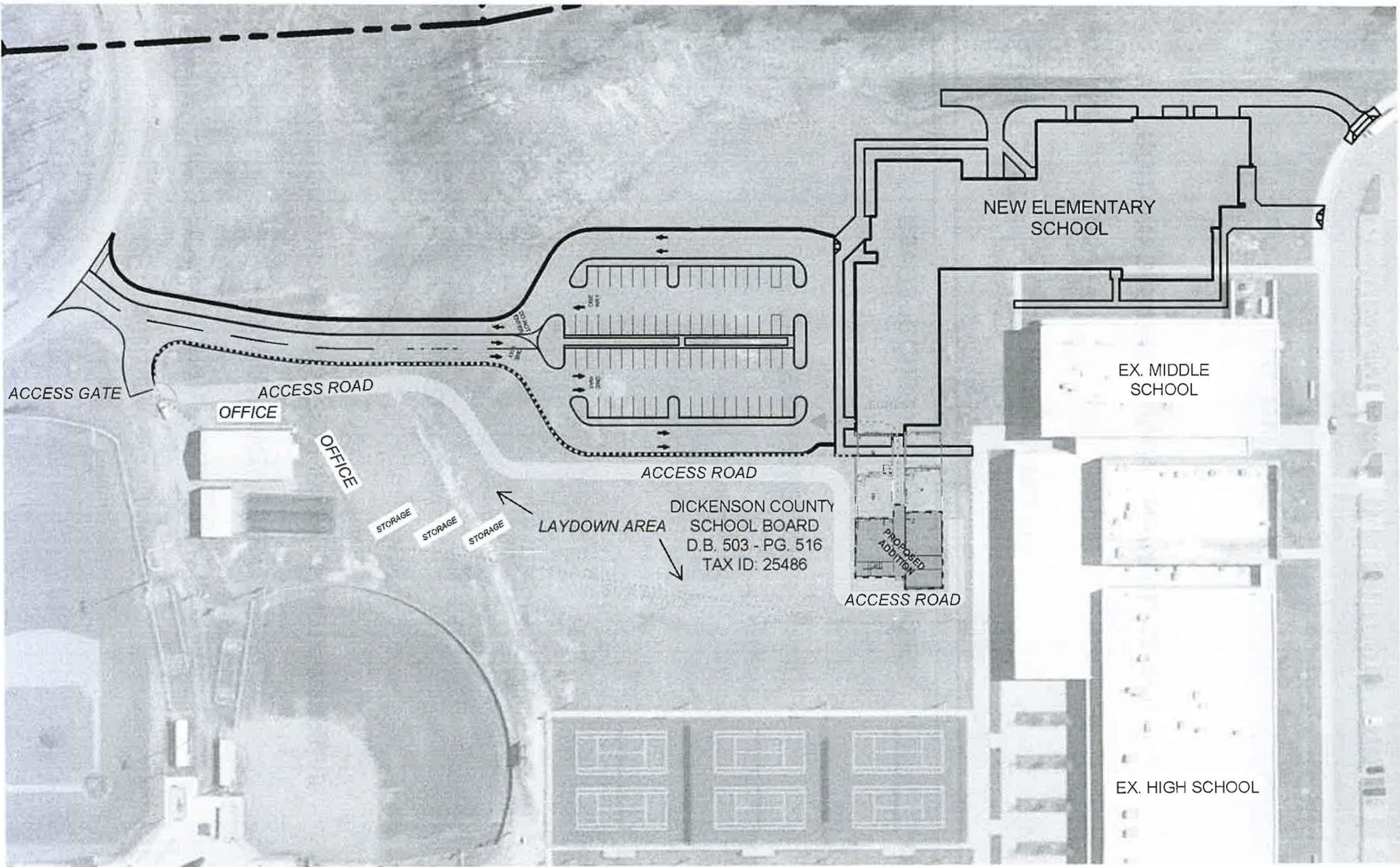
# 025 ROOM ASSIGNMENTS 4TH FLOOR

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3 SECOND FLOOR: 27,090 SF  
ION SECOND FLOOR: 3,992 SF  
D TOTAL SECOND FLOOR SF: 31,082 SF

3 TOTAL SF: 78,093 SF  
ION TOTAL SF: 7,984 SF  
D TOTAL BUILDING SF: 86,077 SF





ACCESS GATE

ACCESS ROAD  
OFFICE

OFFICE

STORAGE

STORAGE

STORAGE

LAYDOWN AREA

DICKENSON COUNTY  
SCHOOL BOARD  
D.B. 503 - PG. 516  
TAX ID: 25486

ACCESS ROAD

NEW ELEMENTARY  
SCHOOL

EX. MIDDLE  
SCHOOL

PROPOSED  
ADDITION

ACCESS ROAD

EX. HIGH SCHOOL

**EXHIBIT D**

**CLARIFICATIONS AND ADDITIONAL INFORMATION**

INTERIM AGREEMENT

BETWEEN

DICKENSON COUNTY SCHOOL BOARD

AND

QUESENBERRY'S, INC.

APRIL 2023

RIGEVIEW ELEMENTARY SCHOOL CLASSROOM ADDITION

RIDGEVIEW CAMPUS

DICKENSON COUNTY PUBLIC SCHOOLS

CLINTWOOD, VIRGINIA

The following Clarifications and Additional Information shall precede the Conceptual Phase Proposal submitted by Quesenberry's, Inc. dated January 13, 2023.

1. Owner and Design-Builder agree on a Contract Cost Limit of \$5,039,200 as mutually agreed upon by both parties.
2. Design-Builder to include builder's risk insurance for value of their contract.
3. Design-Builder to provide topographic survey as part of services under Interim Agreement, if required.
4. Owner intends to pursue an Owner Direct Purchase (ODP) Process and will provide specifications language and assist Design-Builder with the ODP Process. Design-Builder agrees to reasonably participate in process to identify project cost savings.
5. Quesenberry's Construction, Inc. shall comply with the requirements of the Davis-Bacon Act. Contract Documents (100% design documents) shall include prevailing wage requirements and be incorporated into any and all subcontractor agreements.
6. Any utility fees are excluded. Any tap fees are included.
7. Third party construction materials testing and special inspections, geotechnical investigation and report, loose FF&E, and low voltage systems are by Owner similar to those provided for in the New Elementary School and Elementary School Classroom Wing Addition (rough-ins and raceways by Quesenberry's Construction, Inc.).
8. Project shall comply with Davis-Bacon Act due to funding requirements. Quesenberry's pricing shall reflect prevailing wage requirements and provide necessary information needed by DCPS.

**END**

**EXHIBIT E**

**DESIGN STANDARDS AND PROCESSES**

INTERIM AGREEMENT

BETWEEN

DICKENSON COUNTY SCHOOL BOARD

AND

QUESENBERRY'S, INC.

APRIL 2023

RIDGEVIEW ELEMENTARY SCHOOL CLASSROOM ADDITION

RIDGEVIEW CAMPUS

DICKENSON COUNTY PUBLIC SCHOOLS

CLINTWOOD, VIRGINIA

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## **1. INTRODUCTION**

### **1.1. General**

These Design Standards and Processes provide guidance and standards for Design-Build architecture and engineering (“A-E”) services that are being provided by the Design-Builder for the Ridgeview Elementary School Classroom Addition project on the Ridgeview Campus in Dickenson County, VA. The Design-Builder shall be responsible for ensuring that the A-E follows the guidance and standards. The Design-Builder shall be liable to the School Board of Dickenson County, Virginia (“Owner”) if the A-E or those providing design services through the A-E fails to follow the guidance and standards, except as otherwise approved by the Owner. Wherever in this Exhibit E there is any requirement imposed on the A-E or any design professional, this shall be interpreted to mean that the Design-Builder shall cause the A-E or design professional to meet such requirement. Nothing in this Exhibit E shall be interpreted to create any privity of contract between the Owner and A-E, to create any warranty by Owner to Design-Builder, express or implied, regarding any of the design services, or to create any responsibility by the Owner or any acts or omissions by the A-E or those providing services through the A-E.

This Exhibit E is intended to assist the Design-Builder’s A-E and Owner and its Owner Representative by setting forth some of the general procedures to be followed for all of the Services to be provided by or through the A-E. This Exhibit is not designed to be an exhaustive description of the work on the project, but rather to assist design professionals in understanding some of the details of the general requirements for A-E services for the project and describe the major deliverable submissions for interaction and approval by the Owner. This Exhibit is intended to complement and supplement the Agreement, not to replace any of the terms of such documents.

The Owner will identify an Owner’s Representative and an Owner’s Review Committee who would be the key individuals to meet with the Design-Builder and A-E to develop, review and approve the design submissions. The Design-Builder shall coordinate through the Owner’s Representative as described in the Agreement.

### **1.2. Planning and Design Services**

Documents to assist with the planning and design of the New Elementary School Classroom Wing Addition project include:

- Clarifications and Additional Information (Exhibit D)
- Design Standards and Processes (this Exhibit E)
- Guidelines for School Facilities in Virginia's Public Schools, latest edition

Any deviations from these documents must be approved by the Owner in writing.

Design services include all services by design professionals provided by Design-Builder pursuant to the Agreement and this Exhibit E hereto required to provide the final Construction Drawings and Specifications for the project and for any changes thereto and any construction administration services by design professionals. Design Services may include assisting Owner's Review Committee in the preparation of the Design Development and Construction Documents for the Project. References to "complete and accurate" drawings and specifications and such similar language, as used in this document and the Agreement, shall mean those documents will be prepared to a Professional Standard of Care. All design services shall meet the National, State, Dickenson County, VA Building Codes and Regulations and shall meet the Professional Standard of Care ("Standard of Care"), which shall be defined as the standard of performance for all design and construction administration services ("Design Services") under the Agreement and shall be the same professional standard of care and of quality as is ordinarily exercised under similar circumstances by design professionals providing similar services in similar projects in Virginia. The A-E shall devote its resources to the performance of the design services during the term of the Agreement in accordance with the Professional Standard of Care.

The design work shall include all necessary subcontractor and consultant design professionals, including, but not limited to, civil engineer (including all utility analysis, analysis for storm water, sanitary, water service, gas service, electrical power, and telephone/data/communications, site lighting, architectural, landscaping, mechanical, electrical, plumbing, fire protection, acoustical, structural, audio/visual and security design services necessary for a complete and accurate set of final Construction Documents (drawings and specifications).

During design phase reviews, Design-Builder will provide for all printing and electronic copies of drawings and specifications necessary for review of the work product by the Owner's Representative and Review Committee. Electronic copies shall be made available through an accessible electronic platform. Costs for printing of drawings and specifications shall be paid through a printing allowance included within the Not-to-Exceed Budget included within the Interim Agreement. Design-Builder's A-E will provide for design review and coordination meetings necessary to review project design

documents. Meetings will be scheduled with the Owner's Representative to approve the design work product for compliance with this Exhibit E.

### **1.3. Construction Administration**

Construction administration services shall be provided by Design-Builder through its A-E and will only consist of review and approval of any submittals and shop drawings submitted prior to execution of the final Comprehensive Agreement or initiation of actual construction work.

## **2. Project Procedures for A-E**

### **2.1. General Project Procedures**

The Design-Builder and Design-Builder's A-E shall attend a "kick-off" meeting with the Owner's Representative and Review Committee to discuss procedures to be followed for the project and to review the scope of work and the A-E's services to be provided.

The Owner has reviewed the Conceptual Design documents included in the Conceptual Phase PPEA proposal and letter from Quesenberry's Construction, Inc. dated January 13, 2023 included as Exhibits to this Agreement and the Owner shall provide comments and changes to the proposed design and the Design-Builder will incorporate these comments into the Schematic Design submission in accordance with Exhibit F – Clarifications and Additional Information and this Exhibit C and the requirements of the Agreement assuming the comments are considered reasonable.

The A-E, with any subcontractors, engineers, or consultants, will then begin the Design Development process. The following procedures are required, along with the specifics outlined elsewhere in this and other Contract Documents. This introductory list is intended to assist the A-E in knowing what is required by highlighting some of the Owner's requirements, but is not intended to be an exhaustive or exclusive list of project procedures. Other requirements and procedures will be provided by Owner or Owner's Representative for the design process and review.

- All project documentation involving the A-E, including but not limited to meeting minutes, design review comments, correspondence, invoices, code enforcement comments, RFI's, supplemental instructions, formal sketches, site

visit reports, and requests for proposals, must be documented by the A-E with copies provided promptly to the Owner and Owner's Representative.

- At each phase of the design process, the A-E shall respond in writing to any Owner comments as soon as possible and address Owner comments in the subsequent design phase documents. Design-Builder shall update the project progress schedule at each phase of the design process.
- If requested, the A-E shall record and submit to the Owner for comment and revision (before distribution to all parties), all meeting minutes, including but not limited to Owner's Review Committee meetings, code review meetings with Dickenson County, and submittal review meetings. A-E shall address all Owner comments before distributing such documents.
- Design reviews will take place after submission of each design phase with the Owner's Review Committee.
- Any material deviations from the Design Standards and Processes must be provided to the Owner in writing under separate cover.

#### **2.1.1.1. Reproduction, Design Reviews and Value Engineering**

Unless modified by the Owner, provide the Owner with at least three (3) sets of all Plans, Specifications, and calculations at each stage of the design which shall include one (1) full-size and three (3) half-size sets of plans. Deliver or ship these documents overnight as directed by the Owner's Representative. The cost of printing and shipping shall be paid out of the printing allowance included in the CCL or GMP. Materials shall also be made available electronically in pdf format and in CAD or Revit (3-D) if requested. The reimbursable costs shall be for reproduction costs only including file management, paper, bindings, and other material supplies, direct labor involved in printing and delivery charges.

Design reviews will take place at minimum at submission of 90% Construction Documents or prior to submission of 90% Construction Documents, if mutually agreed upon between Private Entity and Owner. These design reviews will also consider value engineering suggestions. Percentages refer to the percent of total design completion, not a percent of each individual phase. A brief review will also be completed by the Owner's Representative at 100% design to ensure that all previous comments have been considered and incorporated. A presentation of the design documents shall be made by the Design-Builder prior to distribution of design documents for review at each stage.

The Owner's Representative and Review Committee shall have up to two (2) weeks to complete their review at each of the design phase submissions. The Design-Builder shall have one (1) week to review comments from the Owner's Representative and Review Committee and must provide a written response to each comment within one (1) week of the submission of review comments to the Owner's Representative. A formal reconciliation meeting shall be held to review each comment and response in an effort to close out each design review comment prior to the design progressing into the next phase.

## **2.2. Procedures for Individual Phases of the Work**

### **2.2.1. Construction Documents (CD) (90%) Submission**

#### **2.2.1.1. Architectural – CD (90%) Submission**

##### **1. General Requirements:**

- The A-E shall prepare the 90% Construction Documents, including plans, drawings, details, and final draft specifications and submit them to the Owner at least one week prior to the 90% review meeting. At the review meeting, the Design-Builder and A-E will present the 90% Construction Document, and will respond to questions and comments on the design. The Design-Builder shall ensure that sufficient persons, including subcontractors and consultants, attend the review meeting so that responses can be provided.
- Subsequent to the 90% review meeting with Owner, the A-E shall:
  - Incorporate all comments or requirements relating and resulting from the review meeting into the Construction Documents.
  - Respond to all previous comments from Owner or Owner's Review Committee on the design.
- Lack of inter-discipline coordination, incompleteness in design of structural or MEP systems, or overall lack of drawing completeness at this phase may result in additional review session(s) which shall be provided at no additional cost to the Owner. Completeness of submitted documents to avoid disruptions of schedule is essential.
- Submit plans to Dickenson County and other agencies having jurisdiction for building permit and approvals.

## 2. Drawing Requirements:

The A-E shall develop and submit the following documents in the Construction Documents phase:

- Provide “letters of agreement” sheet showing any additional documentation of code meetings subsequent to Construction Documents phase. The A-E shall continue to be responsible for preparing letters to the code official, with copies to the Owner, documenting any agreements on compliance with code requirements.
- Finalized overall Life Safety Plan showing, at a minimum, code data travel distances, occupancy loads, and fire area tabulations.
- The drawings and supporting materials produced in this phase of the project shall include the elements listed below at the minimum scales shown:
  - Cover Sheet: Including drawing index and area tabulations of all programmed spaces.
  - Door, window, and hardware schedules: The A-E will prepare the final door and window schedule information that will indicate new doors, windows and frames and labeled door assemblies. Provide hardware schedule on the same sheet.
  - Finish Schedule: The A-E will prepare final finish schedules that include the following information: finish types for walls, floors and ceilings, special finishes required for specialized areas including the courtrooms and judges’ chambers.
  - Equipment and Fixture Schedules outlining all Contractor supplied items.
  - Reference/overall plan(s) at 1/8” minimum scale outlining scope and including room names, occupancy loads, and building and site handicap accessibility features, such as elevators, lifts, ramps, and toilet facilities. Plans should be fully coordinated with MEP and Structural Drawings.

- Equipment and Furnishings Plans 1/8" = 1'-0" minimum (showing equipment and furnishings to be provided by Design-Builder. Include programmed room names, final equipment layouts for specialized spaces such as courtrooms and judges' chambers.
- Elevations clearly demonstrating the scope of work including rooms listed in Equipment and Furnishings Plans. The elevations will define major design features, dimensions and materials to be used. 1/8" = 1'-0" minimum.
- Sections: The A-E will provide typical building sections and wall sections to illustrate proposed building materials, methods, dimensions, and insulation values. 1/8" = 1'-0" minimum.
- Details: The A-E will prepare architectural details which show cross sections (1/8" = 1'-0") and wall sections (3/4" = 1'0") showing major construction features and material.
- Roof Plan showing major rooftop equipment, roof membrane system, and drainage. 1/8" = 1'-0" minimum.
- The Owner's Representative and Review Committee will review the 90% CD submittal. The A-E shall review and respond to all review comments and incorporate comments into the 100% Construction Documents.

### 3. Mechanical Systems – CD (90%) Submission

- **General Requirements**
  - Provide complete specifications including index all sections that will be a part of the final contract documents.
  - Answer and respond to all intermediate submission comments.
- **Drawing Requirements**

- Complete the mechanical cover sheet with symbols list, notes and temperature control zone diagram. Provide code and energy analysis, titles, and complete floor plans.
- Complete equipment schedules and detail sheets.
- Provide separate drawings showing all floor plans. Provide floor plans showing equipment locations, piping, and ductwork. Identify all pieces of equipment, size of piping and ductwork. Provide mechanical room layouts. Show sections of all mechanical rooms and provide finalized sections through any bulkheads. Provide finalized boiler room plan.
- Coordinate floor plans with other disciplines.
- Provide room names and numbers on all floor plans.
- Check that all title block information has been completed on each drawing and that each drawing contains a key plan (where applicable).

#### **4. Electrical Systems – CD (90%) Submission**

The design of the electrical system, unless the A-E is otherwise directed, shall include the following elements:

- **General Requirements:**
  - Provide a copy of the completed electrical specification including a table of contents listing each electrical specification section to be used for the project.
  - If necessary, provide a copy of the final electrical load letter sent to the electrical utility company.
  - Provide copies of the transmittals for information sent to the telephone and cable television companies.
  - Provide the names and addresses of the power company, cable television, and telephone company contacts for this project.
- **Drawing Requirements:**
  - Complete the electrical cover sheet. Insure that all symbols and abbreviations used on this project are included as well as the list of drawings.

- Complete the electrical site plan including all new and existing utility information and site lighting branch circuit wiring. Add proposed electrical (primary and secondary), telephone, and cable television service entrance. Indicate all new and/or existing underground and overhead utility lines (gas and water, etc.) that may affect the electrical work. Add any existing site lighting and electrical utilities that are to be removed. Add any applicable electrical site plan details (pole base secondary electrical service entrance duct back, main grounding, etc.).
- Provide an updated computer generated photometric site lighting plan indicating the point-by point maintained foot-candle levels. This plan must correspond with and accompany the lighting layout shown on the electrical site plan.
- Provide floor plans indicating the new lighting layout in each space. These plans shall also show branch circuit connections to corridor junction boxes, all illuminated exit signs, which lighting fixtures are to be connected to emergency lighting circuits, the method of lighting control for each space, lighting fixture type designations, room names and numbers, and foot-candle level designations. Room names, numbers, and foot-candle levels may be scheduled on each floor plan. The locations of all lighting branch circuit panelboards shall be shown on these plans. All notes referenced on these plans shall be shown on the same plan as the reference.
- Provide floor plans indicating the power receptacles and CATV outlets and their branch circuit connection to corridor junction boxes. These plans shall also show the required power connections to all architectural, mechanical, plumbing, and kitchen equipment including disconnects and control devices. Show a plan for the Main Communications Room and each electrical/communications equipment room, kitchen and boiler rooms if applicable indicating the location and identification of each piece of equipment. All notes

referenced on these plans shall be on the same plan as the reference.

- Complete the lighting plans including all branch circuit wiring and identification of equipment. Identification shall include electrical characteristics for each item of equipment.
- Complete the fire alarm, master program clock, and building security system plans including all interconnection wiring and security zone indications. Indicate the location and identification of each item of control and annunciation equipment, and the building security sub-distribution equipment locations. Provide a detail of the fire alarm graphic annunciator panel faceplate. All notes referenced on these plans shall be shown on the same plan as the reference.
- Provide drawings for the main distribution switchboard, panelboard, transformer, and lighting fixture schedules and a power system load tabulation schedule.
- Complete the sound and intercommunications system, auxiliary sound systems, telecommunications system, CATV system plans including all interconnection wiring, speaker zone indications, and telecommunications outlet identification numbers.
- Provide a power riser diagram showing all electrical service entrance and distribution equipment, emergency service equipment, grounding system, and their associated interconnections. Label each item of equipment. Also provide an isometric elevation and a one-line diagram of the main distribution switchboard.
- Coordinate floor plans with other disciplines.
- Check that all title block information has been completed on each drawing and that each drawing contains a key plan (where applicable).

## **5. Plumbing Systems – CD (90%) Submission**

- **General Requirements:**

- Complete all sections of the specifications. Provide an index for specifications indicating all sections that will be a part of the final construction documents.
- **Drawing Requirements:**
  - Complete cover sheet with symbols list, sprinkler service detail, fixture connection schedule with mounting heights. Provide schedule showing overall drainage fixture units. Allow additional space for notes and other details. Add titles.
  - Provide complete riser diagrams for all piping systems, including pipe sizes.
  - Complete floor plans, details, and schedules. Provide floor plans showing all fixtures, utility entrances, water heaters. Provide notes and details.
  - Coordinate floor plans with other disciplines and coordinate phasing requirements.
  - Provide room names on all floor plans.
  - Provide domestic hot water calculations on cover sheet.
  - Provide drainage fixture unit schedules on cover sheet showing types of fixtures removed and added for project.
  - Check that all title block information has been completed on each drawing and that each drawing contains a key plan (where applicable).

