



FALLS CHURCH CITY
PUBLIC SCHOOLS

Audit of Public Accounts
P.O. Box 1295
Richmond, VA 23218

Via certified-mail, return receipt requested

July 27, 2018

To Whom it May Concern:

Pursuant to Virginia Code § 56-575.9(F) and the Guidelines for Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002, as adopted by the Falls Church City Public Schools on July 14, 2015, enclosed please find a copy of the Comprehensive Agreement that was entered into by Falls Church City School Board and Gilbane Building Company on July 17, 2018, and approved by the Falls Church City Council on July 23, 2018. If you have any questions, or if you need hard copies and/or electronic copies of the referenced Exhibits A through F, please let me know. I can be reached at 703-248-5602 or pminson@fccps.org.

Sincerely,

Patricia Minson
Chief Officer: Legal Services
Falls Church City Public Schools

Encl.

cc: Dr. Peter Noonan, Superintendent, FCCPS (via email w/o enclosure)
Mr. Jim Wise, Purchasing Agent, City of Falls Church (via email w/o enclosure)

JUL 30 2018 PM 4:58

RFPD No. 0517-18-GMHS-PPEA

COMPREHENSIVE AGREEMENT

Between

Falls Church City School Board and

Gilbane Building Company

For

**DESIGN AND CONSTRUCTION OF THE
NEW GEORGE MASON HIGH SCHOOL**

THIS COMPREHENSIVE AGREEMENT ("Agreement") is dated as of this 17th day of July 2018 by and between Falls Church City School Board ("Owner"), and Gilbane Building Company ("Private Entity") of 1100 N. Glebe Road, Suite 1000, Arlington, VA 22201 for a project generally described as the New George Mason High School (more specifically defined below as the "Project").

RECITALS

1. The Owner has determined in writing that proceeding with procurement of the Project using competitive negotiation procedures was likely to be advantageous to the Owner and the public based upon probable scope, complexity and urgency of the Project, risk sharing and added value and/or economic benefit from the Project and that competitive sealed bidding is not practicable or fiscally advantageous;
2. The Owner has determined that the Project is a qualifying project that serves the public purpose of the Public-Private Education Facilities and Infrastructure Act of 2002 as Amended, Virginia Code § 56-575 *et seq.* ("PPEA") and that (a) the Project will satisfy a public need, (b) the estimated cost of the qualifying project is reasonable in relation to similar facilities, and (c) acquisition through the PPEA will facilitate the timely development and operation of the qualifying project;
3. On July 14, 2015, Owner adopted its "Guidelines for Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002 as Amended" (the "Guidelines");
4. On November 30, 2017, Owner advertised and published its "Request for Conceptual Proposals" for the Project pursuant to the PPEA;
5. Private Entity submitted its Conceptual Phase Proposal not later than 2:00 p.m. on January 17, 2018 and after due consideration of Private Entity's Conceptual Phase Proposal, Owner notified Private Entity on February 20, 2018 that it had been shortlisted and requested that Private Entity provide a Detailed Proposal ("Detailed Proposal"); and
6. On or about May 17, 2018, Private Entity submitted a Detailed Proposal, followed by Private Entity submitting Answers to Pre-Interview Questions on June 25, 2018, an interview of Private Entity by Owner on June 29, 2018, and Answers to Post Interview Questions on July 9, 2018, and after due consideration, the Owner has selected Private Entity for entry into a Comprehensive Agreement for the Project based on the Private Entity's proposal, estimated price, and presentation.

NOW, THEREFORE, for and in consideration of the promises and mutual covenants contained herein, the Parties hereby agree as follows:

ARTICLE 1 GENERAL PROVISIONS

1.1 ETHICS. All parties shall comply with Virginia law regarding Ethics in Public Contracting, Va. Code § 2.2-4367, *et. seq.*, the State and Local Government Conflict of Interests Act (§ 2.2-3100 *et seq.*), the Virginia Governmental Frauds Act (§ 18.2-498.1 *et seq.*), and Articles 2 (§ 18.2-438 *et seq.*) and 3 (§ 18.2-446 *et seq.*) of Chapter 10 of Title 18.2.

1.2 DEFINITIONS.

1.2.1 "Agreement" means this Agreement Between Owner and Private Entity, as may be modified by any executed Change Orders.

1.2.2 The following exhibits are a part of this Agreement:

1.2.2.1 Exhibit A. The Land.

1.2.2.2 Exhibit B. Private Entity's Redacted Conceptual Phase and Redacted Detailed-Phase Proposals, June 25, 2018 Answers to Pre-Interview Questions, and July 9, 2018 Answers to Post Interview Questions.

1.2.2.3 Exhibit C. LEED Responsibilities.

1.2.2.4 Exhibit D. GMP Amendment Form.

1.2.2.5 Exhibit E. Conflict of Interest Forms.

1.2.2.6 Exhibit F. Fee Schedule for preconstruction services.

1.2.3 "Business Day" means all Days, except weekends and official federal, state or City holidays where the Project is located.

1.2.4 "Contract Cost Limit" ("CCL") means the maximum amount potentially payable to Private Entity and is a cap on Private Entity's Compensation and shall not exceed One Hundred Eight Million Dollars (\$108,000,000), absent an approved Change Order.

1.2.5 A "Change Order" is a written order signed by the Parties after execution of this Agreement, indicating a change in the scope of the Work, Cost of the Work, or Contract Time, including substitutions proposed by Private Entity and accepted by Owner.

1.2.6 "Construction Schedule" is the document prepared by Private Entity that specifies the dates on which Private Entity plans to begin and complete various parts of the construction phase services Work, and the Project, including dates on which information and approvals are required from Owner.

1.2.7 "The City" means The City of Falls Church, Virginia.

1.2.8 "Construction Change Directive" is any written order containing Work instructions that is signed by Owner after execution of this Agreement by Owner pursuant to § 9.2.

1.2.9 "Contract Documents" consist of the following documents in the following descending Order of Precedence:

1.2.9.1 Any written modifications to this Agreement made in accordance with this Agreement, including Change Orders, explicitly stating an intent to modify the Contract Documents;

1.2.9.2 This Agreement, including all exhibits thereto;

1.2.9.3 Any Construction Change Directives issued in accordance with this

Agreement;

- 1.2.9.4 The Documents, which are the final Plans and Specifications that are approved by the Owner, Architect-Engineer, and Private Entity (also referred to as "Construction Documents");
- 1.2.9.5 The design documents approved by Owner pursuant to § 2.6 in order of the most recently approved;
- 1.2.9.6 The documents incorporated by reference in this Agreement;
- 1.2.9.7 RFP No. 0117-17-GMHS-PPEA, as amended in RFPD No. 0517-18-GMHS-PPEA; and
- 1.2.9.8 The Private Entity's Detailed Proposal as accepted by the Owner, provided that if there is any inconsistency between the Private Entity's Detailed Proposal and the RFPD, then the RFPD shall control unless the inconsistency is expressly identified in Private Entity's List of exceptions to the RFPD or Contract provisions as Assumptions and Clarifications and the Owner has affirmatively accepted such exceptions in writing.

1.2.10 The "Contract Time" is the period between the Date of Commencement and the total time authorized to achieve Substantial Completion.

1.2.11 "Cost of the Work" means the costs and discounts specified in ARTICLE 8.

1.2.12 "Day" means calendar day.

1.2.13 "Date of Commencement" is as provided for in § 6.1.

1.2.14 "Private Entity's Fee" means the compensation paid to Private Entity above reimbursable Costs of the Work. The Private Entity's Fee shall constitute its full compensation for salaries and other mandatory or customary compensation of Private Entity's employees at its principal and branch offices except employees described in § 8.2, general and administrative expenses of Private Entity's principal and branch offices other than the field office, and Private Entity's capital expenses, including interest on Private Entity's capital employed for the Work, and profit.

1.2.15 "Defective Work" is any portion of the Work that does not materially conform to the requirements of the Contract Documents.

1.2.16 "Final Completion" occurs on the date when Private Entity's obligations under this Agreement are complete and accepted by Owner and final payment becomes due and payable.

1.2.17 A "Hazardous Material" is any substance or material identified now or in the future as hazardous under any Law, including amendments that may come into effect during the Project, and any other substance or material which may be considered harmful to health and/or safety of persons in concentrations found present or otherwise subject to statutory or regulatory requirements governing handling, disposal, or clean-up. It includes Asbestos

Containing Materials ("ACM"), presumed asbestos containing materials ("PACM"), and polychlorinated biphenyl ("PCBs").

1.2.18 "Guaranteed Maximum Price" ("GMP") means the amount established as the maximum amount payable to the Private Entity absent a Change Order, and includes all costs for preliminary investigations, design, construction, Private Entity's Fee and taxes in effect at the time the GMP is executed. In no event may the GMP exceed the CCL.

1.2.19 "Issuing Office" means City of Falls Church Purchasing Department.

1.2.20 "Land" means the real property described in Exhibit A hereto.

1.2.21 "Law" means a federal, state, or local law, ordinance, code, rule, or regulation applicable to the Work with which Private Entity must comply that is enacted as of the Agreement date.

1.2.22 "Other Contractors" means Owner's other: (a) contractors, (b) suppliers, and (c) consultants, and others employed directly or indirectly by (a), (b), or (c) or by any of them or for whose acts any of them may be liable.

1.2.23 "Overhead" shall mean all indirect costs that are not Costs of the Work, including, but not limited to: (a) payroll costs and other compensation of Private Entity's employees in Private Entity's principal and branch offices; (b) general and administrative expenses of Private Entity's principal and branch offices including charges against Private Entity for delinquent payments; and (c) Private Entity's capital expenses, including interest on capital used for the Work.

1.2.24 "Owner" means the Falls Church City School Board, operating as Falls Church City Public Schools.

1.2.25 "Owner's Program" is the overall description of the Owner's needs and requirements as defined in the RFP and RFPD, including all exhibits thereto, and as modified through acceptance of the Private Entity's Detailed Proposal and agreement through the design development process.

1.2.26 The "Parties" are collectively Owner and Private Entity.

1.2.27 The "Project" means the design and construction of the New George Mason High School as described in the Owner's Program.

1.2.28 "Project Schedule" is a schedule that shows the timing and sequencing of the design and construction required to meet the time criteria set forth in Owner's Program. The Project Schedule includes the Construction Schedule and is coordinated with design phase service activities.

1.2.29 A "Subcontractor" is a person or entity retained by Private Entity as an independent contractor to provide the labor, materials, equipment, and/or services necessary to complete a portion of the Work. The term Subcontractor does not include Other Contractors as defined above.

1.2.30 "Substantial Completion" with respect to the New School means the date determined by inspection by the Owner's Representative and Private Entity that construction of the Project is sufficiently complete in accordance with the Construction Documents that it may be utilized and can be used for all its intended uses. It shall be a condition precedent to Substantial Completion of the New School or any part thereof that Private Entity obtain applicable certificates of occupancy, that all systems have been commissioned (except as otherwise provided in this Section), and that no remaining punchlist items affecting life or safety are outstanding), provided, however, that if commissioning has not occurred through no fault of Contractor, then such incomplete commissioning shall not preclude a finding of Substantial Completion of the New School. If the Contract Documents require commissioning of any items over one or more seasons, then the Project may be deemed Substantially Complete subject to commissioning over such time periods as may be required under the Contract Documents. Certification under the U.S Green Building Coalition ("USGBC") Leadership in Energy and Environmental Design "LEED" program shall not be required for Substantial Completion. "Substantial Completion" with respect to the demolition and site stabilization of the existing George Mason High School means the date on which the site has been demolished and is ready to be turned over to the City or others for private development.

1.2.31 "Sub-subcontractor" is a party or entity who has an agreement with a Subcontractor or another Sub-subcontractor or Supplier to perform any portion of the Work or to supply material or equipment.

1.2.32 A "Supplier" is a person or entity retained by Private Entity to provide material or equipment for the Work.

1.2.33 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States Secretary of Treasury as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

1.2.34 "Unusual Weather" means weather that deviates significantly from that which reasonably could be expected to occur based on prevailing weather conditions over the five years preceding execution of this Agreement. It shall be the Private Entity's burden to show that weather conditions were unusual.

1.2.35 The "Work" means the construction and other Services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Private Entity to fulfill the Private Entity's obligations. The Work may constitute the whole or a part of the Project

1.2.36 "Worksite" means the area within the Land where the Work is to be performed, together with any real property obtained by the Owner or the City for use of the Private Entity during construction. It includes all areas of the Land used to access the Work and any areas of the Land used for storage, laydown, or trailers, but excludes any real property off the Land and not obtained by the Owner or the City for use during construction.

ARTICLE 2 PRIVATE ENTITY

2.1 PRIVATE ENTITY. Private Entity accepts the relationship of trust and confidence established by this Agreement and agrees to exercise its best skill and judgment in furthering the interests of the Owner; to furnish efficient design and 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.

2.1.1 The Private Entity shall develop the Project in a manner that is acceptable to the Owner, all in accordance with the provisions of this Agreement.

2.1.2 Neither Private Entity nor any of its agents or employees shall act on behalf of or in the name of Owner.

2.2 OVERALL RESPONSIBILITIES. Private Entity shall be responsible for procuring or furnishing the design and for the construction of the Work consistent with Owner's Program, as such Program may be modified by Owner during the Work. Private Entity shall use its diligent efforts to perform the Work in an expeditious manner and within the Contract Time as it may be adjusted hereunder.

2.3 INDEPENDENT CONTRACTOR. The Parties agree that Private Entity is an independent contractor and that it is familiar with the type of Work required by this Agreement. Private Entity shall have exclusive control over and responsibility for its means, methods, sequences and techniques employed in the performance of the Work.

2.4 FAST TRACK. The Parties may establish a fast-track approach to the design and construction services necessary to complete the Project. Such agreement establishing a fast-track approach and the Project Schedule shall be included as an exhibit to this Agreement. In the absence of such agreement, the Parties shall proceed in accordance with § 2.6 and § 2.9 below.

2.5 DESIGN PROFESSIONAL. Private Entity shall furnish all necessary or desirable architectural and engineering services ("Services") by Private Entity's licensed employees or procure such services from a licensed, independent design professional(s) retained by Private Entity. The person or entity providing architectural and engineering services shall be referred to as the "Design Professional." If the Design Professional is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between Private Entity and Design Professional. Unless Owner otherwise agrees in writing, the Design Professional shall be the design professional(s) identified in the Private Entity's Proposal, and Key Personnel identified in the Private Entity's Proposal Response shall not be changed without the written consent of the Owner, except in cases of death, disability, or such personnel no longer being employed by the design entity identified in the Proposal.

2.5.1 Private Entity shall furnish or provide the Services necessary to design the Project in accordance with Owner's requirements, as outlined in Owner's Program and other relevant data defining the Project. The Services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, location, and complexity, during the time in which the Services are provided.

2.5.2 All drawings shall be sealed by an appropriate professional licensed in the Commonwealth of Virginia.

2.5.3 All specifications shall incorporate applicable standards promulgated by the American Society of Testing and Materials ("ASTM"), American Society of Civil Engineers ("ASCE"), or similar bodies that have issued standards applicable to the Work and follow Construction Specification Institute standards (collectively "Standards").

2.5.4 In accordance with § 2.5.1, the Private Entity shall be responsible to ensure that the designs, drawings, plans, specifications, and other services and/or materials furnished by the Private Entity under this Agreement comply with all applicable Laws and Standards, are technically accurate, and do not suffer from any errors or omissions that affect the GMP or Contract Time.

2.5.5 Specifications shall provide for Owner training, and appropriate commissioning of all systems.

2.5.6 In consultation with the Owner, the Private Entity shall identify all extended and manufacturer's warranties to be provided and incorporate such requirements into the Specifications.

2.6 DESIGN PHASE SERVICES.

2.6.1 PRELIMINARY EVALUATION. To the extent not otherwise provided in its detailed proposal, Private Entity shall review Owner's Program to ascertain the requirements of the Project and shall verify such requirements with Owner. Private Entity's review shall also provide to Owner a written preliminary evaluation of the site with regard to access, traffic, drainage, parking, staging areas, existing buildings and their components, building placement, and other considerations affecting the Work, the environment, and energy use, as well as information regarding Laws and requirements. Private Entity shall also propose alternative architectural, civil, structural, mechanical, electrical, and other systems for review by Owner, to determine the most desirable approach on the basis of the Owner's objectives, cost, technology, quality, and speed of delivery. Private Entity's Preliminary Evaluation shall specifically identify any deviations from Owner's Program, provided that no deviation from the Program shall be permitted absent the express written agreement of the Owner.

2.6.1.1 As part of its preliminary evaluation, Private Entity will review existing test reports and shall undertake any independent testing necessary for its design services, including, but not limited to any geotechnical investigations, destructive and non-destructive testing and surveying necessary to ascertain existing site conditions, including site conditions at those portions of Mary Ellen Henderson Middle School on which Work is to be performed. Such testing and surveys may include use of borings, ground penetrating radar and point cloud or other surveys of existing structures. The Owner shall not unreasonably deny or restrict such testing and surveying by Private Entity.

