

**COMPREHENSIVE
AGREEMENT**

between

LANCASTER COUNTY SCHOOL BOARD

and

BRANCH BUILDS, INC.

for

DESIGN & CONSTRUCTION OF

**Combined Middle School/High School
Lancaster County, Virginia**

Date: _____

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EXHIBITS

- Exhibit A – Scope of work for Preconstruction Services
- Exhibit B – Clarifications and Assumptions
- Exhibit C – Pre-Construction Fee Schedule
- Exhibit D – Pre-Construction Schedule
- Exhibit E – GMP Amendment (TBD)
- Exhibit F – Private Entity Certification
- Exhibit G – Certification of No Crimes Against Children

COMPREHENSIVE AGREEMENT

THIS COMPREHENSIVE AGREEMENT (the "Agreement") is dated and effective as of this _____ day of _____ 2022 (the "Effective Date"), by and between the Lancaster County School Board (the "Owner"), and Branch Builds, Inc. (the "Design-Builder" or "DB") of _____.

RECITALS

NOW, THEREFORE, for and in consideration of the premises and mutual covenants hereinafter contained, and subject to the conditions herein set forth, the parties hereby covenant, agree, and bind themselves as follows:

ARTICLE 1 **DEFINITIONS**

Unless the context otherwise specifies or requires, the following definitions apply to this Agreement:

- 1.1 **Architect** means the DB's design professional firms responsible for the architectural and engineering services for the Project, including, without limitation, its design. The DB has proposed its Architects and other design professionals for the Project in its proposals to the Owner, and the DB shall use these Architects for the Project unless the Owner approves otherwise in writing.
- 1.2 **Change** means any addition to, deletion from, or modification of the Project or the Services that is made in accordance with the provisions of this Agreement. A Change may be made by a written Change Order if the Owner and the DB agree as to adjustments to the GMP, as applicable, and schedule, or unilaterally by the Owner by a written Change Directive, with any adjustments to the GMP, as applicable, and schedule, to be determined subsequently pursuant to Article 17 of this Agreement. Notwithstanding the foregoing, no Change that would result in any increase to the GMP shall be effective unless and until approved by the Owner and, in the Owner's sole discretion, by the Lancaster County Board of Supervisors.
- 1.3 **Change Directive** means a written order by the Owner, specifically identified as a Change Directive, directing a Change, which the DB shall follow.
- 1.4 **Change Order** means a Change made by a written agreement in which the Owner and the DB have indicated agreement as to the Change and adjustments to price and/or schedule due to the Change and have evidenced their agreement by executing such written agreement.
- 1.5 **Codes and Standards** means all local, state and federal statutes, regulations, ordinances, codes, laws, or other requirements applicable to the Project, including, without limitation, the most current Virginia Uniform Statewide Building Code.
- 1.6 **Construction Documents** means the Plans and Specifications that are approved by the Owner, Architects and DB.
- 1.7 **Contract Documents** means the following listed in their order of precedence:
 - a. Any written modifications to this Agreement made in accordance with this Agreement;
 - b. This Agreement, including all exhibits thereto;
 - c. Any written Change Orders made in accordance with this Agreement;
 - d. Any written Change Directives issued in accordance with this Agreement;

- e. The Construction Documents;
 - f. Documents incorporated by reference in this Agreement;
 - g. The DB's Detailed-Phase Proposal, which is incorporated herein by reference. The DB represents, warrants and covenants to the Owner that all financial information on the DB, its parent and subsidiaries attached to or included in such Proposal were true, complete and correct in all respects; and
 - h. Lancaster County Public Schools Request for Proposal for Design and Construction of Combined Middle School/High School.
- 1.8 **Contractor** means the DB and, any entity to which the DB subcontracts the construction portion of the Work or its responsibilities under this Agreement.
- 1.9 **DB** means Design-Builder (specifically, the DB).
- 1.10 **Day** means a calendar day, and "days" means calendar days, unless the contrary is expressly indicated. Where the term "working day" or "workday" is used, such term shall mean any day from Monday through Friday exclusive of nationally or state recognized holidays.
- 1.11 **Defect, Defective, or Deficient** is an adjective or noun which when modifying or referring to the word Work refers to Work or any part thereof that is unsatisfactory, faulty, or does not conform to the Contract Documents, or does not meet the requirements of any inspections, standards, tests or approvals referred to in the Contract Documents.
- 1.12 **Draw Schedule (Schedule of Values)** means the schedule attached hereto as Exhibit C, at this stage preliminary, which will be updated within 60 days of the establishment of the GMP, to be used as a basis for payment of the Fees component of payments to the DB, setting forth the anticipated monthly progress billings for the Project, the anticipated completion dates of the various components of the Project and the value assigned to those different components.
- 1.13 **Fees** mean the amounts payable to the DB as specified in Section 5.3 for the Services in addition to Reimbursable Costs.
- 1.14 **Final Completion of Work, Final Completion or final completion** means completion in conformance with this Agreement, the Construction Documents, and other Contract documents of the Work required by this Agreement, including without limitation, Punch List items so that the Project will be properly completed and result in a fully functional and properly operating Project.
- 1.15 **Guaranteed Maximum Price or GMP** means the amount established as the maximum amount payable to the DB absent a Change, which is established at a time mutually agreeable to the Owner and DB, adjusted for any Changes.
- 1.16 **Owner** means Lancaster County School Board.
- 1.17 **Owner's Representative** means that person designated by the Owner in writing to perform the functions of Owner specified in this Agreement.
- 1.18 **Person** or **persons** means any individual, partnership, joint venture, association, joint-stock company, corporation, limited liability company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other legal entity.
- 1.19 **Plans and Specifications** mean the surveys, plans and specifications that the DB causes to be prepared for the Project that are approved by the Owner, Architect, and DB.

- 1.20 **Project** means the complete and proper design and construction of a combined Middle School/High School for the Lancaster County School Board as defined in the PPEA – RFP NO: 2022-01 Design and Construction of New Combined Middle School/High School, Tax Map 28 Parcel 93C, 2330 Irvington Road, Weems, Virginia 22576, to be designed and constructed by the DB in accordance with the Construction Documents and the terms of this Agreement, and any related upgrades and/or modifications ordered by Change, Change Order, or Change Directives.
- 1.21 **Project Schedule** means the schedule for design and construction of the Project, which, in its initial version, is set forth in Exhibit D attached hereto.
- 1.22 **Punch List Items** means a list of items of Work to be completed and deficiencies to be corrected, identified by the Owner’s Representative and Architect that do not affect the attainment of Substantial Completion. If the Owner’s Representative and DB do not agree as to an item or items, any such items not agreed upon shall be considered a punch list item until a contrary determination is made pursuant to Article 17 of this Agreement. Such items must be complete before Final Completion can take place.
- 1.23 **Reimbursable Costs** mean the amounts payable to the DB as specified in Section 5.3 for the Services in addition to the Fees.
- 1.24 **Requisition** means an application for payment in a form mutually agreeable to the Owner and DB.
- 1.25 **School** means the combined middle school/high school comprising the Project.
- 1.26 **Services** means all pre-construction and all architectural and engineering design, procurement and construction services related to the Project furnished by the DB, including, without limitation, all labor, services, materials and facilities, and all other things that are required to provide for the design, construction and equipping of the Project so that such Project is properly completed. Services are a part of the Work.
- 1.27 **Site** means the land on which the Project will be constructed identified as Tax Map 28 Parcel 93C, Irvington Road, Weems, Virginia 22576 and as depicted in the Project Site Plan attached as Attachment F to the PPEA – RFP NO: 2022-01 Design and Construction of New Combined Middle School/High School.
- 1.28 **Substantial Completion** or Substantially Complete means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents, including an occupancy permit, preliminary commissioning and punch list (other than cosmetic items), so that it may be utilized and can be used for all of its intended uses, including that the Project is ready to accept move-in by the Owner and all life/safety items are operational, and other items that are critical in nature are complete.
- 1.29 **Unusually Severe Weather** means weather that impacts major Work activities on the critical path of the Project and deviates significantly from that which could be reasonably expected due to the time of year or as compared to standard averages for the area as compiled through the National Oceanic and Atmospheric Administration (“NOAA”) or other authorized local sources.
- 1.30 **Work** means all the work and materials for the Project required by this Agreement to be provided by the DB and that may be required to result in a fully functional and properly operating Project as defined in this Comprehensive Agreement, and shall be provided by the DB within the GMP, as may be modified by any Change.

ARTICLE 2

GENERAL DESCRIPTION, TERM OF AGREEMENT, AND DB'S STATUS AS INDEPENDENT CONTRACTOR

2.1 General Description

Under this Agreement, the DB will be providing to the Owner continuing preconstruction, site design and development services, A-E design services and the construction services, including procurement, for the Project, so the result will be that the Owner will have fully functional and properly operating school facilities in full accordance with the Contract Documents. The DB will be providing these services as a design-builder. The DB will be compensated subject to the terms of this Agreement but will be responsible for ensuring that the total cost of the Project to the Owner does not exceed the GMP established by this Agreement. The DB will be responsible for completing the Project so that payments by Owner will not exceed the GMP, except as may be adjusted by this Agreement, even if the costs to the DB to do so exceed the GMP. The sharing of savings by the Owner and the DB is provided for in this Agreement. Because this is a design-build project, Owner makes no warranty to the DB, express or implied, regarding any design for the Project. Rather, the DB agrees that all design and design services shall conform to that standard of care ordinarily exercised by architects and engineers engaged in performance of similar services for similar projects in the Commonwealth of Virginia. Requirements for and performance of the Work in this Agreement shall be subject to this standard of care.

2.2 Term Of Agreement

This Agreement begins on the Effective Date indicated at the beginning of the Agreement and continues until its termination pursuant to Article 18, any other provision of this Agreement, or by law or until all obligations under this Agreement have been properly and fully performed.

2.3 Independent Contractor

For all purposes hereunder, the DB is an independent contractor and shall not be deemed an agent, employee or partner of the Owner.

2.4 Subcontractors

- a. The DB may subcontract any portion of the Services to be performed hereunder other than the general contractor portion of the Services, but the DB shall not thereby be relieved of any of its obligations set forth herein. The DB may subcontract the construction Work to a Contractor other than the DB. The DB shall be the Contractor unless the Owner, in its sole discretion, approves otherwise in writing. The DB shall furnish to the Owner, for its information, prior to issuance of subcontracts and in no case not later than ten (10) days prior to the date scheduled for issuance of the notice to proceed with construction, a list of all firms and/or persons being considered to be subcontractors to the Contractor. The Owner or Owner's Representative shall, within ten (10) days of receipt of this list, notify the DB in writing if it has any objection to any such subcontractor. A rejection of a subcontractor by the Owner resulting in an increased cost of the project shall require additional compensation from the Owner, but in no event shall the Owner pay additional compensation beyond the increased costs, including overhead and profit as defined in the GMP Amendment, actually incurred as a result of the rejection. A failure to notify the DB within this ten (10) day period shall not waive the right of the Owner or Owner's Representative to later object to any proposed subcontractor for cause. The receipt of such list shall not require the Owner or Owner's Representative to investigate the qualifications of any listed subcontractor.
- b. The DB shall ensure that all subcontractors shall be properly licensed and authorized to do business in Virginia, shall have the proper insurance coverage, and shall comply with all state, federal, and local laws. The DB shall comply with Title 54.1, Chapter 11, of the Code of Virginia,

with respect to licensure of itself and all subcontractors employed to work on the Project. The DB represents that it has verified that all subcontractors hold all required state and local licenses, including any state contractor's license. The DB will verify that any additional subcontractors employed to work on the Project, subject to initial verification, hold all required state and local licenses, including any state contractor's license. Upon request of the Owner, the DB shall submit the Contractor's Certification as to Licensure of Subcontractors Form to the Owner. This constitutes a material part of this Agreement.

- c. The DB may, without the Owner's prior written approval, remove from the Project any subcontractor that is in default under such subcontractor's agreement(s) with the DB, the Contractor or any other subcontractor.
- d. DB further agrees that it is as fully responsible to the Owner for the acts and omissions of its subcontractors, suppliers, and invitees on the jobsite and of persons either directly or indirectly employed by them, as the DB is for the acts and omissions of Persons directly employed by it.

ARTICLE 3 **THE WORK**

3.1 Work/Specifications

- a. The DB shall furnish all necessary personnel, material, equipment, services, and facilities (except as otherwise specified) to fully and properly perform the Project in a good and workmanlike manner in accordance with the Contract Documents and within the Project Schedule, time being of the essence for this Project.
- b. The Owner shall have the right to add to the Scope of Work to be performed under this Agreement, including, without limitation, Work to be performed at the Project, and DB agrees to perform such Work, subject to issuance of a Change Directive or a Change Order for such Work. DB agrees to promptly meet and confer with the Owner regarding added Scope of Work proposed by Owner.
- c. The DB shall perform a complete job in accordance with the Contract Documents and satisfactory to the Owner.
- d. DB shall provide all Work not specifically described in the Contract Documents yet required to produce a fully functional and properly operating Project, even though every item or minor detail for the proper installation of the entire Work is not mentioned in the Contract Documents.
- e. The DB acknowledges and agrees that in calculating the GMP, it has taken into account in its proposal the requirements of the Contract Documents, local conditions, availability of material, equipment, labor, and any other factors which may affect the performance of the Work. The DB agrees and warrants that it will properly and fully complete the Work not later than the time period or date indicated for completion taking into account any agreed upon time extensions in accordance to article 17. Time extensions should not be unreasonably withheld by the Owner.