## 6. Sprinkler Systems – CD (90%) Submission

- **General Requirements:**
  - The A-E will provide a Final Performance specification for the sprinkler system.
- **Drawing Requirements:**
  - Complete all details.
  - Show all main piping routing, service entrance, manifold system, zone valves, inspector test valve locations, phasing requirements and details such as service manifold system, hangers, and branch over details, etc.
  - Provide final phasing coordination.

- Provide sections of sprinkler piping located in tight areas, where any question may arise as to the implementation of piping requirements.
- Coordinate floor plans with other disciplines and coordinate phasing requirements.
- Provide room names, NFPA hazard classification, and numbers on all floor plans.
- Check that all title block information has been completed on each drawing and that each drawing contains a key plan (if applicable).

**7. Civil and Structural – CD (90%) Submission**

- Provide final structural calculations with a table of contents and clear relationships to drawings and specifications.

**8. Cost Estimate – CD (90%) Submission**

Provide an updated cost estimate based upon market feedback. Provide a detailed labor and material type cost estimate and organize by CSI division.

**2.2.2. A-E Construction Documents (100%)**

**1. General (100%) Requirements**

- The A-E will prepare the 100% Construction Documents, including drawings, details, and specifications and submit them to the Owner at least one week prior to the 100% review meeting. At the review meeting, the Design-Builder and A-E will present the 100% Construction Documents and will respond to questions and comments to the design in writing (can be in the form of meeting minutes). The Design-Builder will ensure that sufficient persons, including subcontractors and consultants, attend the review meeting so that responses can be provided.

- The A-E will develop and provide the following during the 100% Construction Documents phase:
  - Complete construction Specifications
  - Complete civil, architectural, MEP, sprinkler, and structural drawings
  - Construction documents that comply with all requirements for final Dickenson County or other agency submission, if applicable.
  - Provide responses to all previous comments received during design review not previously responded to.
  - Incorporate all comments resulting from building permit applications.
  - Prepare final set of documents for use for construction.
- Lack of inter-discipline coordination, incompleteness in design of structural or MEP systems, or overall lack of drawing completeness at this phase may result in additional review session(s) beyond the final meeting, which shall be provided at no additional cost to the Owner. Completeness of submitted documents to avoid disruptions of schedule is essential.
- Once all adjustments and corrections are made to the 100% Construction Documents, the A-E will present them to the Owner for approval of the final design.
- Subsequent to the 100% review meeting with Owner, the A-E shall accomplish the following:
  - Incorporate all comments or requirements relating to compliance with the Specifications and resulting from the review meeting into the Construction Documents.
  - If required, send one (1) complete, signed and sealed set of Construction Documents (drawings) and Specifications (or as many as they require) with the required signed design statement by the architect or engineer to Dickenson County for their record.

### **2.2.3. Construction Phase (under separate agreement)**

The A-E shall expeditiously and so as not to delay the progress of the work, review and take action on shop drawings, samples and other submittals of the Design-Builder for conformance with the design concept of the project and for compliance with information given in the Construction Documents. The Design-Builder shall obtain the approval of the Owner's Representative prior to approving any items that do not conform to the requirements of the approved Construction Documents.

**END**

# Dickenson County Public Schools

P.O. Box 1127, 309 Volunteer Avenue  
Clintwood, Virginia 24228  
Phone (276) 926-4643 Fax (276) 926-6374

*Haydee L. Robinson, Superintendent*



Mar. 6, 2023

Abran Quesenberry, PE  
President  
Quesenberry's Construction  
P O Drawer Q  
104 E. 19th St N  
Big Stone Gap, VA 24219

**RE: Dickenson County Public Schools  
New Classroom Addition to Ridgeview Elementary School  
PPEA Conceptual Phase Proposal**

Dear Mr. Quesenberry:

As a follow up to the letter dated February 3, 2023 acknowledging receipt of your Conceptual Phase PPEA proposal, DCPS is requesting that Quesenberry's Construction provide revised design documentation and additional information as follows:

## **Proposed Modifications and Clarifications:**

1. No renovations are anticipated in Ridgeview Middle School to accommodate 5<sup>th</sup> grade students. The current 6<sup>th</sup> grade classrooms will be utilized and should meet the needs of 5<sup>th</sup> grade students without any modifications.
2. Add group/gang restrooms to the second floor.
3. Add a custodial office and resource room to the first floor.
4. Based upon expected enrollment, ensure that grade levels are clustered together as best as possible. For example, keep all 4<sup>th</sup> grade classrooms in Area "B" of the second floor.
5. Show proposed logistics plan to include laydown and staging areas, location of jobsite trailer(s), dumpsters, etc. for new classroom addition following substantial completion of the New Ridgeview Elementary School and classroom wing addition currently under construction. It is anticipated that construction of the classroom addition could occur summer 2023.

## **Cost Estimate and Schedule:**

1. Provide an updated estimate of cost for design and construction based upon the information requested above. The cost estimate should be of sufficient detail to include anticipated design fees and estimated construction costs (direct trade costs/cost of work, general conditions and general requirements, bonds and insurance, contractor overhead and profit ("fee"), contractor contingency, and any other indirect costs assuming that the Owner anticipates entering into an interim agreement that establishes a contract cost limit with fixed design fees to finalize plans and specifications with a follow-on contract with a

guaranteed maximum price (GMP) for construction and remaining design team construction administration).

2. Remove costs for modification of existing space from estimate.
3. Remove Owner Contingency of 5% from estimate.
4. Confirm any needed survey work is included in the Private Entity proposed costs.
5. Acknowledge that any loose FF&E and construction materials testing & special inspections are by Owner. In addition, please clarify which low voltage systems are proposed to be provided by Owner vs. Private Entity.
6. DCPS is anticipating an approach that includes an Interim Agreement for design and preconstruction services only that establishes a contract cost limit that cannot be exceeded and a follow-on comprehensive agreement that establishes a GMP or multiple GMPs that will be at or less than the contract cost limit established in the interim agreement. Please provide your thoughts on this contracting approach.
7. Provide an updated schedule that includes milestones for both design and construction activities that assumes execution of an Interim Agreement on April 24, 2023.

### **Business Terms and Structure of the Comprehensive Agreement**

1. The Owner intends to enter into an Interim Agreement which will establish a Contract Cost Limit (CCL) for the design and construction of the project and authorize the design to progress in order to develop a GMP for the work. The Owner intends to use the AIA A141-2014, Agreement between Owner and Design-Builder, form of contract as the basis for the Comprehensive Agreement which will follow the execution of the Interim Agreement. The Comprehensive Agreement will include a mutual agreement on the scope, level of quality, schedule, design approval process, a Guaranteed Maximum Price (GMP) that does not exceed the CCL, along with other terms and conditions. Please confirm you are in agreement with the intended approach and provide any suggested modifications to this approach for consideration.
2. The Owner is interested in a partnering approach throughout the life of the project. This approach includes a transparent, "open book" process whereby the Private Entity will provide copies of bids, subcontractor/vendor/supplier contracts and other procurement documentation, invoices and accounting records and the like upon the request of the Owner. Please provide your thoughts on effective means of partnering and establishing a transparent process.
3. The Private Entity will be required to bid out all major trade packages and obtain a minimum of 3 bids for each major trade package unless agreed upon in writing along with providing the Owner with copies of bid tabs and all bids/quotes at time of presentation of the GMP. Is the Private Entity in agreement with this approach?
4. The proposed structure of the GMP includes the following items. Please provide a response on whether or not you are willing to accept this structure as-is or with any modifications.
  - **Reimbursable Cost of the Work up** to the amount of the GMP including general conditions, general requirements, and trades work.
  - **Subcontractor Bonds / Insurances**
  - **Private Entity Insurances**

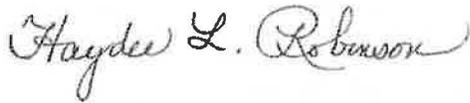
- **Performance and Payment Bond**
  - **Fixed Design Fee**
  - **Fixed Private Entity Fee** (overhead and profit)
  - **Private Entity Contingency:** The Private Entity Contingency may be used by the Private Entity for scope gaps between trade contractors, contract default by a trade's contractor, and unforeseen field conditions (not to include unforeseen unsuitable materials, rock or other obstructions not assumed in estimated quantities included in the cost of the work). Any other proposed use must be approved by the Owner in writing before the Private Entity commits funds from the Private Entity Contingency. The Private Entity Contingency is for use by the Private Entity; however, the Private Entity must provide the Owner notice of each use of this contingency within a reasonable amount of time, but no later than three work days after occurrence. This includes changes that result in a credit to the Private Entity Contingency. Owner approval to use the Private Entity Contingency shall not be unreasonably withheld. The Private Entity may use the Private Entity contingency to cover the cost of any needed repairs that need to be made during the construction process; however, costs for repair work will need to be back-charged to subcontractors or covered out of the Private Entity's fee. The Owner will not be responsible for the cost of repairs made during construction. At the conclusion of the project, the remaining balance of the Private Entity Contingency is to be returned, 100%, to the Owner.
5. Provide suggestion of proposed shared savings split for cost of work savings as well as contractor contingency savings. The Owner proposes a 50/50 split for buyout/cost of work savings with 100% of contractor contingency savings reverting to Owner at completion.
  6. The Private Entity will not be allowed to mark-up any change orders funded through the contractor contingency. Any owner-requested change orders to be funded out of the Owner's contingency will be allowed to be marked-up a fair and reasonable amount, however, the Owner is interested in establishing a maximum amount for subcontractor and Private Entity mark-ups for overhead and profit. Please propose what you believe should be the maximum allowable mark-ups by subcontractors and the Private Entity for owner requested changes.
  7. Liquidated damages will be established at the time of Comprehensive Agreement negotiations. The amount of liquidated damages has not been determined at this time. Please provide your thoughts on liquidated versus actual damages for damages for delay and how this affects your approach to establishing a GMP.
  8. Allowances may be established for scopes of work that cannot be fully defined at the time of agreement of the GMP. The Private Entity will be responsible for managing each allowance to ensure the amount of the allowance is not exceeded without prior approval of the Owner. Please provide your thoughts.
  9. Private Entity may self-perform up to 10% of the cost of construction provided the Private Entity's price for the work can be demonstrated to be lower than competitive bids from trade's contractors. Please elaborate on your interpretation of this statement.
  10. The cost of all warranty work will be the responsibility of the Private Entity, including time spent coordinating warranty work by the Private Entity's project manager, superintendent or other team members. Please elaborate on your interpretation of this statement.

Upon considering the information noted above, please provide your written response by **2:00 PM on Monday, March 13, 2023**. We are requesting an electronic copy of your response be emailed to [curtis.elswick@skanska.com](mailto:curtis.elswick@skanska.com) by the deadline as well as four (4) hardcopies be delivered to:

Mrs. Haydee Robinson, Superintendent  
Dickenson County Public Schools  
309 Volunteer Avenue  
Clintwood, VA 24228

If you have any questions at this time, please contact Curtis Elswick at (540) 423-2860 or [curtis.elswick@skanska.com](mailto:curtis.elswick@skanska.com).

Sincerely,

A handwritten signature in cursive script that reads "Haydee L. Robinson".

Mrs. Haydee L. Robinson  
Division Superintendent



March 10<sup>th</sup>, 2023 (Revised 4-18-23)

Haydee Robinson  
Division Superintendent  
Dickenson County Public Schools  
309 Volunteer Avenue  
PO Box 1127  
Clintwood, VA 24228

Re: Dickenson County Public Schools  
New Classroom Addition to Ridgeview Elementary School  
Quesenberry's receipt letter response (Revised 4-18-23)

Dear Mrs. Robinson,

We have received your 3-6-23 response letter to our PPEA Conceptual Phase Proposal submission for the above referenced project. Below are our responses to the requests within that letter:

#### **Proposal Modifications and Clarifications**

1. We have removed costs for modifications to the existing Ridgeview Middle School. Please see revised cost breakdown in Item 1. of Cost Estimate and Schedule below.
2. Group/gang bathrooms have been added to the second floor of the addition as requested. See attached revised floor plans for review.
3. A custodial office and resource room has been added to the first floor of the addition as requested. See attached revised floor plans for review.
4. We have included our recommended grade assignments on the attached revised floorplans both for the '23-'24 school year (during proposed construction) and the '24-'25 school year after the proposed addition is complete. Grades were clustered as best as possible given the layout of existing facilities and restroom access. See attached revised floorplans for review.

5. Attached you will find a sketch outlining our proposed laydown, staging, trailer, and access for construction of the proposed addition. Highlights of this proposed plan include:

- Jobsite trailers for Quesenberry's and Skanska's use will remain in current location and will continue to be used once current Ridgeview Elementary School and addition projects are complete.
- Storage trailers will remain in current location.
- Access road will enter at its current location and continue around the proposed new addition to allow access to all sides.
- Construction fencing will be moved to align with back of the curb on the western edge of the new access and parking pavement. The fence will then terminate against the existing addition and will resume on the south side of this addition, extending southward to the edge of the sidewalk and then running west along this sidewalk to a point where proper access and clearance can be attained around the proposed addition. The fence will then continue northeast to meet the current inflection point adjacent to the existing softball facilities. Screening can be used on this fence as needed to block view of the jobsite from student occupied areas.
- Egress of the existing spaces will be maintained around the construction area. The existing school addition will exit out of the building at the north staircase and into the parking lot.
- A temporary barrier wall or other agreeable enclosure will be installed at the west end of the existing addition to separate it from the construction area. We propose to not install storefront and curtainwall systems in these areas as originally designed to save costs on installation and demolition, as these systems will not be needed once proposed addition is complete.
- This laydown and access plan is preliminary and is open to input from DCPS and other applicable parties. We will work with your team to ensure that construction activities have a minimal effect on operations of adjacent spaces and that student safety remains the top priority throughout construction.

### **Cost Estimate and Schedule**

1. Below is an updated breakdown of conceptual costs as requested, including changes noted above:

<b>Ridgeview Classroom Addition Conceptual Estimate</b>	
Addition - Classrooms (7,300 SF x \$450/sf)	\$ 3,285,000
Addition - Gang Restroom (684 SF x \$500/sf)	\$ 342,000
Canopy @ Middle & High School (1300sf x \$150/sf)	\$ 195,000
Utility & Foundation Additions and Revisions	\$ 95,000
Construction & Estimate Contingency (5%)	\$ 195,900
Cost Escalation to Construction Midpoint (5%)	\$ 205,600
Bonds & Insurance (1.5%)	\$ 64,800
Building Design (6.0%)	\$ 275,200
Site Design & Permit Updates (0.6%)	\$ 29,200
Private Entity Fee (7.5%)	\$ 351,500
<b>Total Cost =</b>	<b>\$ 5,039,200</b>

These costs have been updated to reflect the current size and layout of the new addition based on the attached sketches. Please note that these costs are conceptual at this time. Given that the floorplan appears to be finalized, we will begin the process of getting more detailed pricing from subcontractors and suppliers and will submit this additional information as it becomes available. Prior to entering into an Interim Agreement and providing a CCL, we feel that we can provide updates to these numbers based on additional input from subcontractors and suppliers to ensure the most accurate and up to date budget is being used moving forward.

2. Costs for modification of existing spaces have been removed from the cost breakdown outlined in Item 1. above.
3. Owner Contingency has been removed from the cost breakdown above.
4. Any required survey work has been included in the cost breakdown above.
5. We acknowledge that loose FF&E and construction materials testing & special inspections are by Owner. We have included in our scope the pathways for low voltage systems; all other low voltage scope is to be provided by Owner. This matches the arrangement currently in place for the Ridgeview Elementary School & Addition.
6. We are familiar with the process of entering into an Interim Agreement for design and preconstruction services that establishes a contract cost limit that cannot be exceeded with a follow up comprehensive agreement that establishes a GMP(s). This approach matches what was utilized for the Ridgeview Elementary School & Addition projects as well as others we have completed in the region while working with Skanska. Given our recent experience with the process and its execution with key team members, we feel that this is an appropriate contracting approach for this project.
7. Below is an estimated timeline based on our current understanding of the conceptual phase of this project. Please note that milestone dates noted below

are based on assumptions and subject to change as additional information becomes available. Once we have enough information regarding the scope of design and construction, a detailed CPM schedule will be drafted and presented for approval. Please also note that the milestone dates below are subject to ongoing supply chain issues related to the ongoing COVID-19 pandemic.

<b>Execution of Interim Agreement</b>	<b>April 24<sup>th</sup>, 2023</b>
<b>Site &amp; Utility Design Complete</b>	<b>May 31<sup>st</sup>, 2023</b>
<b>Building Design 90% Complete</b>	<b>June 12<sup>th</sup>, 2023</b>
<b>Execution of GMP Contract</b>	<b>June 21<sup>st</sup>, 2023</b>
<b>Building Design 100% Complete</b>	<b>June 26<sup>th</sup>, 2023</b>
<b>Construction Start</b>	<b>July 3<sup>rd</sup>, 2023</b>
<b>Completion of Classroom Addition</b>	<b>July 31<sup>st</sup>, 2024</b>

As noted above, a more detailed CPM schedule will be drafted once additional information regarding lead times and activity durations are received from other team members. We will work with DCPS and Skanska to help arrive at a schedule that meets your needs and allows a smooth transition to your use of the proposed addition.

### **Business Terms and Structure of the Comprehensive Agreement**

1. Our Team is familiar with the process of entering into an Interim Agreement, establishing a Contract Cost Limit, development of a GMP, and use of an AIA A141-2014 as the basis for the Comprehensive Agreement. This approach matches what was utilized for the Ridgeview Elementary School & Addition projects as well as others we have completed in the region while working with Skanska. Given our recent experience with this process and its execution with key team members, we do not propose any modifications to this approach.
2. Our Team is agreeable to an “open book” process of partnership and recommend this approach be utilized throughout the life of the project. We feel this approach creates an inherent trust among stakeholders and fosters teamwork while at the same time avoiding the potential for adversarial situations. In order to help make information more readily available to individual team members, we will utilize Procore project management software throughout construction. This platform enables real-time access to critical project information and facilitates seamless communication among key stakeholders. We have utilized this same approach on the Ridgeview Elementary School & Addition projects with this team with good results.
3. Our Team has a great deal of experience in managing the buyout of complex design build projects in our region, and for larger trades we do not see an issue obtaining a minimum of 3 bids for trade packages. We do acknowledge, however, that there is a potential shortage of contractors in this region for some trades, particularly those smaller in size. These include miscellaneous finishes,

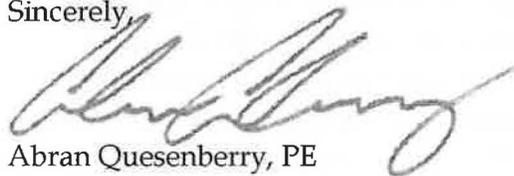
concrete, masonry, door & hardware installation, and general trade packages. To minimize impacts, we will work with subcontractors throughout preconstruction to build interest and gauge the anticipated bid day response. Where needed, we will reach out to additional subcontractors to ensure adequate bid coverage and competitive pricing. We also have the capacity to provide bids for self-performing certain trades to help provide additional competitiveness and resources to the buyout process. We are agreeable to sharing bid tabulations and quotes with the Owner in a collaborative effort to assemble the best team possible for execution of the construction phase of the project.

4. Our Team has no issue with the proposed structure of the GMP and accept it as-is. We utilized a similar approach on the Ridgeview Elementary School & Addition projects as well as others done in collaboration with Skanska with good results. Given our experience with this structure and its execution with key team members, we do not propose any modifications to the outlined approach.
5. Our Team does not take issue with the proposed 50/50 split of cost savings for buyout as this provides our team with incentive to reduce costs while still providing the owner a significant benefit to the project budget. We also take no issue with reverting 100% of the remaining construction contingency back to the owner at the conclusion of the project.
6. While our team will work to minimize the need for changes in the work sequence to the greatest extent possible throughout preconstruction and construction, we understand that some change orders will likely occur. We take no issue with additional markup not being allowed on changes funded through the contractor contingency. For other changes, we believe that a maximum markup of 15% combined overhead and profit for subcontractor and self-performed work and 10% Private Entity markup on subcontractor work is reasonable. These amounts allow for fair profit as well as coverage of direct and indirect overhead associated with implementing and managing the changed work sequence. Markup less than this amount typically forces subcontractors to inflate the costs of the work to cover their margins, and we feel the stated markups will allow for better transparency and more accurate pricing.
7. Our Team prefers the establishment of liquidated versus actual damages for use in addressing damages for delays. In consideration of the proposed liquidated damages, our approach to establishing a GMP will be to ensure that adequate time is included in the construction schedule to account for the period of performance with allowances for reasonably foreseeable delays. We also will work with the project team to define excusable delays and how they are to be identified and reported to ensure clarity and timely acknowledgement by the project team. Our goal is to complete the project within the final construction schedule and avoid delays, and we have a proven track record of doing this on complex projects in our region.

8. Our Team feels that establishing allowances as needed for scopes of work that are not fully defined can be advantageous to the project. We will work to minimize the need for allowances to the greatest extent possible during preconstruction, however if needed we have a great deal of experience in successfully managing allowances and minimizing their impact on project budgets. We have no issue with managing established allowances as part of our scope of work.
9. Our Team feels that a 10% self-perform limit for trade packages is adequate for this project. Our intent would be to propose on self-perform work only where we have issues getting additional competitive pricing and/or where it would be advantageous to the project budget, schedule, or quality parameters. We have experience in successfully self-performing concrete work, door and hardware installation, miscellaneous finishes, and general trades packages among others. We will work closely with the project team to ensure any work self-performed will be executed in the best interest of the project.
10. While we will minimize the need for callbacks and defective work by executing our quality control plan and providing thorough owner training and project closeout, our Team understands that we may experience warranty claims at the conclusion of this project. We have no issues being responsible for the cost of all warranty work per our standard warranty.

We hope this response addresses any questions you had related to our Conceptual Phase Proposal. We will provide additional information and supporting documentation as we continue to develop the design and program of this project. Should you have any additional questions please feel free to reach out to me.