2.6.1.2 Private Entity shall be solely responsible to determine the adequacy of utilities servicing the Project and to determine what investigation, testing and surveying are necessary for it to ascertain existing conditions.

2.6.1.3 Owner represents that it has made a diligent search of its records for information relating to current conditions and has provided information located in such search to Private Entity, but, except as allowed under § 9.4, provides no warranty, expressed or implied, regarding the completeness or accuracy of any

information regarding existing conditions provided in the RFP, RFPD, or pursuant to §§ 3.2.1 and 3.2.2.

2.6.1.4 Except for delays and additional costs reasonably caused by the presence of asbestos or other Hazardous Materials not shown on surveys of the existing George Mason High School and new building site, failure by the Private Entity to ascertain the conditions affecting the Work does not relieve the Private Entity from responsibility for successfully performing the Work within the Contract Time and the lesser of the amount of the GMP as it may be adjusted hereunder or the CCL.

2.6.2 PROJECT SCHEDULE. Within fourteen (14) Days after receiving a Notice to Proceed ("NTP"), Private Entity shall prepare a Preliminary Project Schedule consistent with the milestones provided in the RFPD for review and acceptance by the Owner. The Preliminary Project Schedule and all subsequent schedules shall be in a Critical Path Method ("CPM") format using Primavera Contractor P6 or later software with appropriate durations and logic ties for each activity.

2.6.2.1 The Preliminary Project Schedule shall include activities for the design, permitting, bidding, construction, demolition and site stabilization phases of the Project, and include activities for Owner actions.

2.6.2.2 If the Project is to be substantially completed in time to allow for transition to the New George Mason High School ("New School") over the winter break between December 2020 and January 2021, the Private Entity shall bring the New School to a stage of completion to allow for an orderly transition to the New School that allows for classes to begin in January 2021 according to the Owner's Schedule without an undue burden on the Owner's staff. In no event shall Owner be required to transition to the New School if it is not ready for safe and secure stocking and installation of Furniture, Fixtures, and Equipment at least forty-five (45) calendar days before the scheduled date for the start of school in January 2021. If the Private Entity is not able to bring the New School to the state of completion described in the preceding sentences, the Parties will work together in good faith to facilitate a transition over the following semester consistent with the needs of the Owner, but nothing in this Agreement shall be construed to require the Owner to transition to the New School until the end of the 2020-2021 school year if the Private Entity has not sufficiently completed the New School by the times set forth in this Section. Unless the Owner consents to an earlier start, the Private Entity shall not begin demolition of the existing George Mason High School until forty-two (42) Days after the transition to the New School. Private Entity's access to the existing George Mason High School prior to the start of Winter Break in December 2020, shall be subject to the approval of the Owner and conditioned on the access not interfering with the Owner's activities.

2.6.2.3 Upon acceptance, the Preliminary Project Schedule shall become the Project Schedule. Unless required more frequently due to the status of the Work, the Private Entity shall update the Project Schedule monthly with the level of detail for each schedule update reflecting the information then available. The Project Schedule update shall be provided to the Owner in a live-file format, such as P6. Updated Project Schedules shall identify all conditions or events encountered during the course of the Project that impact the schedule, but Owner's acceptance of an updated schedule showing such events and conditions shall not constitute

agreement by the Owner to any entitlement to an extension of time or increase in the Contract Price for costs to recover from such impacts. If an update indicates that a previously accepted Project Schedule will not be met, Private Entity shall recommend corrective action to Owner in writing.

2.6.2.4 In addition to the Project Schedule, Private Entity shall provide two-week "look ahead" or "pull plan" schedules consistent with its Proposal.

2.6.2.5 Private Entity's obligations to timely and properly update the Project Schedule is a material term of this Agreement and shall be grounds for withholding payment.

2.6.3 PRELIMINARY ESTIMATE. When sufficient Project information has been identified, Private Entity shall prepare for Owner's acceptance a preliminary estimate utilizing area, volume, or similar conceptual estimating techniques. The estimate shall be updated periodically with the level of detail for each estimate update reflecting the information then available. If the preliminary estimate or any update exceeds Owner's budget, Private Entity shall make recommendations to Owner.

2.6.4 DOCUMENT SUBMISSIONS. All design submissions shall be delivered in an electronic format reasonably acceptable to Owner and include one (1) full-sized set of drawings and three (3) half-sized sets of drawings.

2.6.4.1 Private Entity and Owner shall establish appropriate standards, guidelines and procedures for review of the various document submissions, including document formats, review and consideration of value engineering proposals and review and consideration of any substitutions for materials and equipment described in the RFPD. Such guidelines shall establish responsibility for the taking and distribution of meeting minutes and processes for requesting information necessary or desirable for efficient and timely design of the Project.

2.6.4.2 The design process should proceed in phases as described below.

2.6.5 SCHEMATIC DESIGN DOCUMENTS. Private Entity shall submit for Owner's written approval Schematic Design Documents based on the agreed upon Preliminary Evaluation. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Project's basic elements, scale, and their relationship to the Worksite. When Private Entity submits the Schematic Design Documents, Private Entity shall identify in writing all material changes and deviations that have taken place from Private Entity's Preliminary Evaluation, preliminary Project Schedule, and estimate. Private Entity shall update the preliminary Project Schedule and estimate based on the Schematic Design Documents.

2.6.6 PERMITS. Private Entity shall obtain and shall pay for all permits necessary for the construction of the Project. The costs of permits shall be within the GMP. Private Entity agrees and acknowledges that the Owner is separate from the City and has no control over the City's permitting process. Notwithstanding this separation, Owner shall undertake all reasonable efforts to facilitate permitting and City inspections of the Project.

2.6.7 DESIGN DEVELOPMENT DOCUMENTS. Private Entity shall submit for Owner's written approval Design Development Documents based on the approved Schematic Design

Documents. The Design Development Documents shall further define the Project, including drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical, and electrical systems. When Private Entity submits the Design Development Documents, Private Entity shall identify in writing all material changes and deviations that have taken place from the Schematic Design Documents. Private Entity shall update the Project Schedule and estimate based on the Design Development Documents.

2.6.8 CONSTRUCTION DOCUMENTS. Private Entity shall submit for Owner's written approval Construction Documents based on the approved Design Development Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work and shall consist of drawings and specifications based upon Laws enacted at the time of their preparation. When Private Entity submits the Construction Documents, Private Entity shall identify in writing all material changes and deviations that have taken place from the Design Development Documents. Construction shall be in accordance with these approved Construction Documents. Approved Construction Documents shall be furnished to Owner prior to commencement of construction. If a GMP has not been established, Private Entity shall prepare a further update of the Project Schedule and estimate based on the Construction Documents. All plans and specifications in the Construction Documents shall be subject to the review and approval of the Owner. Once approved by the Owner, the Private Entity shall not reduce the scope or quality of the Work without the Owner's written consent.

2.6.9 OWNERSHIP OF DOCUMENTS.

2.6.9.1 OWNERSHIP OF TANGIBLE DOCUMENTS. The Design Documents shall be considered work for hire, and Owner shall receive ownership of all property rights, including copyrights in all design documents, drawings, specifications, electronic data, and information ("Documents") prepared, provided, or procured by Private Entity, its Design Professional, Subcontractors, or consultants and distributed to Owner for this Project upon payment sums due to Private Entity pursuant to ARTICLE 7. Design-Builder represents that (a) the Documents do not, and will not, infringe on any patents, copyrights, or trade dress, (b) the content of the Documents are, and will be, its original works or that it has obtained and paid for all licenses and other permissions to incorporate any patents, copyrights or trade dress in the Documents, (c) Private Entity has not misappropriated, and will not misappropriate, information contained in the documents from any source, and (d) the Documents do not, and will not, include any misappropriated trade secret information. If any claim for infringement or misappropriation is made against Owner arising from or related to the Documents, Design-Builder shall defend such claim and reimburse Owner for any costs of defense, including legal fees, that it incurs, together with the costs paid by Owner as part of a judgment or settlement of such claim, provided that Owner shall not settle any such claim without Private Entity's consent so long as Private Entity performs its defense obligations hereunder.

2.6.9.2 USE OF DOCUMENTS IN EVENT OF TERMINATION. In the event of a termination of this Agreement, Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete, operate, maintain, and add to the Project, provided that Private Entity shall have no liability to Owner for any use of the Documents relating to additions to the Project unless Private Entity performs such additions.

2.6.9.3 OWNER'S USE OF DOCUMENTS. After completion of the Project, Owner may reuse, reproduce, or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. Owner's use of the Documents without Private Entity's involvement or on other projects is at Owner's sole risk, except for Private Entity's indemnification obligations set forth in § 2.6.9.1 above. Owner hereby agrees to defend, indemnify and hold Private Entity, its Design Professional and Subcontractors harmless from and against any and all loss, costs, claims, suits and demands arising out of or relating to Owner's use of the Documents for any additions or other use of the Documents with respect to the Project without the Private Entity's Involvement.

2.6.9.4 PRIVATE ENTITY'S USE OF DOCUMENTS. Private Entity may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

2.6.9.5 Private Entity shall obtain from its Design Professional, Subcontractors, and consultants rights that correspond to the rights given by Private Entity to Owner in this Agreement, and Private Entity shall provide evidence that such rights have been secured.

2.7 GUARANTEED MAXIMUM PRICE.

2.7.1 GMP PROPOSAL. After approval of the Design Development Documents, Private Entity shall submit a GMP Proposal in a format acceptable to Owner. Unless the Parties mutually agree otherwise, the GMP shall be the sum of the estimated Cost of the Work as defined in ARTICLE 8 and Design Phase Payments and Private Entity's Fee as defined in ARTICLE 7. The GMP shall also include Private Entity Contingency, and may include an Owner Controlled Contingency, as described below, and an allowance for Environmental Costs for Contaminated Soils. The GMP is subject to modification as provided in ARTICLE 9. Private Entity does not guarantee any specific line item provided as part of the GMP but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with this Agreement.

2.7.1.1 In no event shall the GMP exceed the CCL.

2.7.1.2 If the Construction Documents are not complete at the time the GMP Proposal is submitted to Owner, Private Entity shall provide in the GMP for further development of the Construction Documents consistent with Owner's Program. Such further development does not include Owner-directed changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

2.7.2 The Owner has selected the Private Entity, in large part, because of its special expertise in designing and constructing similar projects. Before submitting its Guaranteed Maximum Price, the Private Entity shall review the drawings and specifications listed in the GMP Proposal for accuracy, constructability and completeness and shall bring any deficiencies to the attention of the Owner and shall cause its Architect/Engineer to address any such deficiencies.

2.7.3 BASIS OF GUARANTEED MAXIMUM PRICE. Private Entity shall include with the GMP Proposal a written statement of its basis, which shall include:

2.7.3.1 A list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal (the "GMP Documents");

2.7.3.2 A list of allowances and a statement of their basis;

2.7.3.3 A list of the qualifications, assumptions and clarifications made by Private Entity in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

2.7.3.4 The Date of Substantial Completion for the New School, the date of Substantial Completion for demolition and site stabilization of the existing George Mason High School, and the Date of Final Completion, together with an updated Project Schedule complying with the requirements of this Agreement;

2.7.3.5 Schedules of any applicable alternate and unit prices;

2.7.3.6 A statement of Additional Services included, if any;

2.7.3.7 The time limit for acceptance of the GMP proposal;

2.7.3.8 The amount of the Private Entity's contingency as provided in § 2.8.6;

2.7.3.9 A statement of any Work to be self-performed by Private Entity; and

2.7.3.10 A statement identifying all patented or copyrighted materials, methods, or systems selected by Private Entity and incorporated in the Work that are likely to require the payment of royalties or license fees.

2.8 As part of the GMP Proposal submitted in accordance with this Article, the Private Entity agrees to specifically acknowledge and certify that the GMP Documents are sufficiently complete to have enabled the Private Entity to determine the Cost of the Work and to enter into the GMP Amendment to construct the Work in accordance with the Owner's Program and in accordance with applicable laws, statutes, building codes and regulations in effect at the time of GMP execution for a price not greater than the GMP. The Private Entity shall further acknowledge that it has visited the site, investigated the site as required by § 2.6.1.1 of this Agreement consistent with the applicable standard of care, is familiar with all of the reasonably observable conditions thereon and affecting the Work, and has included in the GMP all conditions identified through its investigation.

2.8.1 GMP CERTIFICATION. As part of the GMP Amendment, the Private Entity shall certify that the GMP established thereby (i) contains sufficient amounts to perform all Work necessary for the Final Completion of the Project; and (ii) contains sufficient amounts to provide and construct any items or facilities that are not contained in the GMP Documents, but which are necessary for a fully functioning facility that meets the programmatic requirements established for the Project. The Private Entity will further covenant and agree in the GMP Amendment that it will perform all of the construction work necessary for the Final Completion of the Project, including, without limitation, aspects of the Work that are not shown on the GMP Documents, but which are a logical development of the design intent reflected in the GMP Documents, for an amount not to exceed the Guaranteed Maximum Price.

2.8.2 REVIEW AND ADJUSTMENT TO GMP PROPOSAL. Private Entity shall meet with Owner to review the GMP Proposal. If Owner has any comments relative to the GMP Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Private Entity, who shall make appropriate adjustments to the GMP, its basis, or both.

2.8.3 ACCEPTANCE OF GMP PROPOSAL. Upon acceptance by Owner of the GMP Proposal, the GMP and its basis shall be set forth in an Amendment to this Agreement (the "GMP Amendment"), the form of which is attached as Exhibit D.

2.8.4 FAILURE TO ACCEPT THE GMP PROPOSAL. Unless Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies Private Entity, the GMP Proposal shall not be effective. If Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, Owner shall have the right to:

2.8.4.1 Request modifications to the GMP Proposal. If such modifications are accepted in writing by Private Entity, the GMP Proposal shall be deemed accepted in accordance with § 2.8.3;

2.8.4.2 Direct Private Entity to proceed on the basis of reimbursement as provided in ARTICLE 7 and ARTICLE 8 without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

2.8.4.3 Terminate the Agreement for convenience. The Parties may establish a Date of Substantial Completion and a Date of Final Completion.

2.8.5 PRE-GMP WORK. Prior to Owner's acceptance of the GMP Proposal, Private Entity shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as Owner may specifically authorize in writing.

2.8.6 PRIVATE ENTITY'S CONTINGENCY. The GMP Proposal will contain, as part of the Cost of the Work, Private Entity's Contingency, a sum mutually agreed upon and monitored by Private Entity and Owner to cover costs which are properly reimbursable as a Cost of the Work but are not the basis for a Change Order. As buyout progresses, buyout savings shall be added to Private Entity's Contingency and overages may be withdrawn from Private Entity's Contingency. Private Entity's Contingency is not to be used for changes in scope or for any item that would be the basis for an increase in the GMP. Private Entity shall provide Owner with a monthly accounting of charges against Private Entity's Contingency, if applicable, with each application for payment. Any funds left in the Private Entity's Contingency shall be treated as part of the shared savings on the Project.

2.8.6.1 The Private Entity may draw on the Private Entity's Contingency by written request to the Owner identifying the amount requested and the reason for the request and by obtaining Owner's written approval, which shall not be unreasonably withheld, denied, or delayed; provided, however, that Owner shall not be required to approve any draw on the contingency that is less than Fifty Thousand Dollars (\$50,000) unless such draw when combined with all other draws made during that reporting month exceed Two Hundred Thousand Dollars (\$200,000). The Owner shall have two business days to accept, to reject, or to request reasonable additional information regarding the use of contingency. The Private Entity shall, in subsequent required monthly reports, show an increase in the relevant line item by the amount

drawn and a decrease in the line item for the Contingency. During the Construction Phase, the Private Entity shall keep the Owner's Representative informed as to the status of the Contingency and shall, at a minimum: (i) advise the Owner's Representative of any significant draws upon the Contingency in a timely manner; and (ii) provide the Owner's Representative with a written running status of the Contingency balance at least once every two (2) weeks.

2.8.7 OWNER CONTROLLED CONTINGENCY. The GMP may include an Owner Controlled Contingency allowance, which may be in addition to the CCL. The Owner Controlled Contingency may be used to by the Owner to make changes to the Work not reasonably inferable from the GMP Documents, such as changes in scope, systems, kinds and quality of materials, finishes, or equipment, to accelerate the Work or parts thereof to overcome any delay or disruption for which the Owner is responsible or for such other purposes as the Owner directs. If there is an Owner Controlled Contingency, all uses of the Owner Controlled Contingency must be approved in advance by the Superintendent of the Falls Church City Public Schools or such other person as he or she may designate in writing and shall be added to the contract by a Change Order that approves allocation of the funds.