3.2 Conditions Affecting the Work

- a. The DB is responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions that can affect the Work or its costs, including, but not limited to available parking and staging areas and existing building materials and components. Any failure by the DB to reasonably ascertain the conditions affecting the Work does not relieve the DB from responsibility for successfully performing the Work without additional expense to the Owner. Each party assumes no responsibility for any representations concerning

conditions made by any of its officers, employees or agents before execution of this Agreement unless such representations are expressly stated in the Agreement.

- b. Rock material is specifically excluded and shall be added to the contract value by means of unit costs to be established and agreed upon by the selected subcontractor performing such work.
- c. Rock shall be defined as:
 - i. Rock material in beds, ledges, unstratified masses, conglomerate deposits, and boulders of rock material that exceed 1 cu. Yd. (0.76 cu. M) for bulk excavation or ¾ cu. yd. (0.57 cu. m) for footing, trench, and pit excavation that cannot be removed by rock excavating equipment equivalent to the following in size and performance ratings, without systematic drilling, ram hammering, ripping, or blasting, when permitted:
 - ii. Excavation of Footings, Trenches, and Pits: Late-model, track-mounted hydraulic excavator; equipped with a 42-inch- (1065-mm-) wide, maximum, short-tip-radius rock bucket; rated at not less than 138-hp (103-kW) flywheel power with bucket-curling force of not less than 28,090 lbf (125 kN) and stick-crowd force of not less than 18,650 lbf (82 kN); measured according to SAE J-1179.
 - iii. Bulk Excavation: Late-model, track-mounted loader; rated at not less than 210-hp (157-kW) flywheel power and developing a minimum of 48,510-lbf (216-kN) breakout force with a general-purpose bare bucket; measured according to SAE J-732.

3.3 **Interpretation of Contract Documents**

- a. The Contract Documents are intended to be complementary and to be interpreted in harmony to avoid conflict if this can reasonably be accomplished.
- b. The following rules regarding correlation and intent of the Contract Documents are first to be employed in the event of any inconsistency, conflict, or ambiguity: (1) anything mentioned in the specifications and not shown on the plans, or shown on the plans and not mentioned in the specifications, is of like effect as if shown or mentioned in both; (2) in the case of conflicts between plans and specifications, the specifications will govern; (3) in the case of a difference between small and large-scale drawings, the large-scale drawings will govern; (4) schedules on any contract drawing take precedence over conflicting information on that or any other contract drawing; (5) on any of the drawings in which a portion of the Work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out will apply also to all other like portions of the Work.
- c. If, despite application of the rules in 3.3b, an inconsistency, conflict, or ambiguity still exists between or among the Contract Documents that cannot be reasonably harmonized, then precedence shall be given to the Contract Documents in the order in which they are enumerated in Paragraph 1.9 of this Agreement.

ARTICLE 4 **PROJECT DEVELOPMENT**

4.1 **Design and Construction**

The DB shall be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, plans, specifications, and other services and/or materials furnished by the DB under this Agreement. However, the responsibility of the DB does not relieve those providing such services and/or materials from being responsible for such items.

4.2 **Drawings and Specifications**

- a. Based upon the Scope of Work and/or requirements furnished by the Owner in writing and included herein, the DB shall prepare the complete contract working Plans and Specifications. All design submissions for this Project shall be made in paper drawing/document form, and PDF. The minimum scale for building drawings shall be 1/8 inch = 1 foot except for small scale drawings of the floor plan of the entire building with space tabulation. Design submissions shall be made as outlined below. The Owner review and/or approval period shall be in accordance with the "Project Schedule Milestones" (see Exhibit D), but not fewer than ten (10) working days for each of the following submissions.
- b. **10% Schematic Design Submission ("Schematic Design")**: The DB shall review the program and other information provided by the Owner, and shall review laws, codes, and regulations applicable to the DB's services. The DB shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project Site, and other information, to ascertain the requirements of the Project. The DB shall reach an understanding with the Owner regarding the requirements of the Project including, but not limited to, proposed site improvements, selection of materials, building systems and equipment, and methods of Project delivery. Based on the Project requirements agreed upon with the Owner, the DB shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components. Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including site plan(s), if appropriate, and preliminary building plans, sections, and elevations, and may include some combination of study models, perspective sketches, or digital representations. The DB shall submit the Schematic Design Documents to the Owner and request the Owner's approval.
- c. **35% Design Development Submission ("35% Design Development")**: Following receipt of Owner's approval of the Schematic Design submission, the DB shall prepare a 35% Design Development submission including updated drawings and specifications. DB shall submit the 35% Design Development submission to the Owner for review and approval in accordance with the Project Schedule shown in Exhibit D. The Owner review period will be in accordance with the Project Schedule shown in Exhibit D. This submission shall include details regarding the structural and mechanical, electrical and plumbing ("MEP") components of the design, and a cost estimate consistent with the Association of the Advancement of Cost Engineering ("AACE") practices (detailed labor and material estimate by Construction Specification Institute (CSI) division) to permit the Owner's value-engineering analysis. [See Exhibit D Section 2.2.2, concerning value engineering study.]
- d. **65% Construction Documents Submission ("65% Construction Documents")**: Following receipt of Owner's approval of the 35% Design Development submission [and resolution of any value engineering cost reduction suggestions,] the DB shall prepare a 65% Construction Documents submission. DB shall submit the 65% Construction Documents submission to the Owner for review and approval in accordance with the Project Schedule shown in Exhibit D. The Owner review period will be in accordance with the Project Schedule shown in Exhibit D.
- e. **95% Construction Documents Submission ("95% Construction Documents")**: Following receipt of Owner's approval of the 65% Construction Documents submission, the DB shall prepare a 95% Construction Documents submission. DB shall submit the 95% Construction Documents submission to the Owner for review and approval in accordance with the Project Schedule shown in Exhibit D. On an exception basis, intermediate submissions may be provided for the design of sitework, foundations, structural steel and other items or systems requiring either advance procurement or construction start prior to the completion of the overall design in accordance with the approved schedule. The Owner review period will be in accordance with the Project Schedule shown in Exhibit D.

- f. **100% Construction Documents Submission (“100% Construction Documents”)**: Following receipt of Owner’s approval of the 95% Construction Documents submission, the DB shall prepare a 100% Construction Documents submission. DB shall submit the 100% Construction Documents submission to the Owner for review and approval in accordance with the Project Schedule shown in Exhibit D. On an exception basis, intermediate submissions may be provided for the design of sitework, foundations, structural steel and other items or systems requiring either advance procurement or construction start prior to the completion of the overall design in accordance with the approved schedule. The Owner review period will be in accordance with the Project schedule shown in Exhibit D.

4.3 **Construction**

With Owner’s prior agreement in writing, and subject to imposition by Owner of reasonable conditions to assure a satisfactory Guaranteed Maximum Price for the Project, construction may be allowed to commence in accordance with the Project Schedule prior to the Owner’s Representative’s approval of all Construction Documents. Where phased/fast track construction is proposed prior to overall final approval, Plans and Specifications covering the system or components covered by that phase must be approved by the Owner prior to the start of construction of that phase. Any costs associated with a phased /fast track approach to the Project will be negotiated and agreed to in writing prior to the agreement of the satisfactory guaranteed maximum price for the Project.

4.4 **Scheduled Submittals**

- a. Upon receipt of a submittal by the DB for the Owner’s review and approval, the Owner and Architect, to the extent that the Architect’s approval is required, shall provide its approval, conditional approval or a single consolidated list of exceptions within the period of time specified by the DB; provided, however that the Owner shall have not fewer than ten (10) workdays nor longer than 15 workdays to review and act upon any initial submission unless circumstances require an expedited approval. Acceptance of a particular submittal(s) shall be deemed made by the Owner if the Owner’s Representative has not delivered a consolidated list of exceptions prior to the expiration of the applicable period for review. Upon receipt of any “conditional” approval, work shall proceed on the approved portions of the Work and a re-submittal of the conditional Work will be submitted, or not submitted, as directed.
- b. Upon receipt of a consolidated list of exceptions from the Owner’s Representative regarding any submittal, the DB shall change or correct, and redeliver the submittal to the Owner’s Representative within the period of time specified in the Project Schedule Milestones. The Owner shall then provide the DB its approval or single consolidated list of exceptions within ten (10) work-days unless circumstances require an expedited approval. All exceptions taken at any time must be relative only to the requirements set forth in this Agreement and identify the area of non-compliance. Owner and DB will use their best efforts to accelerate these timelines where practicable.

ARTICLE 5

PRICES AND SHARED SAVINGS

5.1 **Prices**

The DB must provide all Work called for under this Agreement, including furnishing all material, services, labor and equipment to perform the Services for the GMP as indicated in Exhibit E (TBD).

5.2 **Reimbursable Costs**

- a. Subject to the limitation that payments to DB shall not exceed the GMP, the Owner will reimburse the DB for all the following costs (including as stated in Exhibit C) for the Project:
 - i. Contractor materials, supplies, and equipment either incorporated directly into the construction on the Project or required to accomplish a construction activity on the Project including equipment rental or lease, transportation, and storage.
 - ii. Contractor labor costs for personnel performing labor at the Project Site or those personnel directly involved with the preconstruction or construction management services but not located at the Project Site. Labor costs shall include hourly rates with all fringe benefits and taxes required by law and applicable contracts in force between the Contractor and its employees or its standard benefits package.
 - iii. Subcontractor costs for Work on items directly related to and/or incorporated into the finished construction for the Project including the cost of completing Punch List Items. The term "subcontracts" includes purchase orders. The DB shall conduct the subcontractor bid process on an "open book" basis and shall allow the Owner's Representative to observe the receipt and analysis of all bids. The DB shall cause the Contractor to invite at least six (6) bidders, if practical, and endeavor to receive price quotations from at least three (3) firms for all subcontracts for, but not limited to, equipment, materials, labor contracts, any other supplies or services, where the quotations are expected to exceed or actually exceed \$50,000, unless otherwise authorized by the Owner's Representative. The Owner's Representative may recommend additional subcontractor bidders to the DB. The DB shall furnish copies of quotations (if requested) to the Owner's Representative for review and approval prior to award. It is not required that the award be made to the lowest bidder/offeror, instead the award shall be made on the basis of best value. Copies of all subcontracts (if requested), including all modifications and/or revisions will be furnished to the Owner's Representative within five (5) working days from execution. The DB shall not "bid shop" subcontracts after selection.
 - iv. Other Project-related direct costs that shall be reimbursed under this Agreement include, but are not limited to, the following: Contractor direct expenses, insurance (including project specific insurance riders of any type) and accounting (project related), general conditions, project milestone activities, LEAN tools, software, taxes including gross receipts tax, permits (when not paid directly by Owner), "on site construction" supervision, quality control, testing, safety, training, engineering/layout, fire protection, cleanup, field office equipment and operation, but not including expenses incurred prior to the Effective Date of this Agreement unless such expenses are itemized and included in this contract as an exhibit prior to execution or detailed in Exhibit E – GMP once finalized and agreed to by both parties.
 - v. Reimbursable Costs for non-construction portions of the Work shall be documented with vendor's invoices to DB and other similar documentation. Detailed information regarding vendor's hourly rates, materials costs or other expenditures will not be provided.
- b. Owner will not reimburse DB for the following costs:
 - i. Contractor costs not associated with personnel assigned to the Project that are considered to be indirect costs and/or are included as part of the Fees and are not Reimbursable Costs. Examples of indirect costs that are not Reimbursable Costs include, but are not limited to: bonuses to senior executives, travel by company executives or officers, and personnel whose services and/or responsibilities include multiple projects, e.g., accounting, home office estimating, and purchasing personnel; however, that costs for such personnel on multiple projects may be reimbursed if the DB requires each of such personnel to maintain accurate timesheets of any time applicable to the project, if such time allocated to the Project is reasonable, and if the DB makes such timesheets available to the Owner upon request.

Additionally, costs for repairs and maintenance of Contractor-owned equipment (including by any subsidiary or affiliated companies) or rental equipment are NOT Reimbursable Costs. Repair costs and costs of routine maintenance of rental equipment are to be included in the rental price.

- ii. Public relations and advertising, bad debts, contributions and donations, dividends or payments of profits, entertainment, fines or penalties, life insurance for officers, partners, or proprietors, interest on loans, lobbying, losses on other contracts, income taxes, proposal preparation costs except for proposals arising from change requests or direction from the Owner or Owner's Representative, and legal costs involving disputes with the Owner.
- c. Expenditures from the DB's contingency must be approved in advance in writing by the Owner's Representative, whose approval will not be unreasonably withheld. The parties agree that any excess contingency at the completion of the Project shall be subject to shared savings, as indicated in Paragraph 5.7. If the cost of the Project exceeds the GMP as adjusted for any Changes, including the full amount of the contingency, the DB shall be solely responsible for any such excess amount above the GMP as adjusted for any Changes.

5.3 **Fees**

- a. The Owner shall pay the DB Fees, as determined with the GMP submission. Pre-construction fees and expenses, and general contracting fees are stated in Exhibit B. The Fees include all compensation payable by Owner to DB beyond Reimbursable Costs for the Services (including preparation of a GMP), and are intended to compensate for the DB's home office support, overhead costs, insurance, licenses, bond and profit for the Project and for all design professional (including A-E) services, as stated in Exhibit A. The Fee amount will vary with the estimated cost and/or actual cost of construction of the Project except as expressly allowed in this Paragraph 5.3. The components of the Fees below may be increased when a Change in the Project scope, schedule or cost of performance results in a increase in the Reimbursable Costs, such as increase in materials, labor, supervision, management, architecture or engineering man-hours, or insurance costs. The Fees will not be reduced unless the Owner's Representative reasonably requires an equitable reduction in the Fees for any Change that significantly reduces the Scope of Work, provided that such costs have not been incurred prior to the equitable reduction. In no event, shall the payment of Fees provided in the GMP Amendment cause the Owner to pay more than the GMP unless otherwise modified in accordance with Article 17.
- b. A-E Services for Design, Construction Documents and During Construction. This component of the Fee covers the design and preparation of Construction Documents. The Architect will provide coordination with all jurisdictions, authorities, planning and zoning, and building officials to obtain all necessary input, approvals and permits. The component of the Fee also covers construction administration by the Architect and includes, but is not limited to, review of shop drawings and samples, preparing and filing interpretation of Construction Documents, preparation of required clarification drawings, and participation in quality control activities.
- c. Contractor Fee during construction. This component of the Fixed Fees covers profit on construction plus home office support, provided, however, that costs for such personnel on multiple projects may be reimbursed if the DB requires each of such personnel to maintain accurate timesheets of any time applicable to the project, if such time allocated to the Project is reasonable, and if the DB makes such timesheets available to the Owner upon request, and overhead costs except as identified in Section 5.2a.