Sincerely,



Abran Quesenberry, PE  
President  
Quesenberry's Construction

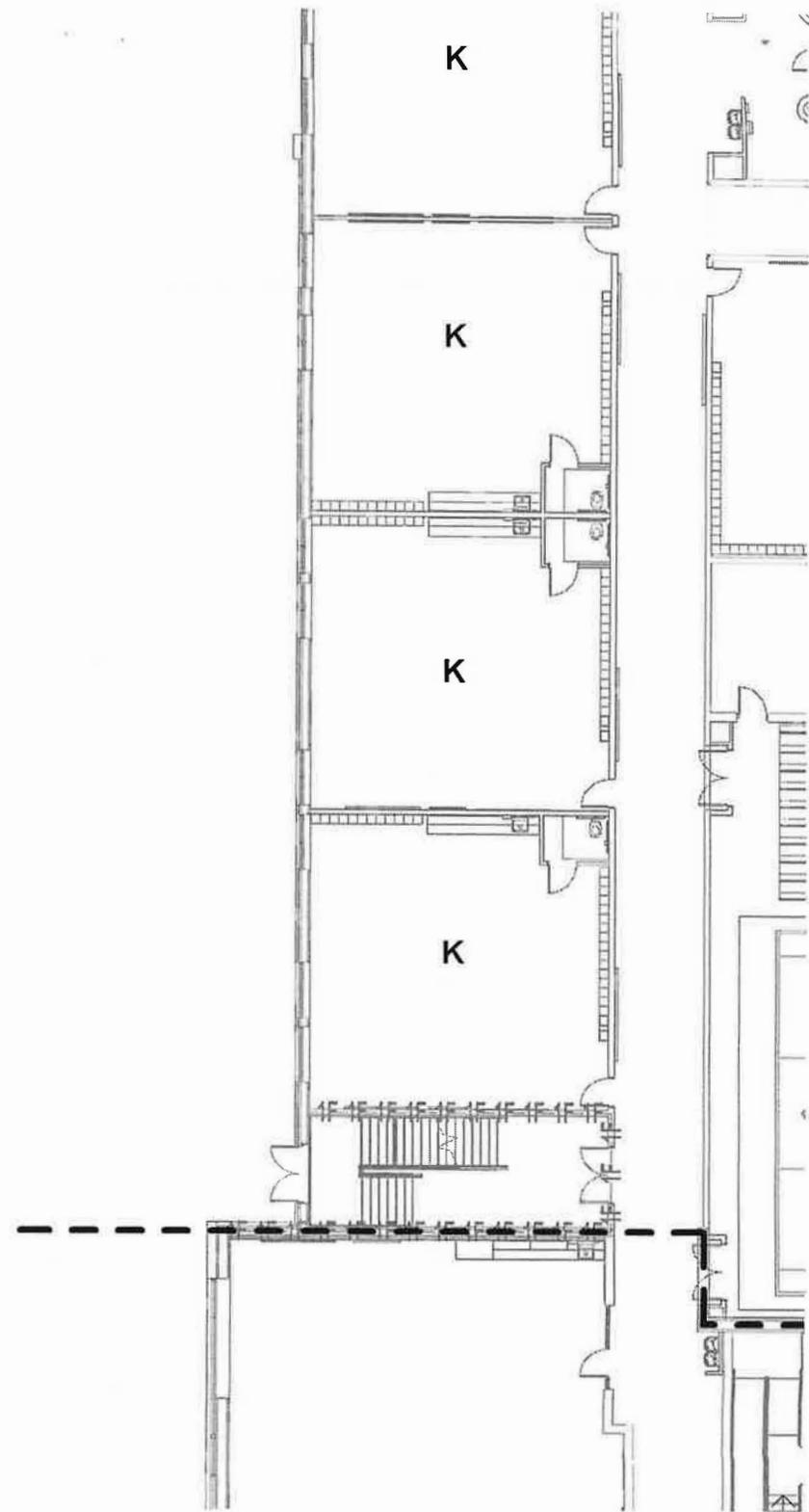
Encl: Revised addition sketches  
Laydown area sketch

# 2024 ROOM ASSIGNMENTS FLOOR

---

JG FIRST FLOOR: 51,003 SF  
SION FIRST FLOOR: 3,992 SF  
ED TOTAL FIRST FLOOR SF: 54,995 SF

JG TOTAL SF: 78,093 SF  
SION TOTAL SF: 7,984 SF  
ED TOTAL BUILDING SF: 86,077 SF

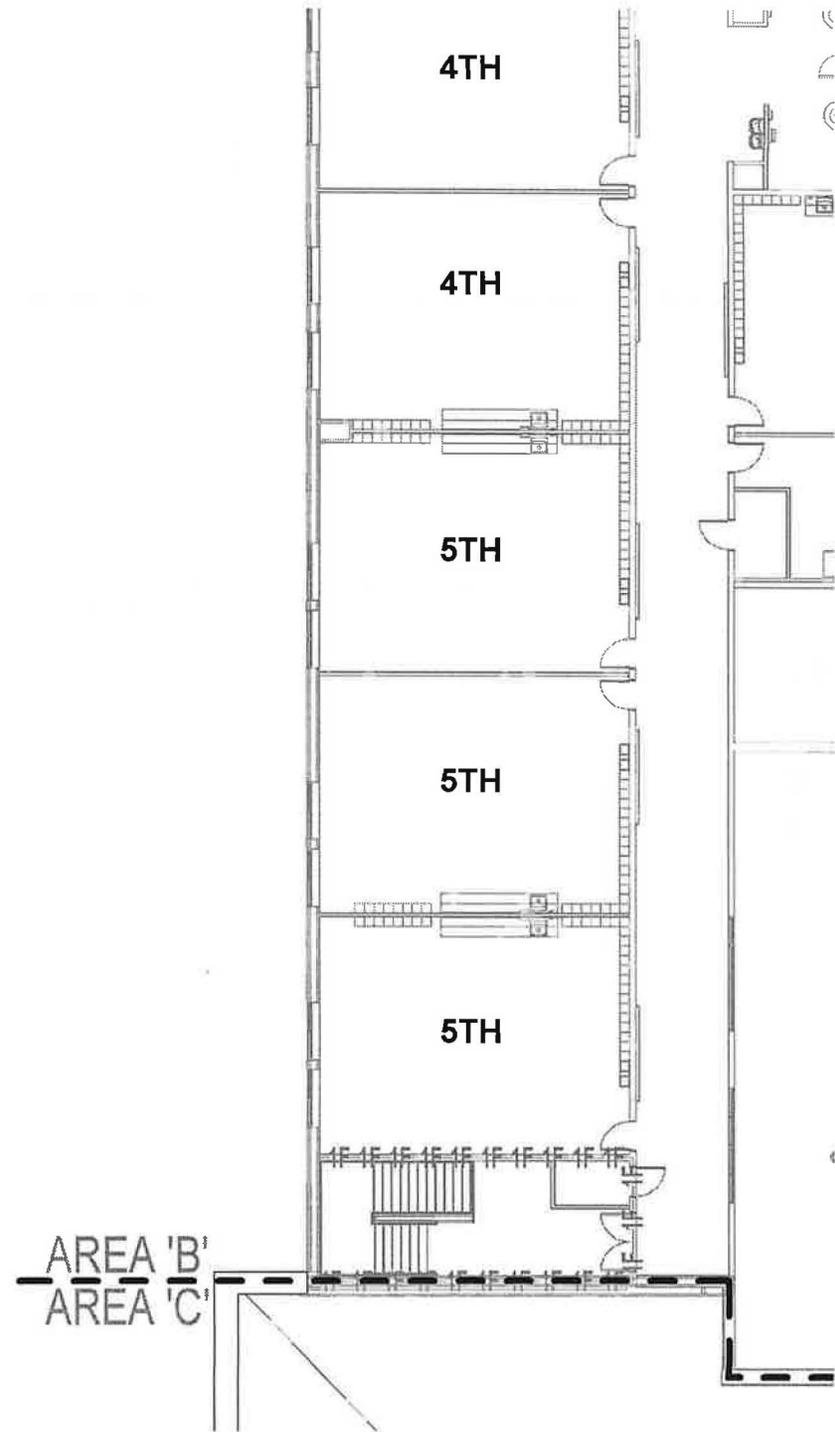


# 2024 ROOM ASSIGNMENTS SECOND FLOOR

---

IG SECOND FLOOR: 27,090 SF  
VISION SECOND FLOOR: 3,992 SF  
MED TOTAL SECOND FLOOR SF: 31,082 SF

IG TOTAL SF: 78,093 SF  
VISION TOTAL SF: 7,984 SF  
MED TOTAL BUILDING SF: 86,077 SF

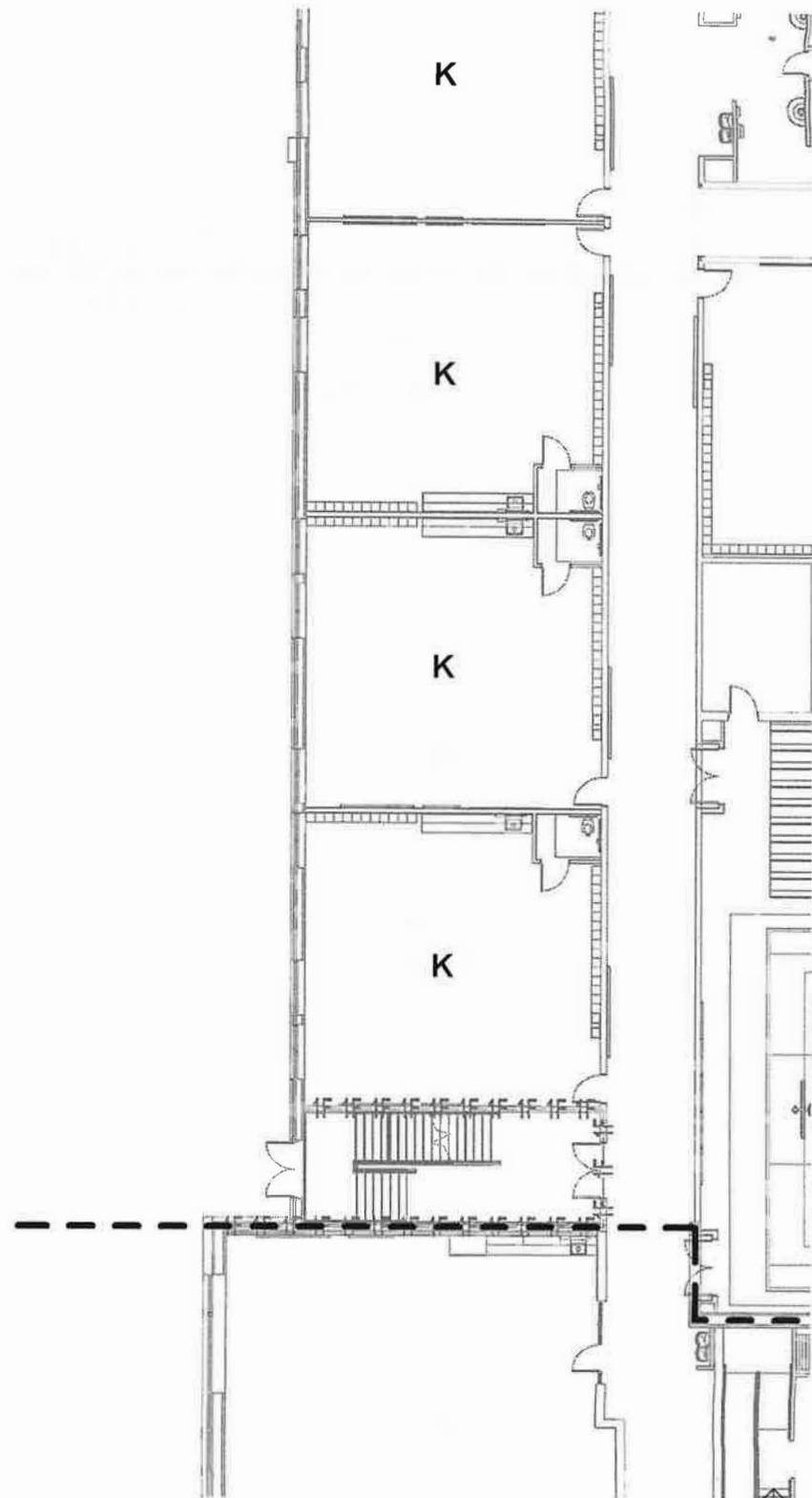


# 2025 ROOM ASSIGNMENTS FLOOR

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G FIRST FLOOR: 51,003 SF  
ION FIRST FLOOR: 3,992 SF  
D TOTAL FIRST FLOOR SF: 54,995 SF

G TOTAL SF: 78,093 SF  
ION TOTAL SF: 7,984 SF  
D TOTAL BUILDING SF: 86,077 SF

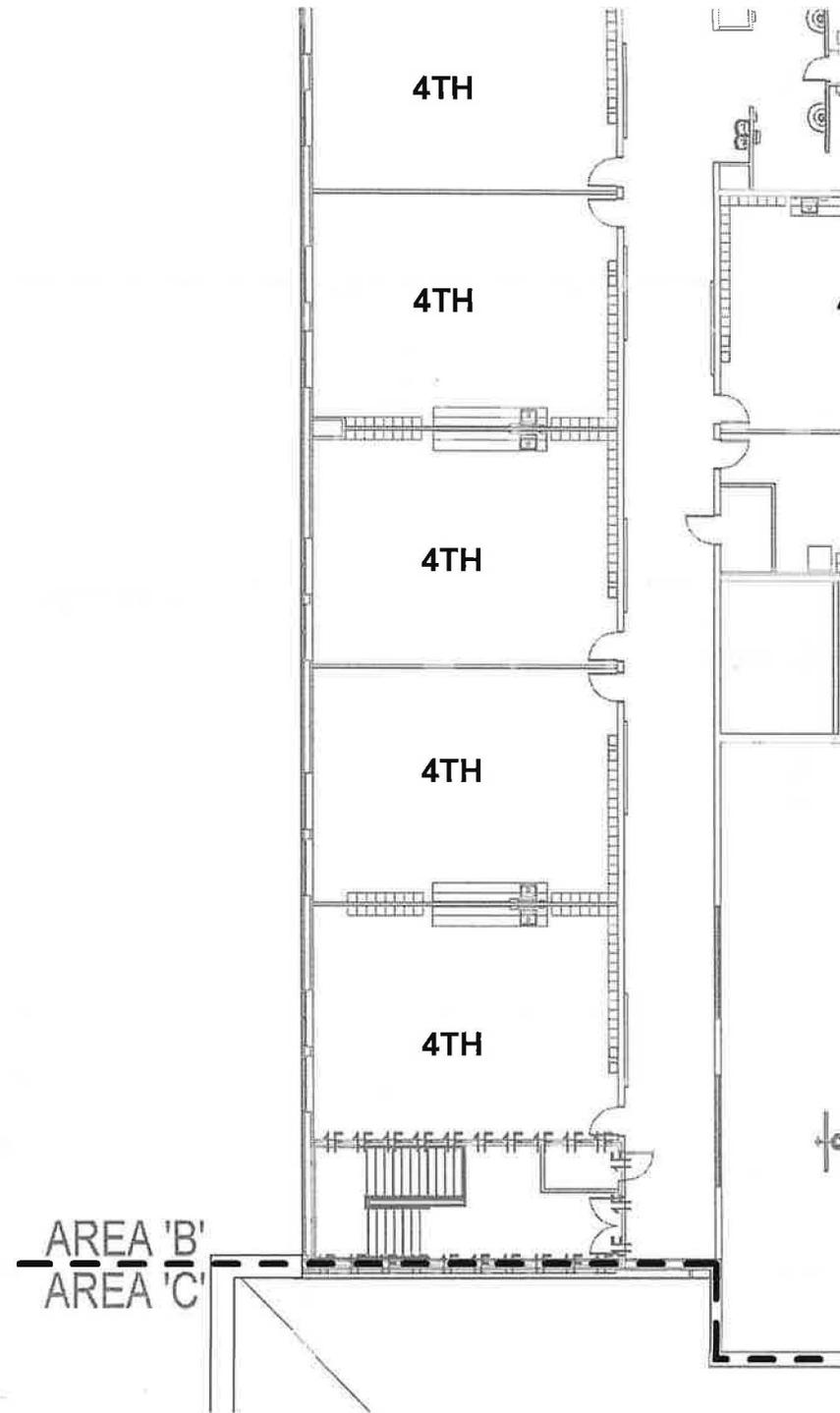


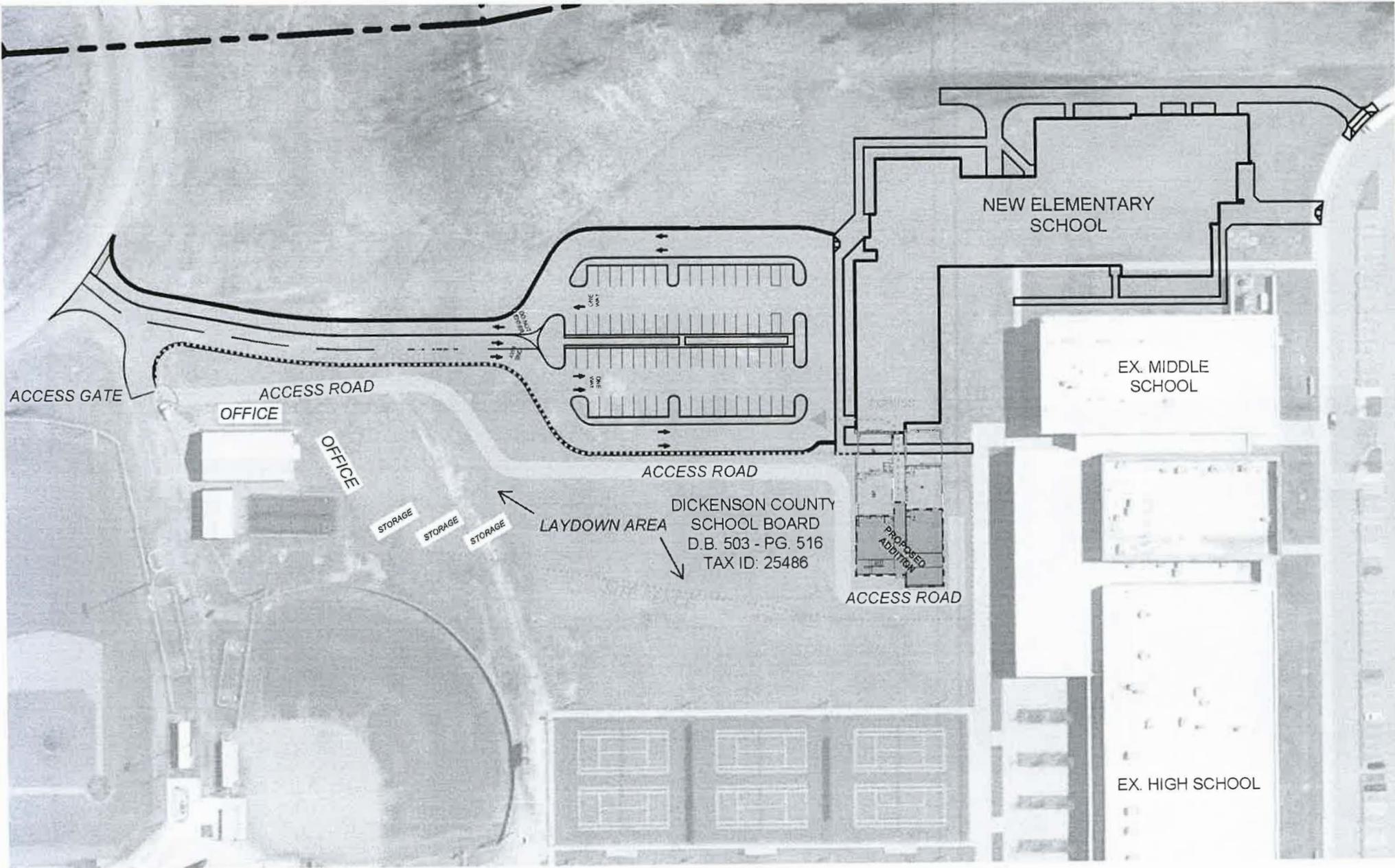
# 025 ROOM ASSIGNMENTS 4TH FLOOR

---

3 SECOND FLOOR: 27,090 SF  
ION SECOND FLOOR: 3,992 SF  
D TOTAL SECOND FLOOR SF: 31,082 SF

3 TOTAL SF: 78,093 SF  
ION TOTAL SF: 7,984 SF  
D TOTAL BUILDING SF: 86,077 SF





ACCESS GATE

ACCESS ROAD

OFFICE

OFFICE

STORAGE

STORAGE

STORAGE

LAYDOWN AREA

ACCESS ROAD

DICKENSON COUNTY  
SCHOOL BOARD  
D.B. 503 - PG. 516  
TAX ID: 25486

PROPOSED  
ADDITION

ACCESS ROAD

NEW ELEMENTARY  
SCHOOL

EX. MIDDLE  
SCHOOL

EX. HIGH SCHOOL

# EXHIBIT D

## CLARIFICATIONS AND ADDITIONAL INFORMATION

INTERIM AGREEMENT

BETWEEN

DICKENSON COUNTY SCHOOL BOARD

AND

QUESENBERRY'S, INC.

APRIL 2023

RIGEVUE ELEMENTARY SCHOOL CLASSROOM ADDITION

RIDGEVIEW CAMPUS

DICKENSON COUNTY PUBLIC SCHOOLS

CLINTWOOD, VIRGINIA

The following Clarifications and Additional Information shall precede the Conceptual Phase Proposal submitted by Quesenberry's, Inc. dated January 13, 2023.

1. Owner and Design-Builder agree on a Contract Cost Limit of \$5,039,200 as mutually agreed upon by both parties.
2. Design-Builder to include builder's risk insurance for value of their contract.
3. Design-Builder to provide topographic survey as part of services under Interim Agreement, if required.
4. Owner intends to pursue an Owner Direct Purchase (ODP) Process and will provide specifications language and assist Design-Builder with the ODP Process. Design-Builder agrees to reasonably participate in process to identify project cost savings.
5. Quesenberry's Construction, Inc. shall comply with the requirements of the Davis-Bacon Act. Contract Documents (100% design documents) shall include prevailing wage requirements and be incorporated into any and all subcontractor agreements.
6. Any utility fees are excluded. Any tap fees are included.
7. Third party construction materials testing and special inspections, geotechnical investigation and report, loose FF&E, and low voltage systems are by Owner similar to those provided for in the New Elementary School and Elementary School Classroom Wing Addition (rough-ins and raceways by Quesenberry's Construction, Inc.).
8. Project shall comply with Davis-Bacon Act due to funding requirements. Quesenberry's pricing shall reflect prevailing wage requirements and provide necessary information needed by DCPS.

**END**

**EXHIBIT E**

**DESIGN STANDARDS AND PROCESSES**

**INTERIM AGREEMENT**

**BETWEEN**

**DICKENSON COUNTY SCHOOL BOARD**

**AND**

**QUESENBERRY'S, INC.**

**APRIL 2023**

**RIDGEVIEW ELEMENTARY SCHOOL CLASSROOM ADDITION**

**RIDGEVIEW CAMPUS**

**DICKENSON COUNTY PUBLIC SCHOOLS**

**CLINTWOOD, VIRGINIA**

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## **1. INTRODUCTION**

### **1.1. General**

These Design Standards and Processes provide guidance and standards for Design-Build architecture and engineering (“A-E”) services that are being provided by the Design-Builder for the Ridgeview Elementary School Classroom Addition project on the Ridgeview Campus in Dickenson County, VA. The Design-Builder shall be responsible for ensuring that the A-E follows the guidance and standards. The Design-Builder shall be liable to the School Board of Dickenson County, Virginia (“Owner”) if the A-E or those providing design services through the A-E fails to follow the guidance and standards, except as otherwise approved by the Owner. Wherever in this Exhibit E there is any requirement imposed on the A-E or any design professional, this shall be interpreted to mean that the Design-Builder shall cause the A-E or design professional to meet such requirement. Nothing in this Exhibit E shall be interpreted to create any privity of contract between the Owner and A-E, to create any warranty by Owner to Design-Builder, express or implied, regarding any of the design services, or to create any responsibility by the Owner or any acts or omissions by the A-E or those providing services through the A-E.