2.8.8 COST REPORTING. Private Entity shall maintain complete and current records that comply with generally accepted accounting principles and calculate the Cost of Work. Owner shall be afforded access during normal business hours to all Private Entity's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. Private Entity shall preserve all such records for a period of five years after the final payment. Owner shall have the right to audit costs charged by the Private Entity at Owner's sole costs, except that if the audit identifies any net overcharges greater than Fifty Thousand Dollars (\$50,000), the Private Entity shall reimburse the Owner for the costs of the audit, in addition to other remedies that may be available at law or pursuant this Agreement. Agreed upon lump sum prices, unit prices, and fixed rates shall not be subject to audit.

2.9 CONSTRUCTION PHASE SERVICES.

2.9.1 START OF CONSTRUCTION PHASE. The Construction Phase will commence upon the issuance by Owner of a written NTP with construction. If construction commences prior to execution of the GMP Amendment, Private Entity shall prepare for Owner's written approval a list of the documents that are applicable to the part of the Work Owner has authorized, which list shall be included in Owner's written NTP.

2.9.2 COMPLETE PROJECT. Except to the extent expressly set forth in the Contract Documents, the Work includes all items necessary to produce a fully functional and properly operating Project, even though such items may not be specifically described in the Contract Documents. Accordingly, Private Entity shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, equipment, tools, services, and facilities to fully and properly complete the Project in a good and workmanlike manner in accordance with the Contract Documents and within the Project Schedule. All materials, systems, and equipment shall be installed in accordance with manufacturer's recommendations and in a manner to preserve all Subcontractor, supplier, and manufacturer warranties and guarantees. All such Work shall be at the sole costs and expense of the Private Entity, subject to reimbursement as provided herein.

2.9.2.1 Throughout the course of the work, the Owner shall have the right to inspect the Project to ensure that the Private Entity's activities are acceptable to the Owner in accordance with the provisions of this Agreement.

2.9.2.2 To the extent the Private entity has any maintenance responsibilities with respect to the Project, the Owner shall be entitled to monitor the practices of the Private Entity to ensure that it is properly maintained.

2.9.3 COMPLIANCE WITH LAWS. Private Entity shall comply with all Laws at its own cost. Private Entity shall be liable to Owner for all loss, cost, and expense, attributable to any acts or omissions by Private Entity, its employees, Subcontractors, and agents resulting from the failure to comply with Laws, including, but not limited to fines, penalties, or corrective measures. However, liability under this subsection shall not apply if notice to Owner was given and advance approval by appropriate authorities, including Owner, is received.

2.9.3.1 CHANGES IN LAW. The GMP, Private Entity's Fee, and Contract Time shall be equitably adjusted by Change Order pursuant to ARTICLE 9 for additional costs and time resulting from any changes in Laws, including increased taxes, which were enacted after the date of this Agreement, or in the case of the GMP, after the date of an accepted GMP proposal. Additionally, where the price of material, equipment, energy and/or labor increase during the term of the Contract due to shortages or price increases resulting from government tariffs announced and imposed after execution of the GMP Amendment, the Contract Sum shall be equitably adjusted by a Change Order pursuant to ARTICLE 9 of this Agreement. Such price increases shall be documented by vendor quotes, invoices, catalogs, receipts or other documents of commercial use.

2.9.4 CONSTRUCTION MANAGEMENT AND ADMINISTRATION.

2.9.4.1 PROJECT MANAGER AND SUPERINTENDENT. Private Entity shall adequately staff the project at all times, and shall appoint at a minimum, a Project Manager with overall responsibility for managing the Project and a Superintendent. The Project Manager and Superintendent shall not be changed without the written consent of the Owner, unless such persons are no longer employed by Private Entity or are unable to perform their duties due to death or disability. The Private Entity's on-site Superintendent must be able to speak, read, and write English to the extent necessary to permit reasonable communication with Owner's personnel.

2.9.4.1.1 Should the Owner's Representative reasonably deem it to be in the best interests of the Owner to require the removal of any person working on or under this Agreement, that person must be immediately removed from the Work.

2.9.4.2 SUBMITTALS. Private Entity shall prepare a list of submittals requiring Owner or Design Professional review for items not fully specified in the Construction Documents. Such submittals may include Shop Drawings, Product Data, Samples and similar items demonstrating the way by which the Private Entity proposes to conform to the information given and the design concept expressed in the Construction Documents.

2.9.4.2.1 **OWNER SUBMITTALS.** Items involving aesthetic or affecting the Owner's operation and maintenance of the Project shall require approval of the Owner and Design Professional. For items requiring Owner approval, the Owner shall provide its approval, conditional approval or a single consolidated list of exceptions within the time specified by Private Entity in the Submittal, provided, however that the Owner shall have not less than ten Business Days to review and act upon any initial submission.

2.9.4.2.2 **DESIGN PROFESSIONAL SUBMITTALS.** Private Entity shall establish a procedure for review of Shop Drawings, Product Data, Samples and similar items ordinarily requiring review by the Design Professional but not requiring Owner approval to demonstrate the way by which the Private Entity proposes to conform to the information given and the design concept expressed in the Design Professional's Construction Documents. The Owner shall be copied on all such submittals and responses. If the Owner has an objection to any such submittal or response, it shall notify the Private Entity in writing in time to avoid any delay to the Work, and the Parties shall work together to resolve any conflicts arising from such submittals.

2.9.4.2.3 Private Entity shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Design Professional, and, if required, by the Owner. The Work shall be in accordance with approved submittals except that the Private Entity shall not be relieved of responsibility for deviations from requirements of the Contract Documents by any approval of a Submittal unless the Private Entity has specifically informed the Design Professional and Owner in writing of such deviation at the time of submittal and (1) the approval has been given of the specific deviation as a Minor Change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. Failure to notify the Design Professional and Owner in writing of such deviations shall constitute just cause for rejection of the submittal and all finished Work resulting therefrom.

2.9.4.3 **OWNER'S ELECTIVE TESTING.** The Owner may, through its consultant or others, take samples of materials or equipment delivered to the site or store offsite for testing. Failure of a sample to meet the requirements of the Contract Documents may void previous approvals of the item tested.

2.9.4.3.1 The Owner will pay for the costs of any elective tests the Owner deems necessary or advisable. The Owner will also pay for the uncovering and replacement of any work required to be removed to allow the testing unless the Private Entity has covered such work contrary to the direction of the Owner or with knowledge that Owner intended to perform testing. However, if such tests

indicate that the workmanship or materials used by the Private Entity are not in conformance with the Construction Documents, approved shop drawings, or the approved materials, then Private Entity shall pay for the tests and/or re-tests, along with all costs of uncovering and recovering the non-conforming work.

2.9.4.3.2 The Private Entity shall replace materials or equipment found not to have met requirements of the Contract Documents, unless Owner, in its sole discretion, elects to accept either an equitable downward adjustment to the GMP or retrofitting of the Work in lieu of such replacement. Any replacement or retrofitting shall be Cost of the Work, but Private Entity shall take all reasonable efforts to recover the costs of any replacement or retrofitting from the responsible Subcontractor or Supplier or their surety or insurers.

2.9.4.4 TESTING. Other than Owner Elective Testing, the Private Entity shall pay for all costs of construction testing, including sampling, field tests, laboratory tests, and inspection services to verify suitability of soils, concrete pours, welds, etc... required by law, the specifications, or standards generally applicable to the Work. Such testing shall be performed by independent testing organizations and the Private Entity shall provide written reports of observations, recommendations, and testing activities to the Owner as the Project progresses.

2.9.4.4.1 The Private Entity shall include in the GMP costs to cover all testing and inspections, including Special Inspections, as required by local building officials. The Private Entity shall provide a listing in the Specifications of all testing, inspections, and special inspections required. The Private Entity shall also provide a preliminary schedule for the Special Inspections required by local building officials.

2.9.4.4.2 The Private Entity will pay for the costs of all testing and inspection under this § 2.9.4.4. If such tests indicate that the workmanship or materials used by the Private Entity are not in conformance with the Construction Documents, approved shop drawings, or the approved materials, the Private Entity shall pay for the re-tests. The Private Entity shall remove all Work and material failing to conform and replace with Work and materials in full conformity to the Owner's satisfaction, unless Owner, in its sole discretion, elects to accept either an equitable downward adjustment to the GMP or retrofitting of the Work in lieu of such replacement. Such removal, replacement, or retrofitting shall be Costs of the Work, but Private Entity shall take all reasonable efforts to recover the costs of any replacement or retrofitting from the responsible Subcontractor or Supplier or their surety or insurers

2.9.5 MONTHLY REPORTS. Not later than by the 15th day of each month, the Private Entity shall provide a monthly written report to Owner on the progress of the Work in such detail as is reasonably agreed to by the Parties. At a minimum, such reports shall include:

- 2.9.5.1 A narrative describing the status of the Project, including buyout;
- 2.9.5.2 An updated copy of the Project Schedule;
- 2.9.5.3 Financial Information on Costs of the Work with a comparison to the Budget and a description of any anticipated overruns;
- 2.9.5.4 A current cash flow projection for funding the Work;
- 2.9.5.5 A list of outstanding Requests For Information ("RFIs") with a separate list of RFIs or submittals requiring answers or selections from the Owner and the dates by which the Owner must provide answers and selections to avoid impacting the Work; and
- 2.9.5.6 A list of any outstanding Change Order Requests ("CORs").

2.9.6 COST REPORTING. Private Entity shall develop a system of cost reporting for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. The reports shall be presented to Owner at mutually agreeable intervals, and Private Entity shall provide full supporting documentation for such costs as requested by Owner.

2.9.7 CLEANUP. Private Entity shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, Private Entity shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Private Entity shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Private Entity shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

2.9.8 OWNERSHIP AND SALVAGE OF FF&E FROM THE EXISTING GEORGE MASON HIGH SCHOOL. After the transition to the New School, the Owner shall remove any Furniture, Fixtures, and Equipment ("FF&E") and other personal property it wishes to retain for its own use or other disposal from the existing George Mason High School and shall provide the Private Entity with written Demolition NTP. If the demolition is to proceed in phases, the Demolition NTP may be for all or parts of the existing George Mason High School as agreed by the Parties. Upon receipt of the Demolition NTP all FF&E, other personal property in the existing George Mason High School or portion thereof subject to the Demolition NTP shall become the property of the Private Entity to be disposed of in any manner it sees fit, provided that (i) if the Private Entity comes across documents containing information on students or staff inadvertently left in the existing school, the Private Entity will return such documents to Owner; and (ii) nothing in this Section shall relieve the Private Entity of its obligations to dispose of materials in a manner consistent with its obligations to obtain a minimum of LEED Gold certification. The Owner shall have absolute discretion to determine what, if any, FF&E and personal property it wishes to leave in the existing George Mason High School.

2.10 AS-BUILTS. Private Entity shall prepare and submit to Owner one (1) full-sized copy of final marked-up as-built drawings and an updated electronic set of As-Builts in AutoCAD format.

2.11 CONSTRUCTION SCHEDULE. As part of its GMP proposal, the Private Entity shall provide the Owner with construction schedule indicating the commencement and completion dates of the various stages of the Work, including the dates when information and approvals are required from Owner.

2.11.1 The Construction Schedule shall organize construction activities by appropriate work areas and be cost loaded for use as the feeder report for the Schedule of Values for purpose of determining progress payment. Durations generally should not exceed ten (10) working Days or contain a value exceeding Forty Thousand Dollars (\$40,000). The schedule shall incorporate anticipated weather Days and be on software compatible with the Owner's Representative's computer system and scheduling software to allow the Owner's Representative to efficiently process each pay application in Expedition, using the AIA G702/G703 format where the G703 back up listing will be the Schedule of Values in CSI division format.

2.11.2 Upon acceptance, the Construction Schedule shall be integrated into the Project Schedule.

2.11.3 The Construction Schedule shall be revised monthly or as mutually agreed by the Parties.

2.11.4 The Private Entity agrees and warrants that it will properly and substantially complete the Work not later than the dates indicated for completion in the RFPD and that in formulating the Construction Schedule, it:

2.11.4.1 Has taken into account the requirements of the Program, the Contract Documents, local conditions, site conditions, all permitting requirements and the availability of material, equipment, labor, and any other factors which may affect the performance of the Work;

2.11.4.2 Has taken into account the need to avoid interruption of academic or other school activities, including any disturbance of students during standardized testing periods;

2.11.4.3 Has taken into account all restrictions on activities necessary to reach final completion after the Owner has taken possession of and started to utilize the Project, including the need to work on weekends and hours when school facilities are not in use; and

2.11.4.4 Understands that school activities may include performances and athletic events that extend late into the evening and that final completion activities cannot interrupt or interfere with academic activities, performances and athletic events.

2.12 OTHER SERVICES.

2.12.1 Private Entity shall act as the Green Building Facilitator. Responsibilities of the Parties for achieving a minimum of LEED Gold Certification shall be as provided in Exhibit C, but Private Entity shall be responsible at a minimum for (a) coordinating and facilitating the achievement of LEED Gold certification; (b) identifying, preparing, and submitting necessary documentation for LEED Gold certification; and (c) identifying Owner responsibilities with respect to such certification; and

2.12.2 Private Entity shall be responsible for equipment systems start-up, testing, and balancing but shall not be responsible for formal commissioning services. The Owner will provide an Enhanced Commissioning Agent for required systems.

2.13 SAFETY OF PERSONS AND PROPERTY.

2.13.1 SAFETY PRECAUTIONS AND PROGRAMS. Private Entity shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their Work, nor for compliance with the provisions of Laws.

2.13.2 GENERAL. Private Entity shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect:

2.13.2.1 its employees and other persons at the Worksite;

2.13.2.2 materials, supplies, and equipment stored at the Worksite for use in performance of the Work; and

2.13.2.3 the Project and all property located at the Worksite and adjacent to Work areas, whether or not said property or structures are part of the Project or involved in the Work.

2.13.3 COMPLIANCE. All construction and other Work on this Project must be performed in compliance with all applicable safety laws and regulations, including, but not limited to the Occupational Safety and Health Act of 1970 ("OSHA"), OSHA regulations and health and safety regulations promulgated and enforced under the Virginia Occupational Safety and Health Program ("VOSH"). If requirements are different or in conflict, the more stringent requirement will apply.

2.13.4 PRIVATE ENTITY'S SAFETY REPRESENTATIVE. Private Entity shall designate an individual at the Worksite in the employ of Private Entity who shall act as Private Entity's designated safety representative with a duty to prevent accidents. Such person may be Private Entity's project Superintendent. Private Entity will report promptly in writing all recordable accidents and injuries occurring at the Worksite to Owner. When Private Entity is required to file an accident report with a public authority, Private Entity shall furnish a copy of the report to Owner

2.13.5 SCHOOL SITE CONSIDERATIONS. Private Entity agrees and acknowledges that construction will occur in and around functioning school facilities, and that activities that could reasonably interfere with academic activities must be timed and coordinated so as not to interfere with academic activities. Further, Private Entity agrees:

2.13.5.1 To take all necessary steps to prevent injury to students, faculty, staff, and parents using such facilities, including the use of appropriate physical barriers to prevent trespass by students in construction areas;

2.13.5.2 That it shall not tolerate any smoking or drug or alcohol use on the Worksite, including use of electronic cigarettes; and

2.13.5.3 That it shall not permit workers to carry firearms or other deadly weapons onto any Owner construction site or into any facility, including in their personal or construction vehicles. This supersedes any state or local law permitting the carrying of firearms or weapons. Violation of this clause shall be grounds for removal of individuals or contractors from the site or termination for default.

2.13.6 NOTICES. Private Entity shall provide Owner with copies of all notices required of Private Entity by Law. Private Entity's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction over the Work.

2.13.7 REPAIRS TO DAMAGED PROPERTY. Damage or loss not insured under property insurance that arises from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of Private Entity, or anyone for whose acts Private Entity may be liable, shall be promptly remedied by Private Entity. Damage or loss attributable to the acts or omissions of Owner or Other Contractors and not to Private Entity shall be promptly remedied by Owner.

2.13.8 OWNER RIGHT TO STOP WORK. If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Private Entity's safety program, may require Private Entity to stop performance of the Work or take corrective measures satisfactory to Owner, or both. If Private Entity does not adopt corrective measures, Owner may perform them and reduce by the costs of the corrective measures the amount of the GMP, or in the absence of a GMP, the Cost of the Work as provided in ARTICLE 8. Private Entity agrees to make no claim for damages, for an increase in the GMP, compensation for Design Phase services, Private Entity's Fee, or the Date of Substantial Completion or the Date of Final Completion based on Private Entity's compliance with Owner's reasonable request.