5.4 **Guaranteed Maximum Price**

- a. A GMP shall be established by the parties for the Project after approval of the 65% Construction Document submission and prior to commencement of construction except those packages the Owner agrees must be started prior to a final GMP in order to achieve completion by the Temporary Certificate of Occupancy and will be determined with the Owner during the preconstruction phase. The GMP is the maximum sum that the Owner shall pay to the DB in total for this Project, except as otherwise provided in this Agreement. It includes all the Reimbursable Costs as defined in Section 5.2 that will be payable to DB and all Fees as defined in Section 5.3 that will be payable to DB.
- b. If at any time during construction it becomes apparent that the final Reimbursable Costs and Fees will exceed the GMP, the DB shall immediately notify the Owner's Representative. The Owner and DB agree to work together to maintain the costs within the GMP, however, any change to the Scope of the Work or the quality of the Work must be agreed to in writing by the Owner.
- c. All proposed revisions or changes to the approved Plans and Specifications must be submitted to the Owner's Representative for review and approval for conformance with the approved Construction Documents plans and specifications, regardless of whether or not they affect the GMP. Owner's Representative's review and approval shall be not unreasonably conditioned or withheld.
- d. No payment shall be made to DB in excess of the GMP except as adjusted for any Changes made in accordance with this Agreement. The DB shall be wholly responsible to complete the Project at no compensation above the GMP as adjusted for any Changes made in accordance with this Agreement, and the Owner shall have no obligation to pay the DB such excess amount or any portion thereof.

5.5 **Change In Fees Relating To Services For Modification of Design**

For Changes to the Work requested by the Owner in writing after Owner's approval of the 35% Plans and Specifications, if such Changes add to the scope of the Work, the DB shall, upon the written request of the Owner's Representative, make the necessary design drawing and specification revisions; prepare and issue requests for proposal describing the modifications; prepare estimates, drawings and specifications as required; evaluate proposals and make recommendations to the Owner's Representatives. The amounts payable by Owner to Change under this paragraph will be negotiated, and if the amount payable cannot be agreed upon, will be based upon the rates indicated in Exhibit B hereto and a determination of a reasonable amount of time to complete the Change.

5.6 **Shared Savings**

If there is a balance in the Contingency following final completion of the project, then savings represented by the difference shall be shared on the following basis: 50% to DB and 50% to the Owner. If there is a balance in final Project Reimbursable Costs plus Fees, as presented by DB within sixty (60) days after Final Completion and then reviewed and audited by the Owner, are less than the GMP, as adjusted for any Changes made in accordance with this Agreement, then savings represented by the difference shall be shared on the following basis. Only if Substantial Completion is obtained on or before the date determined during the preconstruction period, as adjusted for any Changes, savings shall be shared as follows: 50% to the DB and 50% to the Owner.

ARTICLE 6
SAMPLES

6.1. Sample approval

After issuance of the Notice to Proceed with construction, the DB shall furnish to the Owner's Representative samples required by the Plans and Specifications, for the Owner's Representative's approval. The Owner's Review and approval shall not be unreasonably withheld, conditioned or delayed and shall be made in a time frame so as not to delay the DB or Contractor. Samples shall be delivered to the Owner's Representative as specified or as directed. The DB shall prepay all shipping charges on samples. Materials or equipment for which samples are required may not be used in the Work until the Owner's Representative approves them in writing. Approval of a sample is only for the characteristics or use named in the approval and may not be construed to change or modify any requirement of the Contract Documents. Substitutions are not permitted unless approved in writing by the Owner's Representative.

6.2 Labels

Each sample must be labeled to show:

- a. Name of Project building or facility, Project title, and contract number;
- b. Name of DB and (if appropriate) Contractor and subcontractor;
- c. Identification of material or equipment, with specification requirement;
- d. Place of origin; and
- e. Name of producer and brand (if any).

6.3. Markings

Samples of finish materials must have additional markings that will identify them under the finish schedules.

6.5 Use of Samples

Approved samples not destroyed in testing will be sent to the Owner's Representative at the Project. Approved samples of hardware in good condition will be marked for identification and may be used in the Work. Materials and equipment incorporated in the Work must match the approved samples. Samples not destroyed in testing and not approved will be returned at the DB's expense if the DB so requests in writing at the time of submission.

6.6 Failure

Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this Agreement, any further samples of the same brand or make of that material. The Owner reserves the right to disapprove any material or equipment that has previously proved unsatisfactory in service as determined in Owner's sole discretion.

6.7 Testing

Samples of materials or equipment delivered on the Site or in place may be taken by the Owner's Representative for testing. Failure of a sample to meet the requirements of the Contract Documents may void previous approvals of the item tested. The DB shall replace materials or equipment found not to have met requirements of the Contract Documents, unless Owner, in its sole discretion, elects to accept an equitable downward adjustment to the GMP in lieu of such replacement.

6.8 Cost of Testing

- a. The DB shall pay for all costs of construction testing, including sampling, field tests, laboratory tests, and inspection services as required by the specifications. The DB shall provide written reports of observations, recommendations, and testing activities as the Project progresses. The DB has included an allowance to pay for all costs of construction testing, including sampling, field tests, laboratory tests, and inspection services as required by the specifications. The DB may establish a schedule to supply written reports of all observations, recommendations and testing activities during the course of the Project, but such written reports shall be provided to Owner no less often than on a bi-weekly basis. All tests pertaining to physical or chemical properties of materials must be made in a laboratory. The DB shall include all applicable tests required by ASTM in the specifications. The specifications will also include all tests and inspections required by applicable Codes and Standards.
- b. The Owner will pay for the costs of special inspections and any additional tests the Owner deems necessary. However, if such tests indicate that the workmanship of materials used by the DB are not in conformance with the Construction Documents, approved shop drawings, or the approved materials, the DB shall pay for the tests and/or re-tests and remove all Work and material failing to conform, and replace with Work and materials in full conformity, without additional cost to the Owner, and to the Owner's satisfaction.
- c. The DB shall provide a listing in the specifications of all testing, inspections, and special inspections required by the building commissioner.
- d. The special inspections Scope of Work may include, but is not limited to, sampling, field tests, laboratory tests, inspection services to verify soil classifications, moisture density of soils, observation of subgrades to receive compacted structural fill for building and pavement support, observation of pavement subgrades to receive compacted base course material, observation of fill placement and field density testing, observation of footing subgrades to evaluate suitable bearing, observation of concrete pours, field concrete slump testing, air content testing, molding of concrete cylinders, laboratory curing and compression testing of concrete, observation of steel installation, ultra-sonic testing of steel moment connections, steel weld testing and any other test required by standards or codes referenced in the specifications to include, but not limited to, IBC, IEC, IPS, ASTM, ACI, PCI, AISC, NFPA, NEC, etc. It shall also include reporting to the Owner and DB the status of the testing bi-weekly or at a schedule established by the Owner's Representative.
- e. If such tests indicate that the workmanship or materials used by the DB are not in conformance with the Construction Documents, approved shop drawings, or the approved materials, the DB shall pay for the re-tests. The DB shall remove all Work and material failing to conform, and replace with Work and materials in full conformity, without additional cost to the Owner, and to the Owner's satisfaction.

6.9 Inventory of Samples

The DB shall maintain an inventory of all approved samples until final inspection of the Project. Such samples shall be available to Owner for additional viewing, inspection and testing, as deemed necessary by the Owner, at reasonable times.

ARTICLE 7
MEASUREMENTS, DRAWINGS, SPECIFICATIONS

7.1 Requirement for Verification of Measurements/On Site Documents

- a. The DB shall keep at the Site copies of the Contract Documents which includes electronic versions and shall at all times give the Owner and any designated representative access to them.
- b. When the word "similar" appears on the Plans and Specifications, it has a general meaning and must not be interpreted as meaning identical, and all details must be worked out in relation to their location and connection with other parts of the Work.
- c. In case of discrepancy either in figures, or in the Plans and Specifications, the matter must be promptly submitted to the Architect, who shall provide a determination in writing, for approval by the Owner's Representative in writing. Any adjustment by the DB without such approval will be at the DB's own risk and expense. The DB shall furnish from time to time such detailed Plans and Specifications and other information as may be deemed reasonably necessary by Owner's Representative.

7.2 Plans and Specification Requirements

The following requirements apply to DB's responsibility to cause the Plans and Specifications to be properly prepared:

- a. Required technical specifications shall be prepared in accordance with the applicable standards. Specifications must be complete, concise, and reasonably free of repetition and ambiguity. Care must be exercised to avoid specifying the same Work in more than one section and to avoid duplication or conflict with the general provisions, special provisions, and the Plans and Specifications.
- b. Specifications shall be submitted on 8-1/2"x11" sheets, punched for 3-ring binders for ease of adding addenda.
- c. If guide specifications are not furnished, typical specifications developed and used by the Architect in general practice shall be used in preparing contract specifications. The current CSI Master Format for Construction Specifications shall be used in the arrangement of Project Specifications.
- d. Testing to establish compliance with the Contract Documents for critical items or critical portions of the Work shall be specified as the DB's responsibility, subject to Section 6.8. Testing shall be consistent with that required under standard commercial practices as approved by the Owner's Representative and/or the local building officials. Any testing requirements specified do not limit the Owner from having additional testing and inspection performed at the Owner's discretion.
- e. Submittals such as shop drawings, samples, and certificates shall be specified as necessary to establish compliance with the Contract Documents for critical portions of the Work. The DB should not require submittals for minor commercial items or for items of marginal value. The DB shall include in the mechanical and electrical sections the extent of a manufacturer's literature, rating date, performance curves, spare part lists, and shop drawings that must be furnished for review and approval before procurement.
- f. The Plans and Specifications shall require the DB to make tests of heating and air conditioning systems, as installed, to demonstrate that the equipment will perform as required. The results of the tests are to be submitted before the final inspection. Manufacturer's representatives may be required for inspection, start-up, and instructions in the operation and maintenance of equipment and the DB shall ensure their presence for such purposes if requested by the Owner.

Commissioning may be provided by the Owner and the DB shall cooperate with the commissioning agent providing all documentation and demonstrations required.

- g. The Plans and Specifications shall require that the DB furnish manufacturer's manuals, spare part lists, diagrams, instructions, performance data, curves, and shop drawings as approved for major items of equipment to be installed in the Work.
- h. All required plans shall be prepared and furnished as reproducible tracings. All final plans must be 8-1/2"x11", 11"x17", 18"x24", 24"x36", or 30"x42", trim-to-trim, with Owner title block, and graphic scale. Drawing methods and quality must permit satisfactory, clear, and legible one-half (1/2) size reproduction. Lettering on the plans will not be smaller in height than .12 (1/8) inch freehand or .10 inch mechanical.
- i. All final plans shall be detailed as necessary for efficient execution of the construction Work. They must conform to the above general requirements and the requirements previously stated. All original Plans must be prepared at an adequate scale to properly present the design data development including detailed features. Drawing scales for buildings or structures smaller than 1/8-inch = 1'-0" are not permitted without prior written approval of the Owner's Representative.
- j. The electrical design must be separated into two plans, when necessary to avoid congestion: one devoted to the power, receptacle, telephone, fire alarm and intercommunication systems, and the other to lighting. Similarly, the plumbing and heating/air conditioning must be separated, when necessary to avoid congestion. A minimum scale of 1/4-inch = 1'-0" must be used for all details of areas of congestion such as mechanical rooms, toilet rooms, and the like, and as may otherwise be reasonably designated by the Owner's Representative. Drawing scale for site, utility, or other related Work outside five foot building line, including details (engineer's), must clearly and adequately reflect the design data developed. Plans must be organized and provide appropriate details of the Site Work (layout, grading, paving, and drainage) and the utilities (water, sewer, gas, power, and communications) separate from the building and/or structure plans.
- k. At the conclusion of design, primary descriptive scopes of work prepared using CADD support shall be accompanied by electronic files of the submission in AutoCADD, in a version compatible with the Owner's computer system which uses Autodesk Architectural Desktop.
- l. Any discrepancies in figures, or the Plans and Specifications, or submittals shall be promptly resolved by the DB. The DB shall immediately notify the Owner's Representative of any discrepancies in such Plans and Specifications and confirm such notice in writing within five (5) days.
- m. Specifications shall include, to the satisfaction of the Owner, training of Owner's personnel on the operation and maintenance of systems and equipment. In addition, the Plans and Specifications shall include, to the satisfaction of the Owner, the development and submittal of operations and maintenance manuals, to include three (3) copies of each such document in electronic format.
- n. The DB shall be responsible for making all changes in the Work necessary to adapt and accommodate any equivalent product or item that it uses. The necessary changes shall be made at the DB's sole expense.
- o. The DB shall, as requested by the Owner's Representative, provide all design calculations, which may include, but are not limited to, structural steel, mechanical, electrical, plumbing and civil calculations.