This Exhibit E is intended to assist the Design-Builder’s A-E and Owner and its Owner Representative by setting forth some of the general procedures to be followed for all of the Services to be provided by or through the A-E. This Exhibit is not designed to be an exhaustive description of the work on the project, but rather to assist design professionals in understanding some of the details of the general requirements for A-E services for the project and describe the major deliverable submissions for interaction and approval by the Owner. This Exhibit is intended to complement and supplement the Agreement, not to replace any of the terms of such documents.

The Owner will identify an Owner’s Representative and an Owner’s Review Committee who would be the key individuals to meet with the Design-Builder and A-E to develop, review and approve the design submissions. The Design-Builder shall coordinate through the Owner’s Representative as described in the Agreement.

### **1.2. Planning and Design Services**

Documents to assist with the planning and design of the New Elementary School Classroom Wing Addition project include:

- Clarifications and Additional Information (Exhibit D)
- Design Standards and Processes (this Exhibit E)
- Guidelines for School Facilities in Virginia's Public Schools, latest edition

Any deviations from these documents must be approved by the Owner in writing.

Design services include all services by design professionals provided by Design-Builder pursuant to the Agreement and this Exhibit E hereto required to provide the final Construction Drawings and Specifications for the project and for any changes thereto and any construction administration services by design professionals. Design Services may include assisting Owner's Review Committee in the preparation of the Design Development and Construction Documents for the Project. References to "complete and accurate" drawings and specifications and such similar language, as used in this document and the Agreement, shall mean those documents will be prepared to a Professional Standard of Care. All design services shall meet the National, State, Dickenson County, VA Building Codes and Regulations and shall meet the Professional Standard of Care ("Standard of Care"), which shall be defined as the standard of performance for all design and construction administration services ("Design Services") under the Agreement and shall be the same professional standard of care and of quality as is ordinarily exercised under similar circumstances by design professionals providing similar services in similar projects in Virginia. The A-E shall devote its resources to the performance of the design services during the term of the Agreement in accordance with the Professional Standard of Care.

The design work shall include all necessary subcontractor and consultant design professionals, including, but not limited to, civil engineer (including all utility analysis, analysis for storm water, sanitary, water service, gas service, electrical power, and telephone/data/communications, site lighting, architectural, landscaping, mechanical, electrical, plumbing, fire protection, acoustical, structural, audio/visual and security design services necessary for a complete and accurate set of final Construction Documents (drawings and specifications).

During design phase reviews, Design-Builder will provide for all printing and electronic copies of drawings and specifications necessary for review of the work product by the Owner's Representative and Review Committee. Electronic copies shall be made available through an accessible electronic platform. Costs for printing of drawings and specifications shall be paid through a printing allowance included within the Not-to-Exceed Budget included within the Interim Agreement. Design-Builder's A-E will provide for design review and coordination meetings necessary to review project design

documents. Meetings will be scheduled with the Owner's Representative to approve the design work product for compliance with this Exhibit E.

### **1.3. Construction Administration**

Construction administration services shall be provided by Design-Builder through its A-E and will only consist of review and approval of any submittals and shop drawings submitted prior to execution of the final Comprehensive Agreement or initiation of actual construction work.

## **2. Project Procedures for A-E**

### **2.1. General Project Procedures**

The Design-Builder and Design-Builder's A-E shall attend a "kick-off" meeting with the Owner's Representative and Review Committee to discuss procedures to be followed for the project and to review the scope of work and the A-E's services to be provided.

The Owner has reviewed the Conceptual Design documents included in the Conceptual Phase PPEA proposal and letter from Quesenberry's Construction, Inc. dated January 13, 2023 included as Exhibits to this Agreement and the Owner shall provide comments and changes to the proposed design and the Design-Builder will incorporate these comments into the Schematic Design submission in accordance with Exhibit F – Clarifications and Additional Information and this Exhibit C and the requirements of the Agreement assuming the comments are considered reasonable.

The A-E, with any subcontractors, engineers, or consultants, will then begin the Design Development process. The following procedures are required, along with the specifics outlined elsewhere in this and other Contract Documents. This introductory list is intended to assist the A-E in knowing what is required by highlighting some of the Owner's requirements, but is not intended to be an exhaustive or exclusive list of project procedures. Other requirements and procedures will be provided by Owner or Owner's Representative for the design process and review.

- All project documentation involving the A-E, including but not limited to meeting minutes, design review comments, correspondence, invoices, code enforcement comments, RFI's, supplemental instructions, formal sketches, site

visit reports, and requests for proposals, must be documented by the A-E with copies provided promptly to the Owner and Owner's Representative.

- At each phase of the design process, the A-E shall respond in writing to any Owner comments as soon as possible and address Owner comments in the subsequent design phase documents. Design-Builder shall update the project progress schedule at each phase of the design process.
- If requested, the A-E shall record and submit to the Owner for comment and revision (before distribution to all parties), all meeting minutes, including but not limited to Owner's Review Committee meetings, code review meetings with Dickenson County, and submittal review meetings. A-E shall address all Owner comments before distributing such documents.
- Design reviews will take place after submission of each design phase with the Owner's Review Committee.
- Any material deviations from the Design Standards and Processes must be provided to the Owner in writing under separate cover.

#### **2.1.1.1. Reproduction, Design Reviews and Value Engineering**

Unless modified by the Owner, provide the Owner with at least three (3) sets of all Plans, Specifications, and calculations at each stage of the design which shall include one (1) full-size and three (3) half-size sets of plans. Deliver or ship these documents overnight as directed by the Owner's Representative. The cost of printing and shipping shall be paid out of the printing allowance included in the CCL or GMP. Materials shall also be made available electronically in pdf format and in CAD or Revit (3-D) if requested. The reimbursable costs shall be for reproduction costs only including file management, paper, bindings, and other material supplies, direct labor involved in printing and delivery charges.

Design reviews will take place at minimum at submission of 90% Construction Documents or prior to submission of 90% Construction Documents, if mutually agreed upon between Private Entity and Owner. These design reviews will also consider value engineering suggestions. Percentages refer to the percent of total design completion, not a percent of each individual phase. A brief review will also be completed by the Owner's Representative at 100% design to ensure that all previous comments have been considered and incorporated. A presentation of the design documents shall be made by the Design-Builder prior to distribution of design documents for review at each stage.

The Owner's Representative and Review Committee shall have up to two (2) weeks to complete their review at each of the design phase submissions. The Design-Builder shall have one (1) week to review comments from the Owner's Representative and Review Committee and must provide a written response to each comment within one (1) week of the submission of review comments to the Owner's Representative. A formal reconciliation meeting shall be held to review each comment and response in an effort to close out each design review comment prior to the design progressing into the next phase.

## **2.2. Procedures for Individual Phases of the Work**

### **2.2.1. Construction Documents (CD) (90%) Submission**

#### **2.2.1.1. Architectural – CD (90%) Submission**

##### **1. General Requirements:**

- The A-E shall prepare the 90% Construction Documents, including plans, drawings, details, and final draft specifications and submit them to the Owner at least one week prior to the 90% review meeting. At the review meeting, the Design-Builder and A-E will present the 90% Construction Document, and will respond to questions and comments on the design. The Design-Builder shall ensure that sufficient persons, including subcontractors and consultants, attend the review meeting so that responses can be provided.
- Subsequent to the 90% review meeting with Owner, the A-E shall:
  - Incorporate all comments or requirements relating and resulting from the review meeting into the Construction Documents.
  - Respond to all previous comments from Owner or Owner's Review Committee on the design.
- Lack of inter-discipline coordination, incompleteness in design of structural or MEP systems, or overall lack of drawing completeness at this phase may result in additional review session(s) which shall be provided at no additional cost to the Owner. Completeness of submitted documents to avoid disruptions of schedule is essential.
- Submit plans to Dickenson County and other agencies having jurisdiction for building permit and approvals.

## 2. Drawing Requirements:

The A-E shall develop and submit the following documents in the Construction Documents phase:

- Provide “letters of agreement” sheet showing any additional documentation of code meetings subsequent to Construction Documents phase. The A-E shall continue to be responsible for preparing letters to the code official, with copies to the Owner, documenting any agreements on compliance with code requirements.
- Finalized overall Life Safety Plan showing, at a minimum, code data travel distances, occupancy loads, and fire area tabulations.
- The drawings and supporting materials produced in this phase of the project shall include the elements listed below at the minimum scales shown:
  - Cover Sheet: Including drawing index and area tabulations of all programmed spaces.
  - Door, window, and hardware schedules: The A-E will prepare the final door and window schedule information that will indicate new doors, windows and frames and labeled door assemblies. Provide hardware schedule on the same sheet.
  - Finish Schedule: The A-E will prepare final finish schedules that include the following information: finish types for walls, floors and ceilings, special finishes required for specialized areas including the courtrooms and judges’ chambers.
  - Equipment and Fixture Schedules outlining all Contractor supplied items.
  - Reference/overall plan(s) at 1/8” minimum scale outlining scope and including room names, occupancy loads, and building and site handicap accessibility features, such as elevators, lifts, ramps, and toilet facilities. Plans should be fully coordinated with MEP and Structural Drawings.

- Equipment and Furnishings Plans 1/8" = 1'-0" minimum (showing equipment and furnishings to be provided by Design-Builder. Include programmed room names, final equipment layouts for specialized spaces such as courtrooms and judges' chambers.
- Elevations clearly demonstrating the scope of work including rooms listed in Equipment and Furnishings Plans. The elevations will define major design features, dimensions and materials to be used. 1/8" = 1'-0" minimum.
- Sections: The A-E will provide typical building sections and wall sections to illustrate proposed building materials, methods, dimensions, and insulation values. 1/8" = 1'-0" minimum.
- Details: The A-E will prepare architectural details which show cross sections (1/8" = 1'-0") and wall sections (3/4" = 1'0") showing major construction features and material.
- Roof Plan showing major rooftop equipment, roof membrane system, and drainage. 1/8" = 1'-0" minimum.
- The Owner's Representative and Review Committee will review the 90% CD submittal. The A-E shall review and respond to all review comments and incorporate comments into the 100% Construction Documents.

### 3. Mechanical Systems – CD (90%) Submission

- **General Requirements**
  - Provide complete specifications including index all sections that will be a part of the final contract documents.
  - Answer and respond to all intermediate submission comments.
- **Drawing Requirements**

- Complete the mechanical cover sheet with symbols list, notes and temperature control zone diagram. Provide code and energy analysis, titles, and complete floor plans.
- Complete equipment schedules and detail sheets.
- Provide separate drawings showing all floor plans.
- Provide floor plans showing equipment locations, piping, and ductwork. Identify all pieces of equipment, size of piping and ductwork. Provide mechanical room layouts. Show sections of all mechanical rooms and provide finalized sections through any bulkheads. Provide finalized boiler room plan.
- Coordinate floor plans with other disciplines.
- Provide room names and numbers on all floor plans.
- Check that all title block information has been completed on each drawing and that each drawing contains a key plan (where applicable).

#### **4. Electrical Systems – CD (90%) Submission**

The design of the electrical system, unless the A-E is otherwise directed, shall include the following elements:

- **General Requirements:**
  - Provide a copy of the completed electrical specification including a table of contents listing each electrical specification section to be used for the project.
  - If necessary, provide a copy of the final electrical load letter sent to the electrical utility company.
  - Provide copies of the transmittals for information sent to the telephone and cable television companies.
  - Provide the names and addresses of the power company, cable television, and telephone company contacts for this project.
- **Drawing Requirements:**
  - Complete the electrical cover sheet. Insure that all symbols and abbreviations used on this project are included as well as the list of drawings.

- Complete the electrical site plan including all new and existing utility information and site lighting branch circuit wiring. Add proposed electrical (primary and secondary), telephone, and cable television service entrance. Indicate all new and/or existing underground and overhead utility lines (gas and water, etc.) that may affect the electrical work. Add any existing site lighting and electrical utilities that are to be removed. Add any applicable electrical site plan details (pole base secondary electrical service entrance duct back, main grounding, etc.).
- Provide an updated computer generated photometric site lighting plan indicating the point-by-point maintained foot-candle levels. This plan must correspond with and accompany the lighting layout shown on the electrical site plan.
- Provide floor plans indicating the new lighting layout in each space. These plans shall also show branch circuit connections to corridor junction boxes, all illuminated exit signs, which lighting fixtures are to be connected to emergency lighting circuits, the method of lighting control for each space, lighting fixture type designations, room names and numbers, and foot-candle level designations. Room names, numbers, and foot-candle levels may be scheduled on each floor plan. The locations of all lighting branch circuit panelboards shall be shown on these plans. All notes referenced on these plans shall be shown on the same plan as the reference.
- Provide floor plans indicating the power receptacles and CATV outlets and their branch circuit connection to corridor junction boxes. These plans shall also show the required power connections to all architectural, mechanical, plumbing, and kitchen equipment including disconnects and control devices. Show a plan for the Main Communications Room and each electrical/communications equipment room, kitchen and boiler rooms if applicable indicating the location and identification of each piece of equipment. All notes

referenced on these plans shall be on the same plan as the reference.

- Complete the lighting plans including all branch circuit wiring and identification of equipment. Identification shall include electrical characteristics for each item of equipment.
- Complete the fire alarm, master program clock, and building security system plans including all interconnection wiring and security zone indications. Indicate the location and identification of each item of control and annunciation equipment, and the building security sub-distribution equipment locations. Provide a detail of the fire alarm graphic annunciator panel faceplate. All notes referenced on these plans shall be shown on the same plan as the reference.
- Provide drawings for the main distribution switchboard, panelboard, transformer, and lighting fixture schedules and a power system load tabulation schedule.
- Complete the sound and intercommunications system, auxiliary sound systems, telecommunications system, CATV system plans including all interconnection wiring, speaker zone indications, and telecommunications outlet identification numbers.
- Provide a power riser diagram showing all electrical service entrance and distribution equipment, emergency service equipment, grounding system, and their associated interconnections. Label each item of equipment. Also provide an isometric elevation and a one-line diagram of the main distribution switchboard.
- Coordinate floor plans with other disciplines.
- Check that all title block information has been completed on each drawing and that each drawing contains a key plan (where applicable).

## **5. Plumbing Systems – CD (90%) Submission**

- **General Requirements:**

- Complete all sections of the specifications. Provide an index for specifications indicating all sections that will be a part of the final construction documents.
- **Drawing Requirements:**
  - Complete cover sheet with symbols list, sprinkler service detail, fixture connection schedule with mounting heights. Provide schedule showing overall drainage fixture units. Allow additional space for notes and other details. Add titles.
  - Provide complete riser diagrams for all piping systems, including pipe sizes.
  - Complete floor plans, details, and schedules. Provide floor plans showing all fixtures, utility entrances, water heaters. Provide notes and details.
  - Coordinate floor plans with other disciplines and coordinate phasing requirements.
  - Provide room names on all floor plans.
  - Provide domestic hot water calculations on cover sheet.
  - Provide drainage fixture unit schedules on cover sheet showing types of fixtures removed and added for project.
  - Check that all title block information has been completed on each drawing and that each drawing contains a key plan (where applicable).

## 6. Sprinkler Systems – CD (90%) Submission

- **General Requirements:**
  - The A-E will provide a Final Performance specification for the sprinkler system.
- **Drawing Requirements:**
  - Complete all details.
  - Shall all main piping routing, service entrance, manifold system, zone valves, inspector test valve locations, phasing requirements and details such as service manifold system, hangers, and branch over details, etc.
  - Provide final phasing coordination.

- Provide sections of sprinkler piping located in tight areas, where any question may arise as to the implementation of piping requirements.
- Coordinate floor plans with other disciplines and coordinate phasing requirements.
- Provide room names, NFPA hazard classification, and numbers on all floor plans.
- Check that all title block information has been completed on each drawing and that each drawing contains a key plan (if applicable).

**7. Civil and Structural – CD (90%) Submission**

- Provide final structural calculations with a table of contents and clear relationships to drawings and specifications.

**8. Cost Estimate – CD (90%) Submission**

Provide an updated cost estimate based upon market feedback. Provide a detailed labor and material type cost estimate and organize by CSI division.

**2.2.2. A-E Construction Documents (100%)**

**1. General (100%) Requirements**

- The A-E will prepare the 100% Construction Documents, including drawings, details, and specifications and submit them to the Owner at least one week prior to the 100% review meeting. At the review meeting, the Design-Builder and A-E will present the 100% Construction Documents and will respond to questions and comments to the design in writing (can be in the form of meeting minutes). The Design-Builder will ensure that sufficient persons, including subcontractors and consultants, attend the review meeting so that responses can be provided.

- The A-E will develop and provide the following during the 100% Construction Documents phase:
  - Complete construction Specifications
  - Complete civil, architectural, MEP, sprinkler, and structural drawings
  - Construction documents that comply with all requirements for final Dickenson County or other agency submission, if applicable.
  - Provide responses to all previous comments received during design review not previously responded to.
  - Incorporate all comments resulting from building permit applications.
  - Prepare final set of documents for use for construction.
- Lack of inter-discipline coordination, incompleteness in design of structural or MEP systems, or overall lack of drawing completeness at this phase may result in additional review session(s) beyond the final meeting, which shall be provided at no additional cost to the Owner. Completeness of submitted documents to avoid disruptions of schedule is essential.
- Once all adjustments and corrections are made to the 100% Construction Documents, the A-E will present them to the Owner for approval of the final design.
- Subsequent to the 100% review meeting with Owner, the A-E shall accomplish the following:
  - Incorporate all comments or requirements relating to compliance with the Specifications and resulting from the review meeting into the Construction Documents.
  - If required, send one (1) complete, signed and sealed set of Construction Documents (drawings) and Specifications (or as many as they require) with the required signed design statement by the architect or engineer to Dickenson County for their record.

### **2.2.3. Construction Phase (under separate agreement)**

The A-E shall expeditiously and so as not to delay the progress of the work, review and take action on shop drawings, samples and other submittals of the Design-Builder for conformance with the design concept of the project and for compliance with information given in the Construction Documents. The Design-Builder shall obtain the approval of the Owner's Representative prior to approving any items that do not conform to the requirements of the approved Construction Documents.

**END**



# AIA<sup>®</sup> Document A141<sup>®</sup> – 2014

## Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the 26th day of July in the year 2023

BETWEEN the Owner:

Dickenson County School Board  
309 Volunteer Avenue  
P.O. Box 1127  
Clintwood, VA 24228  
and the Design-Builder:

Quesenberry's, Inc.  
(dba Quesenberry's Construction)  
P.O. Box Q  
104 E. 19th Street  
Big Stone Gap, VA 24219  
The term Design-Builder shall be synonymous with Private Entity or PPEA Firm or Contractor.

for the following Project:

Ridgeview Elementary School 2023 Classroom Addition  
Ridgeview Campus  
Clintwood, VA

Design and construct an approximately 8,000 SF classroom addition to Ridgeview Elementary School on the Ridgeview Campus that would include additional classrooms, pullout classrooms, and associated support spaces.  
The Owner and Design-Builder agree as follows.

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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5	WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
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### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

*(Paragraph deleted)*

#### § 1.1.1 The Owner's program for the Project:

See Drawings and Specifications dated June 26, 2023, Addendum #1 dated June 30, 2023 and Addendum #2 dated July 13, 2023 (incorporated by reference).

#### § 1.1.2 The Owner's design requirements for the Project and related documentation:

See Drawings and Specifications dated June 26, 2023, Addendum #1 dated June 30, 2023 and Addendum #2 dated July 13, 2023 (incorporated by reference).

#### § 1.1.3 The Project's physical characteristics:

*(Paragraphs deleted)*

See Drawings and Specifications dated June 26, 2023, Addendum #1 dated June 30, 2023 and Addendum #2 dated July 13, 2023 (incorporated by reference).

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

N/A

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

N/A

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

Guaranteed Maximum Price of \$4,974,300 per Exhibit E – Guaranteed Maximum Price Proposal dated July 19, 2023.

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

See Interim Agreement (incorporated by reference as Ex. F).

.2 Submission of Design-Builder Proposal:

See Interim Agreement (incorporated by reference as Ex. F).

.3 Phased completion dates:

.4 Substantial Completion date:

By August 2, 2024.

.5 Other milestone dates:

Final Completion: August 30, 2024

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

.1 Architect

ZMM, Inc.  
200 Country Club Drive SW  
Plaza One, Building E  
Blacksburg, VA 24060

.2 Consultants

Environmental Engineering and Civil Engineering:  
The Lane Group  
310 West Valley Street  
Abingdon, VA 24210  
276-233-7167

### .3 Contractors

N/A

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

*(Paragraph deleted)*

See Interim Agreement dated April 26, 2023 (incorporated by reference as Ex. F).

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

#### § 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

Haydee Robinson  
Division Superintendent  
Dickenson County Public Schools  
309 Volunteer Avenue  
Clintwood, VA 24228

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

Skanska USA Building Inc.  
Curtis Elswick, Sr. Vice President  
4309 Emperor Blvd., Suite 200  
Durham, NC 27703  
540-423-2860  
curtis.elswick@skanska.com

§ 1.2.3 The Owner will retain the following consultants and separate contractors:

Skanska USA Building Inc.  
Curtis Elswick, Sr. Vice President  
4309 Emperor Blvd., Suite 200  
Durham, NC 27703  
540-423-2860  
curtis.elswick@skanska.com

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:

Abran Quesenberry  
President  
Quesenberry's, Inc.  
(dba Quesenberry's Construction)  
P.O. Box Q  
104 E. 19th Street  
Big Stone Gap, VA 24219

Init.

276-523-0411

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

### § 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

*(Paragraph deleted)*

Arbitration pursuant to Section 14.4

Litigation by bench trial in the Circuit Court of Dickenson County, Virginia for all disputes arising under this Agreement or related thereto.

Other: *(Specify)*

### § 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits, including the Design-Build Amendment attached and incorporated as Exhibit A (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder. To the extent that the schedules, assumptions, or deliverables of the Agreement differ from those contained in the Interim Agreement (incorporated by reference as Ex. F), then those conflicting terms of Exhibit F shall not control and shall be deemed preliminary, unless otherwise stated herein.

§ 1.4.3 **The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder, provided, however, that, to the extent that the Design-Build Documents are based on the assumption that no off-site work and road improvements will be required by governmental authorities and such assumption proves to be incorrect, then the Work shall also include necessary off-site work and road improvements. The Work may constitute the whole or a part of the Project.

§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 **Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 **Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 **Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

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§ 1.4.8 **Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 **Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 **Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 **Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 **Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 **Day.** The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 **Contract Sum.** The Contract Sum is the maximum total amount to be paid to the Design-Builder for all Work performed before and after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment. The Contract Sum includes the Interim Agreement dated June 26, 2023. The Contract Sum will not exceed Four Million Nine Hundred Seventy Four Thousand Three Hundred and 00/100 dollars (\$4,974,300.00) (the "Guaranteed Maximum Price," "GMP," and "Contract Sum" are synonymous.) The Owner shall not be responsible for any cost overruns to the extent that they cause the Owner's costs to exceed the GMP.

## ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

*(Table deleted)*

*(Paragraphs deleted)*

### § 2.1.3 **Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment**

For work conducted prior to the execution of this Agreement, see Interim Agreement dated June 26, 2023 (incorporated by reference as Ex. F).

*(Paragraphs deleted)*

**§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment**

*(Paragraphs deleted)*

**§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment**

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

**ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT**

**§ 3.1 General**

**§ 3.1.1** The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

**§ 3.1.2** The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

**§ 3.1.3** The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

**§ 3.1.3.1** The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.1.3.2** Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

**§ 3.1.4** The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

**§ 3.1.5 General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.6** When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

### § 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

### § 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder has prepared and submitted for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

### § 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 **Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 **Royalties, Patents and Copyrights**

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 **Indemnification**

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or

anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 3.1.15 Contingent Assignment of Agreements**

- § 3.1.15.1** Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that
- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
  - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

**§ 3.1.15.2** Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 3.1.15.3** Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

**§ 3.1.16 Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B. Such bonds shall comply with Va. Code § 2.2-4337.

**ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT**

**§ 4.1 General**

**§ 4.1.1** For work conducted prior to the execution of this Agreement, see Interim Agreement dated June 26, 2023 (incorporated by reference as Ex. F).

**§ 4.1.2** The Design-Builder has advised and shall continue to advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder has or will also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

**§ 4.2 Evaluation of the Owner's Criteria**

**§ 4.2.1** The Design-Builder has scheduled and conducted meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder has or will thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation has considered cost information, constructability, and procurement and construction scheduling issues.

**§ 4.2.2** The Design-Builder has met with the Owner to present the preliminary evaluation, and the Design-Builder has provided a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report includes

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:

§ 4.2.3 The Owner has reviewed the Design-Builder's written report and, as acceptable, has provided the Design-Builder with written consent to proceed to the development of the Preliminary Design as referenced in the Interim Agreement (incorporated by reference as Ex. F).

§ 4.3 Preliminary Design (see Interim Agreement incorporated by reference as Ex. F)

*(Paragraphs deleted)*

**ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT (see Interim Agreement incorporated by reference as Ex. F)**

**§ 5.1 Construction Documents**

§ 5.1.1 The Construction Documents have been prepared as part of the Interim Agreement. The Work performed after the execution of this Agreement shall be governed by the terms of this Agreement.

**§ 5.2 Construction**

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### § 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

### § 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

### § 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

**§ 5.6.3** The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

### **§ 5.7 Key Personnel, Contractors and Suppliers**

**§ 5.7.1** The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

**§ 5.7.2** If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.7.3** Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.7.3.1** If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

### **§ 5.8 Documents and Submittals at the Site**

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

### **§ 5.9 Use of Site**

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment. The Design-Builder acknowledges and understands that the property on which construction is to occur is an active school location that will have students present and associated activities in areas immediately adjacent to the construction site.

### **§ 5.10 Cutting and Patching**

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be

unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

#### **§ 5.11 Cleaning Up**

**§ 5.11.1** The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 5.11.2** If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

#### **§ 5.12 Access to Work**

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site. The Design-Builder shall take reasonable steps to secure the construction site from unauthorized entry, including by students attending the existing adjacent school facilities.

#### **§ 5.13 Construction by Owner or by Separate Contractors**

##### **§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 5.13.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

**§ 5.13.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

**§ 5.13.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

**§ 5.13.1.4** Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

#### **§ 5.14 Mutual Responsibility**

**§ 5.14.1** The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

**§ 5.14.2** If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

#### § 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

### ARTICLE 6 CHANGES IN THE WORK

#### § 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

#### § 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

#### § 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

## ARTICLE 7 OWNER'S RESPONSIBILITIES

### § 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

**§ 7.2 Information and Services Required of the Owner**

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B and such bonds shall comply with Va. Code § 2.2-4337. Design-Builder to provide "all risk" builders risk insurance covering new materials as part of their scope of Work.

### § 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

### § 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

### § 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments

then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

## **ARTICLE 8 TIME**

### **§ 8.1 Progress and Completion**

**§ 8.1.1** Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.1.2** The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

**§ 8.1.3** The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### **§ 8.2 Delays and Extensions of Time**

**§ 8.2.1** If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

**§ 8.2.2** Claims relating to time shall be made in accordance with applicable provisions of Article 14.

**§ 8.2.3** This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

## **ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION**

### **§ 9.1 Contract Sum**

The Contract Sum is stated in the Design-Build Amendment.

### **§ 9.2 Schedule of Values**

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least five days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

**§ 9.3.1.1** As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay and such work performed by others has been identified to the Owner in advance of payment for such work.

**§ 9.3.2** Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.3** The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 Certificates for Payment**

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

#### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

**§ 9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.3** If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

#### **§ 9.6 Progress Payments**

**§ 9.6.1** After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

**§ 9.6.2** The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more

than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, from amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

#### § 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

#### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build

Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

#### § 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

#### § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims,

security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner against the Design-Builder except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder, and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

### ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

#### § 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

#### § 11.2 Correction of Work

§ 11.2.1 **Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

#### § 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

### § 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them. However, all drawings, specifications and other documents supplied by the Design-Builder to Owner shall become the property of the Owner providing that the Owner shall only use such documents in regard to the maintenance and future alterations of the project work after the project work has been completed.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to the extent permitted by law to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

## **ARTICLE 13 TERMINATION OR SUSPENSION**

### **§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment**

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

### **§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment**

#### **§ 13.2.1 Termination by the Design-Builder**

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

### § 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

### § 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or

- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### § 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

### ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

#### § 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

#### § 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

#### § 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

#### § 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

#### § 14.2.2 Procedure

§ 14.2.2.1 **Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 **Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

*(Paragraphs deleted)*

Both the Owner and Design-Builder will make reasonable efforts to resolve claims against the other party. However, if a claim cannot be resolved by mutual agreement within 60 days of the presenting of a claim, the resolution of such unresolved claim will be through a litigation process in the Circuit Court of Dickenson County, Virginia.

## **ARTICLE 15 MISCELLANEOUS PROVISIONS**

### **§ 15.1 Governing Law**

The contract shall be governed by the laws of the Commonwealth of Virginia.

### **§ 15.2 Successors and Assigns**

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The

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Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

### § 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### § 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### § 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity.

A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

**§ 15.7 Capitalization**

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

**§ 15.8 Interpretation**

**§ 15.8.1** In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**§ 15.8.2** Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

**ARTICLE 16 SCOPE OF THE AGREEMENT**

**§ 16.1** This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed (not used)
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

N/A

- .6 Other:

Exhibit D - Preliminary Construction Schedule dated July 20, 2023

Exhibit E - Design-Build Guaranteed Maximum Price proposal developed by Quesenberry's, Inc. dated July 19, 2023

Exhibit F – Interim Agreement dated April 26, 2023 (incorporated by reference)

Exhibit G - AIA Document A312-2010 Performance and Payment Bonds (incorporated by reference)

Exhibit H - AIA Document G702-1992 Application and Certificate for Payment and AIA Document G703-1992 Continuation Sheet (incorporated by reference)

Exhibit I - AIA Document G704DB-2017 Certificate of Substantial Completion

Exhibit J - AIA Document G706-1994 Contractor's Affidavit of Payment of Debts and Claims

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** (Signature)

Haydee Robinson      Division Superintendent  
(Printed name and title)

\_\_\_\_\_  
**DESIGN-BUILDER** (Signature)

Abran Quesenberry      President  
(Printed name and title)

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# Additions and Deletions Report for

AIA® Document A141® – 2014

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 08:36:38 ET on 07/21/2023.

PAGE 1

**AGREEMENT** made as of the 26th day of July in the year 2023

(In words, indicate day, month and year.)

...

~~(Name, legal status, address and other information)~~

Dickenson County School Board  
309 Volunteer Avenue  
P.O. Box 1127  
Clintwood, VA 24228

...

~~(Name, legal status, address and other information)~~

Quesenberry's, Inc.  
(dba Quesenberry's Construction)  
P.O. Box Q  
104 E. 19th Street  
Big Stone Gap, VA 24219  
The term Design-Builder shall be synonymous with Private Entity or PPEA Firm or Contractor.

~~(Name, location and detailed description)~~

Ridgeview Elementary School 2023 Classroom Addition  
Ridgeview Campus  
Clintwood, VA

Design and construct an approximately 8,000 SF classroom addition to Ridgeview Elementary School on the Ridgeview Campus that would include additional classrooms, pullout classrooms, and associated support spaces.

PAGE 2

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)*

...

~~(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)~~

See Drawings and Specifications dated June 26, 2023, Addendum #1 dated June 30, 2023 and Addendum #2 dated July 13, 2023 (incorporated by reference).

...

*(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)*

See Drawings and Specifications dated June 26, 2023, Addendum #1 dated June 30, 2023 and Addendum #2 dated July 13, 2023 (incorporated by reference).

...

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

See Drawings and Specifications dated June 26, 2023, Addendum #1 dated June 30, 2023 and Addendum #2 dated July 13, 2023 (incorporated by reference).

**PAGE 3**

*(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™ 2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)*

N/A

...

*(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)*

N/A

...

*(Provide total for Owner's budget, and if known, a line item breakdown of costs.)*

Guaranteed Maximum Price of \$4,974,300 per Exhibit E – Guaranteed Maximum Price Proposal dated July 19, 2023.

...

See Interim Agreement (incorporated by reference as Ex. F).

...

See Interim Agreement (incorporated by reference as Ex. F).

...

By August 2, 2024.

...

Final Completion: August 30, 2024

...

*(List name, legal status, address and other information.)*

.1 Architect

ZMM, Inc.  
200 Country Club Drive SW  
Plaza One, Building E  
Blacksburg, VA 24060

.2 Consultants

Environmental Engineering and Civil Engineering:  
The Lane Group  
310 West Valley Street  
Abingdon, VA 24210  
276-233-7167

**PAGE 4**

N/A

...

*(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)*

See Interim Agreement dated April 26, 2023 (incorporated by reference as Ex. F).

...

*(List name, address and other information.)*

Haydee Robinson  
Division Superintendent  
Dickenson County Public Schools  
309 Volunteer Avenue  
Clintwood, VA 24228

...

*(List name, address and other information.)*

Skanska USA Building Inc.  
Curtis Elswick, Sr. Vice President  
4309 Emperor Blvd., Suite 200  
Durham, NC 27703  
540-423-2860  
curtis.elswick@skanska.com

...

*(List discipline, scope of work, and, if known, identify by name and address.)*

Skanska USA Building Inc.  
Curtis Elswick, Sr. Vice President  
4309 Emperor Blvd., Suite 200  
Durham, NC 27703  
540-423-2860

curtis.elswick@skanska.com

...

(List name, address and other information.)

Abran Quesenberry

President

Quesenberry's, Inc.

(dba Quesenberry's Construction)

P.O. Box Q

104 E. 19th Street

Big Stone Gap, VA 24219

276-523-0411

**PAGE 5**

*(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

...

~~Litigation in a court of competent jurisdiction~~  Litigation by bench trial in the Circuit Court of Dickenson County, Virginia for all disputes arising under this Agreement or related thereto.

...

**§ 1.4.1 Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached ~~Exhibits~~ Exhibits, including the Design-Build Amendment attached and incorporated as Exhibit A (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, ~~including the Design-Build Amendment,~~ (2) a Change Order, or (3) a Change Directive.

**§ 1.4.2 The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder. To the extent that the schedules, assumptions, or deliverables of the Agreement differ from those contained in the Interim Agreement (incorporated by reference as Ex. F), then those conflicting terms of Exhibit F shall not control and shall be deemed preliminary, unless otherwise stated herein.

**§ 1.4.3 The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the ~~Design-Builder.~~ Design-Builder, provided, however, that, to the extent that the Design-Build Documents are based on the assumption that no off-site work and road improvements will be required by governmental authorities and such assumption proves to be incorrect, then the Work shall also include necessary off-site work and road improvements. The Work may constitute the whole or a part of the Project.

**PAGE 6**

**§ 1.4.15 Contract Sum.** The Contract Sum is the maximum total amount to be paid to the Design-Builder for ~~performance of the Work~~ all Work performed before and after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment. The Contract Sum includes the Interim Agreement dated June 26, 2023. The Contract Sum will not exceed Four Million Nine Hundred Seventy Four Thousand Three Hundred and 00/100 dollars (\$4,974,300.00) (the "Guaranteed Maximum Price," "GMP," and "Contract Sum" are synonymous.) The Owner shall not be responsible for any cost overruns to the extent that they cause the Owner's costs to exceed the GMP.

...

**§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment**

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Build Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Build Builder as follows:

*(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)*

§ 2.1.2 The hourly billing rates for services of the Design-Build Builder and the Design-Build Builder's Architect, Consultants and Contractors, if any, are set forth below:

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

**Individual or Position**

**Rate**

For work conducted prior to the execution of this Agreement, see Interim Agreement dated June 26, 2023 (incorporated by reference as Ex. F).

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Build Builder and the Design-Build Builder's Architect, Consultants, and Contractors, as follows:

- .1 — Transportation and authorized out-of-town travel and subsistence;
- .2 — Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 — Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 — Printing, reproductions, plots, standard form documents;
- .5 — Postage, handling and delivery;
- .6 — Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 — Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 — All taxes levied on professional services and on reimbursable expenses; and
- .9 — Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Build Builder and the Design-Build Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of — percent (—%) of the expenses incurred.

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~~§ 2.1.4.1~~ Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid ~~(—)~~ days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.  
*(Insert rate of monthly or annual interest agreed upon.)*

—%

~~§ 2.1.4.2~~ Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

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~~§ 3.1.9.1~~ The Design-Builder, promptly after execution of this Agreement, shall prepare and submit Design-Builder has prepared and submitted for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

PAGE 10

~~§ 3.1.16~~ **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B. Such bonds shall comply with Va. Code § 2.2-4337.

...

~~§ 4.1.1~~ Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification. For work conducted prior to the execution of this Agreement, see Interim Agreement dated June 26, 2023 (incorporated by reference as Ex. F).

~~§ 4.1.2~~ The Design-Builder has advised and shall continue to advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder ~~shall has or will~~ also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

...

~~§ 4.2.1~~ The Design-Builder ~~shall schedule and conduct~~ has scheduled and conducted meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder ~~shall has or will~~ thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation ~~shall consider~~ has considered cost information, constructability, and procurement and construction scheduling issues.

~~§ 4.2.2~~ ~~After the Design-Builder meets~~ The Design-Builder has met with the Owner ~~and presents to present~~ the preliminary evaluation, and the Design-Builder has provided a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report ~~shall also include~~ includes

...

.4 the following:

*(List additional information, if any, to be included in the Design-Builder's written report.)*

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~~§ 4.2.3~~ The Owner ~~shall review~~ has reviewed the Design-Builder's written report and, ~~if acceptable, provide as acceptable, has provided~~ the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. ~~The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification referenced in the Interim Agreement (incorporated by reference as Ex. F).~~

**§ 4.3 Preliminary Design (see Interim Agreement incorporated by reference as Ex. F)**

~~§ 4.3.1~~ Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- ~~.1~~ Confirmation of the allocations of program functions;
- ~~.2~~ Site plan;
- ~~.3~~ Building plans, sections and elevations;
- ~~.4~~ Structural system;
- ~~.5~~ Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- ~~.6~~ Outline specifications or sufficient drawing notes describing construction materials.

~~The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.~~

~~§ 4.3.2~~ The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. ~~The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.~~

~~§ 4.4 Design-Builder's Proposal~~

~~§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:~~

- ~~.1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;~~
- ~~.2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;~~
- ~~.3 The proposed date the Design-Builder shall achieve Substantial Completion;~~
- ~~.4 An enumeration of any qualifications and exclusions, if applicable;~~
- ~~.5 A list of the Design-Builder's key personnel, Contractors and suppliers; and~~
- ~~.6 The date on which the Design-Builder's Proposal expires.~~

~~§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.~~

~~§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.~~

**ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT (see Interim Agreement incorporated by reference as Ex. F)**

...

~~§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.~~

~~§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents. The Construction Documents have been prepared as part of the Interim Agreement. The Work performed after the execution of this Agreement shall be governed by the terms of this Agreement.~~

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The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment. The Design-Builder acknowledges and understands that the property on which construction is to occur is an active school location that will have students present and associated activities in areas immediately adjacent to the construction site.

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The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site. The Design-Builder shall take reasonable steps to secure the construction site from unauthorized entry, including by students attending the existing adjacent school facilities.

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§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B-B and such bonds shall comply with Va. Code § 2.2-4337. Design-Builder to provide "all risk" builders risk insurance covering new materials as part of their scope of Work.

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§ 9.3.1 At least ~~ten~~ five days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

...

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to ~~pay~~ pay and such work performed by others has been identified to the Owner in advance of payment for such work.

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§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, from amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

PAGE 23

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner against the Design-Builder except those arising from

...

.3 terms of ~~special~~ warranties required by the Design-Build Documents.

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§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them. However, all drawings, specifications and other documents supplied by the Design-Builder to Owner shall become the property of the Owner providing that the Owner shall only use such documents in regard to the maintenance and future alterations of the project work after the project work has been completed.

...

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor

all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to the extent permitted by law to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

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### **§ 14.3 Mediation**

~~§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~

~~§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.~~

### **§ 14.4 Arbitration**

~~§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.~~

~~§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

### **§ 14.4.4 Consolidation or Joinder**

~~§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional~~

person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

~~§ 14.4.4.3~~ The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement. Both the Owner and Design-Builder will make reasonable efforts to resolve claims against the other party. However, if a claim cannot be resolved by mutual agreement within 60 days of the presenting of a claim, the resolution of such unresolved claim will be through a litigation process in the Circuit Court of Dickenson County, Virginia.

...

~~The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~  
Section 14.4 contract shall be governed by the laws of the Commonwealth of Virginia.

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.4 AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed (not used)

...

N/A

.6 Other:

Exhibit D - Preliminary Construction Schedule dated July 20, 2023

Exhibit E - Design-Build Guaranteed Maximum Price proposal developed by Quesenberry's, Inc. dated July 19, 2023

Exhibit F – Interim Agreement dated April 26, 2023 (incorporated by reference)

Exhibit G - AIA Document A312-2010 Performance and Payment Bonds (incorporated by reference)

Exhibit H - AIA Document G702-1992 Application and Certificate for Payment and AIA Document G703-1992 Continuation Sheet (incorporated by reference)

Exhibit I - AIA Document G704DB-2017 Certificate of Substantial Completion

Exhibit J - AIA Document G706-1994 Contractor's Affidavit of Payment of Debts and Claims

...

Haydee Robinson      Division Superintendent

Abran Quesenberry

President

## **Certification of Document's Authenticity**

*AIA® Document D401™ – 2003*

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 08:36:38 ET on 07/21/2023 under Order No. 3104237542 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*

# AIA<sup>®</sup> Document A141<sup>®</sup> – 2014 Exhibit A

## **Design-Build Amendment**

This Exhibit A is incorporated into the accompanying AIA Document A141<sup>TM</sup>-2014, Standard Form of Agreement Between Owner and Design-Builder dated the 26th day of July in the year 2023 (the "Agreement")

*(Paragraph deleted)*

**for the following PROJECT:**

Ridgeview Elementary School 2023 Classroom Addition  
Ridgeview Campus  
Clintwood, VA

### **THE OWNER:**

Dickenson County School Board  
309 Volunteer Avenue  
P.O. Box 1127  
Clintwood, VA 24228

### **THE DESIGN-BUILDER:**

Quesenberry's, Inc.  
(dba Quesenberry's Construction)  
P.O. Box Q  
104 E. 19th Street  
Big Stone Gap, VA 24219

The term Design-Builder shall be synonymous with Private Entity or PPEA Firm or Contractor.

The Owner and Design-Builder hereby amend the Agreement as follows.

### **TABLE OF ARTICLES**

- A.1 CONTRACT SUM**
- A.2 CONTRACT TIME**
- A.3 INFORMATION UPON WHICH EXHIBIT A IS BASED**
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS**
- A.5 COST OF THE WORK**

### **ARTICLE A.1 CONTRACT SUM**

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Exhibit A, subject to the GMP, which includes costs and work performed prior to the execution of this Exhibit A. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Exhibit A:

[ ] Stipulated Sum, in accordance with Section A.1.2 below

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

**§ A.1.2 Stipulated Sum**

**§ A.1.2.1** The Stipulated Sum shall be (\$ ), subject to authorized adjustments as provided in the Design-Build Documents.

**§ A.1.2.2** The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:  
*(Paragraph deleted)*

**§ A.1.2.3** Unit prices, if any:  
*(Paragraph deleted)*

Item	Units and Limitations	Price per Unit (\$0.00)
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**§ A.1.3 Cost of the Work Plus Design-Builder's Fee**

**§ A.1.3.1** The Cost of the Work is as defined in Article A.5, Cost of the Work.

**§ A.1.3.2** The Design-Builder's Fee:  
*(Paragraph deleted)*

**§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price**

**§ A.1.4.1** The Cost of the Work is as defined in Article A.5, Cost of the Work.

**§ A.1.4.2** The Design-Builder's Fee:  
*(Paragraph deleted)*

See Guaranteed Maximum Price proposal and 1.4.3.2 below.

**§ A.1.4.3 Guaranteed Maximum Price**

**§ A.1.4.3.1** The total for all costs to the Owner, including the sum of the Reimbursable Costs of the Work, Site Costs (including Off-Site Road Improvements if required), Subcontractor Bonds & Insurances, Design-Builder Insurances, Performance and Payment Bonds, Fixed Design Fee, Design-Builder Contingency, and the Design-Builder's Fee (Overhead & Profit) is guaranteed by the Design-Builder not to exceed Four Million Nine Hundred Seventy Four Thousand Three Hundred and 00/100 dollars (\$ 4,974,300.00 ) (the "Guaranteed Maximum Price" or "GMP"). Except as set forth in the Agreement dated July 26, 2023, costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

*(Paragraphs deleted)*

The Owner shall not be responsible for any cost overruns to the extent that they cause the Owner's costs to exceed the GMP. The Guaranteed Maximum Price includes all work, costs and fees incurred prior to and after the date of this Agreement, including the Interim Agreement dated April 26, 2023..

**§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price**

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.

The GMP is the maximum sum that the Owner shall pay to the Design-Builder in total for this Project, except as otherwise provided in this Agreement. It includes all the Reimbursable Costs and Fixed Fees as defined in this Agreement, including those defined in A.1.4.3.2 and A.5.1, that have been or will be payable to Design-Builder.

Init.