2.14 ENVIRONMENTAL AND TREE PRESERVATION. The Private Entity shall perform all Work necessary to implement and accomplish a program to prevent environmental pollution during or as a result of construction performed under this Agreement. As a minimum, the Private Entity's Work must conform to all requirements of applicable federal, state and local law.

2.14.1 In coordination with the City's Arborist, the Private Entity will take all reasonable actions to preserve, protect and maintain all existing vegetation (such as trees, shrubs, and grass), landscape features, athletic fields, and structures on or adjacent to the site of Work that are not to be removed, including, but not limited to guard posts or barriers as necessary to control vehicular traffic passing close to trees and/or shrubs to remain. Care must be taken in removing trees authorized by the Owner's Representative for removal, to avoid damage to vegetation that will remain in place. Any trees or other landscape features scarred or damaged by the Private Entity's equipment or operations must be restored by the Private Entity. The Owner's Representative decides what method of restoration must be used and whether damaged trees and/or shrubs will be treated or replaced.

2.14.2 The Private Entity shall obtain approval from the Owner's Representative for any temporary roads, embankments and disposal areas not included in Project Specifications or Plans.

2.14.3 Private Entity shall restore all areas outside the footprint of the completed structures to near natural conditions that will permit vegetation growth, including six inches of topsoil unless otherwise specified in the Construction Documents. All such areas shall be graded

and filled in compliance with an approved landscaping plan.

2.14.4 The Private Entity shall protect from damage all existing buildings, improvements or utilities at or contiguous to the site of the Work, the location of which is known, and must repair or restore any damage to these facilities. If the Private Entity fails or refuses to repair such damage promptly, the Owner's Representative may have the necessary Work performed and charge the cost to the Private Entity, who shall pay such costs to the Owner in a prompt manner.

2.14.5 Monuments, markers and works of art must be protected. If Private Entity encounters human remains or items with potential historical or archeological interest, it must leave such remains or items undisturbed, take reasonable actions to prevent their loss or destruction, and immediately report the find to the Owner's Representative so that the proper authorities may be notified. Notwithstanding any provision to the contrary in this Agreement, the GMP and time shall be equitably adjusted if the find impacts the critical path of the Work or the Private Entity incurs additional cost to perform as a result of any such discovery.

2.15 EMERGENCIES. In any emergency affecting the safety of persons or property, Private Entity shall act in a reasonable manner to prevent threatened damage, injury, or loss. Any change in the GMP, estimated Cost of the Work, Private Entity's Fee, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate the compensation for Design Phase services, on account of emergency Work shall be determined as provided for in ARTICLE 9.

2.16 HAZARDOUS MATERIALS.

2.16.1 Private Entity shall follow all Environmental Protection Agency, Virginia Department of Environmental Quality and other applicable governmental regulations and guidelines, as to the labeling, use, storage, remediation, and/or disposal of Hazardous Materials.

2.16.2 Except for those Hazardous Materials identified in the RFPD or which were identified as a result of Private Entity's Preliminary Evaluation (collectively, "Known Materials"), Private Entity shall not be obligated to commence or continue Work until any Hazardous Material discovered at the Worksite has been removed, rendered, or determined to be harmless by Owner as certified by an independent testing laboratory and approved by the appropriate governmental agency.

2.16.3 If, after commencing the Work, Hazardous Materials other than Known Materials are discovered at the Project, Private Entity shall be entitled to immediately stop Work in the affected area. Private Entity shall promptly report the condition to Owner and, if required, the governmental agency with jurisdiction.

2.16.4 Private Entity shall not resume nor be required to continue any Work affected by any Hazardous Material other than Known Materials without written mutual agreement between the Parties after unknown Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

2.16.5 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures or remedial action. Such measures shall be the sole

responsibility of Owner and shall be performed in a manner minimizing any adverse effect upon the Work.

2.16.6 If Private Entity incurs additional costs or is delayed due to the presence or remediation of Hazardous Material other than Known Materials discovered at the Worksite, Private Entity shall be entitled to an equitable adjustment in the GMP, compensation for Design Phase services, Private Entity's Fee, and, as applicable, the Date of Substantial Completion or the Date of Final Completion. Private Entity shall defend, indemnify and hold harmless, Owner and all Owner's successors, employees, officers, the City Council, School Board members, representatives, and agents from all liability, claims and actions, including, but not limited to, any demands, fines, remediations, or penalties asserted by any governmental entity, arising from or related to Private Entity's treatment, storage, disposal, handling, spillage, leakage, disturbance or use of Hazardous Materials on the Project, except to the extent such release or disturbance is due to the presence of pre-existing Hazardous Materials, unless, however such claim or action results from the negligence or intentional wrongful act of Contractor regarding Known Materials. If, without the negligence on the part of the Contractor, the Contractor 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 Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred. Nothing contained in this Agreement shall be construed or interpreted as requiring Contractor, its officers, agents, servants, employees to assume the status of a generator, storer, treater, transporter or disposal facility as those terms appear within the Resource Conservation Recovery Act, 42 USCA § 6901, et seq. (RCRA), or within any state statute of similar effect governing the treatment, storage, transportation or disposal of waste.

2.16.7 MATERIALS BROUGHT TO THE SITE.

2.16.7.1 Safety Data Sheets ("SDS") as required by Law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Private Entity, Subcontractors, Owner, or Other Contractors, shall be maintained at the Project by Private Entity and made available to Owner and Subcontractors.

2.16.7.2 Private Entity shall be responsible for the proper handling, application, storage, removal, and disposal of all materials brought to the Worksite by Private Entity. Costs to repair or replace materials damaged due to the Private Entity's failure to properly store materials shall not be reimbursable Costs of the Work.

2.16.7.3 To the extent caused by the negligent or intentionally wrongful acts or omissions of Private Entity, its agents, officers, directors, and employees, Private Entity shall indemnify and hold harmless Owner, its agents, officers, directors, and employees, from and against any and all claims, damages, losses, costs, and expenses, including but not limited to attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to the delivery, handling, application, storage, removal, and disposal of materials and substances brought to the Worksite by Private Entity.

2.16.8 SURVIVAL. The provisions of this § 2.16 shall survive the completion of the Work or Agreement termination.

2.17 WARRANTY.

2.17.1 Private Entity warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, that all Work will be of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the Date of Substantial Completion of the Work or of a designated portion.

2.17.2 Private Entity shall collect all written warranties and equipment manuals and deliver them to Owner in a format directed by Owner to include two (2) copies of each such document including a searchable Adobe PDF format.

2.17.3 At Substantial Completion, Private Entity shall assign to Owner all manufacturers and other warranties applicable to the Work and shall cooperate with the Owner in enforcing any such warranties.

2.17.4 Private Entity shall secure required certificates of inspection, testing, or approval and deliver them to Owner.

2.17.5 With the assistance of Owner's maintenance personnel, Private Entity shall direct the checkout of utilities and start-up operations and adjusting and balancing of systems and equipment for readiness.

2.18 CORRECTION OF WORK WITHIN ONE YEAR.

2.18.1 Before Substantial Completion and within one year after the later of the date of Substantial Completion of the Work established in § 6.2, or the date of Actual Substantial Completion of the New School, or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents, if any Defective Work is found, Owner shall promptly notify Private Entity in writing. Unless Owner provides written acceptance of the condition, Private Entity shall promptly correct the Defective Work at its own cost and time and bear the expense of any additional design services required for correction of any Defective Work for which it is responsible, provided that if the Defective Work is corrected before Final Payment, the costs of correction shall be considered Cost of the Work.

2.18.2 During the one-year correction period, Private Entity shall make its team reasonably available to address any warranty needs or issues. In the absence of any warranty claims, Private Entity shall contact the Owner not less than monthly to ensure that all Work is satisfactory and shall arrange an 11-month walk-through to identify any issues needing correction and to schedule such correction as soon as practicable given the needs of the Owner and climate conditions.

2.18.3 With respect to any portion of Work first performed after Substantial Completion, including demolition of the existing George Mason High School and stabilization of the site, the one-year correction period shall commence when that portion of Work is complete. Correction periods shall not be extended by corrective Work performed by Private Entity.

2.18.4 If Private Entity fails to correct Defective Work within a reasonable time after receipt of written notice from Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter.

due Private Entity. If payments then or thereafter due Private Entity are not sufficient to cover such amounts, Private Entity shall pay the difference to Owner.

2.18.5 If, after the one-year correction period but before the applicable limitation period has expired, Owner discovers any Work that Owner considers to be Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Private Entity and allow Private Entity an opportunity to correct the Work. If Private Entity elects to correct the Work, it shall provide written notice of such intent within seven (7) Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Private Entity does not elect to correct the Work, Owner may have the Work corrected by itself or others. If Owner intends to seek recovery of those costs from Private Entity, Owner shall promptly provide Private Entity with an accounting of actual correction costs, and Private Entity shall reimburse the Owner within 30 Days of receipt of such accounting, subject to adjustments for any costs that are not the responsibility of the Private Entity.

2.18.6 If Private Entity's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, Private Entity shall be responsible for the cost of correcting the destroyed or damaged property.

2.18.7 The one-year correction period applies only to Private Entity's obligation to correct Work, and does not limit any warranties expressed or implied, all of which shall survive the one-year correction period, nor does the one-year correction period constitute a limitation period with respect to the enforcement of Private Entity's other obligations under the Contract Documents.

2.18.8 Before final payment, at Owner's option and with Private Entity's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted for the cost of correction.

2.19 CONFIDENTIALITY.

2.19.1 PRIVATE ENTITY'S INFORMATION. Information provided under this Agreement is subject to the Virginia Freedom of Information Act ("FOIA"). If the Private Entity wishes to protect any information from disclosure under FOIA, it shall proceed in accordance with § 4.4 of the Guidelines.

2.19.2 OWNER INFORMATION. The Owner may mark certain information as confidential, and the Private Entity shall treat any information that would reasonably be considered confidential regardless of whether it is marked or not. Additionally, all information provided to Private Entity regarding school safety and security shall be deemed confidential regardless of whether it is so-marked (collectively, the information described above constitute "Confidential Information"). Private Entity shall not publicly disclose Confidential Information, except as required by law or approved by the Owner in writing, such approval not to be unreasonably conditioned, withheld or delayed. If such information is sought through Court Order, then Private Entity shall provide Owner with reasonable notice and opportunity to object to any such disclosure. Notwithstanding the foregoing, Private Entity may make information related to safety and security available to potential bidders through a secure website accessible for purposes of bidding on the Project and to all contractors and Subcontractors on the Project for use in construction. As a condition for accessing bidding information, bidders must agree to these confidentiality provisions. Private Entity further

agrees to abide by all Federal, State, and local laws regarding confidentiality of student or medical information that may be disclosed to it in the performance of this Agreement.

2.19.3 The Parties agree that they shall have no adequate remedy at law if Confidential Information is, or is threatened to be, disclosed in violation of this § 2.19, and hereby agree that either party may apply to the appropriate court for injunctive relief to enforce these provisions.

2.20 ADVERTISING AND AWARDS. Except with the Owner's prior written approval (to be provided or withheld in Owner's sole discretion), Private Entity shall not take any action or make any statement to imply in any manner that the Owner endorses its products or services. Subject to the foregoing, Private Entity may list this Project on its website or other promotional materials.

2.21 GROUND BREAKING CEREMONIES. Private Entity agrees to participate in groundbreaking and Project Opening ceremonies as specified by the Owner.

2.22 ADDITIONAL SERVICES. Private Entity shall provide or procure the following additional services upon the request of Owner. A written agreement between Owner and Private Entity shall define the extent of such Additional Services before they are performed by Private Entity. If a GMP has been established for the Work or any portion of the Work, such Additional Services shall be considered a Change in the Work, unless they are specifically included in the statement of the basis of the GMP as set forth in Amendment 1.

2.22.1 Making revisions to the Schematic Design, Design Development, Construction Documents, or documents forming the basis of the GMP after they have been approved by Owner, and which are due to causes beyond the control of Private Entity. Causes beyond the control of Private Entity do not include acts or omissions on the part of Subcontractors, Suppliers, Sub-subcontractors, or the Design Professional.

2.22.2 Services requested by Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice.

2.23 PRIVATE ENTITY'S REPRESENTATIVE. Private Entity shall designate a person who shall be Private Entity's representative. Private Entity's Representative is Jennifer Macks.

ARTICLE 3 OWNER'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES PROVIDED BY OWNER. Owner's responsibilities under this article shall be fulfilled with reasonable detail and in a timely manner.

3.2 WORKSITE INFORMATION. Owner shall provide the following Worksite information to Private Entity:

3.2.1 Existing Information describing the physical characteristics of the site, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting known existing conditions, and environmental studies, reports, and investigations;

3.2.2 Existing Tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law;

3.2.3 The limits of Pollution Liability Insurance covering the Worksite held by Owner; and

3.2.4 Any other information or services requested in writing by Private Entity which are required for Private Entity's performance of the Work and under Owner's possession, custody, or control.

3.3 RESPONSIBILITIES DURING DESIGN PHASE.

3.3.1 Based upon the RFP, RFPD, and Private Entity's Detailed Proposal, Owner shall work with Private Entity to promptly define the Program. Owner shall review and provide timely written comments and approval of schedules, estimates, Preliminary Estimate, Schematic Design Documents, Design Development Documents, Construction Documents furnished during the Design Phase, and the GMP Proposal.

3.4 RESPONSIBILITIES DURING CONSTRUCTION PHASE.

3.4.1 Owner shall review the Construction Schedule and timely accept the milestone and other dates set forth, provided they are consistent with the Owner's needs as expressed in the RFPD.

3.4.2 If Owner becomes aware of any material error, omission, or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, Owner shall give prompt written notice to Private Entity. The failure of Owner to give such notice shall not relieve Private Entity of its obligations to fulfill the requirements of the Contract Documents.

3.4.3 Owner shall have no contractual obligations to Subcontractors, suppliers, or the Design Professional.

3.4.4 Owner shall provide its insurance for the Project as provided in ARTICLE 11.

3.5 ELECTRONIC DOCUMENTS. The Parties shall agree on a written protocol addendum governing all exchanges of electronic documents. Such protocol shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. The Parties shall each bear their own costs for the requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

3.6 OWNER'S REPRESENTATIVE. The Owner has engaged Brailsford & Dunlavey, Inc. as its Owner's Representative to provide certain program management functions. The Owner's Representative shall, at all times, be acting solely for the benefit of the Owner, not the Private Entity. **The Owner's Representative shall not be authorized to modify any of the rights or obligations of Owner or the Private Entity pursuant to this Agreement, or to issue Change Orders or Change Directives and that any such modifications are null and void. The Private Entity hereby acknowledges and agrees that only the Superintendent of the Falls Church City Schools or such person as he or she may duly designate in writing shall have the authority to issue Change Orders or Change Directives on the Owner's behalf.** The Owner's representative shall: (a) be fully acquainted with the Project; (b) furnish the information and services required of Owner in a timely manner; and (c) have the authority to

bind Owner in all matters requiring Owner's approval, authorization, or written notice, except for any matter increasing the Contract Price or Contract Time. Any matter increasing the Contract Price or Contract Time must be approved in writing by the Superintendent of the Falls Church City Public Schools or his/her designee, provided that any change or claim (i) outside of the Owner Controlled Contingency in excess of Fifty Thousand Dollars (\$50,000) or (ii) causing an increase in the GMP beyond the CCL shall require the written approval of the Falls Church City School Board.

3.6.1 If Owner changes its representative or the representative's authority as listed above, Owner shall notify Private Entity in writing in advance.

3.7 SITE VISITS. The Owner from time to time during construction may desire to conduct groups of guests on visits to the site of the Work. These tours will be authorized by the Owner's Representative or his/her appointed representative. In such event the Private Entity shall cooperate by providing reasonable access to and posting signs to give notice of dangerous areas, providing hard hats, and making such other arrangements for the safety and convenience of the guests as may be required. The Owner's Representative shall give the Private Entity as much advance notice of any such visits as is practical and to the maximum practicable extent shall schedule any such visits so as not to interfere with the progress of the Work.

3.8 OWNER ACCESS TO THE WORKSITE. Subject to compliance with the Private Entity's Safety Program, the Owner, the Owner's Consultants, and its Separate Contractors shall at all times have the right to enter on to the Worksite to inspect the Work, to perform its obligations under this Agreement, to facilitate the fit out of the Project with furniture, fixtures, and equipment, and to carry out its police powers.

3.9 MARY ELLEN HENDERSON MIDDLE SCHOOL. To facilitate the tie-in between the New School and Mary Ellen Henderson Middle School in contemplation of transition to the New School over winter break in December 2020 and January 2021, the Owner shall provide access to Mary Ellen Henderson Middle School as needed, but only to the extent it does not interfere with educational activities. Private Entity agrees to coordinate with the Owner to avoid interference with such activities, including work at night and on weekends without any increase in the GMP.