7.3 **Shop Drawings, Submittals, Coordination Drawings and Schedules**

- a. The DB shall submit to the Owner's Representative, in triplicate, a schedule listing all items that will be furnished for review and approval no later than thirty (30) days after Owner's final approval of Plans and Specifications. For example, the schedule must include shop drawings and manufacturer's literature, test procedures, test results, certificate of compliance, material samples, and special guarantees, etc. The schedule must indicate the type of item, contract requirement reference, the DB's scheduled date for submitting the above items, identification of the first scheduled activity and projected needs for approval answers to support procurement or installation. In preparing the schedule, reasonable time will be allowed for review, approval, and possible re-submittal. Also, the scheduling shall be coordinated with the approved construction progress chart. The DB must revise and/or update the schedule as the Owner's Representative reasonably directs. Such revised schedule must be made available to the Owner's Representative for monitoring.
- b. The DB shall submit to the Owner's Representative shop drawings, coordination drawings, and schedules for approval as required by the Specifications or requested by the Owner's Representative, as follows:
 1. Shop drawings shall include fabrication, erection, and settling drawings, schedule drawings, manufacturer's scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data. All required information will be submitted in electronic, reproducible format through the DB's project management platform.
- c. Approval by the Owner's Representative is to validate conformance with the Owner's intent, and does not relieve the DB from a design liability for the approval submittals.
- d. Before submitting shop drawings on the mechanical and electrical Work, the DB shall obtain the Owner's Representative's written approval of lists of mechanical and electrical equipment and materials as required by the Specifications.
- e. The DB must check the drawings and schedules and coordinate them (by means of coordination drawings whenever required) with the Work of all trades involved before submission, indicating approval on them. Drawings and schedules submitted without evidence of subcontractors'/trades' approval may be returned for resubmission.
- f. Each shop drawing or coordination drawing must have a blank area 5x5 inches, located adjacent to the title block. The title block must display:
 - i. Number and title of drawing;
 - ii. Date of drawing or revision;
 - iii. Name of Project building or facility;
 - iv. Name of DB and, if appropriate, of subcontractor submitting drawing;
 - v. Clear identity of contents and location on the Work;
 - vi. Project title and contract number; and
 - vii. Provide a unique 9-digit alphanumeric transmittal number containing the Specification number (6 digits), sequence number (3 digits), and iteration letter (1 digit) clearly identifying the state of the submittal process.

- g. Unless otherwise provided in this Agreement, or otherwise directed by the Owner's Representative, shop drawings, coordination drawings, and schedules must be submitted by DB sufficiently in advance of construction requirements to permit fourteen (14) days, excluding delivery time to and from the Contractor, for checking and appropriate action by the Architect. Such items shall be submitted to the Owner's Representative (2 copies) for review concurrently with the Architect's review.
- h. Except as otherwise provided in Paragraph 7.3h, below, approval of drawings and schedules will be general and may not be construed as:
 - 1. Permitting any departure from the requirements of the Contract Documents; or
 - 2. Relieving the DB of responsibility for any errors, including details, dimensions, and materials.
- i. If drawings or schedules show variations from the requirements of the Contract Documents because of standard shop practice or for other reasons, the DB must clearly describe the variation in the letter of transmittal. If acceptable, the Owner's Representative may approve any or all variations and issue an appropriate Change Order. If the DB fails to describe these variations, it is not relieved of the responsibility for executing the Work in accordance with the Contract Documents, even though the drawings or schedules have been previously approved.
- j. Shop drawings, samples, color schedules, catalog cuts, construction schedule, etc., submitted to Owner's Representative must first be reviewed by the Architect to verify compliance with the Construction Documents. The Owner's Representative reserves the right to review building shop drawings, and formwork and falsework drawings. Such submittals shall be only in response to a specific request by the Owner's Representative.
- k. The DB shall prepare and submit equipment room layout drawings and drawings of areas where the equipment proposed for use could present interface or space difficulties. Room layout drawings must conform to the requirements established for drawings. Layouts must be submitted within forty (40) days after completion of final construction drawings. Submittals describing the various mechanical and electrical equipment items which are to be installed in the areas represented by the layout drawings must be assembled and submitted concurrently and accompanied by the room layout drawings. Room layout drawings must show all pertinent structural and fenestration features and other items such as cabinets required for installation and which will affect the available space. All mechanical and electrical equipment and accessories must be shown in scale in plan and also in elevation and/or section in their installed locations. Duct work and piping also must be shown. Equipment room layout designs must ensure all equipment is accessible for maintenance, repair, and replacement.
- l. All shop drawings, ductwork drawings, and sprinkler drawings must be on 30"x42" sheets to fit the size of the Project plans.
- m. At the completion of the Project, updated ductwork drawings and sprinkler drawings must be submitted as part of the "As-Built" drawings submission.
- n. All certificates required for demonstrating proof of compliance of materials with specification requirements, including mill certificates, statements of application, and extended warranties, must be executed in quadruplicate and furnished to the Owner's Representative. It is the DB's responsibility to review all certificates to ensure compliance with the requirements of the Contract Documents and that all affidavits are properly executed prior to submission to the Owner's Representative. Each certificate must contain the name and address of the manufacturer, the Project name and location, and the quantity and date(s) of shipment or delivery to which the certificate(s) apply. Copies of laboratory test reports submitted with certificates must contain the name and address of the testing laboratory and the date(s) of the tests to which the report applies.

Certification shall not be construed as relieving the DB from furnishing satisfactory material, if, after test(s) are performed on selected sample(s), the material is found not to meet the specified requirements.

- o. Architect shall review and take action on all shop drawings and samples. All approvals must be in accordance with the terms of the Contract Documents. Processing will be accomplished in accordance with the following procedure:
 - i. The Contractor shall transmit reproducible copies of shop drawings, etc., to Architect for review. Information copies of the letter of transmittal clearly identifying shop drawings, etc., shall at the same time be furnished to the Owner's Representative.
 - ii. As a result of Architect's review, each submittal will be marked by Architect as follows:
 - "Approved": the fabrication, manufacture and/or construction may proceed provided the Work is in compliance with the Contract Documents.
 - "Approved as Noted": the fabrication, manufacture and/or construction may proceed provided the Work is in compliance with Architect's notations and the Contract Documents.
 - "Rejected": no Work shall be fabricated, manufactured or constructed and a new submittal is required. No Work for a submittal marked "C-Action" shall be permitted on Site.
- p. The DB is responsible for obtaining prints of all "Approved" and "Approved as Noted" reproducible shop drawings and distributing them to the field and to the subcontractors. Concurrently, two (2) copies of each print shall be provided to the Owner's Representative.
- q. The DB is responsible for obtaining copies of all "Approved" and "Approved as Noted" manufacturer's descriptive literature, literature, catalog cuts and brochures and distributing them to the Contractor. Concurrently, two (2) copies of each shall be provided to the Owner's Representative.
- r. The DB is responsible for submitting new shop drawings, brochures and/or samples to replace all "Rejected" items and furnishing two (2) copies to the Owner's Representative.
- s. The DB is responsible for maintaining a log of all shop drawings. An updated copy of this log shall be furnished to the Owner's Representative no less often than monthly. At the option of the Owner in the Owner's sole discretion, the Owner may direct that any review conducted, or required to be conducted, by Architect be submitted to a third party of the Owner's choosing for an independent evaluation and such costs shall be deemed a reimbursable cost to the project.
- t. The DB and Architect have the authority to not require tests and inspections for coordination and compliance, and to modify the requirements in the contract documents as long as the level of quality and service is maintained and so long as the Owner is notified and given reasonable time to object. In the event that the Owner objects, the parties are to use reasonable efforts to resolve the dispute.

7.4 **Record "As Built" Drawings**

- a. The DB shall, during the progress of the Work, keep a master set of prints on the job Site or electronically in the DB's project management platform (Record or also referred to as "As-Built" drawings) on which is kept a complete, careful and neat record of all deviations from the Construction Documents made during the course of the Work.
- b. The DB shall provide the Owner with one, complete, reproducible set of the Construction Documents incorporating the revisions and changes made during construction up to acceptance of

the Project. These updated Plans and Specifications shall reflect all changes to the Construction Documents to indicate the "As-Built" conditions, including revisions in Site and building area tabulations. These Plans and Specifications must be certified as to their correctness by the signature of the DB and Architect and used in preparing a permanent set of "As-Built" drawings.

- c. The Owner reserves the right to review "As-Built" documents at any time during the Project.
- d. The DB shall forward all "As-Built" drawings, specifications and photographs to the Owner's Representative not later than thirty (30) days after Project completion.
- e. Any part of the costs associated with the preparation and completion of the "As-Built" drawings will not be paid to DB by Owner until the As-Built drawings are provided to and approved by the Owner's Representative. Approval shall not be unreasonably withheld by the Owner and shall not exceed fourteen (14) calendar days from submission.

7.5 Spare Parts Data

- a. The DB shall furnish spare parts data for each different item of equipment furnished. The data must include a complete list of parts and supplies, with current unit prices and sources of supply; a list of parts and supplies that are either normally furnished at no extra cost with the purchase of the equipment, or specified to be furnished as part of the Contract Documents, and a list of additional items recommended by the manufacturer to ensure efficient operation for a period of three hundred sixty (360) days at the particular installation.
- b. The foregoing does not relieve the DB of any responsibilities under any of the guarantees specified and/or provided.

ARTICLE 8 **WARRANTY**

8.1 Warranties

The DB warrants that all the Work furnished as part of the Services is in substantial accordance with the requirements of the Contract Documents, free from any defect or inferior materials or equipment, and is of such quality workmanship as to meet the applicable standard of care in Virginia for the type of Work performed, for a period of one (1) year after the date of Substantial Completion of the Work as defined by Exhibit E, and, unless otherwise agreed by the Owner in writing, in the Owner's sole discretion, all materials and equipment are new. The DB shall provide a list of extended warranties at 35% design that DB is providing, or will be providing, or is or will be assigning from manufacturers and which shall be in addition to the warranty mentioned above. All warranties are subject to the reasonable approval of the Owner. The DB shall include provisions in the Specifications that such warranties do not contain any limitation on liability, any reduction of the applicable statute(s) of limitations, any indemnity requirements from the Owner, any venue or forum selection clause other than Lancaster County, Virginia, or any requirement for mediation or arbitration. In addition, the DB shall, after the first and second anniversaries of the Substantial Completion of the Work, conduct walk-through inspections with the Owner for the detection and correction by the DB, at the DB's expense, of latent defects that have by then appeared.

8.2 Repairs

If, within the applicable warranty period, the Owner or Owner's Representative finds that warranted Work needs to be repaired or changed because the materials, equipment, or workmanship were inferior, defective, or not in accordance with the requirements of the Contract Documents, the DB shall promptly, and without additional expense to the Owner:

- a. Place in a condition consistent with the contract documents, products, specifications, and warranties and satisfactory to the Owner;
- b. Correct all damage to equipment, the Site, the building, or its contents that is the result of such unsatisfactory Work in a manner satisfactory to the Owner; and consistent with the contract document requirements.
- c. Correct any Work, materials or equipment disturbed in fulfilling the warranty in a manner satisfactory to the Owner; and consistent with the contract documents.
- d. Should the DB fail to respond promptly in accordance with the warranty or if the DB fails to proceed with the warranty work consistent with the contract documents, the Owner may have the Work performed by others at the DB's expense and DB agrees to promptly pay the Owner for all such costs, including reasonable costs associated with the warranty repair, including reasonable attorneys' fees.

8.3 **Transfer of Warranties**

The DB shall obtain each transferable guarantee or warranty of equipment, materials, or installation that is furnished by any manufacturer or installer in the ordinary course of the business or trade. The DB shall obtain and furnish to the Owner all information required to make any such guarantee or warranty legally binding and effective, and shall submit both the information and the guarantee or warranty to the Owner in sufficient time to permit the Owner to meet any time limit requirements specified in the guarantee or warranty or, if no time limit is specified, before completion and acceptance of all Work under this Agreement.

8.4 **Non-Waiver**

Owner, by accepting any warranties or guarantees under this Agreement, does not waive any legal right or remedy that Owner otherwise may have for breach of this Agreement and/or for breach of any such warranties or guarantees.

ARTICLE 9
INSURANCE, BONDS AND RISK

9.1 **Bonds**

DB shall provide payment and performance bonds for 100% of the Guaranteed Maximum Price of the Project. The bonds shall be provided when and to the extent the DB has been given a notice to proceed with construction at the Site. The bonds shall make the Owner obligee and shall be in a form acceptable to Owner. The sureties providing the bonds shall be rated AVIII or higher, approved by the Owner's Representative in writing, and authorized to do business in the Commonwealth of Virginia.

9.2 **Insurance**

- a. During the term of this Agreement, the DB and its subcontractors shall maintain the insurance required by this Paragraph 9.2. The DB can include such subcontractors under the DB coverage, and/or the subcontractors can include DB under their coverage. The DB is fully responsible to verify the insurance coverage of any subcontractors, and the DB proof of coverage documentation must specifically so state that there exists no exclusion for DB subcontractors. Insurance companies providing such insurance shall be licensed in Virginia and shall be rated at least AVIII or higher by A.M. Best. Policies shall include all terms and provisions normally included in a policy of the type specified. The Owner, its officers, employees, agents and representatives shall be included as

additional insureds on the liability policies, including each professional liability policy under Paragraph 9.3, but not for any Workers' Compensation/Employers Liability Coverage.