- a. If the Design-Builder becomes aware of circumstances that cause it to believe that costs will exceed those anticipated by this Agreement, it shall not alter the methods or materials anticipated in the Contract Documents and Design-Build Documents without first obtaining the written consent of the Owner.
- b. All proposed revisions or changes to the approved Plans and Specifications must be submitted to the Owner's Representative for review and approval for conformance with the approved Construction Documents plans and specifications, regardless of whether or not they affect the GMP. Owner's Representative's review and approval shall be not be unreasonably conditioned.
- c. Design-Builder shall ensure that the GMP amount is not exceeded, but if such amount is exceeded, Design-Builder shall be solely responsible for any such excess amount.
- d. No payment shall be made to Design-Builder in excess of the GMP except as adjusted for any Changes made in accordance with this Agreement. The Design-Builder shall be wholly responsible to complete the Project at no compensation above the GMP as adjusted for any Changes made in accordance with this Agreement, and the Owner shall have no obligation to pay the Design-Builder such excess amount or any portion thereof.

#### REIMBURSABLE COSTS

- a. Subject to the limitation that payments to Design-Builder shall not exceed the GMP, the Owner will reimburse the Design-Builder for all the following costs for the Project:
  1. Contractor materials, supplies, and equipment either incorporated directly into the construction on the Project or required to accomplish a construction activity on the Project including equipment rental or lease, transportation, and storage.
  2. Contractor labor costs for personnel performing labor at the Project site. Labor costs include hourly rates with all fringe benefits and taxes required by law and applicable contracts in force between the Contractor and its employees or its standard benefits package.
  3. Subcontractor costs for Work on items directly related to and/or incorporated into the finished construction for the Project including the cost of completing Punch List Items. The term "subcontracts" includes purchase orders. The Design-Builder shall conduct the subcontractor bid process on an "open book" basis, and shall allow the Owner's Representative to observe the receipt and analysis of all bids. The Design-Builder shall seek to invite at least six (6) bidders, if practical, and endeavor to receive price quotations from at least three (3) firms for all subcontracts for, but not limited to, equipment, equipment rentals or leases, materials, labor contracts, any other supplies or services, where the quotations are expected to exceed or actually exceed \$50,000, unless otherwise authorized by the Owner's Representative. The Owner's Representative may recommend additional subcontractor bidders to the Design-Builder. The Design-Builder shall furnish copies of quotations to the Owner's Representative for review and approval prior to award. It is not required that the award be made to the lowest offeror, but shall be made on the basis of best value. Copies of all subcontracts, including all modifications and/or revisions will be furnished to the Owner's Representative within five (5) working days from issuance. The Design-Builder shall not "bid shop" subcontracts after selection.
  4. Other Project-related direct costs that shall be reimbursed under this Agreement include, but are not limited to, the following: Contractor direct expenses, insurance (including project specific insurance riders of any type and accounting (project related), general conditions, payment and performance bonds, taxes including gross receipts tax, permits, utility availability, relocation and usage costs, "on site construction" supervision, quality control, testing, safety, training, engineering/layout, fire protection, cleanup, field office equipment and operation, but not including expenses incurred prior to the Effective Date of this Agreement. Design-Builder may self-perform up to 10% of the cost of the construction work provided the Design-Builder's price for the work can be demonstrated to be lower than competitive bids from trades contractors or is advantageous to the Owner.
  5. Reimbursable Costs for non-construction portions of the Work shall be documented with vendor's invoices to Design-Builder and other similar documentation. Detailed information regarding vendor's hourly rates, materials costs or other expenditures will not be provided.

b. Owner will not reimburse Design-Builder for the following costs, including those defined in A.5.2:

1. Contractor costs not associated with personnel assigned to the Project are considered to be indirect costs that are included as part of the Fixed Fees and are not Reimbursable Costs. Examples of indirect costs that are not Reimbursable Costs include, but are not limited to: bonuses to senior executives, travel by company executives or officers, and personnel whose services and/or responsibilities include multiple projects, e.g., accounting, home office estimating, and purchasing personnel; provided, however, that costs for such personnel on multiple projects may be reimbursed if the Design-Builder requires each of such personnel to maintain accurate timesheets of any time applicable to the Project, if such time allocated to the Project is reasonable, and if the Design-Builder makes such timesheets available to the Owner at any time and from time to time as requested by the Owner. Additionally, costs for repairs and maintenance of Contractor-owned equipment (including by any subsidiary or affiliated companies) or rental equipment are not Reimbursable Costs. Repair costs and costs of routine maintenance of rental equipment are to be included in the rental price.

2. Public relations and advertising, bad debts, contributions and donations, dividends or payments of profits, entertainment, fines or penalties, life insurance for officers, partners, or proprietors, interest on loans, lobbying, losses on other contracts, income taxes, proposal preparation costs except for proposals arising from change requests or direction from the Owner or Owner's Representative, and legal costs involving disputes with the Owner.

3. The cost of all warranty work will be the responsibility of the Design-Builder, including time spent coordinating warranty work by the Design-Builder's project manager, superintendent, or other team members.

4. Costs incurred prior to the Effective Date of this Agreement, except design or preconstruction services included in the Contract Cost Limit and authorized in advance of this agreement to expedite the schedule, unless the same have already been paid, or with the consent of the Owner prior to the Effective Date are to be paid, outside of this Agreement.

c. Owner and Design-Builder shall share equally in savings in the costs of work over the course of the construction project "Buyout Savings" except as specifically noted in (d) below. The anticipated Buyout Savings will be reviewed on a periodic basis as Design-Builder completes procurement of the Work. The net combined Buyout Savings from individual line items from within the established Reimbursable Costs will be split equally (50/50) between the Owner and Design-Builder once all Work has been procured. The buyouts of materials and self-performed work of the Design-Builder are to be included in total net combined Buyout Savings to be split equally (50/50) between the Owner and Design-Builder.

d. Expenditures from the Design-Builder's Contingency must be approved in advance by the Owner's Representative, whose approval will not be unreasonably withheld. The Design-Builder's Contingency may be used by the Design-Builder for scope gaps between trade contractors, contract default by a trades contractor, and unforeseen field conditions (not to include unforeseen unsuitable materials, rock or other obstructions not assumed in estimated quantities included in the cost of the work). Any other proposed use must be approved by the Owner in writing before the Design-Builder commits funds from the Design-Builder Contingency. The Design-Builder must submit a completely documented request for the Owner's Representative's review and approval justifying why the request is not included in the GMP. The Design-Builder must provide the Owner notice of each use of the Design-Builder Contingency within a reasonable amount of time, but no later than three (3) work days prior to committing funds from the Design-Builder Contingency. The Design-Builder may use the Design-Build Contingency to cover the cost of any needed repairs that need to be made during the construction process, however, costs for repair work will need to be back-charged to subcontractors or covered out of the Design-Builder's Fee. The Owner will not be responsible for the cost of repairs made during construction. The parties agree that any excess contingency at the completion of the Project shall be returned 100% to the Owner. If the cost of the Project exceeds the GMP as adjusted for any Changes, including the full amount of the Design-Build Contingency, the Design-Builder shall be solely responsible for any such excess amount above the GMP as adjusted for any Changes.

#### FIXED FEES

The Owner shall pay the Design-Build Fixed Fees, which consist of the architecture and engineering fees, pre-construction fees and expenses, and general contracting fees not already assumed within the scope of the Interim Agreement. The Fixed Fees include all compensation payable by Owner to Design-Builder beyond Reimbursable

Init.

Costs for the Services and are intended to compensate for the Design-Builder's home office support, overhead costs, and profit for the Project and for all design (architectural/engineering) and other professional services. The Fixed Fees will not vary with either the estimated cost or actual cost of construction of the Project. The components of the Fixed Fees below may only be increased if the Owner requests changes that alter the design after the GMP is established or design documents are considered 100% complete by both parties. The Fixed Fees will not be reduced unless the Owner's Representative reasonably requires an equitable reduction in the Fixed Fees for any Change that significantly reduces the scope of the Work, provided that such costs have not been incurred prior to the equitable reduction.

a. A-E Services for Design, Construction Documents and During Construction: This component of the Fixed Fees covers the design and preparation of Construction Documents. The A-E will provide coordination with all jurisdictions, authorities, planning and zoning, and building officials to obtain all necessary input, approvals and permits. This component of the Fixed Fees also covers construction administration by the A-E and includes, but is not limited to, review of shop drawings and samples, field interpretation of Construction Documents, preparation of required clarification drawings, and participation in quality control activities.

b. Contractor Fee during pre-construction and construction: This component of the Fixed Fees covers all pre-construction services, including design reviews, cost estimates, preparation of a GMP, profit on construction plus home office support (including project manager, project engineer, estimator, and purchasing agent) and overhead costs.

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

*(Paragraphs deleted)*

N/A

§ A.1.4.3.4 Unit Prices, if any:

*(Paragraph deleted)*

Item

Units and Limitations

Price per Unit (\$0.00)

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

See Design-Build Guaranteed Maximum Price supporting documentation developed by Quesenberry's, Inc. dated July 19, 2023.

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the 30th day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the 30th day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than Forty Five ( 45 ) days after the Owner receives the Application for Payment.

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

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§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

*(Paragraphs deleted)*

**§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

**§ A.1.5.4.1** Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the

period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ A.1.5.4.2** Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of Five percent ( 5 %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of Five percent ( 5 %) from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

Reduction of retainage, if any, will be negotiated between Owner and Design-Builder upon reaching Substantial Completion.

**§ A.1.5.4.3** The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

#### **§ A.1.5.5 Final Payment**

**§ A.1.5.5.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

**§ A.1.5.5.2** If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

### **ARTICLE A.2 CONTRACT TIME**

**§ A.2.1** Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than ( ) days from the date of this Exhibit A, or as follows:

*(Paragraphs deleted)*

Work shall reach Substantial Completion by August 2, 2024 per schedule included in Exhibit E – Guaranteed Maximum Price proposal dated July 19, 2023.

<b>Portion of Work</b>	<b>Substantial Completion Date</b>
------------------------	------------------------------------

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

*(Paragraphs deleted)*

If Work is not fully and satisfactorily completed within the period of time set forth in this Agreement, the Design-Builder agrees it shall owe and pay the Owner as liquidated damages in the amount of \$1,000 per day for each calendar day Design-Builder fails to reach Substantial Completion.

If Final Completion of the Work is not achieved by August 30, 2024, and if no extension of such time period has been granted by the Owner as required by this Agreement, then Design-Builder shall owe the Owner an additional amount in liquidated damages of \$250 per calendar day for Design-Builder failure to reach Final Completion.

**ARTICLE A.3 INFORMATION UPON WHICH EXHIBIT A IS BASED**

§ A.3.1 The Contract Sum and Contract Time set forth in this Exhibit A are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ A.3.1.2 The Specifications:

*(Paragraph deleted)*

Section	Title	Date	Pages
	Specifications	June 26, 2023	

§ A.3.1.3 The Drawings:

*(Paragraph deleted)*

Number	Title	Date
	Drawings	June 26, 2023

§ A.3.1.4 The Sustainability Plan, if any:

*(Paragraph deleted)*

Title	Date	Pages
N/A		

*Other identifying information:*

Addendum #1 dated June 30, 2023 and Addendum #2 dated July 13, 2023.

§ A.3.1.5 Allowances and Contingencies:

*(Paragraph deleted)*

**.1 Allowances**

1. \$2,000: Owner printing allowance (included in Interim Agreement (see Ex. F)
2. \$195,000: Canopy allowance

The Design-Builder will be responsible for managing the allowance to ensure the amount of the allowance is not exceeded without prior approval of the Owner.

**.2 Contingencies**

See A.1.4.3.2 above.

**§ A.3.1.6 Design-Builder's assumptions and clarifications:**

See Design-Build Guaranteed Maximum Price supporting documentation developed by Quesenberry's, Inc. dated July 19, 2023.

**§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification: *N/A***

**§ A.3.1.8** To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

**ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS**

**§ A.4.1** The Design-Builder's key personnel are identified below:

**.1 Superintendent**

Randy Carter

**.2 Project Manager**

Trey Garrison

**.3 Others**

Senior Project Manager: Abran Quesenberry

**§ A.4.2** The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

**Architect:**

ZMM, Inc.  
200 Country Club Drive SW  
Plaza One, Building E  
Blacksburg, VA 24060

**Consultants:**

**Environmental Engineering and Civil Engineering:**  
The Lane Group  
310 West Valley Street  
Abingdon, VA 24210  
276-233-7167

**ARTICLE A.5 COST OF THE WORK**

**§ A.5.1 Cost To Be Reimbursed as Part of the Contract Subject to GMP**

**§ A.5.1.1 Labor Costs**

**§ A.5.1.1.1** Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

**§ A.5.1.1.2** With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

*(Paragraph deleted)*

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
-----------------	------------------------------	---------------	---------------------

**§ A.5.1.1.3** Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**§ A.5.1.1.4** Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

**§ A.5.1.1.5** Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

**§ A.5.1.2 Contract Costs.** Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

**§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ A.5.1.3.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ A.5.1.3.2** Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ A.5.1.4.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

**§ A.5.1.4.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

**§ A.5.1.4.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ A.5.1.4.4** Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

Init.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

**§ A.5.1.5 Miscellaneous Costs**

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable. Design-Builder will make all reasonable efforts to utilize the Owner's tax exempt status to save costs in regards to sales tax, etc.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

*(Paragraph deleted)*

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ A.5.1.6 Other Costs and Emergencies**

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

*(Paragraph deleted)*

**§ A.5.1.7 Related Party Transactions**

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

**§ A.5.1.7.2** If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

**§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract**

The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

**§ A.5.3 Discounts, Rebates, and Refunds**

**§ A.5.3.1** Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

**§ A.5.3.2** Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

**§ A.5.4 Other Agreements**

**§ A.5.4.1** When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ A.5.4.2** Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

**§ A.5.4.3** The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

**§ A.5.5 Accounting Records**

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs

incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

**§ A.5.6 Relationship of the Parties**

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Exhibit A to the Agreement entered into as of the day and year first written above.

<b>OWNER (Signature)</b>		<b>DESIGN-BUILDER (Signature)</b>	
Haydee Robinson Superintendent	Division	Abran Quesenberry	President

*(Row deleted)*

# Additions and Deletions Report for AIA® Document A141® – 2014 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 07:55:59 ET on 07/21/2023.

## PAGE 1

This ~~Amendment Exhibit A~~ is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder dated the 26th day of July in the year 2023 (the "Agreement")  
(In words, indicate day, month and year.)

...

~~(Name and location or address)~~  
Ridgeview Elementary School 2023 Classroom Addition  
Ridgeview Campus  
Clintwood, VA

...

~~(Name, legal status and address)~~  
Dickenson County School Board  
309 Volunteer Avenue  
P.O. Box 1127  
Clintwood, VA 24228  
**THE DESIGN-BUILDER:**

Quesenberry's, Inc.  
~~(Name, legal status and address)~~(dba Quesenberry's Construction)  
P.O. Box Q  
104 E. 19th Street  
Big Stone Gap, VA 24219  
The term Design-Builder shall be synonymous with Private Entity or PPEA Firm or Contractor.

...

### A.3 INFORMATION UPON WHICH AMENDMENT EXHIBIT A IS BASED

...

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this ~~Amendment Exhibit A~~, subject to the GMP, which includes costs and work performed prior to the execution of this Exhibit A. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this ~~Amendment Exhibit A:~~

~~(Check the appropriate box.)~~

## PAGE 2

[ X ] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

~~(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)~~

...

~~(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)~~

...

~~(Identify item, state the unit price, and state any applicable quantity limitations.)~~

...

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)~~

...

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)~~

See Guaranteed Maximum Price proposal and 1.4.3.2 below.

...

**§ A.1.4.3.1** The sum of the Cost of the Work and the Design-Builder's Fee total for all costs to the Owner, including the sum of the Reimbursable Costs of the Work, Site Costs (including Off-Site Road Improvements if required), Subcontractor Bonds & Insurances, Design-Builder Insurances, Performance and Payment Bonds, Fixed Design Fee, Design-Builder Contingency, and the Design-Builder's Fee (Overhead & Profit) is guaranteed by the Design-Builder not to exceed (\$—), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs Four Million Nine Hundred Seventy Four Thousand Three Hundred and 00/100 dollars (\$ 4,974,300.00 ) (the "Guaranteed Maximum Price" or "GMP"). Except as set forth in the Agreement dated July 26, 2023, costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

~~(Insert specific provisions if the Design-Builder is to participate in any savings.)~~

The Owner shall not be responsible for any cost overruns to the extent that they cause the Owner's costs to exceed the GMP. The Guaranteed Maximum Price includes all work, costs and fees incurred prior to and after the date of this Agreement, including the Interim Agreement dated April 26, 2023..

...

~~(Provide information below or reference an attachment.)~~

The GMP is the maximum sum that the Owner shall pay to the Design-Builder in total for this Project, except as otherwise provided in this Agreement. It includes all the Reimbursable Costs and Fixed Fees as defined in this Agreement, including those defined in A.1.4.3.2 and A.5.1, that have been or will be payable to Design-Builder.

a. If the Design-Builder becomes aware of circumstances that cause it to believe that costs will exceed those anticipated by this Agreement, it shall not alter the methods or materials anticipated in the Contract Documents and Design-Build Documents without first obtaining the written consent of the Owner.

b. All proposed revisions or changes to the approved Plans and Specifications must be submitted to the Owner's Representative for review and approval for conformance with the approved Construction Documents plans and specifications, regardless of whether or not they affect the GMP. Owner's Representative's review and approval shall be not be unreasonably conditioned.

c. Design-Builder shall ensure that the GMP amount is not exceeded, but if such amount is exceeded, Design-Builder shall be solely responsible for any such excess amount.

d. No payment shall be made to Design-Builder in excess of the GMP except as adjusted for any Changes made in accordance with this Agreement. The Design-Builder shall be wholly responsible to complete the Project at no compensation above the GMP as adjusted for any Changes made in accordance with this Agreement, and the Owner shall have no obligation to pay the Design-Builder such excess amount or any portion thereof.

#### REIMBURSABLE COSTS

a. Subject to the limitation that payments to Design-Builder shall not exceed the GMP, the Owner will reimburse the Design-Builder for all the following costs for the Project:

1. Contractor materials, supplies, and equipment either incorporated directly into the construction on the Project or required to accomplish a construction activity on the Project including equipment rental or lease, transportation, and storage.

2. Contractor labor costs for personnel performing labor at the Project site. Labor costs include hourly rates with all fringe benefits and taxes required by law and applicable contracts in force between the Contractor and its employees or its standard benefits package.

3. Subcontractor costs for Work on items directly related to and/or incorporated into the finished construction for the Project including the cost of completing Punch List Items. The term "subcontracts" includes purchase orders. The Design-Builder shall conduct the subcontractor bid process on an "open book" basis, and shall allow the Owner's Representative to observe the receipt and analysis of all bids. The Design-Builder shall seek to invite at least six (6) bidders, if practical, and endeavor to receive price quotations from at least three (3) firms for all subcontracts for, but not limited to, equipment, equipment rentals or leases, materials, labor contracts, any other supplies or services, where the quotations are expected to exceed or actually exceed \$50,000, unless otherwise authorized by the Owner's Representative. The Owner's Representative may recommend additional subcontractor bidders to the Design-Builder. The Design-Builder shall furnish copies of quotations to the Owner's Representative for review and approval prior to award. It is not required that the award be made to the lowest offeror, but shall be made on the basis of best value. Copies of all subcontracts, including all modifications and/or revisions will be furnished to the Owner's Representative within five (5) working days from issuance. The Design-Builder shall not "bid shop" subcontracts after selection.

4. Other Project-related direct costs that shall be reimbursed under this Agreement include, but are not limited to, the following: Contractor direct expenses, insurance (including project specific insurance riders of any type and accounting (project related), general conditions, payment and performance bonds, taxes including gross receipts tax, permits, utility availability, relocation and usage costs, "on site construction" supervision, quality control, testing, safety, training, engineering/layout, fire protection, cleanup, field office equipment and operation, but not including expenses incurred prior to the Effective Date of this Agreement. Design-Builder may self-perform up to 10% of the cost of the construction work provided the Design-Builder's price for the work can be demonstrated to be lower than competitive bids from trades contractors or is advantageous to the Owner.

5. Reimbursable Costs for non-construction portions of the Work shall be documented with vendor's invoices to Design-Builder and other similar documentation. Detailed information regarding vendor's hourly rates, materials costs or other expenditures will not be provided.

b. Owner will not reimburse Design-Builder for the following costs, including those defined in A.5.2:

1. Contractor costs not associated with personnel assigned to the Project are considered to be indirect costs that are included as part of the Fixed Fees and are not Reimbursable Costs. Examples of indirect costs that are not Reimbursable Costs include, but are not limited to: bonuses to senior executives, travel by company executives or officers, and personnel whose services and/or responsibilities include multiple projects, e.g., accounting, home office estimating, and purchasing personnel; provided, however, that costs for such personnel on multiple projects may be reimbursed if the Design-Builder requires each of such personnel to maintain accurate timesheets of any time applicable to the Project, if such time allocated to the Project is reasonable, and if the Design-Builder makes such timesheets available to the Owner at any time and from time to time as requested by the Owner. Additionally, costs for repairs and maintenance of Contractor-owned equipment (including by any subsidiary or affiliated companies) or rental equipment are not Reimbursable Costs. Repair costs and costs of routine maintenance of rental equipment are to be included in the rental price.

2. Public relations and advertising, bad debts, contributions and donations, dividends or payments of profits, entertainment, fines or penalties, life insurance for officers, partners, or proprietors, interest on loans, lobbying, losses on other contracts, income taxes, proposal preparation costs except for proposals arising from change requests or direction from the Owner or Owner's Representative, and legal costs involving disputes with the Owner.

3. The cost of all warranty work will be the responsibility of the Design-Builder, including time spent coordinating warranty work by the Design-Builder's project manager, superintendent, or other team members.

4. Costs incurred prior to the Effective Date of this Agreement, except design or preconstruction services included in the Contract Cost Limit and authorized in advance of this agreement to expedite the schedule, unless the same have already been paid, or with the consent of the Owner prior to the Effective Date are to be paid, outside of this Agreement.

c. Owner and Design-Builder shall share equally in savings in the costs of work over the course of the construction project "Buyout Savings" except as specifically noted in (d) below. The anticipated Buyout Savings will be reviewed on a periodic basis as Design-Builder completes procurement of the Work. The net combined Buyout Savings from individual line items from within the established Reimbursable Costs will be split equally (50/50) between the Owner and Design-Builder once all Work has been procured. The buyouts of materials and self-performed work of the Design-Builder are to be included in total net combined Buyout Savings to be split equally (50/50) between the Owner and Design-Builder.

d. Expenditures from the Design-Builder's Contingency must be approved in advance by the Owner's Representative, whose approval will not be unreasonably withheld. The Design-Builder's Contingency may be used by the Design-Builder for scope gaps between trade contractors, contract default by a trades contractor, and unforeseen field conditions (not to include unforeseen unsuitable materials, rock or other obstructions not assumed in estimated quantities included in the cost of the work). Any other proposed use must be approved by the Owner in writing before the Design-Builder commits funds from the Design-Builder Contingency. The Design-Builder must submit a completely documented request for the Owner's Representative's review and approval justifying why the request is not included in the GMP. The Design-Builder must provide the Owner notice of each use of the Design-Builder Contingency within a reasonable amount of time, but no later than three (3) work days prior to committing funds from the Design-Builder Contingency. The Design-Builder may use the Design-Build Contingency to cover the cost of any needed repairs that need to be made during the construction process, however, costs for repair work will need to be back-charged to subcontractors or covered out of the Design-Builder's Fee. The Owner will not be responsible for the cost of repairs made during construction. The parties agree that any excess contingency at the completion of the Project shall be returned 100% to the Owner. If the cost of the Project exceeds the GMP as adjusted for any Changes, including the full amount of the Design-Build Contingency, the Design-Builder shall be solely responsible for any such excess amount above the GMP as adjusted for any Changes.