ARTICLE 4 SUBCONTRACTS

4.1 SUBCONTRACTOR QUALIFICATIONS. Private Entity may subcontract any portion of the Work to be performed under this Agreement and shall subcontract all design Services or other services for which it is not properly licensed to a properly licensed subconsultant, supplier, or Subcontractor, provided that Private Entity shall remain responsible for the Work and shall be solely responsible to Owner for the acts and omissions of all such Subcontractors. All such Subcontractors shall be properly licensed and authorized to do business in the Commonwealth of Virginia and comply with all licensure and other requirements for doing business in the City. Subcontractors debarred from performing Work in the Commonwealth or on Federal Projects may not be utilized on the Project. Unless the Private Entity is utilizing a Subcontractor Default Insurance Program, each such Subcontractor having a Subcontract in excess of Fifty Thousand Dollars (\$50,000) (except design professionals) shall be capable of obtaining payment and performance bonds on the Project. The Owner may waive this requirement for good cause shown, including, but not limited to facilitation of subcontracting with small businesses and businesses owned by minorities or women.

4.2 SUBCONTRACTOR SELECTION. Except with respect to those subcontractors and subconsultants identified in Private Entity's Detailed Proposals, Private Entity shall use its best efforts to obtain competitive bids from a minimum of three (3) licensed subcontractors for each scope of Work exceeding One Hundred Thousand Dollars (\$100,000) in value. Bid packages shall not be developed to avoid this One Hundred Thousand Dollar (\$100,000) threshold. In soliciting such bids, Private Entity shall ensure that it makes reasonable efforts to facilitate participation of small businesses and businesses owned by women and minorities and shall fully document its efforts to facilitate such participation. Private Entity shall review the bids for each Subcontractor and shall make a recommendation to the Owner of which Subcontractor shall be selected for such Work based on price, capacity, quality of Work and other relevant factors. Owner shall have a reasonable time to accept or reject any recommendation not to exceed ten (10) business days.

4.2.1 All Subcontracts shall be subject to Owner's approval. If the Owner rejects a qualified Subcontractor who was recommended by Private Entity and was reasonably capable of performing the Work and Private Entity is required to contract with a different Subcontractor, then the GMP shall be adjusted to reflect the difference between the base bids and any applicable alternates for the recommended Subcontractor and the Subcontractor receiving the award. In no event shall Private Entity be required to subcontract with a Subcontractor or subconsultant to which it has a reasonable objection. Owner shall have no responsibility to investigate the qualifications of any recommended Subcontractor or to disclose any information known to it regarding such Subcontractors.

4.2.2 The Private Entity shall carefully document its procedures for making available bid packages to potential bidders, the contents of each bid package, discussions with bidders at any pre-bid meetings, bidders' compliance with bid requirements, all bids received, the Private Entity's evaluations of all bids, and the basis for the Private Entity's recommendation as to which bidders should be chosen. The Owner shall be afforded access to all such records at all reasonable times so that, among other things, it may independently confirm the Private Entity's adherence to all requirements set forth in the Agreement, including, without limitation, affirmative action requirements and subcontracting requirements

4.2.3 As part of the negotiations leading up to the GMP, the Private Entity shall provide to the Owner tabulations of the trade bids solicited and copies of all trade bids. In general, the bid tab shall be presented in tabular format that compares the bids received and any other relevant information (i.e. exclusions, past performance history, etc.). The bid tabulation shall include scope assessments and identify required leveling of the trade submitted. To the extent that the Private Entity's award recommendation is based on scoping adjustments, the Private Entity shall clearly identify the scoping adjustment and the need for such adjustments. Such bid tabulations as well as copies of the bids shall be submitted to the Owner's Representative. The Private Entity represents and warrants that the bid tabs so submitted shall fairly represent the results of the subcontractor bidding process and that the Private Entity shall not misrepresent any such data to the Owner or the Owner's Representative.

4.3 CONDITIONS TO STARTING WORK. No Subcontractor shall be permitted to start work on the Project until the Owner has approved award of the Subcontract in writing and Private Entity has provided the Owner with:

4.3.1 Evidence demonstrating that such Subcontractor holds a current contractor's license;

4.3.2 All certifications required by § 14.24 (Crimes Against Children);

4.3.3 Any required Certificates of Insurance; and

4.3.4 If required by the Contract Documents, payment and performance bonds naming the Owner as a dual obligee.

4.4 MANAGEMENT OF SUBCONTRACTORS. Private Entity shall be responsible for the management of Subcontractors in the performance of their Work.

4.5 CONTINGENT ASSIGNMENT OF SUBCONTRACT.

4.5.1 If this Agreement is terminated for cause by the Owner, each subcontract agreement shall be assigned by Private Entity to Owner, subject to the prior rights of any surety, provided that:

4.5.1.1 this Agreement is terminated by Owner;

4.5.1.2 Owner accepts such assignment after termination by providing written notice to Private Entity and Subcontractor or Supplier; and

4.5.1.3 Owner assumes all rights and obligations of Private Entity pursuant to each subcontract or supply agreement, subject to the provisions of §§ 4.5.2 and 4.5.3.

4.5.2 PRIVATE ENTITY'S RESPONSIBILITIES TO SUBCONTRACTOR AFTER ASSIGNMENT. Private Entity's responsibilities for an assigned subcontract shall cease, except that Private Entity shall remain liable to such Subcontractor for (i) any payments received by Private Entity for Work performed by such Subcontractor and not paid over to such Subcontractor, and (ii) any claims arising from or related to Private Entity's failure to properly discharge its contractual obligations to such Subcontractor, provided that nothing in this section shall discharge Private Entity of responsibility for pass-through claims to the extent paid by the Owner. Owner shall have no liability to any assigned Subcontractor for liabilities that remain with Private Entity provided, however, that Owner fully discharges its payment obligations to Private Entity hereunder. Notwithstanding the foregoing, if the Owner deems it reasonably necessary to resolve such claims for the good of the Project and Private Entity fails to resolve such claims within ten (10) Days' written notice to Private Entity, then Private Entity shall indemnify Owner for all costs, including reasonable attorney's and consultant's fees incurred by the Owner in resolving such claims, all of which shall constitute costs to complete the Private Entity's performance.

4.5.3 If Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, Subcontractor's or Supplier's compensation shall be equitably adjusted as a result of the suspension, and Private Entity shall be responsible for the costs of such equitable adjustment except to the extent the suspension was due to the fault or neglect of the Owner.

4.6 FLOW DOWN. Private Entity agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its Sub-subcontractors and significant suppliers) to all the provisions of this Agreement and the Contract Document's applicable provisions to that portion of the Work, including, but not limited to the provisions of § 2.19 regarding Confidentiality.

ARTICLE 5 OTHER CONTRACTORS.

5.1 The Owner may award other contracts for additional Work to Other Contractors. The Private Entity must cooperate fully and coordinate with the Other Contractors and Owner's employees, and carefully fit its own Work with that of Other Contractors as may be directed by the Owner's Representative. The Private Entity must not unnecessarily commit or permit any act that will interfere with the performance of Work by any Other Contractor or by Owner's employees. Should Owner's Other Contractors or employees delay the Private Entity, cause any damage to Private Entity's Work or otherwise cause an increase in the Private Entity's cost or time of performance, the contract sum and Contract Time shall be equitably adjusted in accordance with the provisions of this Agreement.

ARTICLE 6 TIME

6.1 **DATE OF COMMENCEMENT.** The Date of Commencement is the effective date of this Agreement, unless otherwise specified. The Work shall proceed in general accordance with the approved Project Schedule which may be amended from time to time, subject, however, to other provisions of this Agreement.

6.2 **SUBSTANTIAL COMPLETION.** Substantial Completion for the New School shall be June 1, 2021 and for demolition and site stabilization of the existing George Mason High School shall be established in the GMP Amendment, both subject to adjustments as provided for in the Contract Documents. The existing George Mason High School will become available for demolition activities as provided in § 2.6.2.2 unless otherwise agreed. Private Entity shall start demolition of the existing George Mason High School upon receipt of the Demolition NTP from the Owner and substantially complete demolition and site restoration and improvements, not later than the Date for Final Completion set forth in the RFPD as it may be adjusted in accordance with the Contract Documents, except for any planting that must be delayed based on good practice.

6.2.1 Notwithstanding the substantial and final completion dates set forth in the RFPD, the Parties recognize that the Private Entity's goal is to complete the New School in time to start classes at the end of the winter break December 2020/January 2021, and to complete demolition and regrading of the existing George Mason School by July 14, 2021. The Parties agree that such planned early completion is solely for the convenience of the Private Entity and shall not create any additional rights in the Private Entity or Obligations of the Owner under this Agreement. The Private Entity shall not be required to pay damages to the Owner because of its failure to achieve Substantial Completion by its planned earlier date, and the Owner shall not be pay the Private Entity any additional compensation for achieving Substantial Completion early, nor shall the Owner owe the Private Entity any compensation should the Owner cause the Private Entity not to achieve substantial or final completion earlier than the dates set forth in the RFPD as they may be adjusted in accordance with the Contract Documents.

6.2.2 Time is of the essence with regard to the obligations of the Contract Documents.

6.2.3 Unless instructed by Owner in writing, Private Entity shall not knowingly commence the Work before the effective date of insurance required to be provided by Private Entity, and in no event prior to receipt of certifications required by § 14.24 (Crimes Against Children).

6.3 **DELAYS AND EXTENSIONS OF TIME.**

6.3.1 If the critical path of Private Entity's work is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Private Entity, Private Entity shall be entitled to an equitable extension of the Date of Substantial Completion or the Date of Final Completion equal to the impact of the delay on the critical path. Examples of causes beyond the control of Private Entity include, but are not limited to, the following: (a) acts or omissions of Owner or Other Contractors; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials or concealed or unknown conditions for which Private Entity is entitled to an increase in the Contract Time or GMP as provided in this Agreement; (d) delay authorized by Owner pending dispute resolution or suspension by Owner; (e) fire; (f) Terrorism; (g) epidemics; (h) adverse governmental actions (including those caused by the impact of tariffs); (i) unavoidable accidents or circumstances; and (j) Unusual Weather. Private Entity shall process any requests for equitable extensions of the Date of Substantial Completion or the Date of Final Completion in accordance with the provisions of ARTICLE 9.

6.3.2 Private Entity shall be entitled to an equitable adjustment in the GMP for additional costs incurred due to delays caused by items (a) through (c) immediately above, subject to the terms and conditions of this Agreement.

6.3.3 If delays to the Project are encountered for any reason, the Parties agree to take reasonable steps to mitigate the effect of such delays.

6.3.4 In addition to the requirements of § 9.6, it shall be a condition precedent to the Private Entity's right to an extension of time or other relief for delays that it provide a written notice of the delaying event within five (5) Days of the date on which it first becomes aware or reasonably should have become aware of the condition or event giving rise to the claim for the delay, provided that notice for claims related to Unusual Weather based a series of weather events that collectively represent Unusual Weather may be provided within five (5) Days of the last day of the month in which such weather events occurred. Such notice shall be conspicuously labeled as a "Notice of Delay," and identify the source of the delay and identify the activities impacted by the condition or event.

6.4 ACCELERATION. If the Private Entity is behind schedule and not entitled to an increase in the Contract Time under this Agreement, then it shall take all necessary steps to accelerate the schedule to meet the Substantial and Final Completion Dates required by the Contract without an increase in the GMP. If the Private Entity is entitled to an increase in the Contract Time, then the Owner, at its sole election, may direct the Private Entity to accelerate the Work by any available means to overcome the amount of the delay for which Private Entity is entitled to an increase in the Contract Time. In such case, the Private Entity shall accelerate the Work as directed by the Owner and shall be entitled to an increase in the Contract Sum equal to the costs incurred plus Private Entity's Fee on such costs to the extent necessary to overcome the delay for which Private Entity would otherwise be entitled to an increase in the Contract Time.

6.5 LIQUIDATED DAMAGES.

6.5.1 The Parties agree on the following provisions for imposition of liquidated damages.

6.5.1.1 SUBSTANTIAL COMPLETION FOR THE NEW SCHOOL. Private Entity understands that if the Date of Substantial Completion for the New School, subject to adjustments as provided for in the Contract Documents, is not attained, Owner will

suffer damages which are difficult to determine and accurately specify. Private Entity agrees that if the Date of Substantial Completion is not attained, Private Entity shall pay Owner Two Thousand Dollars (\$2,000) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion through July 23, 2021. If the date for Substantial Completion as it may be amended does not extend beyond July 23, 2021 and Private Entity does not achieve Substantial Completion by July 23, 2021, then Private Entity shall pay Owner Ten Thousand Dollars (\$10,000) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion after July 23, 2021. If the date for Substantial Completion is not extended beyond the start of the 2021-2022 school year, and the Private Entity does not achieve Substantial Completion in time for school for start in the New School, then, in addition to any liquidated damages, the Private Entity agrees to forego its share of the shared savings.

6.5.1.2 For purposes of calculating liquidated damages for Substantial Completion of the New School, Substantial Completion shall be limited to use of the New School (including peripheral areas such as parking lots needed for the convenient use thereof), but does not include demolition and site restoration of the existing George Mason High School or the completion of any athletic fields or other facilities that are dependent on completion of the demolition and site restoration of the existing George Mason High School. Liquidated damages shall not be assessed for delays based on time for the USGBC to process LEED Certification.

6.5.2 SUBSTANTIAL COMPLETION FOR DEMOLITION AND SITE STABILIZATION OF THE EXISTING SCHOOL. Private Entity understands that if the Date of Substantial Completion established by the GMP Amendment for demolition of the existing George Mason High School and site stabilization is not attained, Owner will suffer damages which are difficult to determine and accurately specify. Private Entity agrees that if the Date of Substantial Completion is not attained; Private Entity shall pay Owner Three Thousand Dollars (\$3,000) as liquidated damages for each Day that Substantial Completion extends beyond the Date of Substantial Completion established in the GMP Amendment as it may be adjusted by subsequent Change Order.

6.5.3 Liquidated damages for Substantial Completion shall be capped at 50% of Private Entity's Fee.

6.5.4 The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the Date of Substantial Completion. Private Entity hereby agrees to waive any right to object to the liquidated damages under this § 6.5.1 as a penalty.

6.5.5 If there are any Work items necessary for Substantial Completion that cannot be completed due to climatic or other conditions for which the Private Entity is not responsible, then the Private Entity shall provide a list of such items to the Owner prior to the Substantial Completion Date with an explanation of why they cannot be completed and an estimate of when Work on those items can start. Provided that Private Entity promptly commences Work on such items when conditions allow, liquidated damages shall not be assessed with respect to the failure of the Private Entity to complete properly listed items by the Substantial Completion Date.

6.5.6 The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the Date of Substantial Completion. Private Entity hereby agrees to waive any right to object to the liquidated damages under this § 6.5 as a penalty.

6.6 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES. Except for damages mutually agreed upon by the Parties as liquidated damages and excluding losses covered by insurance required by the Contract Documents (provided that Private Entity shall have no obligation to pay until payment is made by the insurance carrier), the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement. Owner agrees to waive damages including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of reputation, or insolvency. Private Entity agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination.

6.6.1 The Parties shall require similar waivers in contracts with Subcontractors and Other Contractors retained for the Project.

ARTICLE 7 PAYMENT FOR DESIGN PHASE SERVICES.

7.1 DESIGN PHASE PAYMENTS.

7.1.1 To the extent required by Law, the cost of services performed directly by Design Professional is computed separately and is independent from Private Entity's compensation for Work or services performed directly by Private Entity; these costs shall be shown as separate items on applications for payment. If any Design Professional is retained by Private Entity, the payments to Design Professional shall be as detailed in a separate agreement between Private Entity and Design Professional.

7.1.2 Owner shall pay Private Entity for design services performed during the Design Phase, including preparation of a GMP Proposal, and any work by design-build subcontractors, provided that in no event shall Private Entity be entitled to compensation in excess of Six Million Five Hundred Thousand Dollars (\$6,500,000) prior to the next tranche of bond funding, currently scheduled in June 2019 or if Owner exercises its right to terminate this contract for convenience prior June 28, 2019. The Fee Schedule for preconstruction services is attached as Exhibit F.

7.1.3 Compensation for Design Phase services, as part of the Work, shall include Private Entity's Fee, paid in proportion to the services performed, subject to adjustment.

7.1.4 No later than fifteen (15) Days after receipt of an application for payment, Owner shall give written notice to Private Entity of Owner's acceptance or rejection, in whole or in part, of such application for payment, indicating the reason for its rejection. If the Parties cannot agree on the amount of the application, Owner shall pay the undisputed amount due on a payment application, no later than thirty (30) Days after accepting such application. Any items rejected by Owner shall be due and payable when the reasons for the rejection have been removed.

7.1.5 If Owner fails to pay Private Entity at the time payment of any amount becomes due, then Private Entity may, at any time thereafter, upon serving written notice that the Work will be stopped within seven (7) Days after receipt of the notice by Owner, and after such seven (7) Day period, stop the Work until payment of the amount owing has been received.