- b. Neither the DB nor any subcontractor shall commence Work for this Project until the DB has provided proof of insurance as required under this Section and such insurance has been approved by the Owner. The following minimum insurance requirements apply:

Workers' Compensation and Employers' Liability. The Contractor shall obtain and maintain the following limits:

Workers' Compensation: Statutory

Employers' Liability: \$100,000 bodily injury by accident each occurrence
\$500,000 bodily injury by disease (policy limit)
\$100,000 bodily injury by disease each employee

Commercial General Liability. Coverage is to be written on an "occurrence" basis, \$5,000,000 minimum limit, and such coverage shall include at a minimum:

Products/Completed Operations

Personal Injury and Advertising Injury

Bodily Injury

Delete X, C, U exclusions

Rigger's Liability stating 'on hook' coverage

Automobile Liability: Limits for vehicles owned, non-owned, or hired shall not be less than:

\$5,000,000 Bodily Injury and Property Damage combined single limit

Umbrella Coverage:

Required limits may be achieved by combining underlying primary coverage with umbrella liability coverage to apply in excess of general and automobile liability policies, including rigger's liability coverage. DB may fulfill this requirement under Paragraph 9.2.b by providing umbrella coverage in the amount of Five Million Dollars by Contractor and Two Million Dollars by Architect/Engineer.

- c. The required certificates of insurance shall be on an Accord form and shall contain substantially the following statement: "The insurance covered by this certificate shall not be canceled except after a thirty (30) day advance written notice has been received by the Owner." If changes to the Certificate form, which are made at Owner's request, require endorsement of any policy, then any additional premiums for such endorsement(s) shall be a Reimbursable Cost.
- d. The DB and its subcontractors must furnish a certificate of insurance or, if required by the Owner's Representative, true copies of liability policies and manually countersigned endorsements of any changes required by this Agreement. Insurance must be effective, and evidence of acceptable insurance furnished by DB to Owner, before beginning performance under this Agreement. Evidence of renewal must be furnished not later than five (5) days before a policy expires.

- e. The maintenance of insurance coverage as required by this Paragraph 9.2 is a continuing obligation, and the lapse or termination of insurance coverage without replacement coverage being obtained will be grounds for termination of this Agreement for default.
- f. The DB will carry builder's risk insurance coverage.
- g. DB shall be responsible for filing and settling of applicable claims and liaison with insurance adjusters.
- h. Neither the DB nor any subcontractor shall commence Work under this Agreement until the DB has obtained and provided proof of the required insurance under this section to the Owner. The DB shall confirm that all subcontractors have provided the DB with proof of insurance. DB further warrants that proof of coverage as provided to the Owner responds on a primary basis in the event of an uninsured or underinsured subcontractor. All such insurance shall be primary and non-contributory to any insurance or self-insurance the Owner may have in force.
- i. The required certificates of insurance shall name the Owner, its officers, agents, volunteers, and employees as additional insureds, except with regard to the workers' compensation and employers' liability coverages. All coverages, except Worker's Compensation and professional liability insurance, shall contain a waiver of subrogation in favor of the Owner. Additional insured and waiver endorsements shall be received by the Owner from the insurer within thirty (30) days after the Effective Date.
- j. Property Coverage – Installation Floater (and Rigger's Form, if applicable) will be required for the installation of contents or equipment. Coverage will begin with supplier and continue until equipment/contents has been fully installed. Floater will be valued for the replacement cost value of equipment/contents including all costs. The DB shall provide coverage for portions of the Work stored off-site after written approval of the Owner at the value established in the approval and for portions of the Work in transit. Riggers Form extension to the General Liability coverage may be on the DB's insurance coverage, or may be a certificate from the crane company supplying this coverage and listing the Owner, its officers, agents, volunteers, and employees, and the DB and the subcontractors as additional insureds.
- k. Special Hazards - In the event special hazards required by the Contract Documents, the DB shall obtain and maintain during the life of the Agreement a rider to the policy or policies required, in an amount not less than that stipulated under the above paragraphs. Should any unexpected special hazards be encountered during the performance of this Agreement, the DB shall, prior to performing any Work involving the special hazard, immediately obtain this insurance as instructed by the Owner. In the event the special hazard requiring the additional coverage was not a part of the GMP, the expense of such insurance shall be reimbursed to the DB by the Owner, otherwise the DB shall assume full responsibility for the purchase with no charge back to the Owner.
- l. Limit of Liability - Nothing contained in these insurance requirements is to be construed as limiting the liability of DB. Owner does not in any way represent that the coverages or the limits of insurance specified is sufficient or adequate to protect DB's interests or liabilities, but are merely minimums. The obligation of the DB to purchase insurance herein shall not in any way limit the obligation of the DB 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.

9.3 **Error and Omissions**

The DB shall obtain, maintain, and shall ensure that the Architect shall obtain and maintain Professional Liability insurance in the amount of \$2,000,000 per claim.

Unless the DB's policy is pre-paid, non-cancelable, and issued for a period at least equal to the term of this Agreement, on an occurrence basis, the DB shall have the policy amended to include substantially the following provision: "It is a condition of this policy that the company shall endeavor to furnish written notice to the Owner thirty (30) days in advance of the effective date of cancellation of this policy."

The DB shall furnish a certificate of insurance or, if requested by the Owner's Representative true copies of liability policies and manually countersigned endorsements of any changes. Insurance must be effective, and evidence of acceptable insurance furnished by DB to Owner, before beginning performance under this Agreement. Evidence of renewal shall be furnished not later than five (5) days before a policy expires.

9.4 **Indemnification**

The DB shall hold harmless, defend and indemnify Owner, the County Board of Supervisors, and their respective officers, Board and Board members, agents, representatives, and employees from all claims, losses, damage, actions, causes of action, expenses, and/or liability, including any related and reasonable attorney fees, accountant fees, expert witness fees, consultant fees, court costs, per diem expenses, traveling and transportation expenses, or other such related costs resulting from (i) any personal injury or property damage of any type claimed, including any alleged wrongful death claim, received or sustained by any person, persons or property growing out of, occurring, or attributable to any Work performed under or related to this Agreement, to the extent such damages result from any negligent acts or omissions of the DB, any subcontractor, or any employee, agent, or representative of the DB or any subcontractor or anyone performing Work for the Project through them, (ii) any mechanics' or construction liens arising as a result of the Work, or (iii) any failure of the Project to comply with any applicable governmental laws, ordinances, rules and regulations to the extent resulting from the negligent act or omission of the DB or any of its subcontractors, and/or arising in any way out of or resulting from this Agreement or any of the Work provided thereunder, except to the extent such failure is solely caused by the negligence or misconduct of the Owner or the County.

9.5 **Bankruptcy**

In the event the DB enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the DB shall immediately notify Owner's Representative. The notification shall be sent to ensure its receipt within five (5) days of the initiation of the bankruptcy proceedings. The notification shall include the date on which the bankruptcy petition was filed, the court in which the petition was filed, and a list of Project contracts for which final payment has not yet been made. This obligation remains in effect until final payment under this Agreement. If a surety upon any bond furnished in connection with this Agreement or any insurance carrier providing coverage in connection with this Agreement acknowledges to the DB such surety's or carrier's insolvency, or voluntarily files or has filed against it a petition in bankruptcy, or becomes subject to a receivership or any similar insolvency proceeding under state or federal law, the DB shall promptly replace the bond or insurance policy with one which is equivalent and acceptable to Owner.

ARTICLE 10

NOTICES TO PROCEED, COMMENCEMENT AND COMPLETION

10.1 **Initial Notice to Proceed**

Execution of this Agreement by Owner constitutes Notice to Proceed with design and Construction Document preparation.

10.2 **Notice to Proceed for Construction, Prosecution, and Completion of Work**

No construction Work may be performed by or through DB except pursuant to a Notice to Proceed with Construction for each phase. The Notice under this section shall be issued by the Owner or the Owner's Representative. The DB shall:

- a. Commence Work under this Agreement within ten (10) days after the date of the Notice to Proceed with Construction from the Owner's Representative and obtaining all required permits and authorizations from authority having jurisdiction,
- b. Prosecute the Work diligently, and
- c. Substantially complete each phase of the construction Work in accordance with Exhibit D. TIME IS OF THE ESSENCE.

Notice to Proceed with Construction shall be executed no later than fourteen (14) calendar days from the GMP Submission. In the event the Notice to Proceed is not issued in 30 days after GMP submission, the DB will be given a day -for-day time extension. DB may submit a request for compensation for any increase in costs due to escalation, material price increases and product delivery acceleration.

Some Work (preliminary site work, demolition, abatement, shop drawings, fabrication, general conditions work, etc.) may have to be performed prior to the full commencement of construction. The time stated for completion of each phase includes cleanup of the Site. DB shall achieve Final Completion as soon as possible but not later than sixty (60) days after Substantial Completion of each phase. At the time of receipt of the building permit and monthly thereafter, DB shall consult with the Owner's Representative with regard to the likely Substantial Completion date of each phase (if applicable) and earlier occupancy dates so as to allow the Owner to plan its move.

10.3 **Notice of Delay**

Immediately, and in no event later than fourteen (14) days after it first believes an event may give rise to or result in a Change due to any delay under this Comprehensive Agreement, DB shall so notify the Owner's Representative in writing. The notification must identify the difficulties, the reasons for them and the estimated period of delay anticipated or reasonably known at the time of submission. Failure to give such notice in substantial compliance with this Article 10.3 will waive any right by DB to make a claim based upon such delay. Such notice shall be a condition precedent to DB's right to pursue any claim for an adjustment to payment or schedule based upon such delay.

10.4 **Liquidated Damages for Delay**

- a. Owner and DB recognize that time is of the essence in the completion of the Work and that Owner may suffer loss or damages if the Work is not completed within the period of time stipulated, plus any extensions thereof allowed in accordance with the Agreement. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss or damages suffered by Owner if the Work is not completed on time. Accordingly, if such Work is not fully and satisfactorily completed within the period of time set forth in this Agreement, the DB agrees it shall owe to and pay to Owner as liquidated damages for loss of Owner's use or occupancy of the Work, but not as a penalty, the sum of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) as step one liquidated damages for each and every consecutive day of unexcused delay after the date established for Substantial Completion. Once the Work is Substantially Complete, the accrual of step one liquidated damages shall stop and the DB shall have sixty (60) days in which to achieve Final Completion of the Work. If Final Completion of the Work is not achieved by the 60th day after Substantial Completion has been achieved, and if no extension of such time has been granted by the Owner as required by this Agreement, then DB shall owe the Owner the additional amount of step 2 liquidated damages as set forth in Paragraph 10.4(b), below.

The DB agrees it shall owe to and pay to Owner as liquidated damages the sum of FIVE HUNDRED DOLLARS (\$500.00) per School as step two liquidated damages for each consecutive day during which full and satisfactory completion of the Work is delayed or exceeds the number of days provided for in this Agreement to complete the Work or as agreed to between the Owner and DB in writing. DB further agrees that any liquidated damages Owner assesses against DB may also be withheld by Owner from any retainage or other sums Owner may otherwise owe to DB. DB hereby waives any defense as to the validity of any liquidated damages on the grounds such liquidated damages could be void as penalties or are not reasonably related to actual damages except as to whether DB is not responsible for delays. All liquidated damages are in addition to any other damages other than for delay that the Owner may be entitled to recover from DB.

10.5 **Suspensions and Delays**

If the performance of all or any part of the Work of this Agreement is unreasonably suspended, delayed, or interrupted solely by:

- i. An order or act of the Owner's Representative in administering this Agreement; or
- ii. By a failure of the Owner's Representative to act within the time specified in this Agreement or within a reasonable time so as not to delay the Work of the DB;

Then the DB may request an equitable adjustment to the amount and/or time due under this Agreement due to any increased costs directly caused by the delay or interruption (including the direct costs incurred during any suspension or interruption), and in the schedule and any other contractual term or condition affected by such suspension, delay, or interruption. However, no adjustment may be made under this Paragraph 10.5.a. for any delay or interruption of performance that has been delayed or interrupted in any way by the action, omission, fault or negligence of the DB or those providing Work through DB.

A claim under this clause will not be allowed for any costs incurred before the DB has notified the Owner's Representative in writing of the act or failure to act involved, or if DB has failed to follow the procedures of Article 17, Paragraph 17.5 of this Agreement for such claim.

10.6 **Excusable Delays to the Work.**

- a. If DB is delayed in the performance of the Work on the Project due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom DB is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle DB to an extension of the Contract Time(s) include, but are not restricted to, acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events such as acts of God or of the public enemy, fires, severe floods, epidemics, pandemics, quarantine restrictions, strikes, freight embargoes, and unusually severe and extreme weather, unusual delays in material procurement and delivery due to supply chain issues, and unprecedented man power shortages, but in every case the failure to perform must be beyond the control and without any fault or negligence of the DB or those providing any of the Services through DB, including without limitation, the Architect, the Contractor, and any subcontractor, who shall plan for all contingencies which can be reasonably anticipated, such as unfavorable weather.
- b. Contingencies which can be reasonably anticipated shall not be considered a basis for claiming an excusable delay. DB must notify Owner's Representative in writing within fourteen (14) days of any event it believes constitutes an excusable delay and such notice is a condition precedent to any such claim. Furthermore, DB shall be entitled to a reasonable time extension and may be entitled to reasonable additional compensation as mutually agreed to by both parties. Owner's Representative may disallow such a claim for an excusable delay if such claim does not meet all the requirements of this Agreement. Notwithstanding the provisions of Article 17, the parties'

inability to agree upon whether the DB is entitled to additional compensation and, if so, to what amount, shall not constitute a justification for the DB to stop work.