#### FIXED FEES

The Owner shall pay the Design-Build Fixed Fees, which consist of the architecture and engineering fees, pre-construction fees and expenses, and general contracting fees not already assumed within the scope of the Interim Agreement. The Fixed Fees include all compensation payable by Owner to Design-Builder beyond Reimbursable

Costs for the Services and are intended to compensate for the Design-Builder's home office support, overhead costs, and profit for the Project and for all design (architectural/engineering) and other professional services. The Fixed Fees will not vary with either the estimated cost or actual cost of construction of the Project. The components of the Fixed Fees below may only be increased if the Owner requests changes that alter the design after the GMP is established or design documents are considered 100% complete by both parties. The Fixed Fees will not be reduced unless the Owner's Representative reasonably requires an equitable reduction in the Fixed Fees for any Change that significantly reduces the scope of the Work, provided that such costs have not been incurred prior to the equitable reduction.

a. A-E Services for Design, Construction Documents and During Construction: This component of the Fixed Fees covers the design and preparation of Construction Documents. The A-E will provide coordination with all jurisdictions, authorities, planning and zoning, and building officials to obtain all necessary input, approvals and permits. This component of the Fixed Fees also covers construction administration by the A-E and includes, but is not limited to, review of shop drawings and samples, field interpretation of Construction Documents, preparation of required clarification drawings, and participation in quality control activities.

b. Contractor Fee during pre-construction and construction: This component of the Fixed Fees covers all pre-construction services, including design reviews, cost estimates, preparation of a GMP, profit on construction plus home office support (including project manager, project engineer, estimator, and purchasing agent) and overhead costs.

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§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)*  
N/A

...

*(Identify item, state the unit price, and state any applicable quantity limitations.)*

...

See Design-Build Guaranteed Maximum Price supporting documentation developed by Quesenberry's, Inc. dated July 19, 2023.

...

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the 30<sup>th</sup> day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the 30<sup>th</sup> day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than Forty Five ( 45 ) days after the Owner receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

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**§ A.1.5.2 Progress Payments—Stipulated Sum**

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of — percent ( — %) on the

- Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- ~~.2~~ Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (~~—~~%);
  - ~~.3~~ Subtract the aggregate of previous payments made by the Owner; and
  - ~~.4~~ Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

~~§ A.1.5.2.3~~ The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- ~~.1~~ Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)*
- ~~.2~~ Add, if final completion of the Work is thereafter materially delayed through no fault of the Design Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

~~§ A.1.5.2.4~~ Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)*

#### ~~§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee~~

~~§ A.1.5.3.1~~ Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design Builder through the end of the period covered by the Application for Payment and for which Design Builder has made or intends to make actual payment prior to the next Application for Payment.

~~§ A.1.5.3.2~~ Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- ~~.1~~ Take the Cost of the Work as described in Article A.5 of this Amendment;
- ~~.2~~ Add the Design Builder's Fee, less retainage of ~~—~~ percent (~~—~~%). The Design Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- ~~.3~~ Subtract retainage of ~~—~~ percent (~~—~~%) from that portion of the Work that the Design Builder self-performs;
- ~~.4~~ Subtract the aggregate of previous payments made by the Owner;
- ~~.5~~ Subtract the shortfall, if any, indicated by the Design Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- ~~.6~~ Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

~~§ A.1.5.3.3~~ The Owner and Design Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design Builder shall execute agreements in accordance with those terms.

PAGE 7

- .3 Add the Design-Builder's Fee, less retainage of Five percent ( 5 %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of Five percent ( 5 %) from that portion of the Work that the Design-Builder self-performs;

...

- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

Reduction of retainage, if any, will be negotiated between Owner and Design-Builder upon reaching Substantial Completion.

**PAGE 8**

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than ( ) days from the date of this ~~Amendment, Exhibit A,~~ or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

Work shall reach Substantial Completion by by August 2, 2024 per schedule included in Exhibit E – Guaranteed Maximum Price proposal dated July 19, 2023.

...

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

If Work is not fully and satisfactorily completed within the period of time set forth in this Agreement, the Design-Builder agrees it shall owe and pay the Owner as liquidated damages in the amount of \$1,000 per day for each calendar day Design-Builder fails to reach Substantial Completion.

If Final Completion of the Work is not achieved by August 30, 2024, and if no extension of such time period has been granted by the Owner as required by this Agreement, then Design-Builder shall owe the Owner an additional amount in liquidated damages of \$250 per calendar day for Design-Builder failure to reach Final Completion.

**ARTICLE A.3 — INFORMATION UPON WHICH AMENDMENT IS BASED**

**ARTICLE A.3 INFORMATION UPON WHICH EXHIBIT A IS BASED**

§ A.3.1 The Contract Sum and Contract Time set forth in this ~~Amendment-Exhibit A~~ are based on the following:

...

*(Either list the specifications here or refer to an exhibit attached to this Amendment.)*

...

Specifications

June 26, 2023

...

*(Either list the drawings here or refer to an exhibit attached to this Amendment.)*

...

Drawings

June 26, 2023

...

*(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)*

...

N/A

...

Addendum #1 dated June 30, 2023 and Addendum #2 dated July 13, 2023.

...

*(Identify any agreed upon allowances and contingencies, including a statement of their basis.)*

...

- 1. \$2,000: Owner printing allowance (included in Interim Agreement (see Ex. F)
- 2. \$195,000: Canopy allowance

The Design-Builder will be responsible for managing the allowance to ensure the amount of the allowance is not exceeded without prior approval of the Owner.

**PAGE 9**

See A.1.4.3.2 above.

...

See Design-Build Guaranteed Maximum Price supporting documentation developed by Quesenberry's, Inc. dated July 19, 2023.

...

**§ A.3.1.7** Deviations from the Owner's Criteria as adjusted by a Modification: N/A

...

*(Identify name, title and contact information.)*

...

Randy Carter

...

Trey Garrison

...

Senior Project Manager: Abran Quesenberry

...

(List name, discipline, address and other information.)

Architect:

ZMM, Inc.  
200 Country Club Drive SW  
Plaza One, Building E  
Blacksburg, VA 24060

Consultants:

Environmental Engineering and Civil Engineering:  
The Lane Group  
310 West Valley Street  
Abingdon, VA 24210  
276-233-7167  
**PAGE 10**

**§ A.5.1 Cost To Be Reimbursed as Part of the Contract Subject to GMP**

...

*(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

**PAGE 11**

**§ A.5.1.5.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable. Design-Builder will make all reasonable efforts to utilize the Owner's tax exempt status to save costs in regards to sales tax, etc.

...

**§ A.5.1.5.5** Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. ~~However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price- Documents.~~ If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

...

~~§ A.5.1.5.8~~ With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

...

~~§ A.5.1.6.3~~ Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

**PAGE 13**

This Amendment Exhibit A to the Agreement entered into as of the day and year first written above.

...

Haydee Robinson                      Division  
Superintendent  
\_\_\_\_\_  
*(Printed name and title)*

Abran Quesenberry                      President  
\_\_\_\_\_  
*(Printed name and title)*

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 07:55:59 ET on 07/21/2023 under Order No. 3104237542 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014 Exhibit A, Design-Build Amendment, other than those additions and deletions shown in the associated Additions and Deletions Report.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*



# Document A141® – 2014 Exhibit B

## Insurance and Bonds

for the following PROJECT:

Ridgeview Elementary School 2023 Classroom Addition  
Ridgeview Campus  
Clintwood, VA

Design and construct an approximately 8,000 SF classroom addition to Ridgeview Elementary School on the Ridgeview Campus that would include additional classrooms, pullout classrooms, and associated support spaces.

### THE OWNER:

Dickenson County School Board  
309 Volunteer Avenue  
P.O. Box 1127  
Clintwood, VA 24228

### THE DESIGN-BUILDER:

Quesenberry's, Inc.  
(dba Quesenberry's Construction)  
P.O. Box Q  
104 E. 19th Street  
Big Stone Gap, VA 24219

The term Design-Builder shall be synonymous with Private Entity or PPEA Firm or Contractor.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

### THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the 26th day of July in the year 2023.

### TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

### ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

### ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the

Init.

jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

*(Paragraphs deleted)*

All types and amounts of insurance shall be as provided and as set forth in the Interim Agreement dated April 26, 2023 and as noted below.

**§ B.2.1.1 Commercial General Liability** with policy limits of not less than One Million (\$ 1,000,000 ) for each occurrence and Two Million (\$ 2,000,000 ) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

**§ B.2.1.2 Automobile Liability** covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than One Million (\$ 1,000,000 ) per claim and One Million (\$ 1,000,000 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

**§ B.2.1.3** The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

**§ B.2.1.4 Workers' Compensation** at statutory limits.

**§ B.2.1.5 Employers' Liability** with policy limits as provided below:

\$1,000,000 per Accident; \$1,000,000 Disease, Policy Limit; \$1,000,000 Disease, Each Employee

**§ B.2.1.6 Professional Liability** covering negligent acts, errors and omissions in the performance of professional services by design consultants, with policy limits of not less than Two Million (\$ 2,000,000 ) per claim and Two Million (\$ 2,000,000 ) in the aggregate. Contractor to provide Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million (\$1,000,000 ) per claim and One Million (\$ 1,000,000 ) in the aggregate.

**§ B.2.1.7 Pollution Liability** covering performance of the Work, with policy limits of not less than One Million (\$ 1,000,000 ) per claim and One Million (\$ 1,000,000 ) in the aggregate.

**§ B.2.1.7.1** The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than Two Million (\$ 2,000,000 ) per claim and Two Million (\$ 2,000,000 ) in the aggregate.

**§ B.2.1.8** The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

**§ B.2.1.9 Additional Insured Obligations.** The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

**§ B.2.1.10 Certificates of Insurance.** The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

**§ B.2.2 Performance Bond and Payment Bond**

The Design-Builder shall provide surety bonds as follows:

*(Paragraph deleted)*

Type	Penal Sum (\$0.00)
Payment Bond	Amount of Agreement
Performance Bond	Amount of Agreement

**§ B.2.2.1** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**ARTICLE B.3 OWNER'S INSURANCE**

**§ B.3.1 Owner's Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

**§ B.3.2 Property Insurance**

**§ B.3.2.1** Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

Design-Builder to provide "all risk" builders risk insurance covering new materials as part of their scope of Work.

**§ B.3.2.1.1** The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

**§ B.3.2.1.2** If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

§ B.3.2.4 **Loss of Use Insurance.** At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.3.2.7 **Waivers of Subrogation.** The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ B.3.2.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgage clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

**§ B.3.2.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

**§ B.3.2.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### **ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

# Additions and Deletions Report for

## AIA® Document A141® – 2014 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 07:56:13 ET on 07/21/2023.

### PAGE 1

~~(Name and location or address)~~

Ridgeview Elementary School 2023 Classroom Addition  
Ridgeview Campus  
Clintwood, VA

Design and construct an approximately 8,000 SF classroom addition to Ridgeview Elementary School on the Ridgeview Campus that would include additional classrooms, pullout classrooms, and associated support spaces.

...

~~(Name, legal status and address)~~

Dickenson County School Board  
309 Volunteer Avenue  
P.O. Box 1127  
Clintwood, VA 24228

**THE DESIGN-BUILDER:**

Quesenberry's, Inc.

(dba Quesenberry's Construction)

~~(Name, legal status and address)~~P.O. Box Q  
104 E. 19th Street  
Big Stone Gap, VA 24219

The term Design-Builder shall be synonymous with Private Entity or PPEA Firm or Contractor.

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the 26th day of July in the year -2023.

~~(In words, indicate day, month and year.)~~

### PAGE 2

~~(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)~~

All types and amounts of insurance shall be as provided and as set forth in the Interim Agreement dated April 26, 2023 and as noted below.

**§ B.2.1.1 Commercial General Liability** with policy limits of not less than One Million (\$ 1,000,000 ) for each occurrence and Two Million (\$ 2,000,000 ) in the aggregate providing coverage for claims including

...

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than One Million (\$ 1,000,000 ) per claim and One Million (\$ 1,000,000 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

...

\$1,000,000 per Accident; \$1,000,000 Disease; Policy Limit: \$1,000,000 Disease; Each Employee

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services by design consultants, with policy limits of not less than Two Million (\$ 2,000,000 ) per claim and Two Million (\$ 2,000,000 ) in the aggregate. Contractor to provide Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$—One Million (\$1,000,000 ) per claim and One Million (\$ 1,000,000 ) in the aggregate.

§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than One Million (\$ 1,000,000 ) per claim and One Million (\$ 1,000,000 ) in the aggregate.

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than Two Million (\$ 2,000,000 ) per claim and Two Million (\$ 2,000,000 ) in the aggregate.

PAGE 3

*(Specify type and penal sum of bonds.)*

...

Payment Bond

Amount of Agreement

Performance Bond

Amount of Agreement

...

Design-Builder to provide "all risk" builders risk insurance covering new materials as part of their scope of Work.

# **EXHIBIT D**

## **CLARIFICATIONS AND ADDITIONAL INFORMATION**

**INTERIM AGREEMENT**

**BETWEEN**

**DICKENSON COUNTY SCHOOL BOARD**

**AND**

**QUESENBERRY'S, INC.**

**APRIL 2023**

**RIGEVUE ELEMENTARY SCHOOL CLASSROOM ADDITION**

**RIDGEVIEW CAMPUS**

**DICKENSON COUNTY PUBLIC SCHOOLS**

**CLINTWOOD, VIRGINIA**

The following Clarifications and Additional Information shall precede the Conceptual Phase Proposal submitted by Quesenberry's, Inc. dated January 13, 2023.

1. Owner and Design-Builder agree on a Contract Cost Limit of \$5,039,200 as mutually agreed upon by both parties.
2. Design-Builder to include builder's risk insurance for value of their contract.
3. Design-Builder to provide topographic survey as part of services under Interim Agreement, if required.
4. Owner intends to pursue an Owner Direct Purchase (ODP) Process and will provide specifications language and assist Design-Builder with the ODP Process. Design-Builder agrees to reasonably participate in process to identify project cost savings.
5. Quesenberry's Construction, Inc. shall comply with the requirements of the Davis-Bacon Act. Contract Documents (100% design documents) shall include prevailing wage requirements and be incorporated into any and all subcontractor agreements.
6. Any utility fees are excluded. Any tap fees are included.
7. Third party construction materials testing and special inspections, geotechnical investigation and report, loose FF&E, and low voltage systems are by Owner similar to those provided for in the New Elementary School and Elementary School Classroom Wing Addition (rough-ins and raceways by Quesenberry's Construction, Inc.).
8. Project shall comply with Davis-Bacon Act due to funding requirements. Quesenberry's pricing shall reflect prevailing wage requirements and provide necessary information needed by DCPS.

**END**





July 19<sup>th</sup>, 2023

Haydee Robinson  
Division Superintendent  
Dickenson County Public Schools  
309 Volunteer Avenue  
PO Box 1127  
Clintwood, Virginia 24228

Re: GMP Proposal for the PPEA Expansion to Ridgeview Elementary School  
Clintwood, Virginia

Dear Mrs. Robinson,

We propose to furnish all materials, labor, and equipment to construct the expansion to Ridgeview Elementary School for the Guaranteed Maximum Price (GMP) of Four Million, Nine Hundred Seventy-Four Thousand Three Hundred dollars (\$4,974,300).

This proposal is based upon the following documents:

1. The Ridgeview Elementary School 2023 Classroom Addition estimate dated July 19, 2023 included herein.
2. The Ridgeview Elementary School 2023 Classroom Addition bid documents dated June 26, 2023, including Addendums No. 1 and No. 2, included by reference.
3. The Preliminary Construction Schedule, included herein.

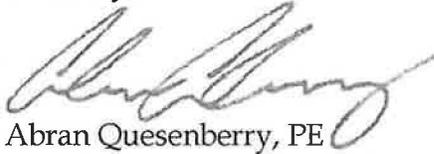
This proposal also includes the following clarifications and conditions:

4. This proposal is based on firm pricing from selected subcontractors and suppliers based on the Bid Documents identified above. Any subsequent scope changes that are initiated by the Owner and that impact the construction cost will be negotiated with the Owner and a change order issued.
5. Temporary electrical is to be provided by the Owner.
6. Temporary water is to be provided by the Owner.
7. Natural gas service is to be provided by the Owner.
8. Testing and inspections are by the Owner.
9. This proposal is based upon the execution of a Comprehensive Agreement no later than July 26, 2023.

10. Quesenberry's Construction is responsible for securing all permits necessary for construction.
11. The terms and conditions of the Comprehensive Agreement will be mutually acceptable prior to the anticipated execution of the Agreement on July 26, 2023.

We appreciate this opportunity to work with your team on this important project. Please contact me if you have any questions.

Sincerely,



Abran Quesenberry, PE  
President  
Quesenberry's Construction

Project Name: 23008 Ridgeview ES 2023 Classroom Addition Estimate Name: 23008 Ridgeview ES 2023 Classroom Expansion

Ridgeview Elementary School  
2023 Classroom Addition  
Guaranteed Maximum Price

Project name 23008 Ridgeview ES 2023 Classroom Addition  
WorPark Drive  
Chilhowie  
VA  
Dickinson

Client Dickinson County School Board

Architect JMH

Engineer The Late Group

Estimator Spencer Quisenberry

Labor rate table STANDARD VA

Equipment rate table STANDARD VA

Job size 7300 sf

Duration 50 weeks

Report format Sorted by "Item Type/Group phase"  
Detail Summary

QUEENSBERRY'S CONSTRUCTION  
Spreadsheet Report  
Project Name: 23008 Ridgeview ES 2023 Classroom Addition Estimate Name: 23008 Ridgeview ES 2023 Classroom Expansion

Item Type	Item	Phase	Location	Description	Unit	Quantity	Unit Price	Material Amount	Material Price	Material Amount	Sub Price	Sub Price	Equip Price	Equip Amount	Equip Price	Other Price	Other Amount	Total Amount	Total Credit
2.1 Gen. Cont.	15.1	1150.00		15.1 Repaint	sq ft	137,290	24.85											3,408.00	3,408.00
	15.2	1150.00		15.2 Repaint	sq ft	65,720	1,237.00												81,120.00
2.01 Site Pkg.	15.100	1150.00		15.100 Project Manager (15%)	month	1	1,000.00											1,000.00	1,000.00
	15.101	1150.00		15.101 Project Manager	month	1	1,000.00											1,000.00	1,000.00
	15.102	1150.00		15.102 Project Manager	month	1	1,000.00											1,000.00	1,000.00
	15.103	1150.00		15.103 Project Manager	month	1	1,000.00											1,000.00	1,000.00
	15.104	1150.00		15.104 Project Manager	month	1	1,000.00											1,000.00	1,000.00
	15.105	1150.00		15.105 Project Manager	month	1	1,000.00											1,000.00	1,000.00
	15.106	1150.00		15.106 Project Manager	month	1	1,000.00											1,000.00	1,000.00
	15.107	1150.00		15.107 Project Manager	month	1	1,000.00											1,000.00	1,000.00
	15.108	1150.00		15.108 Project Manager	month	1	1,000.00											1,000.00	1,000.00
	15.109	1150.00		15.109 Project Manager	month	1	1,000.00											1,000.00	1,000.00
2.02 Cont. Site	15.100	1150.00		15.100 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.101	1150.00		15.101 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.102	1150.00		15.102 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.103	1150.00		15.103 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.104	1150.00		15.104 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.105	1150.00		15.105 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.106	1150.00		15.106 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.107	1150.00		15.107 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.108	1150.00		15.108 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.109	1150.00		15.109 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
2.04 Cont. Building	15.100	1150.00		15.100 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.101	1150.00		15.101 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.102	1150.00		15.102 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.103	1150.00		15.103 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.104	1150.00		15.104 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.105	1150.00		15.105 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.106	1150.00		15.106 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.107	1150.00		15.107 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.108	1150.00		15.108 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.109	1150.00		15.109 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
2.06 Masonry	15.100	1150.00		15.100 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.101	1150.00		15.101 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.102	1150.00		15.102 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.103	1150.00		15.103 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.104	1150.00		15.104 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.105	1150.00		15.105 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.106	1150.00		15.106 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.107	1150.00		15.107 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.108	1150.00		15.108 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.109	1150.00		15.109 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
2.07 Rebar_Masonry	15.100	1150.00		15.100 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.101	1150.00		15.101 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.102	1150.00		15.102 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.103	1150.00		15.103 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.104	1150.00		15.104 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.105	1150.00		15.105 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.106	1150.00		15.106 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.107	1150.00		15.107 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.108	1150.00		15.108 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00
	15.109	1150.00		15.109 Temp. Electricity (by Owner)	month	1	1,000.00											1,000.00	1,000.00