7.1.6 Payments due pursuant to § 7.1.4 may bear interest from the date payment is due at the prime rate prevailing at the location of Project, but in no event at a rate exceeding one percent per month.

7.2 CONSTRUCTION PHASE PAYMENTS.

7.2.1 Owner shall pay Private Entity for Work performed following the commencement of the Construction Phase on the following basis:

7.2.1.1 the Cost of the Work as allowed in ARTICLE 8; and

7.2.1.2 Private Entity's Fee paid in proportion to the services performed subject to adjustment.

7.2.2 The compensation to be paid under this section shall be limited to the GMP established in Amendment 1, which may be adjusted under ARTICLE 9.

7.2.3 Payment for Construction Phase services shall be as set forth in ARTICLE 10. If Design Phase services continue to be provided after construction has commenced, Private Entity shall continue to be compensated as provided in § 7.1, or as mutually agreed.

7.3 PRIVATE ENTITY'S FEE. Subject to adjustment as provided in § 7.4, Private Entity's Fee shall be as follows: Three and one-half Percent (3.5%) of the Cost of the Work, which may be converted to a lump sum at the time the GMP is established.

7.4 ADJUSTMENT IN PRIVATE ENTITY'S FEE. Adjustment in Private Entity's Fee shall be made as follows:

7.4.1 For changes in the Work as provided in ARTICLE 9, Private Entity's Fee shall be adjusted as follows: Three and one-half Percent (3.5%) of the Cost of the Work, provided that there shall be no Fee on changes paid as part of the Owner Controlled Contingency. If the Owner Controlled Contingency is increased above the amount set forth in the GMP Amendment, then the Private Entity shall be entitled to Fee on work performed in Owner Controlled Contingency above the amount set forth in the GMP Amendment.

7.4.2 Except as provided elsewhere in this Agreement, Private Entity may seek an equitable adjustment in Private Entity's Fee to compensate Private Entity for increased costs not caused by Private Entity, pursuant to ARTICLE 9; and

7.4.3 If Private Entity is placed in charge of managing the replacement of an insured loss, Private Entity shall be paid an additional fee in the same proportion that Private Entity's Fee bears to the estimated Cost of the Work for the replacement, subject to receipt of such fee from insurance proceeds.

ARTICLE 8 COST OF THE WORK

Owner agrees to pay Private Entity for the Cost of the Work, provided that the sum of the Cost of the Work payable under this ARTICLE 8 and Private Entity's Fee shall not exceed the GMP, as it may be amended by Change Order, and if the Parties are not able to agree on a GMP, the total sum paid to the Private Entity shall not exceed the CCL.

8.1 COST ITEMS FOR DESIGN PHASE SERVICES.

8.1.1 Compensation for Design Phase services as provided in § 7.1.

8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES. Except as otherwise expressly provided herein, the following Items shall be reimbursable Costs of the Work:

8.2.1 Wages for labor directly employed by Private Entity performing the Work.

8.2.2 Salaries of Private Entity's employees when stationed at the field office to the extent necessary to complete the applicable Work, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office as mutually agreed by the Parties in writing.

8.2.3 Cost of employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under Private Entity's standard personnel policy, insofar as such costs are paid to employees of Private Entity who are included in the Cost of the Work under § 8.2.1 and § 8.2.2.

8.2.4 Reasonable transportation, travel, hotel, and moving expenses of Private Entity's personnel incurred in connection with the Work.

8.2.5 Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, transportation, storage, and handling.

8.2.6 Payments made by Private Entity to Subcontractors for Work performed in accordance with the Subcontract terms.

8.2.7 Fees and expenses for design services procured or furnished by Private Entity except as provided by the Design Professional and compensated in § 7.1.

8.2.8 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed, that remain the property of Private Entity.

8.2.9 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, including installation, repair, and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rental costs shall not be reimbursable if the equipment is rented from Private Entity or its affiliates, subsidiaries, or related parties unless Private Entity demonstrates that such rental shall be in the best interests of the Project and the terms and conditions of the rental are agreed to in a change order.

8.2.10 Cost of the premiums for all insurance and surety bonds which Private Entity is required to procure or deems necessary, and approved by Owner, including any additional premium incurred as a result of any increase in the GMP.

8.2.11 Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which Private Entity is liable.

8.2.12 Permits, fees, licenses, tests, and royalties.

8.2.13 Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective Work or redesign during the Construction Phase and for a one-year period following the Date of Substantial Completion, provided that such costs are charged prior to Final Payment, provided that deductibles under any program of Subcontract Default Insurance shall not be reimbursable costs of the Work, and deductibles on other insurance shall be limited as set forth in ARTICLE 11.

8.2.14 All costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office.

8.2.15 All water, power, and fuel costs necessary for the Work.

8.2.16 Cost of removal of all hazardous and non-hazardous substances, debris, and waste materials, except for such pre-existing hazardous substances for which Owner is responsible for removal under § 2.16, unless such removal has been added by Change Order.

8.2.17 Reasonable attorney's fees, consultant, and other costs incurred to complete permitting and to mitigate Subcontractor claims on the Project, but no such fees to the extent they involve any conflict between the Owner and the Private Entity.

8.2.18 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in Private Entity's Fee, which are reasonably inferable from the Contract Documents.

8.3 DISCOUNTS. All discounts for prompt payment shall accrue to Owner to the extent such payments are made directly by Owner or Owner advances funds to obtain the benefit of such discounts. To the extent payments are made with funds of Private Entity, cash discounts shall accrue to Private Entity. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

ARTICLE 9 CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished, without invalidating this Agreement, by Change Order, Construction Change Directive, or a minor change in the Work, subject to the limitations stated in the Contract Documents.

9.1 CHANGE ORDERS.

9.1.1 Owner may order changes in the Work within the general scope of the Contract Documents consisting of additions, deletions, or other revisions to the GMP or the estimated

cost of the Work, compensation for Design Phase services, Private Entity's Fee, or the Date of Substantial Completion or the Date of Final Completion being adjusted accordingly. All such changes in the Work shall be authorized by applicable Change Order and processed in accordance with this article.

9.1.2 Each adjustment in the GMP or estimated Cost of the Work resulting from a Change Order shall clearly separate the amount attributable to compensation for Design Phase services, other Cost of the Work, and Private Entity's Fee.

9.1.3 The Parties shall negotiate an appropriate adjustment to the GMP or the estimated Cost of the Work, compensation for Design Phase services, Private Entity's Fee, or the Date of Substantial Completion or the Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the GMP, the estimated Cost of the Work, compensation for Design Phase services, Private Entity's Fee, or the Date of Substantial Completion or the Date of Final Completion shall not be unreasonably withheld.

9.1.4 Private Entity shall not perform changes in the Work until a Change Order has been executed or Construction Change Directive has been issued.

9.2 CONSTRUCTION CHANGE DIRECTIVES.

9.2.1 Owner may issue a Construction Change Directive directing a change in the Work before agreeing on an adjustment, if any, in the GMP, estimated Cost of the Work, Private Entity's Fee, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate, the compensation for Design Phase services. The Owner may also direct Private Entity to perform Work that Owner believes is not a change. If the Parties disagree that the Interim Directed Work is within the scope of the Work, Private Entity shall perform the disputed Work. If the Owner directs Private Entity to perform Interim Work that the Owner believes to be within the scope of the Work, then it shall be a condition precedent to the Private Entity's right to recover costs for such Work that that Private Entity provide Owner with written notice of its disagreement and the basis thereof with a Notice of Intent to file a claim for such Work, along with a good faith estimate of the costs to be claimed. During the performance of such disputed work, the Private Entity shall maintain contemporaneous records to support any claim for additional costs or time arising from disputed Work. No such Construction Change Directive shall be effective unless it is issued in a signed writing by the Owner's Representative. Electronic signatures shall be sufficient. Owner shall not be liable for costs incurred in performance of a Construction Change Directive to the extent those costs exceed the authority of the Owner's Representative unless (1) Private Entity notifies the Owner in writing that the costs will exceed that authority, and (2) such additional expenditure is approved by the School Board.

9.2.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP, estimated Cost of the Work, Private Entity's Fee, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate the compensation for Design Phase services, arising out of the Construction Change Directive. As the changed Work is performed, Private Entity shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Construction Change Directive. If there is a dispute as to the cost to Owner, Owner shall pay Private Entity only the undisputed costs less any retainage, and the Parties reserve their rights as to the disputed amount. Private Entity's receipt of

payment for the disputed Work does not prejudice its right to receive full payment for the disputed Work should it be determined that the disputed Work is not within the scope of the Work. Undisputed amounts may be included in applications for payment and shall be paid by Owner in accordance with this Agreement.

9.2.3 When the Parties agree upon the adjustments in the GMP, estimated Cost of the Work, Private Entity's Fee, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate the compensation for Design Phase services, for a change in the Work directed by a Construction Change Directives, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Construction Change Directives on which Owner and Construction Manager have reached agreement on the GMP or the Date of Substantial Completion or Date of Final Completion issued since the last Change Order.

9.3 MINOR CHANGES IN THE WORK.

9.3.1 Subject to prior written approval by the Owner, Private Entity may make minor changes in the design and construction of the Project consistent with the intent of the Contract Documents which do not involve an adjustment in the GMP, estimated Cost of the Work, Private Entity's Fee, the Date of Substantial Completion, or the Date of Final Completion, and do not materially and adversely affect the design of the Project, the quality of any of the materials or equipment specified in the Contract Documents, the performance of any materials, equipment, or systems specified in the Contract Documents, or the quality of workmanship required by the Contract Documents.

9.3.2 Private Entity shall promptly inform Owner in writing of any such changes and shall record such changes on the Design-Build Documents maintained by Private Entity.

9.4 CONCEALED OR UNKNOWN SITE CONDITIONS. If a condition encountered at the Worksite is (a) a subsurface or other physical condition materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Private Entity shall stop affected Work after the concealed or unknown condition is first observed and give prompt written notice of the condition to Owner. Owner shall investigate and then issue a Construction Change Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Private Entity is to proceed. Any change in the GMP, estimated Cost of the Work, Private Entity's Fee, and the dates of Substantial and Final Completion as a result of the condition, including any dispute about its existence or nature, shall be determined as provided in this article. For purposes of this section a condition is "unknown" if the Private Entity had no actual knowledge of the condition and reasonably would not have had such knowledge had it performed its duties under § 2.6.1 with reasonable diligence. Notwithstanding anything to the contrary in the Proposal regarding rock removal, rock or other concealed conditions indicated through Private Entity's Geotechnical investigation consistent with the provisions of this Agreement shall be included in the GMP.

9.5 DETERMINATION OF COST.

9.5.1 An increase or decrease in the GMP or estimated Cost of the Work resulting from a change in the Work shall be determined by one or more of the following methods:

9.5.1.1 unit prices set forth in this Agreement or as subsequently agreed; or

9.5.1.2 a mutually accepted, itemized lump sum; or

9.5.1.3 by cost, including general conditions and a fee increase if the Change Order is an additive change.

9.5.2 If an increase or decrease in GMP or Contract Time cannot be agreed to as set forth in § 9.5.1 above, and Owner issues a Construction Change Directive, the cost of the change in the Work shall be determined by the Cost of the Work expense incurred and savings realized in the performance of the Work resulting from the change. Private Entity shall maintain a documented, itemized accounting evidencing the Cost of Work expenses and savings.

9.5.3 If unit prices are indicated in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to Owner or Private Entity, such unit prices shall be equitably adjusted.

9.5.4 The maximum markup on Work performed by Subcontractors is 10%. If Work is performed by a Sub-subcontractor of any tier, the maximum cumulative Subcontractor markup shall not exceed 15%.

9.6 CLAIMS FOR ADDITIONAL COST OR TIME. For any claim for an increase in the GMP, estimated Cost of the Work, Private Entity's Fee, and the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design Phase services, Private Entity shall give Owner written notice of the Private Entity's intention to file a claim at the time of the occurrence or beginning of the Work upon which the claim is based. Except in an emergency, notice shall be given before proceeding with the Work. Private Entity shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, provided that if the costs are not definable within fourteen (14) Days after the giving of the notice, Private Entity may provide a good faith estimate of such costs with its claim and supplement the claim with actual costs within 21 Days of when those costs are known. Owner shall respond in writing denying or approving Private Entity's claim promptly after receipt of Private Entity's complete claim documentation. If the Owner believes more information or documentation is needed to respond to the claim, it shall request such information promptly after receipt of the claim. Owner's failure to respond to a claim shall be deemed a denial of Private Entity's claim. Any change in the GMP, estimated Cost of the Work, Private Entity's Fee, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate the compensation for Design Phase services, resulting from such claim shall be authorized by Change Order. All claims for an extension of time shall be supported with a schedule analysis identifying the impact on the critical path of the Work based on the most recent schedule update.

9.7 CHANGES NOTICE. Owner may direct Private Entity to perform incidental changes in the Work upon concurrence with Private Entity that such changes do not involve adjustments in the Cost of the Work or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Owner shall initiate an incidental change in the Work by issuing a Construction Change Directive.

ARTICLE 10 PAYMENT FOR CONSTRUCTION PHASE SERVICES

10.1 PROGRESS PAYMENTS.

10.1.1 On the last Day of each month after the Construction Phase has commenced, Private Entity shall submit to Owner an application for payment consisting of the Cost of the Work performed up to the last Day of the month, along with a proportionate share of Private Entity's Fee. Prior to submission of the next application for payment, Private Entity shall furnish to Owner a statement accounting for the disbursement of funds received under the previous application. The extent of such statement shall be as agreed upon between Owner and Private Entity.

10.1.2 Within fifteen (15) Days after receipt of each monthly application for payment, Owner shall give written notice to Private Entity of Owner's acceptance or rejection, in whole or in part, of such application for payment. Within thirty (30) Days of receipt of such application, Owner shall pay directly to Private Entity the appropriate amount for which application for payment is made, less amounts previously paid by Owner. If such application is rejected in whole or in part, Owner shall indicate the reasons for its rejection. If Owner and Private Entity cannot agree on a revised amount then, Owner shall pay Private Entity only the appropriate amount for those items not rejected by Owner for which application for payment is made, less amounts previously paid by Owner. Those items rejected by Owner shall be due and payable with the next payment application after the reasons for the rejection have been removed.

10.1.3 If for any reason not the fault of Private Entity, Private Entity does not receive a progress payment from Owner within seven (7) Days after the time such payment is due, then Private Entity, upon giving seven (7) Days' written notice to Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Private Entity has been received. If Private Entity incurs costs or is delayed resulting from shutdown, delay, and start-up, Private Entity may seek an equitable adjustment in compensation, time, or both, under ARTICLE 9.

10.1.4 Payments due but unpaid pursuant to § 10.1.2, less any amount retained pursuant to the provisions of this Agreement may bear interest from the date payment is due at the prime rate prevailing at the place of the Project, but in no event at a rate exceeding one percent per month.

10.1.5 Private Entity warrants and guarantees that title to all Work, materials, and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to Owner upon receipt of such payment by Private Entity, free and clear of all liens, claims, security interests, or encumbrances, hereinafter referred to as liens.

10.1.6 Owner's progress payment, occupancy, or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

10.1.7 Upon Substantial Completion of the Work, Owner shall pay Private Entity the unpaid balance of the Cost of the Work, compensation for Design Phase services, and Private Entity's Fee, less (a) one hundred and fifty percent (150%) of the cost of completing any unfinished items as agreed to between Owner and Private Entity, (b) any liquidated damages that may be assessed by Owner, and (c) any amounts that may be withheld pursuant to § 10.2 below.

10.1.8 STORED MATERIALS AND EQUIPMENT. Unless otherwise provided in the Contract Documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite, including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on submission by Private Entity of bills of sale and proof of required insurance, or such other procedures satisfactory to Owner to establish the proper valuation of the stored materials and equipment, Owner's title to such materials and equipment, and to otherwise protect Owner's interests therein, including transportation to the Worksite. All such materials shall be segregated from other materials held by the supplier and clearly identified as belonging to the Owner.

10.1.9 RETAINAGE. From each progress payment made prior to the time of Substantial Completion, Owner may retain ten percent (10%) of the amount otherwise due after deduction of any amounts as provided in the Agreement. Upon fifty percent (50%) completion, retention will be reduced to five percent (5%) of the amount otherwise due after deduction of any amounts as provided in this Agreement. Owner may release retainage on that portion of the Work a Subcontractor has completed, in whole or in part, and which Work Owner has accepted. Provided that Private Entity has provided a Performance Bond acceptable to Owner and is not behind schedule or otherwise in breach of this Agreement, Owner shall not hold retainage on Private Entity's Fee, Designer's Fee, or General Conditions Costs.