In recognition of the potential delays related to supply chain issues, material shortages, and labor shortages, the parties will identify in the GMP a contingency line item for reserve funds in the event that such funds are necessary to compensate the DB, the DB's trade partners and vendors for cost incurred as the result of delays resulting from supply chain issues, material shortages, and labor shortages. To access this contingency, DB must first notify Owner and receive its permission to use the contingency per the contingency usage provisions in this document. Owner's permission shall not be unreasonably withheld. In the event that reasonable compensation for the delay exceeds the reserved contingency amount, the DB will be fully responsible to bear additional costs related to the delay.

10.7 **Construction Schedule/ Progress Chart**

- a. Within fourteen (14) working days after receiving Notice to Proceed for each phase, the DB shall prepare and submit to the Owner's Representative a complete detailed design and construction schedule in the form of an electronic file. Unless otherwise required by the Contract Documents; the schedule shall contain details appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to the Substantial Completion date and final completion date indicated in the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. Such software and schedule shall be compatible with the Owner Representative's computer system and scheduling software. This will 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 as explained in Paragraph 16.3, so that the Owner will only be paying for work actually completed by the DB.
- b. At the end of each progress payment period, or at such reasonable intervals as directed by the Owner's Representative, the DB shall:
 - i. Revise the design and construction schedule to reflect any changes in the Work, completion time, or both, as approved by the Owner's Representative;
 - ii. Enter on the design and construction schedule the total percentage of Work actually in place; and
 - iii. Submit a copy of the adjusted design and construction schedule, and a complete electronic update to the Owner's Representative.
- c. If at any time the Work falls behind the design and construction schedule after taking into consideration any excusable delays as defined above, the DB shall take such action as necessary to improve progress. The Owner's Representative may require the DB to submit a revised design and construction schedule demonstrating its proposed recovery plan to make up the lag in scheduled progress. The plan shall show how the DB shall achieve recovery by increasing resources and/or work times (if approved by Owner). If the Owner's Representative finds the proposed plan unacceptable, the DB may be required to submit a new plan. If the new plan submitted is not reasonable, after consultation with the DB, the Owner's Representative may require the DB to increase the work force, accelerate the planned construction volume, increase assigned construction equipment, or the number of work shifts, or take other appropriate action, all without increase to the GMP.

- d. The DB shall update the schedule and issue a progress report each month. If after any update has been performed the actual durations of recurring activities are longer than the original durations, the DB shall issue a written plan that indicates the additional resources to be allocated to those activities showing how they will achieve the planned duration. Alternatively, the durations of all subsequent occurrences of that type of activity shall be increased to reflect actual production, and the DB shall issue a recovery plan to the Owner's Representative within ten (10) days showing how the Project will get back on schedule.
- e. Costs incurred prior to the Effective Date of this Agreement may be charged to this Contract if incurred on or after October 1, 2022, and performed in accordance with the terms and conditions of this agreement.

10.8 Exception to Completion Schedule and Liquidated Damages

In cases where the parties agree in writing that sodding and/or planting and/or specified maintenance thereof is not feasible during the construction period, such Work will be excepted from the completion schedule and the liquidated damages provision of Paragraph 10.4. However, such Work must be accomplished or completed during the first sodding and/or planting period or the specified maintenance period following the original completion date within the same number of days originally scheduled for such activity. This shall also include items not contracted to the DB, but directly contracted by the Owner with other vendors and which is required to complete and provide a fully functional facility. The failure of Owner's other vendors to provide or complete their work shall not affect either Substantial Completion or Final Completion of the Work by DB.

ARTICLE 11
DB RESPONSIBILITIES

11.1 Performance and Superintendence of Work By DB

- a. The DB shall be responsible for providing all the Services called for by this Agreement
- b. The DB must give personal superintendence to the Work by having a superintendent, on the DB's payroll, approved by the Owner's Representative, with authority to act on behalf of the DB, on the Site at all times Work is in progress.
 - 1. A minimum of one such superintendent must be provided on the Site to be responsible for coordinating, directing, inspecting, and expediting the Work of the DB, Contractor and its subcontractors.
 - 2. It is contemplated that all Work will be performed during normal working hours, between the hours of 8:00 a.m. until 5:00 p.m., Monday through Friday, local time, with the option to work on Saturday if desired or required as a makeup day due to weather during the week, unless otherwise specified in this Agreement or unless otherwise prohibited by the local jurisdiction. The DB's material and equipment deliveries must not interfere with the arrival or departure of Owner employees, staff and visitors to existing facilities.
- c. The DB must refer requests received from occupants of buildings included in the immediate Work area to change the hours of Work, including anticipated cost and schedule impact, to the Owner's Representative for resolution.
- d. The DB shall submit a daily construction report by close of business of the following working day on a form provided by or approved by the Owner's Representative or other form customarily used in the industry. The report shall indicate the number of people by trade or craft, and the type and

location of Work. The report shall include subcontractors, safety and quality violations observed, corrective measures taken to correct the violations, and other information requested by the Owner's Representative. The Owner's Representative may reasonably modify the requirements of the report as the Project progresses.

11.2 **Materials and Workmanship**

- a. Unless otherwise specifically provided, all equipment and materials incorporated in the Work must be new and of suitable grade for the purpose intended. Unless otherwise specifically provided, reference to any equipment, material, or patented process by brand name, make, or catalog number establishes a standard of quality only. The DB may substitute any equipment, material, or process that the Owner's Representative finds to be equal to that named, which finding shall be in writing and at the Owner's Representative's discretion.
- b. In the event of substitution in accordance with Subparagraph 11.2.a above, the DB shall furnish to the Owner's Representative for approval the manufacturer's name, the model number, and any other relevant information on the performance, capacity, nature, and rating of equipment or materials proposed for substitution. If requested by the Owner's Representative, samples must be submitted for approval at the DB's expense, shipping charge prepaid. Materials or processes substituted without the Owner's Representative's approval may be rejected by Owner.
- c. The DB shall obtain the Owner's Representative's written approval of the machinery and mechanical equipment incorporated into the Work. Approval will not be unreasonably withheld and must be obtained prior to the submission of the GMP. The DB shall submit samples of all materials and equipment as required by the Specifications unless otherwise agreed to in writing. Owner approval or rejection shall be based upon the Contract Documents.
- d. All Work shall be performed in a skillful and workmanlike manner. The Owner's Representative may, in writing, require the DB to remove from the Work any employee of the DB, or any subcontractor or its employee, the Owner's Representative deems incompetent, careless, or otherwise objectionable. The DB shall immediately remove from the Work any employee or any subcontractor or its employee so designated. However, if DB does not agree with such action, the DB may within three (3) days request the Owner to review and make a decision on the matter, which decision shall be final.

11.3 **Responsibility for Design**

- a. It is understood and agree that this Agreement includes design services. The DB agrees not to assign or transfer any of DB's interests in this Agreement. The DB agrees not to transfer or delegate to others its responsibilities under this Agreement except the DB shall be allowed to subcontract portions of the Scope of Work. The DB may, by subcontract, engage persons who are design and engineering professionals to provide design services for the Project. The DB represents that the design professionals providing services for the Project include Persons with required Virginia licenses and registrations or are otherwise permitted by law to provide such services. The DB further represents that the structural, electrical, mechanical and other engineering disciplines provided for the design of the Project will be under the direct supervision of licensed professional engineers who are registered in Virginia or who are persons in responsible charge of an engineering firm registered in Virginia.
- b. The DB is responsible to Owner for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other Services furnished by the DB's design professionals under this Agreement. The DB must, without any changes to the GMP or schedule, correct any errors or deficiencies in any of the designs, drawings, specifications, and other Services, all at no cost to the Owner and, provided that such errors or deficiencies do not arise out of, or as a result of, information or directives furnished by Owner or Owner's Representative, and

further provided, that because of such errors or deficiencies the Work does not conform to the requirements of this Agreement.

- c. As part of the DB's responsibility under this Agreement, the DB shall ensure that the design and construction of the Project shall comply with all applicable Codes and Standards, including without limitation the VUSBC, the National Fire Protection Association Codes, the Uniform Federal Accessibility Standards, and the Americans with Disabilities Act, Section 504, Rehabilitation Act 1973 Standards. Any Owner review, approval, or acceptance of, or payment for, any of the Services required under this Agreement shall not be construed to and does not relieve DB of any obligation under this Agreement. The DB shall remain liable to the Owner for all damages caused by the DB's performance of any Services furnished under this Agreement that fails to meet the requirements of this Agreement.
- d. The rights and remedies of the Owner provided for under this Agreement are in addition to any other rights and remedies provided by law.

11.4 **Use of Premises**

- a. The DB, the Contractor, and any subcontractors and their employees shall comply with the regulations governing access to, operation of, and conduct while on the Site and shall perform the Work required under this Agreement so as not to unreasonably interfere with the conduct of Owner's business or use and occupancy by Owner.
- b. As permitted by the site conditions, the DB shall separate its personnel, Contractor's personnel and subcontractors' personnel from Owner visitors, employees, and Owner property not involved in the Project. The DB shall cordon off the construction area using barricades or other means to achieve this separation.
- c. Any requests received by the DB from occupants, or occupants in the area, to change the sequence of Work shall be referred to the Owner's Representative.
- d. The DB, any subcontractors, and their employees will not have access to any Owner facility outside the scope of this Agreement without permission of the Owner's Representative
- e. DB, Contractor or subcontractor employees may not use the Owner's existing toilet facilities. No cleaning of tools, including painting equipment/brushes, is permitted in the toilet or janitorial facilities.
- f. DB shall provide a site utilization plan for Owner review at the time of the 35% Design Development submission. Such plan should show access points, traffic control, storage of materials, phasing, lay down areas, fenced and protected areas, and mobile office locations at a minimum.

11.5 **Licenses, Permits and Responsibilities**

- a. Except as otherwise noted in this Agreement, the DB is responsible for identifying and obtaining any necessary licenses and permits at the DB's expense and for complying with the Codes and Standards in connection with the prosecution of the Work. The Owner will directly pay actual costs for all permits as set forth in Paragraph 5.3.a. There shall be no additional mark-up on any permit or other costs paid for by the Owner for the items covered by the allowances as defined in the GMP.
- b. The DB shall demonstrate compliance with all environmental permits and regulations identified in the Contract Documents and/or as may be required by law prior to and during construction.

11.6 **Building Codes, Fees, and Charges**

- a. The DB shall comply with all state and local building code requirements.
- b. The DB shall pay all fees and charges for temporary connections to outside services and for use of property outside the Site, as provided by Paragraph 5.3.a. The Owner will directly pay for permanent utility connection fees for the facility.

11.7 **Federal, State, and Local Taxes**

The GMP includes all applicable federal, state, and local taxes and duties.

11.8 **Identification of Contract Deliverables**

Unless otherwise specified, the cover page of each document prepared and submitted by the DB to the Owner under this Agreement shall include the following information:

- a. Name and business address of the DB;
- b. Contract number;
- c. Name, position and office location of the Owner's Representative; and
- d. Date of Document.

11.9 **Patent and Copyright Indemnity**

- a. Except as provided in Subparagraph 11.9.c, below, the DB shall indemnify, defend and hold harmless the Owner, its employees, officers, Board of Supervisors, School Board members, representatives and agents against any liability, including other such costs and fees as further set out in Paragraph 9.4, above, from any claim of patent and/or copyright infringement (or unauthorized use) arising in any way from any failure of DB to perform its Services provided by or through DB for the Project under this Agreement.
- b. The Owner shall promptly notify the DB of any claim or suit subject to Subparagraph 11.9.a above.
- c. This indemnification does not apply to claims of infringement of a patent and/or copyright resulting from the Owner's or Owner's Representative's specific written direction, compliance with which requires the infringement.
- d. This clause must be included in all subcontracts under this Agreement, at any tier.

11.10 **Non-Disclosure**

To the greatest extent allowable by law, neither the Owner nor DB shall disclose any information of either party received that is marked confidential unless such disclosure is required by law or approved by the owner of such information, such approval not to be unreasonably withheld or delayed.

11.11 **Debris and Cleanup**

- a. On a daily basis during the progress of the Work, the DB must remove and dispose of the resultant debris to a dumpster or other approved collection area and keep the Site neat and clean.
- b. The DB shall, upon completion of each phase of the Work, remove all construction equipment and surplus materials (except materials or equipment that are to remain on Owner property as provided by this Agreement), and leave the Site in a clean, neat, and orderly condition satisfactory to the Owner's Representative, in his/her sole discretion.

11.12 **Heat**

Unless otherwise specified, or unless directed otherwise by the Owner's Representative in writing, the DB shall provide heat as necessary to protect all Work, materials, and equipment against injury from dampness and cold, and in the case of information technology equipment requiring the same, air conditioning, to protect it from heat and humidity

11.13 **English Language Requirement of On-Site Superintendent**

The DB's on-site superintendent must be able to speak, read, and write English to the extent necessary to permit reasonable communication with Owner personnel.

11.14 **Substitute Materials or Methods**

Where the technical provisions permit the DB to propose substitute materials, terms, systems or equipment, the selection of such options is subject to the following conditions:

- a. Once a substitute has been selected and approved by the Owner's Representative, it must be used for the entire Project unless the DB has proposed, and Owner's Representative has approved, the substitute for a limited application.
- b. The DB must coordinate its selection with the Plans and Specifications and the Architect.
- c. Substitutions proposed by DB shall be at no increase to the GMP, however, can be funded by use of the DB Contingency, upon prior written approval of the Owner.

11.15 **Advertising of Awards**

Except with the Owner's Representative's prior written approval, the DB agrees not to refer in its commercial advertising to imply in any manner that the Owner endorses its products.

11.16 **Groundbreaking Ceremonies**

DB agrees to participate in groundbreaking ceremonies at a time specified by the Owner.