Item Type	Takeoff Quantity	Location	Phase	Item	Description	Unit	Material Price	Material Amount	Sub Price	Sub Amount	Equip Price	Equip Amount	Other Price	Other Amount	Total Quantity	Total Amount
2.015 Steel Erection	1.00 Item		2100.00	19	Rebar, Material Masonry	Rebar	0.00 Rebar	0								
2.015 Steel Erection	1.00 Item		1250.00	20	Rebar, Material Masonry	Rebar	111.00/100' Rebar	111.00							111.00	1250.00
2.015 Steel Erection	1.00 Item		1120.00	21	Rebar, Material Masonry	Rebar	111.00/100' Rebar	111.00							111.00	1120.00
2.09 Gen Trades Pkg	0.00 LF		5500.00	10	Structural L Supports @ 10' W/ 2" (Gen Trades Pkg)	Struct	0.00 LF	0	20.00 LF	0	0.00 LF	0	0.00 LF	0	0.00 LF	0
2.10 Inert Sub	1.00 Item		3000.00	103	Structural Steel Pkg, 10' W/ 2" (Gen Trades Pkg)	Struct		3000.00							3000.00	3000.00
2.11 AS&WP	1.00 Item		2100.00	104	Insulation (2x6 in Pkg 2.19)	Insul	0.00/100' Insul	0	0.00/100' Insul	0	0.00/100' Insul	0	0.00/100' Insul	0	0.00/100' Insul	0
2.11 AS&WP	1.00 Item		1820.00	105	Insulation (2x6 in Pkg 2.19)	Insul	0.00/100' Insul	0	0.00/100' Insul	0	0.00/100' Insul	0	0.00/100' Insul	0	0.00/100' Insul	0
2.11 AS&WP	1.00 Item		1820.00	106	Insulation (2x6 in Pkg 2.19)	Insul	0.00/100' Insul	0	0.00/100' Insul	0	0.00/100' Insul	0	0.00/100' Insul	0	0.00/100' Insul	0
2.12 Wall Prie	1.00 Item		7400.00	107	Embedment Joint (Ext Masonry) - RA	Embed	0.00 LF	0	5.00 LF	0	0.00 LF	0	0.00 LF	0	5.00 LF	7400.00
2.12 Wall Prie	1.00 Item		7400.00	108	Embedment Joint (Ext Masonry) - RA	Embed	0.00 LF	0	5.00 LF	0	0.00 LF	0	0.00 LF	0	5.00 LF	7400.00
2.13 Roofing & Acc	1.00 Item		1400.00	109	Surface Wall Expansion Joint (Incl. 2x6 in Pkg 2.19)	Surf	0.00 LF	0	5.00 LF	0	0.00 LF	0	0.00 LF	0	5.00 LF	1400.00
2.14 Int Sealant	1.00 Item		1400.00	110	Surface Wall Expansion Joint (Incl. 2x6 in Pkg 2.19)	Surf	0.00 LF	0	5.00 LF	0	0.00 LF	0	0.00 LF	0	5.00 LF	1400.00
2.15 Doors & Hdwr	1.00 Item		1400.00	111	Surface Wall Expansion Joint (Incl. 2x6 in Pkg 2.19)	Surf	0.00 LF	0	5.00 LF	0	0.00 LF	0	0.00 LF	0	5.00 LF	1400.00
2.18 Alum Glass Glazin	1.00 Item		1400.00	112	Surface Wall Expansion Joint (Incl. 2x6 in Pkg 2.19)	Surf	0.00 LF	0	5.00 LF	0	0.00 LF	0	0.00 LF	0	5.00 LF	1400.00
2.19 CFMF, M/B & GB	1.00 Item		1400.00	113	Surface Wall Expansion Joint (Incl. 2x6 in Pkg 2.19)	Surf	0.00 LF	0	5.00 LF	0	0.00 LF	0	0.00 LF	0	5.00 LF	1400.00
2.20 Ceramic Tile	1.00 Item		1400.00	114	Surface Wall Expansion Joint (Incl. 2x6 in Pkg 2.19)	Surf	0.00 LF	0	5.00 LF	0	0.00 LF	0	0.00 LF	0	5.00 LF	1400.00
2.21 ACT & A cxt Pnt	1.00 Item		1400.00	115	Surface Wall Expansion Joint (Incl. 2x6 in Pkg 2.19)	Surf	0.00 LF	0	5.00 LF	0	0.00 LF	0	0.00 LF	0	5.00 LF	1400.00
2.22 Reel Fr & Cpl	1.00 Item		1400.00	116	Surface Wall Expansion Joint (Incl. 2x6 in Pkg 2.19)	Surf	0.00 LF	0	5.00 LF	0	0.00 LF	0	0.00 LF	0	5.00 LF	1400.00
2.26 Painting	1.00 Item		1400.00	117	Surface Wall Expansion Joint (Incl. 2x6 in Pkg 2.19)	Surf	0.00 LF	0	5.00 LF	0	0.00 LF	0	0.00 LF	0	5.00 LF	1400.00
2.27 Lockers	1.00 Item		1400.00	118	Surface Wall Expansion Joint (Incl. 2x6 in Pkg 2.19)	Surf	0.00 LF	0	5.00 LF	0	0.00 LF	0	0.00 LF	0	5.00 LF	1400.00
2.28 Specialties	1.00 Item		1400.00	119	Surface Wall Expansion Joint (Incl. 2x6 in Pkg 2.19)	Surf	0.00 LF	0	5.00 LF	0	0.00 LF	0	0.00 LF	0	5.00 LF	1400.00
2.36 Arch Casework	1.00 Item		1400.00	120	Surface Wall Expansion Joint (Incl. 2x6 in Pkg 2.19)	Surf	0.00 LF	0	5.00 LF	0	0.00 LF	0	0.00 LF	0	5.00 LF	1400.00
2.36 Fire Suppression	1.00 Item		1400.00	121	Surface Wall Expansion Joint (Incl. 2x6 in Pkg 2.19)	Surf	0.00 LF	0	5.00 LF	0	0.00 LF	0	0.00 LF	0	5.00 LF	1400.00

QUEENBERRY'S CONSTRUCTION

Spreadsheet Report

Project Name: 23008 Ridgeview ES 2023 Classroom Addition Estimate Name: 23008 Ridgeview ES 2023 Classroom Expansion

Item Type	Temp Quantity	Location	Units	Description	Unit Price	Sub Price	Material Amount	Material Price	Sub Amount	Sub Price	Equip Amount	Equip Price	Other Price	Other Amount	Total Quantity	Total Amount
2.39 Plumbing	1.00	MS	4188	Plumbing Support	230.00	230.00			230.00	230.00					1.00	230.00
2.40 HVAC	1.00	MS	4188	HVAC Support	230.00	230.00			230.00	230.00					1.00	230.00
2.41 Electrical	1.00	MS	4188	Electrical Support	230.00	230.00			230.00	230.00					1.00	230.00
2.51 Carpentry	1.00	MS	4188	Carpentry Support	230.00	230.00			230.00	230.00					1.00	230.00
	1.00	LSUM		Carry @ MS (Allowance)	0.00	0.00			0.00	0.00					1.00	0.00

Estimate Totals

Category	Amount	Rate	Percentage
Subcontract	230.00	230.00	5.15%
Material	230.00	230.00	5.15%
Equipment	230.00	230.00	5.15%
Other	230.00	230.00	5.15%
<b>Total</b>	<b>920.00</b>	<b>920.00</b>	<b>20.6%</b>

Category	Amount	Rate	Percentage
Subcontract	230.00	230.00	5.15%
Material	230.00	230.00	5.15%
Equipment	230.00	230.00	5.15%
Other	230.00	230.00	5.15%
<b>Total</b>	<b>920.00</b>	<b>920.00</b>	<b>20.6%</b>

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Subcontract	230.00	230.00	5.15%
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<b>Total</b>	<b>920.00</b>	<b>920.00</b>	<b>20.6%</b>

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Subcontract	230.00	230.00	5.15%
Material	230.00	230.00	5.15%
Equipment	230.00	230.00	5.15%
Other	230.00	230.00	5.15%
<b>Total</b>	<b>920.00</b>	<b>920.00</b>	<b>20.6%</b>



# AIA® Document G704® – 2017

## Certificate of Substantial Completion

**PROJECT:** *(name and address)*  
Ridgeview Elementary School 2023  
Classroom Addition  
Ridgeview Campus  
Clintwood, VA

**CONTRACT INFORMATION:**  
Contract For: Design-Build Services

**CERTIFICATE INFORMATION:**  
Certificate Number:

Date:

Date:

**OWNER:** *(name and address)*  
Dickenson County School Board  
309 Volunteer Avenue  
P.O. Box 1127  
Clintwood, VA 24228

**ARCHITECT:** *(name and address)*  
ZMM, Inc.  
200 Country Club Drive SW  
Plaza One, Building E  
Blacksburg, VA 24060

**CONTRACTOR:** *(name and address)*  
Quesenberry's, Inc.  
(dba Quesenberry's Construction)  
P.O. Box Q  
104 E. 19th Street  
Big Stone Gap, VA 24219

The Work identified below has been reviewed and found, to the Architect's best knowledge, information, and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated below is the date established by this Certificate.  
*(Identify the Work, or portion thereof, that is substantially complete.)*

\_\_\_\_\_  
**ARCHITECT** *(Firm Name)*

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINTED NAME AND TITLE**

\_\_\_\_\_  
**DATE OF SUBSTANTIAL COMPLETION**

### WARRANTIES

The date of Substantial Completion of the Project or portion designated above is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:  
*(Identify warranties that do not commence on the date of Substantial Completion, if any, and indicate their date of commencement.)*

### WORK TO BE COMPLETED OR CORRECTED

A list of items to be completed or corrected is attached hereto, or transmitted as agreed upon by the parties, and identified as follows:  
*(Identify the list of Work to be completed or corrected.)*

The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment, whichever occurs first. The Contractor will complete or correct the Work on the list of items attached hereto within ( ) days from the above date of Substantial Completion.

Cost estimate of Work to be completed or corrected: \$

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, insurance, and other items identified below shall be as follows:  
*(Note: Owner's and Contractor's legal and insurance counsel should review insurance requirements and coverage.)*

The Owner and Contractor hereby accept the responsibilities assigned to them in this Certificate of Substantial Completion:

\_\_\_\_\_  
**CONTRACTOR** *(Firm Name)*

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINTED NAME AND TITLE**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**OWNER** *(Firm Name)*

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINTED NAME AND TITLE**

\_\_\_\_\_  
**DATE**





# AIA® Document G706® – 1994

## Contractor's Affidavit of Payment of Debts and Claims

**PROJECT:** *(Name and address)*  
Ridgeview Elementary School  
2023 Classroom Addition  
Ridgeview Campus  
Clintwood, VA

**ARCHITECT'S PROJECT NUMBER:**

OWNER:   
ARCHITECT:   
CONTRACTOR:   
SURETY:   
OTHER:

**TO OWNER:** *(Name and address)*  
Dickenson County School Board  
309 Volunteer Avenue  
P.O. Box 1127  
Clintwood, VA 24228

**CONTRACT FOR:** Design-Build Services  
**CONTRACT DATED:**

**STATE OF:**  
**COUNTY OF:**

The undersigned hereby certifies that, except as listed below, payment has been made in full and all obligations have otherwise been satisfied for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against the Contractor for damages arising in any manner in connection with the performance of the Contract referenced above for which the Owner or Owner's property might in any way be held responsible or encumbered.

**EXCEPTIONS:**

**SUPPORTING DOCUMENTS ATTACHED HERETO:**

- Consent of Surety to Final Payment. Whenever Surety is involved, Consent of Surety is required. AIA Document G707, Consent of Surety, may be used for this purpose
- Indicate Attachment       Yes     No

**CONTRACTOR:** *(Name and address)*

Quesenberry's, Inc.  
(dba Quesenberry's Construction)  
P.O. Box Q  
104 E. 19<sup>th</sup> Street  
Big Stone Gap, VA 24219

BY: \_\_\_\_\_  
*(Signature of authorized representative)*

\_\_\_\_\_  
*(Printed name and title)*

*The following supporting documents should be attached hereto if required by the Owner:*

- Contractor's Release or Waiver of Liens, conditional upon receipt of final payment.
- Separate Releases or Waivers of Liens from Subcontractors and material and equipment suppliers, to the extent required by the Owner, accompanied by a list thereof.
- Contractor's Affidavit of Release of Liens (AIA Document G706A).

Subscribed and sworn to before me on this date:

Notary Public:  
My Commission Expires:



# Dickenson County Public Schools

P.O. Box 1127, 309 Volunteer Avenue  
Clintwood, Virginia 24228

Phone (276) 926-4643 Fax (276) 926-6374



*Haydee L. Robinson, Superintendent*

August 7, 2023

Mr. Abran Quesenberry  
President  
Quesenberry's, Inc. (dba Quesenberry's Construction)  
P.O. Box Q  
104 E. 19<sup>th</sup> Street  
Big Stone Gap, VA 24219

**RE: Notice to Proceed  
Ridgeview ES Classroom Additions 2023-2024  
Ridgeview Campus**

Dear Mr. Quesenberry:

This letter shall serve as Notice to Proceed on the Ridgeview Elementary School Classroom Addition on the Ridgeview Campus per your contract dated July 26, 2023. This Notice to Proceed authorizes you to proceed with the Work starting on August 7, 2023. Substantial Completion of the Work shall be reached by August 2, 2024. Final Completion of the Work shall be reached by August 30, 2024.

We look forward to working with Quesenberry's, Inc. on this important project.

Sincerely,

A handwritten signature in cursive script that reads "Haydee L. Robinson".

Haydee L. Robinson  
Division Superintendent

# THE CINCINNATI INSURANCE COMPANY

## Payment Bond

**CONTRACTOR** (Name, legal status and address):

Quesenberry's, Inc. dba Quesenberry's Construction  
PO Box Q, 104 E. 19th Street  
Big Stone Gap, VA 24219

**OWNER** (Name, legal status and address):

Dickenson County School Board  
309 Volunteer Ave., PO Box 1127  
Clintwood, VA 24228

**SURETY** (Name, legal status and principal place of business):

**THE CINCINNATI INSURANCE COMPANY**  
6200 S. GILMORE ROAD  
FAIRFIELD, OHIO 45014-5141

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

**CONSTRUCTION CONTRACT**

Date: July 26, 2023

Amount: \$4,974,300.00

Description (Name and location):

Ridgeview Elementary School 2023 Classroom Addition  
Ridgeview Campus, Clinwood, VA 24228

**BOND**

Date (Not earlier than Construction Contract Date): August 2, 2023

Amount: \$4,974,300.00

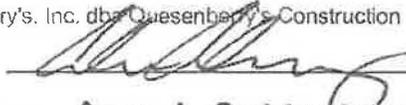
Modifications to this Bond:

None

See Section 18

**CONTRACTOR AS PRINCIPAL**

Company: (Corporate Seal)  
Quesenberry's, Inc. dba Quesenberry's Construction

Signature: 

Name and Title: **AARON QUESENBERRY**  
**PRESIDENT**

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY - Name, address and telephone)

**AGENT or BROKER:**

**SURETY**

Company: (Corporate Seal)  
**THE CINCINNATI INSURANCE COMPANY**

Signature: 

Name and Title:  
Michael L. Allen, Attorney-In-Fact

**OWNER'S REPRESENTATIVE** (Architect, Engineer or other party):

**1** The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

**2** If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

**3** If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

**4** When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

**5** The Surety's obligations to a Claimant under this Bond shall arise after the following:

**5.1** Claimants, who do not have a direct contract with the Contractor,

**.1** have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and

**.2** have sent a Claim to the Surety (at the address described in Section 13).

**5.2** Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

**6** If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

**7** When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

**7.1** Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

**7.2** Pay or arrange for payment of any undisputed amounts.

**7.3** The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

**8** The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

**9** Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

**10** The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

**11** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**12** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**13** Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

**14** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

**15** Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

## **16 Definitions**

**16.1 Claim.** A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

**16.2 Claimant.** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

**16.3 Construction Contract.** The agreement between the Owner and the Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

**16.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

**16.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

**17** If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

**18** Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corporate Seal)

Signature: \_\_\_\_\_

Name and Title:

Address:

**SURETY**

Company: \_\_\_\_\_ (Corporate Seal)

Signature: \_\_\_\_\_

Name and Title:

Address:

THE CINCINNATI INSURANCE COMPANY  
THE CINCINNATI CASUALTY COMPANY

Fairfield, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY and THE CINCINNATI CASUALTY COMPANY, corporations organized under the laws of the State of Ohio, and having their principal offices in the City of Fairfield, Ohio (herein collectively called the "Companies"), do hereby constitute and appoint

Michael L. Allen; Anthony Rogers; Darcus Hamilton; Hagan Hensley; Tammy N. Sturgill; Farrah Bunch;  
Floyd W. Witt, Jr. and/or Ryan W. Witt each in their separate capacity

of Norton, Virginia their true and legal Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and deliver on behalf of the Companies as Surety, any and all bonds, policies, undertakings or other like instruments, as follows:

Any such obligations in the United States, up to  
Sixty Million and No/100 (\$60,000,000.00).

This appointment is made under and by authority of the following resolutions adopted by the Boards of Directors of The Cincinnati Insurance Company and The Cincinnati Casualty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the President or any Senior Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company.

RESOLVED, that the signature of the President or any Senior Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary or Assistant Vice-President and the Seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS WHEREOF, the Companies have caused these presents to be sealed with their corporate seals, duly attested by their President or any Senior Vice President this 16th day of March, 2021.



STATE OF OHIO )SS:  
COUNTY OF BUTLER )

THE CINCINNATI INSURANCE COMPANY  
THE CINCINNATI CASUALTY COMPANY

*Stephen A. Ventre*

On this 16th day of March, 2021 before me came the above-named President or Senior Vice President of The Cincinnati Insurance Company and The Cincinnati Casualty Company, to me personally known to be the officer described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of said Companies and the corporate seals and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporations.



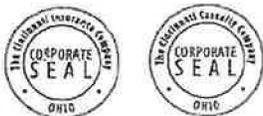
*Keith Collett*

Keith Collett, Attorney at Law  
Notary Public - State of Ohio

My commission has no expiration date.  
Section 147.03 O.R.C.

I, the undersigned Secretary or Assistant Vice-President of The Cincinnati Insurance Company and The Cincinnati Casualty Company, hereby certify that the above is the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Power of Attorney is still in full force and effect.

Given under my hand and seal of said Companies at Fairfield, Ohio, this 2nd day of August, 2023.



*Ed [Signature]*

# THE CINCINNATI INSURANCE COMPANY

## Performance Bond

**CONTRACTOR** (Name, legal status and address):

Quesenberry's, Inc. dba Quesenberry's Construction  
PO Box Q, 104 E. 19th Street  
Big Stone Gap, VA 24219

**SURETY** (Name, legal status and principal place of business):

**THE CINCINNATI INSURANCE COMPANY**  
**6200 S. GILMORE ROAD**  
**FAIRFIELD, OHIO 45014-5141**

**OWNER** (Name, legal status and address):

Dickenson County School Board  
309 Volunteer Ave., PO Box 1127  
Clintwood, VA 24228

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

### CONSTRUCTION CONTRACT

Date: July 26, 2023

Amount: \$4,974,300.00

Description (Name and location):

Ridgeview Elementary School 2023 Classroom Addition  
Ridgeview Campus, Clintwood, VA 24228

### BOND

Date (Not earlier than Construction Contract Date): August 2, 2023

Amount: \$4,974,300.00

Modifications to this Bond:

None

See Section 16

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)  
Quesenberry's, Inc. dba Quesenberry's Construction

Signature:



Name and Title: **AARON QUESENBERRY**  
**PRESIDENT**

(Any additional signatures appear on the last page of this Performance Bond.)

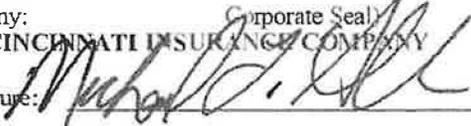
(FOR INFORMATION ONLY - Name, address and telephone)

**AGENT or BROKER:**

### SURETY

Company: (Corporate Seal)  
**THE CINCINNATI INSURANCE COMPANY**

Signature:



Name and Title:  
Michael L. Allen, Attorney-In-Fact

**OWNER'S REPRESENTATIVE** (Architect, Engineer or other party):

**1** The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

**2** If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

**3** If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1** the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2** the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3** the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

**4** Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

**5** When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

**5.1** Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract;

**5.2** Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

**5.3** Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

**5.4** Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1** After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2** Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

**6** If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which the signature appears.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### 14 Definitions

**14.1 Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

**14.2 Construction Contract.** The agreement between the Owner and the Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

**14.3 Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

**14.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

**14.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: \_\_\_\_\_ (Corporate Seal)

Company: \_\_\_\_\_ (Corporate Seal)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title:

Name and Title:

Address:

Address:

THE CINCINNATI INSURANCE COMPANY  
THE CINCINNATI CASUALTY COMPANY

Fairfield, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY and THE CINCINNATI CASUALTY COMPANY, corporations organized under the laws of the State of Ohio, and having their principal offices in the City of Fairfield, Ohio (herein collectively called the "Companies"), do hereby constitute and appoint

Michael L. Allen; Anthony Rogers; Darcus Hamilton; Hagan Hensley; Tammy N. Sturgill; Farrah Bunch;  
Floyd W. Witt, Jr. and/or Ryan W. Witt each in their separate capacity

of Norton, Virginia their true and legal Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and deliver on behalf of the Companies as Surety, any and all bonds, policies, undertakings or other like instruments, as follows:

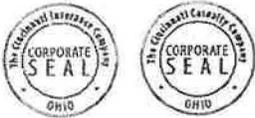
Any such obligations in the United States, up to  
Sixty Million and No/100 (\$60,000,000.00).

This appointment is made under and by authority of the following resolutions adopted by the Boards of Directors of The Cincinnati Insurance Company and The Cincinnati Casualty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the President or any Senior Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company.

RESOLVED, that the signature of the President or any Senior Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary or Assistant Vice-President and the Seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS WHEREOF, the Companies have caused these presents to be sealed with their corporate seals, duly attested by their President or any Senior Vice President this 16th day of March, 2021.



STATE OF OHIO )SS:  
COUNTY OF BUTLER )

THE CINCINNATI INSURANCE COMPANY  
THE CINCINNATI CASUALTY COMPANY

*Stephen A. Justice*

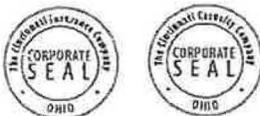
On this 16th day of March, 2021 before me came the above-named President or Senior Vice President of The Cincinnati Insurance Company and The Cincinnati Casualty Company, to me personally known to be the officer described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of said Companies and the corporate seals and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporations.



*Keith Collett*  
Keith Collett, Attorney at Law  
Notary Public – State of Ohio  
My commission has no expiration date.  
Section 147.03 O.R.C.

I, the undersigned Secretary or Assistant Vice-President of The Cincinnati Insurance Company and The Cincinnati Casualty Company, hereby certify that the above is the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Power of Attorney is still in full force and effect.

Given under my hand and seal of said Companies at Fairfield, Ohio, this 2nd day of August, 2023



*Ed H*

A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

**§ 15.7 Capitalization**

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

**§ 15.8 Interpretation**

**§ 15.8.1** In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**§ 15.8.2** Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

**ARTICLE 16 SCOPE OF THE AGREEMENT**

**§ 16.1** This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed (not used)
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

N/A

- .6 Other:

Exhibit D - Preliminary Construction Schedule dated July 20, 2023

Exhibit E - Design-Build Guaranteed Maximum Price proposal developed by Quesenberry's, Inc. dated July 19, 2023

Exhibit F - Interim Agreement dated April 26, 2023 (incorporated by reference)

Exhibit G - AIA Document A312-2010 Performance and Payment Bonds (incorporated by reference)

Exhibit H - AIA Document G702-1992 Application and Certificate for Payment and AIA Document G703-1992 Continuation Sheet (incorporated by reference)

Exhibit I - AIA Document G704DB-2017 Certificate of Substantial Completion

Exhibit J - AIA Document G706-1994 Contractor's Affidavit of Payment of Debts and Claims

This Agreement entered into as of the day and year first written above.

  
OWNER (Signature)

Haydee Robinson Division Superintendent  
(Printed name and title)

  
DESIGN-BUILDER (Signature)

Abran Quesenberry President  
(Printed name and title)

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User Notes:

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incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

**§ A.5.6 Relationship of the Parties**

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Exhibit A to the Agreement entered into as of the day and year first written above.

  
OWNER (Signature)

Haydee Robinson                      Division  
Superintendent

  
DESIGN-BUILDER (Signature)

Abran Quisenberry                      President

(Row deleted)

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