10.2 ADJUSTMENT OF PRIVATE ENTITY'S APPLICATION FOR PAYMENT. Owner may adjust or reject an application for payment or nullify a previously approved Private Entity application for payment, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Private Entity is responsible under this Agreement:

10.2.1 Private Entity's repeated failure to perform the Work as required by the Contract Documents;

10.2.2 Except as accepted by the insurer providing Builder's Risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by Private Entity to Owner or others to whom Owner may be liable;

10.2.3 Private Entity's failure to properly pay either Design Professional, Subcontractors, or Suppliers for labor, materials, equipment, or supplies furnished in connection with the Work, provided that Owner is making payments to Private Entity in accordance with this Agreement;

10.2.4 Rejected or Defective Work not corrected in a timely fashion;

10.2.5 Reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Date of Substantial Completion or the Date of Final Completion, and that the unpaid balance of the GMP is not sufficient to offset any direct damages that may be sustained by Owner as a result of the anticipated delay caused by Private Entity;

10.2.6 Reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work;

10.2.7 Uninsured third-party claims involving Private Entity or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Private Entity furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established; and

10.2.8 No later than fifteen (15) Days after receipt of an application for payment, Owner shall give written notice to Private Entity, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by Private Entity in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

10.3 OWNER OCCUPANCY OR USE OF COMPLETED OR PARTIALLY COMPLETED WORK. Owner may use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) or sureties consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work. Private Entity shall not unreasonably withhold consent to partial occupancy or use. Owner shall not unreasonably refuse to accept partial occupancy or use, provided such partial occupancy or use is of value to Owner. Prior to taking partial occupancy, the Owner's Representative shall furnish the Private Entity an itemized list of Work remaining to be performed or corrected. Failure to list an item will not relieve the Private Entity of the responsibility for complying with the terms of the Contract Documents. Responsibility for damage to the Work within the partially occupied area shall be transferred to the Owner for any such partial occupancy or use.

10.4 SHARED SAVINGS. If at Final Completion, Cost of the Work plus Private Entity's Fee is less than the GMP, the difference shall be shared as follows: The savings, if any, shall accrue seventy-five percent (75%) to Owner and twenty-five percent (25%) to Private Entity, provided that Private Entities' share of the Savings shall not exceed Five Hundred Thousand Dollars (\$500,000). The shared savings shall be calculated and paid as part of final payment. Private Entity shall not be entitled to any portion of the shared savings if either Party terminates this Agreement.

10.5 FINAL PAYMENT.

10.5.1 Final Payment, consisting of the unpaid balance of the Cost of the Work, compensation for Design Phase services, Shared Savings (if any) and Private Entity's Fee, shall be due and payable when the Work is fully completed. Before issuance of final payment, Owner may request satisfactory evidence that all payrolls, material bills, and other indebtedness connected with the Work have been paid or otherwise satisfied, and that no other conditions for withholding payment exist.

10.5.2 In making final payment Owner waives all claims except for:

10.5.2.1 outstanding liens or claims;

10.5.2.2 improper workmanship or defective materials;

10.5.2.3 Work not in conformance with the Contract Documents; and

10.5.2.4 Terms of any special warranties required by the Contract Documents.

10.5.3 In accepting final payment, Private Entity waives all claims, but nothing in this provision shall be construed as a waiver of indemnity and contribution rights (if any) involving third party claims for bodily injury (including death) and property damage.

ARTICLE 11 INDEMNITY, INSURANCE, AND BONDS

11.1 INDEMNITY.

11.1.1 INDEMNITY FOR INJURY TO PERSONS OR PROPERTY. To the fullest extent permitted by law, Private Entity shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees (the "Indemnitees") from all claims for bodily injury, death and property damage other than to the Work itself, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Private Entity, Subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Private Entity shall not be required to indemnify or hold harmless any Indemnitee for the sole negligence or intentionally wrongful acts or omissions of that Indemnitee.

11.1.2 NO LIMITATION ON LIABILITY. In any and all claims against the Indemnitees by any employee of Private Entity, anyone directly or indirectly employed by Private Entity or anyone for whose acts Private Entity may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Private Entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

11.1.3 INDEMNITY FOR SUBCONTRACTOR AND SUPPLIER CLAIMS. To the fullest extent permitted by law, Private Entity shall defend and indemnify Indemnitees from all claims directly asserted by Subcontractors or Suppliers of any tier on the Project, provided that nothing in this indemnity shall prohibit Private Entity from pursuing claims on behalf of its Subcontractors to the extent the Private Entity has the right to maintain any such claim against the Owner.

11.2 PRIVATE ENTITY'S LIABILITY INSURANCE.

11.2.1 Before commencing the Work and as a condition precedent to payment, Private Entity shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, Contractor's Pollution Liability ("CPL"), and Commercial General Liability Insurance ("CGL"). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Private Entity shall maintain completed operations liability insurance for five years after Substantial Completion. Private Entity's Employers' Liability, Business Automobile Liability, CPL, and CGL policies shall be written with at least the following limits of liability:

11.2.1.1 Worker's Compensation Insurance as required by law;

11.2.1.2 Employers' Liability Insurance;

(a) \$500,000 bodily injury by accident per accident;

(b)\$500,000 bodily injury by disease policy limit;

(c)\$500,000 bodily injury by disease per employee;

11.2.1.3 Business Automobile Liability Insurance per accident \$1,000,000;

11.2.1.3.1 Medical Payments \$5,000;

11.2.1.3.2 Uninsured Motorist \$1,000,000;

11.2.1.3.3 Hired, Rented and Leased Autos \$1,000,000;

11.2.1.3.4 Non-Owned Autos \$1,000,000; and

11.2.1.3.5 Retention or Deductible None;

11.2.1.4 Contractor's Pollution Liability of \$5,000,000 for each loss/aggregate; and

11.2.1.5 Commercial General Liability Insurance shall be provided with the following minimum limits:

(a) Per occurrence \$1,000,000;

(b) General aggregate \$2,000,000;

(c) Products/completed operations aggregate \$2,000,000; and

(d) Personal and advertising injury limit \$1,000,000;

11.2.1.6 Commercial Crime Insurance of \$1,000,000, which shall cover employees responsible to disburse funds to pay project costs against employee dishonesty, forgery, alteration, or computer fraud;

11.2.1.7 Aircraft Liability. If the Work involves the operation, maintenance or use of any aircraft, including unmanned aircraft systems, Subcontractor shall procure and maintain or cause to be procured and maintained Aircraft Liability insurance for loss or damage arising out of or related to the use of any aircraft used in the performance of the Work. Such insurance shall have passenger liability limits of Five Million Dollars (\$5,000,000) per seat and provide coverage in a combined single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence, including bodily injury, property damage and passenger liability. Such Aircraft Liability coverage shall be endorsed to include Subcontractor, Contractor, Owner and all others required by the Agreement to be additional insureds;

11.2.1.8 Cyber Security Insurance of One Million Dollars (\$1,000,000) for loss to the Owner due to data security and privacy breach including costs of investigation of a potential or actual breach of confidential information;

11.2.1.9 Excess Third-party Liability (over Commercial General Liability, Business Auto and Employer's Liability):

11.2.1.9.1 General Aggregate	\$5,000,000;
Products-Completed Operations	\$5,000,000;
Each Incident Limit	\$5,000,000;
11.2.1.9.2 Retention	\$10,000 Maximum;

11.2.1.10 If the Private Entity is providing insurance with policies that have greater limits than are set forth in this § 11.2, then the limits of required insurance under this Agreement shall be equal to the limits contained in the policies providing coverage, and if the coverage provided in such policies is broader than the coverage expressly specified in this ARTICLE 11, then the broader coverages provided by the policy shall be required by this Agreement. Private Entity shall not voluntarily reduce its policy limits or narrow its coverages without the express written agreement of the Owner, which agreement shall not be unreasonably withheld.

11.2.2 INSURANCE POLICIES. All liability insurance policies with the exception of Professional Liability shall be written on an occurrence basis and the CGL coverage shall be written on the ISO form CG 00 01 or equivalent, including products and completed operations. Policies may not include XCU exclusions.

11.2.3 All policies shall be primary and non-contributory with respect to any other insurance available to an additional insured and include Waiver of Subrogation with endorsement ISO CG 24 04 or its equivalent.

11.2.4 All insurance coverages shall be maintained in force for at least one (1) year after the Owner has accepted the work or has made the final payment, whichever is later, and Certificates of Insurance will continue to be sent to the Chief Officer - Legal Services of the Owner to confirm the coverages are in place and are valid, provided that the completed operations coverage provided by the CGL insurance policy shall be maintained with total limits of insurance applying on a project specific basis for a period of five years after final completion and acceptance of the project by the Owner.

11.2.5 Coverage shall not include limitations or exclusions related to or arising from construction-related Activities or exclusionary endorsements for "Limitation of Coverage to Designated Premises or Project," ISO CG 21 44 07 98, or its equivalent.

11.2.6 Employers' Liability, Business Automobile Liability, and CGL coverage required under § 11.2.1 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

11.2.7 Private Entity shall maintain in effect all insurance coverage required under § 11.2.1 with insurance companies lawfully licensed and admitted to do business in the Commonwealth of Virginia with an A.M. Best Rating of at least "A" and a financial rating of at least VIII, or equivalent rating assigned by a similar rating agency acceptable to Owner. If Private Entity fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such coverage and charge the expense to Private Entity or terminate this Agreement.

11.2.8 Each insurance policy will include the Commonwealth of Virginia's standard Notice of Cancellation requirement as reflected in all insurance policies with a minimum of thirty (30) Days' notice of cancellation, non-renewal or material change in coverage, limits,

deductibles, exclusions, terms and conditions and all other aspects of the placements that would have an effect on the insurance coverages. All changes are to be in an outline format and sent to the Owner's Chief Officer - Legal Services at the Owner's Administrative Offices by Certified Mail. Copies of all Certificates of Insurance illustrating the minimum insurance requirements will be presented to the Owner's Chief Officer - Legal Services within thirty (30) Days of the start of any work under this contract and all insurance policy renewals will be presented to the Owner within thirty (30) Days of the individual insurance policies renewal date.

11.2.9 Prior to commencing the Work and upon renewal or replacement of the insurance policies, Private Entity shall furnish Owner with certificates of insurance on Acord form until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under § 11.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Private Entity shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

11.2.9.1 Certified Copies of the CGL; Business Auto Policy (BAP); Workers' Compensation and Employers Liability (WC); Excess Liability (Umbrella); and the Builders Risk Policies procured by Private Entity are to be sent to the Chief Officer - Legal Services of Owner within thirty (30) Days of the start of any work. Copies of these insurance contracts are to be sent to the Chief Officer - Legal Services of the Owner upon their renewal dates in addition to the Certificates of Insurance. All endorsements, warranties, etc. that are included within the insurance contracts are to be attached and included. These policies shall be redacted to exclude premiums and deductibles and shall be provided subject to an appropriate confidentiality agreement.

11.2.10 If the Owner has any objection to the insurance coverages afforded by or to any other provision of the insurance required to be purchased and maintained by the Private Entity on the basis that such insurance placements do not comply with this Article or the Supplemental Conditions, the Owner will notify the Private Entity in writing thereof within 15 Days of the start of any work. Private Entity and Owner will discuss the objections and the situation will be negotiated between the two Parties, with the Owner's Insurance Consultant, legal advisor, Chief Officer - Legal Services, and/or Insurance Agent/Pool being included in the discussions and negotiations as necessary. This provision for objection is included herein for the sole purpose of setting forth a mechanism to discuss coverage issues, and the Owner's failure to object to coverages provided shall not constitute acceptance of the insurance provided or a waiver of Owner's right to insist upon compliance with this provision.

11.3 SUBCONTRACTOR LIABILITY INSURANCE.

11.3.1 Prior to allowing any Subcontractor to start Work on the Project, Private Entity shall obtain Certificates of Insurance for all Subcontractors evidencing that such Subcontractor maintains Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and CGL Insurance with limits not less than those required by this Agreement. All such certificates shall name as Additional Insureds all persons required to be named as Additional Insureds on Private Entity's Policies and contain a provision that the insurance company or its designee must give Owner written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 business Days after cancelation of coverage by the

insurance company. For good cause shown, Owner may agree in writing to reduced Subcontractor insurance limits.

11.4 PROPERTY INSURANCE.

11.4.1 Unless otherwise directed in writing by Owner, before starting the Work, Private Entity shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full replacement cost of the Project, including adjacent and existing structures. This insurance shall: (a) name Owner, Private Entity, Subcontractors, Sub-subcontractors, Suppliers, and Design Professional as insureds; (b) be written on "all-risk" basis without any unusual exclusions and (c) insure at least against and not exclude:

11.4.1.1 the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Private Entity) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse, freezing, surface water, or mudslides however caused;

11.4.1.2 damage resulting from defective design, workmanship, or material;

11.4.1.3 coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings, plant, or structures. Coverage shall be to the extent loss or damage arises out of Constructor's activities or operations at the Project;

11.4.1.4 equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment;

11.4.1.5 testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and

11.4.1.6 physical loss resulting from Terrorism.

11.4.2 Coverages shall include soft costs, expediting and extra expense, demolition, debris removal, increased costs of construction, the operation of building laws, pollution liability, temporary buildings and trailers, underground pipes, flues, property while in transit and other real property placed below the ground, testing and startup of the completed work and compensation for the damages on a Replacement Cost Basis for the full Replacement Costs of the Real and Personal Property of the Project both above and below ground.

11.4.3 The deductible on such policy shall be reimbursable cost of the work in an amount not greater than Twenty-Five Thousand Dollars (\$25,000) per occurrence and shall be reimbursable Costs of the Work with the exception of deductibles due to U.S. Government-named windstorm, flood, or earthquake. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Private Entity has secured the consent of the insurance company or companies

providing the coverage required in this subsection. Before commencing the Work, Private Entity shall provide a copy of the property policy or policies obtained in compliance with

11.4.4 If Owner elects to purchase the property insurance required by this Agreement, including all of the same coverages and deductibles for the same duration specified in § 11.4, then Owner shall give written notice to Private Entity and the Design Professional before the Work is commenced and provide a copy of the property policy or policies obtained in compliance with this Agreement, and the GMP shall be adjusted for the Owner's costs of procuring such insurance. If the coverages in the Owner's property insurance do not meet the requirements of this contract the Private Entity shall purchase additional coverage, reimbursable as a Cost of the Work.

11.4.5 The Parties waive all rights against each other and their respective employees, agents, contractors, Subcontractors and Sub-subcontractors, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance.

11.4.6 RISK OF LOSS. Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Party obtaining and maintaining the Builder's Risk Policy pursuant to § 11.4 until the Date of Final Completion.

11.4.7 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 Work, or if after Substantial Completion of the Work (or a designated portion thereof) property insurance is to be provided on the completed work (or designated portion thereof) through a policy or policies other than those insuring the Work (or designated portion) prior to Substantial Completion, the Owner shall waive all rights in accordance with the terms of § 11.4.5 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.

11.4.8 A loss insured under the Private Entity's property insurance shall be adjusted by the Private Entity as fiduciary and made payable to the Private Entity as fiduciary for the insureds, as their interests may appear. The Private Entity shall pay Subcontractors their just shares of insurance proceeds received by the Private Entity, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.5 ADDITIONAL INSURED. The City of Falls Church, Falls Church City Public Schools, the Falls Church City School Board and their respective officers, agents, volunteers, and employees shall be named as additional insureds on all liability policies. Each policy shall contain additional insured endorsements using endorsements equivalent to ISO CG 20 10 for ongoing operations and to ISO CG 20 37 for completed operations.

11.6 ROYALTIES, PATENTS, AND COPYRIGHTS. Private Entity shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Private Entity and incorporated in the Work. Private Entity and its Design Professional shall defend, indemnify, and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Owner agrees to defend, indemnify and hold Private Entity harmless from any suits or claims of

infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by Owner.

11.7 PROFESSIONAL LIABILITY INSURANCE. Private Entity shall obtain, either itself or through Design Professional, professional liability insurance for claims arising from the negligent performance of professional services under this Agreement. Such Insurance shall be a project specific and provide coverage of not less than Five Million Dollars (\$5,000,000) per claim and in the aggregate with a deductible not to exceed Twenty-Five Thousand Dollars (\$25,000). The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by the Design Professional. This coverage shall be continued in effect for five-year(s) after the Date of Substantial Completion and may be provided through a combination of a primary policy and a Contractor's Protective Insurance policy (commonly referred to as "CPPI").

11.8 LIMIT OF LIABILITY. Nothing contained in these insurance requirements is to be construed as limiting the liability of Private Entity. Owner does not in any way represent that the coverages or the limits of insurance specified is sufficient or adequate to protect Private Entity's interests or liabilities but are merely minimums. The obligation of the Private Entity to purchase insurance herein shall not in any way limit the obligation of the Private Entity in any event and/or in the event that the Owner should suffer an injury or loss in excess of the amount recoverable through insurance.