ARTICLE 12

OWNER RIGHTS AND RESPONSIBILITIES

12.1 **Owner**

The Owner may appoint an Owner's Representative, who may be either an Owner employee or a contractor. The name, address, telephone number, and specific responsibilities, authority, and limitations of the Owner's Representative will be provided to the DB in writing prior to the notice to proceed to DB. The Owner, in its sole discretion, may remove or replace Owner's Representative at any time without prior notice to the DB, but notification of the change, including the name and address of any successor Owner's Representative, will be provided promptly to the DB by the Owner, in writing. In the event the Owner chooses to replace the Owner's Representative, the Owner agrees the DB is not liable for carrying out change orders or adhering to any instruction or direction provided by the replaced Owner Representative after the DB has been notified of the replacement.

12.2 **Site Visits**

- a. 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 DB 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 DB 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.
- b. The DB's indemnification of the Owner contained in the "indemnification" clause of this Agreement shall not apply during any such visits to the Project by visitors or guests of the Owner or to Owner's officers, employees, or agents who are engaged in conducting, guiding, or accompanying any such visits, leaving the Owner and the DB and its subcontractors responsible for their own acts and omissions according to applicable law and other clauses of this Agreement. This limited exception in this Paragraph 12.2.b to DB's indemnification obligation does not apply to inspectors, investigations, or other site visits provided for elsewhere in this Agreement or conducted for the purpose of aiding in the enforcement of law.

12.3 **Owner-Directed Staffing Changes**

- a. 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. If DB does not agree with such action, the DB may within three (3) days request the Owner to review and make a decision on the matter, which decision shall be final.
- b. "Person," as used in this paragraph, includes any persons providing Work through or under the DB.

12.4 **Examination of Records**

- a. The Owner and its authorized representatives shall, during the Project and until three (3) years after final payment under this Agreement, have access to and the right to audit, copy and/or examine any pertinent books, documents, papers, or other records of the DB involving any transactions or items related to Paragraph 5.3 of this Agreement. Notwithstanding the foregoing, Owner shall provide DB with reasonable notice for items covered by this section prior to submission of the GMP. Any notice for items covered by this section after submission of the GMP may allow the DB to request additional cost incurred in compliance.
- b. The DB agrees to include in all subcontracts under this Agreement and to have its Contractor include in all its subcontracts a provision to the effect that the Owner and its authorized representatives will, until three (3) years after final payment under this Agreement, have access to and the right to audit, copy, and/or examine any pertinent books, documents, papers, or other records of the Contractor and subcontractors involving any transactions or items related to the Work performed for which payment is made to DB under Paragraph 5.3 hereof, and further providing that such individuals shall otherwise comply with the provisions contemplated by Paragraph 12.4.c. The term subcontract as used in this paragraph excludes:
 - 1. Subcontracts for public utility services at rates established for uniform applicability to the general public.
- c. For the purposes of this Paragraph 12.4, the DB agrees to provide Owner, at no cost to the Owner, adequate and appropriate workspace at the DB's facilities in order to conduct such examinations to the extent space is available.

12.5 **Ownership of Work Product**

- a. Work Product: The Plans and Specifications, including electronic copy of them, furnished by the DB to the Owner under this Agreement and the copyrights thereto ("Work Product") shall become the property of the Owner upon payment for such item(s). DB, Architect, and Contractor shall have the right to use the Work Product, except as a re-use of the same design on another project.
- b. The Owner may use the Work Product in connection with the Owner's occupancy and use of the Project, including for maintenance and repairs, future renovations, and expansions, and for any other purpose the Owner deems appropriate. Such Work Product is not intended or expected to be suitable for use on other projects. Such use of Work Product by Owner or any other person to whom the Owner has furnished such Work Product shall be at the user's sole risk of liability and without liability or legal exposure to DB, Architect, Contractor, or any of their subcontractors and consultants, or any of their officers or employees.
- c. The DB shall include in its contract with Architect and have included in contracts with any design professionals providing any services for this Project provisions that require all design professionals providing any services for the Project to agree to this Paragraph 12.5, and the DB shall indemnify, defend and hold harmless the Owner and its agents, employees, architects, engineers, consultants and contractors from any claim of copyright infringement by an Person based upon the Owner's use of the Work Product pursuant to this Paragraph 12.5 for this or any other project.
- d. Nothing in this Paragraph 12.5 shall be deemed to relieve the DB or any design professionals providing services through the DB of their obligation under this Agreement that all design and design services provided for this Project shall conform to the applicable standard of care defined herein for the applicable design professional providing such design or services.

12.6 **Survey Monuments and Benchmarks**

- a. The DB will establish such general reference points, for written approval by the Owner's Representative, as will enable the DB to proceed with the Work. The DB shall provide new monuments where shown or specified if the DB finds that any previously established reference points have been destroyed or displaced, or that none have been established, the DB shall promptly notify the Owner's Representative.
- b. The DB must protect and preserve established benchmarks and monuments and make no changes in locations without the written approval of the Owner's Representative. Established reference points that may be lost, covered, destroyed, or disturbed in the course of performance of the Work under this Agreement, or that require shifting because of necessary changes in grades or locations, must (subject to prior approval of the Owner's Representative) be replaced and accurately located or relocated (as appropriate) by a licensed engineer or licensed land surveyor.
- c. New monuments will be six (6) inches square by three (3) feet deep (unless otherwise specified), of concrete or stone, with a 3-inch copper or brass pin, 3/8-inch in diameter, in the center, and must be set flush with the ground or pavement in locations indicated on the site plan.
- d. Monuments will not be required where lines of buildings are coincident with property lines.
- e. The DB shall verify the figures shown on the survey and site plan before undertaking any construction Work and will be responsible for the accuracy of the finished Work.
- f. After completion of construction and before final payment, the DB must furnish the Owner blueprints (in triplicate) of plans showing the exact location of construction survey monuments with reference to true property lines.

12.7 **Owner Partial Occupancy**

- a. The Owner reserves the right of partial occupancy or use of facilities, services, and utilities, before final completion without implying completion or acceptance of any part of the Project by the Owner. Before such occupancy or use, the Owner's Representative must furnish the DB an itemized list of Work remaining to be performed or corrected. Failure to list an item will not relieve the DB 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.
- b. Costs incurred and delays to the completion of the Project as a direct result of such partial occupancy or use of facilities, services, and utilities may be subject to equitable adjustment under Article 17, Paragraph 17.1.

12.8 **Owner Property**

- a. The Owner will provide access to the Land/Property by the DB.
- b. Title to the Land and tangible Owner property will remain with the Owner even if incorporated in or affixed to property not owned by the Owner. The DB may use the Land and tangible Owner property only in connection with this Agreement. The DB must maintain adequate property control records in a form acceptable to the Owner's Representative and must make them available for Owner inspection upon request. Owner represents that it will obtain good title to the Land subject to easements and other items of record and the authority to authorize the DB contractors to perform work on such Land provided the DB complies with all applicable laws, ordinances, and regulations regarding work on such Land and obtains all required permits and licenses for such Work. The Land shall be made available to the DB with the notice to proceed with the construction Work.
- c. Upon delivery of the tangible Owner property (other than the Land) to the DB, the DB assumes the risk and responsibility for its loss or damage, except:
 - 1. For reasonable wear and tear;
 - 2. To the extent property is consumed in performing the Agreement; or
 - 3. As otherwise provided in the Contract Documents.
- d. Changes in Owner-Furnished Tangible Property
 - 1. By written notice, the Owner's Representative may: (a) decrease the property provided or to be provided by the Owner under this Agreement; or (b) substitute other Owner owned property for the property to be provided by the Owner, or to be acquired by the DB for the Owner under this Agreement. The DB must promptly take any action the Owner's Representative may direct regarding the removal and shipping of the property covered by this notice.
 - 2. In the event of any decrease in or substitution of property pursuant to Subparagraph 12.8.d.1 above, or any withdrawal of authority to use property provided under any other contract or lease, or failure of Owner to make Land or tangible property available in a timely manner which property the Owner had agreed in this Agreement to make available, the Owner's Representative, upon the DB's written request, or if substitution causes a decrease in the cost of performance, on the Owner's Representative's own initiative, may equitably adjust any contractual provisions affected by the decrease, substitution, late delivery or withdrawal, in accordance with Article 17 hereof.

- e. The DB must maintain and administer a program or system acceptable to the Owner's Representative for the utilization, maintenance, repair, protection, and preservation of Owner property until it is disposed of in accordance with this Paragraph 12.8.
- f. The Owner, and any persons designated by it, shall at reasonable times have access to premises where any Owner property is located for the purpose of inspecting it.
- g. Within forty-five (45) days after Notice to Proceed with construction, the Owner must submit a schedule to the DB, in an acceptable format and giving desired dates for delivery of items and property furnished by the Owner. Approved dates of delivery must be confirmed by the Owner's Representative in writing. Approved dates of delivery must be confirmed by the Owner thirty (30) days prior to scheduled delivery.
- h. If Owner-furnished equipment is to be installed and is not on the construction Site, the Owner will make separate arrangements to provide delivery to the Site. Any costs to DB for labor associated with loading or unloading this Owner-furnished equipment may be negotiated.

12.9 **Other Contracts**

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

12.10 **Owner Property Furnished "AS IS"**

- a. The Owner makes no warranty whatsoever with respect to the Land and tangible Owner Property provided "as is" except that such Property is in the same condition specified in the solicitation as when inspected by the DB pursuant to the solicitation or (if not inspected by the DB) as when last available for inspection under the solicitation.
- b. The DB may repair any Property made available to the DB "as is." Repair will be at the DB's expense except as otherwise provided in this paragraph. Such Property may be modified at the DB's expense, but only with the written permission of the Owner's Representative. Any repair or modification of Property furnished "as is" does not affect the title of the Owner.
- c. If there is any change (between the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation) in the condition of tangible Owner Property furnished "as is" that will adversely affect the DB, the DB must, upon receipt of the Property, notify the Owner's Representative of that fact, and (as directed by the Owner's Representative) either (1) return the Property at the expense of the Owner or otherwise dispose of it, or (2) effect repairs to return it to the condition it was in when inspected under the solicitation or (if not inspected) as it was when last available for inspection under the solicitation. Upon completion of (1) and (2) above, the Owner's Representative, upon written request from the DB, may equitably adjust any contractual provision affected by the return, disposition, or repair, in accordance with Article 17 hereof. The foregoing provisions for adjustment are exclusive, and the Owner is not liable for any delivery of Owner Property furnished "as is" in a condition other than that in which it was originally offered.
- d. Except as otherwise provided in this Paragraph, tangible Owner Property furnished "as is" is governed by this Paragraph 12.10 of this Agreement.

12.11 **Owner's Right to Stop Work**

If the DB or Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the DB or Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the DB or any other person or entity.

ARTICLE 13
ADMINISTRATIVE ITEMS

13.1 **Standard References**

All publications and other documents (such as manuals, handbooks, codes, standards, and specifications) cited to in this Agreement for the purpose of establishing requirements applicable to equipment, materials, or workmanship are hereby incorporated by reference in this Agreement.

ARTICLE 14
SUBCONTRACTING

14.1 **Subcontracts**

- a. Nothing in this Agreement may be construed to create any contractual relationship between any subcontractors and the Owner. The divisions or sections of the Specifications are not intended to control the DB in dividing the Work among subcontractors or to limit the Work performed by any trade.
- b. The DB is responsible to the Owner for acts and omissions of its own employees, of subcontractors and their employees, and any other person providing Work on the Project through or under the DB. The DB is also responsible for the coordination of the Work of the trades of subcontractors.
- c. The Owner will not undertake to settle any differences among the DB, the Contractor, Architect and any subcontractors of any of them.

ARTICLE 15
PROTECTION OF PERSONS AND PROPERTY

15.1 **Accident Prevention**

- a. All construction and other Work on this Project must be performed in compliance with the Occupational Safety and Health Act of 1970 and with local, state and federal occupational safety and health regulations enforced by an agency of the locality or state under a plan approved by the U.S. Department of Labor, Occupational Safety and Health Administration ("OSHA"). Where requirements are different or in conflict, the more stringent requirement will apply.
- b. The DB shall maintain or require maintenance by the Contractor of an accurate record of exposure data and all accidents incidental to Work performed under this Agreement resulting in death, traumatic injury, occupational disease, or damage to property, material, supplies, or equipment.

The DB shall submit regular Project safety reports, exposure data, and accident reports, as prescribed by the Owner's Representative.

- c. A written comprehensive health and safety plan (the "Health and Safety Plan") is required as follows:
 - 1. Prior to commencing on-site Work, the DB shall submit to the Owner's Representative, a Health and Safety Plan designed to provide a system by which hazards on the Project Site will be controlled to minimize or eliminate occupational injuries or illnesses during performance of the Agreement.
 - 2. The Health and Safety Plan shall state that the DB, Architect and all subcontractors are required to comply with the DB's Project safety rules and requirements issued under the authority of that program.
 - 3. The Health and Safety Plan shall identify, by name, the DB's representative responsible for the execution of the Project safety program. The DB's Project safety representative shall have the express written authority from the DB to stop work, to abate hazardous conditions or unsafe practices, and to eject any DB, subcontractor or vendor employees from the Project Site for failure to comply with safety requirements.
 - 4. The Health and Safety Plan must include the precautionary measures to be taken to protect the Owner's staff, employees, students and the public.
- d. The authority, responsibilities, and duties of the DB's Project safety representative must be incorporated as part of the Health and Safety Plan. The safety responsibilities include, but are not limited to, conducting subcontractor construction safety program reviews, conducting employee safety orientation training, conducting weekly safety meetings, conducting daily site safety inspections, auditing subcontractor safety compliance, and preparing required periodic and special safety reports.
- e. In addition to the general requirements of Health and Safety Standards, the DB, Architect and Contractor specifically must comply with applicable OSHA requirements concerning hazard communications standards. Details of the DB's hazard communications program shall be included in the Health and Safety Plan.