11.9 BONDING. Private Entity shall deliver Performance and Payment Bonds in connection with the development of the Project in a form and amount satisfactory to the Owner an in compliance with Virginia Code § 2.2-4337 for those components of the project that involve construction. Such bonds shall be issued by a Treasury-listed surety admitted in Virginia reasonably acceptable to the Owner and issued in the full amount of the CCL. The form of the bond shall be reasonably acceptable to Owner. No payments shall be made until such time as the Performance and Payment Bonds are provided.

ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION

12.1 SUSPENSION BY OWNER FOR CONVENIENCE.

12.1.1 Owner may order Private Entity in writing to suspend, delay, or interrupt all or any part of the Work without cause for its convenience.

12.1.2 Adjustments caused by suspension, delay, or interruption shall be made for increases in the GMP, compensation for Design Phase services, Private Entity's Fee, or the Date of Substantial Completion or the Date of Final Completion. No adjustment shall be made if Private Entity is or otherwise would have been responsible for the suspension, delay, or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

12.2 NOTICE TO CURE A DEFAULT. If Private Entity persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work, or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards Law or orders of any public authority having jurisdiction or is otherwise guilty of a material breach of a provision of this Agreement, Private Entity may be deemed in default.

12.2.1 Owner shall give Private Entity seven (7) Days written notice to commence and to continue satisfactory correction of such default.

12.2.2 If, after receiving Owner's written notice, Private Entity fails to promptly commence and continue satisfactory correction of the default with the seven day period described above, then Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing any reasonable means; (c) withhold payment due to Private Entity; and (d) as Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge Private Entity the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

12.2.3 In the event of an emergency affecting the safety of persons or property, Owner may immediately commence and continue satisfactory correction of a default without first giving written notice to Private Entity but shall give Private Entity prompt notice.

12.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT.

12.3.1 TERMINATION BY OWNER FOR DEFAULT. Upon expiration of the Notice to Cure period in § 12.2 and absent appropriate corrective action, Owner may terminate this Agreement by written notice. Termination for default is in addition to any other remedies available to Owner under this Agreement or law. If Owner's costs arising out of Private Entity's failure to cure, including the costs to complete the Work and reasonable attorneys' fees, exceed the GMP, Private Entity shall be liable to Owner for such excess costs. If Owner's costs are less than the GMP, Owner shall reimburse Private Entity for its costs not yet paid and fee, provided that in no event may the sum of amounts paid to Private Entity and costs paid to Other Contractors under this section exceed the GMP. If Owner exercises its rights under this section, upon the request of Private Entity, Owner shall furnish to Private Entity a detailed accounting of the costs incurred by Owner.

12.3.2 If Private Entity files a petition under the Bankruptcy Code, this Agreement shall terminate if: (a) Private Entity or Private Entity's trustee rejects the Agreement; (b) a default occurred, and Private Entity is unable to give adequate assurance of required performance; or (c) Private Entity is otherwise unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

12.3.3 Owner shall make reasonable efforts to mitigate damages arising from Private Entity default and shall promptly invoice Private Entity for all amounts due pursuant to § 12.1.2.

12.4 TERMINATION BY OWNER FOR CONVENIENCE. If Owner terminates this Agreement before July 1, 2019, other than as set forth in § 12.1.2, Owner shall pay Private Entity for all Work executed plus reasonable demobilization costs, together with Private Entity's Fee on work completed, but no overhead, profit, or fee on work not performed. If the Owner terminates this Agreement, other than as set forth in § 12.1.2, and on or after July 1, 2019, Owner shall pay Private Entity for all Work executed and for all reasonable costs in cancelling approved subcontracts and work orders, and reasonable demobilization costs, together with Private Entity's Fee thereon, but no overhead, profit or Fee on Work not performed.

12.5 PPEA DEFAULT REMEDIES. Notwithstanding anything to the contrary herein, if the Owner terminates this Agreement for default, it shall have all of the rights and remedies provided pursuant to Virginia Code § 56-575.11.

12.6 TERMINATION BY PRIVATE ENTITY.

12.6.1 Seven (7) Days after Owner's receipt of Private Entity's written notice, Private Entity may terminate this Agreement, if the Work has been stopped for a ninety (90) Day period through no fault of Private Entity for any one of the following reasons: (a) under court order or order of other governmental authorities having jurisdiction; (b) as a result of the declaration of a national emergency or other governmental act emergency during which, through no act or fault of Private Entity, materials are not available; or (c) Work is suspended by Owner for Convenience.

12.6.2 In addition, upon seven (7) Days' written notice to Owner and an opportunity to cure within three (3) Days, Private Entity may terminate this Agreement if Owner:

12.6.2.1 fails to pay Private Entity in accordance with this Agreement and Private Entity stopped Work in compliance with § 10.1.3; or

12.6.2.2 otherwise materially breaches this Agreement.

12.6.3 Upon termination by Private Entity in accordance with this section, Private Entity is entitled to recover from Owner payment for all Work executed and for all reasonable costs in cancelling approved subcontracts and work orders, and reasonable demobilization costs and, in the case of breach by Owner pursuant to § 12.6.2.1, which includes but is not limited to statutory interest on late payment(s) and Contractor's fee on work not performed.

ARTICLE 13 DISPUTE MITIGATION AND RESOLUTION

13.1 WORK CONTINUANCE AND PAYMENT. Unless otherwise agreed in writing, Private Entity shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If Private Entity continues to perform, Owner shall continue to make payments in accordance with the Agreement.

13.2 DIRECT SETTLEMENT DISCUSSIONS. If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions.

13.3 MEDIATION. If direct discussions pursuant to § 13.2 do not result in resolution of the matter, and as a condition precedent to filing any action at law or equity to enforce this Agreement, the Parties shall endeavor to resolve the matter by mediation under the auspices of the McCammon Mediation Group or its successors, with the Parties to share the costs of mediation equally.

13.4 BINDING DISPUTE RESOLUTION. If the matter is unresolved after mediation, then any disputes shall be resolved by litigation. Venue for any litigation arising from this Agreement shall only be proper in the Circuit Court of Arlington County, Virginia or in the General District Court of Falls Church, Virginia if the amount in controversy is within the jurisdictional limit of such court, and all parties to this Agreement voluntarily submit to the jurisdiction and venue of such courts, regardless of the actual location of such parties. Both Parties waive trial by Jury.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 EXTENT OF AGREEMENT. Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Parties and not for the benefit of any third party.

14.2 NONDISCRIMINATION. During the performance of this Agreement, the Private Entity agrees as follows:

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

14.2.2 The Private Entity, in all solicitations or advertisements for employees placed by or on behalf of the Private Entity, will state that such Private Entity is an equal Employment Opportunity Employer.

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

14.2.4 The Private Entity will include the provisions of the foregoing Subsections 14.2.1 through 14.2.3 in every subcontract or purchase order of over Ten Thousand Dollars (\$10,000), so that the provisions will be binding upon each Subcontractor or vendor.

14.3 Pursuant to the Code of Virginia § 2.2-4343.1, be advised that the City does not discriminate against faith-based organizations.

14.4 DRUG-FREE WORKPLACE. During the performance of this Contract, the Private Entity agrees to (i) provide a drug-free workplace for the Private Entity's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Private Entity's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Private Entity that the Private Entity maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over Ten Thousand Dollars (\$10,000), so that the provisions will be binding upon each Subcontractor or vendor.

14.4.1 For the purpose of this section, "drug-free workplace" means a site for the performance of Work done in connection with a specific contract awarded to a Private Entity, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

14.4.2 The Private Entity shall post a copy of the policy in a conspicuous place at the jobsite and assure that all Private Entity, Subcontractor, and supplier personnel entering the jobsite are informed of the policy.

14.5 ASSIGNMENT. Except as to the assignment of Subcontracts, neither Party shall assign any interest in this Agreement without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other. Prohibited assignments shall be void. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other Party.

14.6 GOVERNING LAW. This Agreement shall be governed by the law of the Commonwealth of Virginia without regard to its choice of law provisions. To the extent the laws of the Commonwealth of Virginia applicable to this Project require any term or condition to be included in this Agreement, such provisions shall be deemed to be made a part hereof by reference.

14.7 SEVERABILITY. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.8 NOTICE. Unless changed in writing, Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service and also by e-mail and shall be provided to the following addresses:

To the Owner: Dr. Peter Noonan
 Superintendent
 Falls Church City Public Schools
 800 W. Broad Street, Suite 203
 Falls Church, VA 22046
 pnoonan@fccps.org

With Copies to Owner's Representative:

Deisy Brangman
Senior Project Manager
Brailsford & Dunlavey
1140 Connecticut Ave NW # 400
Washington, DC 20036
dbrangman@programmanagers.com

and

Tricia Minson
Chief Officer - Legal Services
Falls Church City Public Schools
800 W. Broad Street, Suite 203
Falls Church, VA 22046
pminson@fccps.org

To Private Entity: Emre Ozcan
Vice President
Gilbane Building Company
1100 North Glebe Road, Suite 1000
Arlington, VA 22201
eoacan@gilbaneco.com

With Copies to: Kristin Protas
Senior Legal Counsel
Gilbane Building Company
1100 North Glebe Road, Suite 1000
Arlington, VA 22201
kprotas@gilbaneco.com

14.9 NO WAIVER OF PERFORMANCE. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

14.10 TITLES. The titles given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.11 JOINT DRAFTING. As this Agreement is the product of Competitive Negotiation, the Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party but shall be construed in a neutral manner.

14.12 COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterpart.

14.13 ANNUAL APPROPRIATION AND PLAN OF FINANCE. The financial obligations of the Owner contained in this Agreement are subject to annual appropriation and availability of funds for the Project, and the Owner shall be bound under this Agreement only to the extent that there are funds available to perform its obligations hereunder. The Private Entity shall cooperate in executing any documents reasonably necessary to aid Owner in implementing its plan of finance for the Project.

14.14 FINANCIAL STATEMENTS. Private Entity agrees to provide Owner with copies of its complete and current financial statements upon reasonable written request by Owner. Such statements may be requested periodically during the Project, in accordance with Virginia Code § 56-575.9(A)(7). The Private Entity may designate such financial statements as confidential proprietary information exempt from release under the Virginia Freedom of Information Act by following the procedure for such designation indicated in the Owner's PPEA Guidelines.

14.15 COPY OF AGREEMENT TO AUDITOR OF PUBLIC ACCOUNTS. Owner shall submit a copy of this Agreement to the Virginia Auditor of Public Accounts within thirty (30) Days of its effective date as required by Virginia Code § 56-575.9(G).

14.16 APPROVAL BY THE CITY COUNCIL AS A CONDITION PRECEDENT TO AGREEMENT'S EFFECTIVENESS. It shall be a condition precedent to this Agreement's effectiveness that it first be approved by Falls Church City Council.

14.17 CERTIFICATIONS. Private Entity has executed and provided to Owner a Vendor's Certification (Exhibit H) contemporaneously with the execution of this Agreement. Private Entity shall require all Subcontractors who will perform more than Ten Thousand Dollars (\$10,000.00) of Work pursuant to this Agreement to execute this document (Exhibit H) prior to commencement of such Subcontractor's Work.

14.18 HEADINGS. The captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of this Agreement.

14.19 MINORITY & WOMEN-OWNED BUSINESS ENTERPRISE AND SMALL BUSINESS CERTIFICATION. The Private Entity shall use reasonable efforts to use minority and women-owned business enterprises and small businesses for Work on the Project. The Private Entity shall complete and submit the "Minority & Women-Owned Business Enterprise and Small Business Certification" form from time to time as requested by the Owner's Representative. Failure to complete and sign this statement is considered a material violation of the Agreement.

14.20 ENTIRE AGREEMENT. This Agreement and the attachments and exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between Private Entity and Owner concerning the Project, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. No alteration, amendment, change or addition to this Agreement shall be binding upon Private Entity or Owner unless reduced to writing and signed by each party. Private Entity's Redacted Conceptual Phase and Detailed-Phase proposals at Exhibit B are attached and incorporated by reference for purposes of convenience and providing details concerning the overall intent of the Parties. However, the incorporation of Exhibit B is not intended to elevate those portions of the Proposal above the Proposal in the Order of Precedence given to the Proposal in this Agreement.

14.21 PROMPT PAYMENT. Required Payment Provisions under Virginia Code § 2.2-4354.

14.21.1 The Private Entity shall take one of the two following actions within seven (7) Days after receipt of amounts paid to the Private Entity by the Owner for Work performed by the Subcontractor under this Agreement:

14.21.1.1 Pay the Subcontractor for the proportionate share of the total payment received from the Owner attributable to the Work performed by the Subcontractor under this Agreement; or

14.21.1.2 Notify the Owner and the Subcontractor, in writing, of its intention to withhold all or a part of the Subcontractor's payment with the reason for nonpayment.

14.21.2 The Private Entity shall provide its federal employer identification number to the Owner.

14.21.3 The Private Entity shall pay interest to the Subcontractor on all amounts owed by the

Private Entity that remain unpaid after seven (7) Days following receipt by the Private Entity of payment from the Owner for Work performed by the Subcontractor under this Agreement, except for amounts withheld as allowed in subdivision 14.21.1.2 above.

14.21.4 Unless otherwise provided under the terms of this Agreement, such interest shall accrue at the rate of one percent (1%) per month.

14.21.5 The Private Entity shall include in each of its subcontracts a provision requiring each Subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier Subcontractor.

14.21.6 The Private Entity's obligation to pay an interest charge to a Subcontractor pursuant to the payment clause above may not be construed to be an obligation of the Owner.

14.22 NO ALIENS. The Private Entity does not and shall not during the performance of this Agreement for goods and services in the Commonwealth of Virginia, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

14.23 ORGANIZATIONAL STATUS.

14.23.1 To the extent the Private Entity is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, the Private Entity shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law, and in which case the Private Entity shall provide to the Owner the Private Entity's identification number issued to it by the Virginia State Corporation Commission.

14.23.2 The Private Entity shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the contract.

14.23.3 The Owner may void this contract and any other contract with the Private Entity if the Private Entity is a business entity and the Private Entity fails to remain in compliance with the provisions of this section.

14.24 CRIMES AGAINST CHILDREN.

14.24.1 The Private Entity acknowledges that the implementation of this Agreement may require the Private Entity, the Private Entity's employees or other persons that will provide services under this Agreement, including but not limited to Private Entity and Subcontractors, to have direct contact Falls Church Public Schools students. Therefore, the Private Entity hereby certifies that neither the Private Entity, the Private Entity's employees nor any person that will provide services under this Agreement, including but not limited to Private Entity and Subcontractors, who will have direct contact with students on school property during regular school hours or during school-sponsored activities have been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child.

14.24.2 The Private Entity understands that, pursuant to Code of Virginia § 22.1-296.1.

making a materially false statement regarding offenses which are required to be included in the certification referenced above is a Class I misdemeanor and, upon conviction, the fact of such conviction shall be grounds for the revocation of the contract to provide such services and, when relevant, the revocation of any license required to provide such services. Falls Church City Public Schools shall not be liable for materially false statements regarding the certifications required under this Agreement.

14.24.3 The Private Entity shall execute and deliver to the Owner upon execution of the Agreement a certification that all persons who will provide services who may have direct contact with students on school property have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child. The Private Entity shall require Private Entity and all other Subcontractors to execute such certification prior to performing any Work.

ARTICLE 15 CONTRACT DOCUMENTS

15.1 ORDER OF PRECEDENCE. In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern, in descending order, the order of precedence set forth in § 1.2.9. If that order of precedence is not sufficient to resolve the inconsistency, conflict, or ambiguity, then the term or provision that includes the latest date shall control. Where figures are given, they shall be preferred to scaled dimensions. Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

15.2 CONTRACT DOCUMENTS COMPLEMENTARY. The Contract Documents are intended to be complementary and to be interpreted in harmony to avoid conflict if this can reasonably be accomplished.

15.3 GREATER QUANTITY AND QUALITY. The intent of the Contract Documents is to provide the greater quantity and quality in the event of a conflict.

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement by their duly authorized representatives.

Gilbane Building Company

Attest/Witness:

Jennifer A. Mack
Jennifer A. Mack

Typed or Printed Name and Title
Title Sr Project Executive

Attest/Witness:

Lisa High
Lisa High

Typed or Printed Name and Title
Title Chief Academic Officer

Approved as to form:

Patricia A. Munson

Chief Officer Legal Services

Approved as to execution:

Patricia A. Munson

Chief Officer Legal Services.

By

Gilbane Building Company

By

Emre Ozcan
Emre Ozcan, Vice President
Typed or Printed Name and

Falls Church City School Board.

By

Peter Bowman
Peter Bowman - Superintendent

Typed or Printed Name and