15.2 Health and Safety Standards

- a. In performing this contract, the DB must:
 - 1. Comply with applicable Occupational Safety and Health Standards promulgated pursuant to the authority of the Occupational Safety and Health Act of 1970 (OSHA).
 - 2. Comply with any other applicable federal, state, or local regulations governing workplace safety to the extent they do not conflict with Paragraph 15.2.a.1 above; however, the more stringent standard shall apply.
 - 3. Take all reasonable precautions to protect the safety and health of the DB's employees, Owner's staff, employees, students and the public.
- b. The DB shall coordinate its use of existing Owner premises with the Owner's Representative. Subjects of this coordination include the designation of work and storage areas; the extent, if any, of use by the DB of Owner tools and equipment; the furnishing by the DB of appropriate signs and barricades to exclude unauthorized personnel from the work areas and to call attention to hazards

and dangers; and other matters relating to the protection of the Owner's staff, employees, students, property, and the public

- c. Materials, supplies, articles, or equipment manufactured or furnished under this Agreement or order must conform to the Occupational Safety and Health Standards pursuant to the authority of OSHA, and to other safety and health requirements specified in this Agreement or order. When conducting work on existing facilities, the DB must provide the Owner's Representative copies of Material Safety Data Sheets (MSDS) for any hazardous material, as defined by OSHA's Hazard Communications Standards, to be used on the job.
- d. If no OSHA standard exists, federal or other nationally recognized standards apply. Copies of current Occupational Safety and Health Standards are available from regional and/or area offices of OSHA.

15.3 **Protection of the Environment, Existing Vegetation, Structures, Utilities, and Improvements**

- a. The DB 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. At a minimum, the Work must conform to all requirements of applicable federal, state and local law.
- c. The DB 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 resulting from failure to comply with the requirements of this Agreement or to exercise reasonable care in performing the Work. If the DB fails or refuses to repair such damage promptly, the Owner's Representative may have the necessary remedial work performed and charge the cost to the DB, who shall pay such costs to the Owner in a prompt manner.
- d. The DB shall obtain approval from the Owner's Representative for any temporary roads, embankments and disposal areas not included in the Plans and Specifications and restore such areas to original conditions, including appropriate landscaping, upon the completion of Work. Additional work of this type requested by the Owner for areas not disturbed by the DB during the course of the Work will be reimbursed to the DB.
- e. Monuments, markers and works of art must be protected. Items discovered that have potential historical or archeological interest must be preserved. The DB shall leave the archeological find undisturbed and must immediately report the find to the Owner's Representative so that the proper authority may be notified. The GMP at any time may be equitably adjusted in accordance with the provisions of this Agreement if the DB incurs additional cost or time to perform as a result of any such discovery.
- f. DB shall follow all Environmental Protection Agency, Virginia Department of Environmental Quality and other applicable governmental regulations and guidelines, as to the labeling, use, storage and disposal of "hazardous waste", which shall for the purposes of this Agreement be defined as (a) any chemical, substance, material, mixture, contaminant or pollutant, now or hereafter defined as a "hazardous substance" under the comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time; (b) petroleum, crude oil, or any fraction thereof; (c) any pollutant, contaminant, special waste or toxic substance now or hereinafter listed, defined by or subject to regulation under any federal, state or local statute, ordinance, rule, regulation, standard, policy, guidance, permit, order, administrative or judicial decision or pronouncement, previously, currently or hereafter in effect, as amended from time to time, pertaining to health, safety, or the environment, including without limitation, natural resources, environmental regulation, contamination, pollution, cleanup, or disclosure. DB agrees to indemnify, hold harmless and defend Owner and all Owners' successors, employees, officers, the Lancaster County Board of Supervisors and its members, representatives and agents from any liability, claim, demand, action, cause of action, suit, loss, damage, injury, expense, cost, settlement, or judgment of any kind or nature including but not limited to demands, fines, remediations, or penalties asserted by any

governmental entity, as a result of the treatment, storage, disposal, handling, spillage, leakage, or presence in any form in soils, surface waters, ground waters, air, or property, of any wastes or "hazardous waste" as defined in this paragraph, at the subject property, caused or to the extent contributed to by DB or DB's subcontractors.

15.4 Access to Site

- a. The DB and the Owner's Representative shall agree upon the DB's access to the Site and the use of existing roads, including issuing vehicle passes for construction and private vehicles.
- b. The DB 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 paragraph shall be grounds for removal of individuals or contracts from the Site or termination for default.

15.5 Handling Asbestos and Other Hazardous Materials

If the DB discovers any hazardous waste and/or suspected hazardous waste that was present on the Site before the DB started Work on the Site the DB shall immediately notify, both verbally and in writing, the Owner's Representative and the Owner of such discovery. The DB shall not disturb and/or cause any release of any such hazardous waste, but shall secure such area and do no further work in such area until further directed by the Owner. The Owner shall have thirty (30) days from receipt of the above notice from the DB to remove, remediate, and/or take other appropriate action to address such hazardous waste so that the DB can proceed with the DB's Work on the Project. During such thirty (30) day period the DB shall continue to work on the Project in other areas of the Site or shall suspend Work on the Project, as directed by the Owner's Representative. If such hazardous waste has not been addressed by the Owner within such thirty (30) day period and such hazardous waste prevents the DB's performance of the Work on the Project and impacts the DB's critical path for the Project, the DB and Owner will address such situation by a mutually agreeable Change Order that may involve a change in the completion time and/or the amount of the GMP, or by termination of the Agreement pursuant to the provisions of the Agreement.

ARTICLE 16 **PAYMENTS**

16.1 Invoices

- a. The DB may make requests for progress payments on a monthly basis, but not more frequently. Such requests shall be in compliance with Paragraph 10.7, above. No request for payment will be made without the Owner's Representative's approval, which shall not be unreasonably withheld, of a monthly design and construction schedule update, including a recovery plan if required.
- b. The DB's invoices must be submitted before payment can be made.
- c. The DB agrees that submission of an invoice to the Owner for payment is a certification that:
 1. Any services being billed for have been performed in accordance with the requirements of the Contract Documents; and
 2. Any supplies for which the Owner is being billed have been delivered or suitably stored off site, with appropriate insurance coverage, and in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated in the Contract Documents. If

requested, DB shall provide, suitable to Owner approval, evidence of insurance for storage facility and complete inventory of items.

- d. To ensure proper payment, DB must furnish all documents required elsewhere in the Contract Documents and/or as reasonably required by the Owner's Representative.

16.2 **Payment**

- a. The Owner will make progress payments on a monthly basis for Work properly completed. Such payments shall be made within thirty (30) days of receipt and approval by the Owner's Representative of the DB's invoice. Before the first progress payment becomes due, the DB must prepare a preliminary schedule of values reasonably acceptable to the Owner's Representative for the Project
- b. If material delivered to the Project Site that will be incorporated into the Project will be taken into consideration in computing progress payments, before each payment is made, the DB must furnish the Owner's Representative proof of the quantity, value, and delivery of such material.
- c. In making progress payments, the Owner will retain five percent (5%) of the progress payments earned on both the Reimbursable Costs and the Fees, except on those Fees set forth in Paragraph 5.4.a. as Retainage that will be held by the Owner until Owner's Final Acceptance of that portion of the Project, or as negotiated prior to substantial completion.
- d. All material and Work covered by progress payments will be the sole property of the Owner. However, this paragraph does not:
 - 1. Relieve the DB of responsibility to protect and safeguard material and Work for which payment has been made or for restoration of any damaged Work; or
 - 2. Waive the right of the Owner to require fulfillment of all terms of the Contract Documents.
- e. Before receiving a progress payment or final payment under this Agreement, the DB must certify to the Owner's Representative that payments due to the Contractor and subcontractors have been made from the proceeds of prior payments or will be made in a timely fashion from the payment then due the DB. DB agrees to comply with the provisions of Virginia Code Section 2.2-4354 regarding payments to others.
- f. Upon completion and acceptance of all Work, the amount due the DB under this Agreement shall be paid upon presentation of a properly executed invoice, after the DB has furnished the Owner with a release of all claims against the Owner arising by virtue of this Agreement, other than claims in stated amounts that must be specifically excepted by the DB from the operation of the release. If the sum of all progress payments and the final invoice is greater than the GMP; the final invoice shall be adjusted so that the sum of all progress payments and the final payment is not greater than the GMP. If the DB's claim to amounts payable under the Agreement has been assigned, with consent of Owner, as provided in the Assignment of Claims paragraph, a release may also be required of the assignee.
- g. The DB's sole remedies for any failure or delay in payment by the Owner shall be the remedies provided in Article 4 of the Virginia Public Procurement Act, Virginia Code Sections 2.2-4347, et seq. The DB may neither terminate this Agreement nor stop the Work due to a failure or delay in payment, and any attempt to terminate this Agreement or stop the Work shall constitute a default on the part of the DB. If payment is delayed more than sixty (60) days due to no fault of the DB, then, prior to the DB stopping work, it shall notify the Owner in writing of its intent to stop the Work. Both parties shall make all reasonable efforts to meet within five (5) business days from the date of the DB's notification. The parties shall engage in good faith negotiations intended to resolve the

dispute regarding payment and the continuation of the Work. During the five (5) business days, the DB will continue the Work. If the parties are unable to reach to an agreement within five (5) business days from the date of the DB's notification, the DB may stop the Work until the payment issue is resolved.

16.3 **Construction Cost Breakdown and accounting**

The DB's submission of its Guaranteed Maximum Price must include a "schedule of values" type construction cost breakdown by CSI Division and other breakdowns as reasonably requested by Owner's Representative. Upon written request by the Owner's Representative, the DB shall provide copies of its contract with its Contractor and construction subcontracts and a comparison to the GMP for approval by the Owner's Representative, and for use in verifying monthly construction invoices. The DB's accounting for the Project shall be open and available for inspection at any time and from time to time as Owner may request.

16.4 **Allowable Cost and Payment**

- a. **Invoicing:** The Owner will make payments to the DB as set forth in Paragraph 16.2.a, in amounts approved by the Owner's Representative, such approval not to be unreasonably withheld. The DB must submit an invoice or voucher to the address specified by the Owner, supported by a statement of claimed allowable costs of performing this Agreement, in such form and detail as agreed to by all parties, in writing, and attached as Exhibit C.
- b. **Audit:** Without limiting Paragraph 12.4, at any time or times before final payment, the Owner's Representative may have the DB's invoices or vouchers and statements of cost audited. Any payment may be:
 1. Reduced by amounts found by the Owner not to be proper or supported by sufficient documents; or
 2. Adjusted for prior overpayments or underpayments. If the Owner chooses to audit, reasonable additional compensation incurred in compliance will be provided to the DB as mutually agreed upon by both parties and will be submitted as reimbursable costs.
- c. **Final Payment**
 1. The DB must submit a completion invoice or voucher, designated as such, promptly upon Final Completion of the Work by DB, but not later than 30 days (or longer, as the Owner's Representative may approve in writing) from the completion date. Upon Owner's approval of that invoice or voucher, and upon the DB's compliance with all terms of this Agreement, the Owner will promptly pay any balance not previously paid.
 2. In exchange for final payment the DB shall and does release the Owner and its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Agreement, except for those that have been identified as open in the final invoice. Final payment shall be considered Owner's final acceptance of the Work, subject to this Agreement.

ARTICLE 17
CHANGES/CLAIMS/DISPUTES

17.1 Changes

- a. The Owner may at any time, without notice to any sureties, by written change specifically designated or indicated to be a Change Order or Change Directive, make a Change including, without limitation, one that:
 - i. Changes the Plans and Specifications (including drawings and designs);
 - ii. Changes the Owner-furnished facilities, equipment, materials, services, or site;
 - iii. Directs acceleration in the performance of the Work; or
 - iv. Other changes referred to in this Agreement.
- b. Any other written, direction, instruction, interpretation, or determination from the Owner or the Owner's Representative that causes a change to the Scope of Work or its time of performance will only be treated as a Change Directive, allowing a change in compensation or schedule, only if (1) the DB gives the Owner's Representative written notice promptly, but not later than within twenty (20) days of the receipt by DB or the Contractor, whichever has first receipt of such order, direction, instruction, or determination, stating (i) the date, circumstances, and source of the order, direction, instruction or determination, and (ii) that the DB regards the order, direction, instruction or determination as a Change, and (2) the DB does not incur additional cost attributable to such order, direction, instruction or determination without first receiving a Change Directive from Owner, unless waiting for a Change Directive is unreasonable under the circumstances. Such notice is a condition precedent to any such claim.
- c. Except as provided in this Paragraph 17.1, no order, direction, instruction, interpretation, determination, statement, or conduct of the Owner's Representative may be treated as a Change or entitle the DB to any adjustment in compensation or schedule.
- d. Only if any Change under this Article 17 adds to or increases the Scope of Work, other than minor changes, and causes an increase or decrease in the DB's cost of, or the time required for, the performance of any part of the Work under this Agreement, the Owner shall issue a Change Order or Change Directive for such Change. However, no claim for any Change shall be allowed for which the DB has not substantially complied with the requirements of Paragraph 17.1.b, as well as all other requirements of this Agreement. No claims will be allowed for Plans or Specifications prepared by or for the DB and not in conformance with this Agreement. Accordingly, the GMP shall only be increased if there is an addition requested by the Owner to the Scope of Work, other than minor changes, and increased cost or time to the DB. The GMP shall be decreased for any Owner requested reduction to the Scope of Work.
- e. No claim by the DB will be allowed if first asserted after final payment under this Agreement, except as provided herein.
- f. After approval of final Plans and Specifications, except for the correction of errors and omissions, the DB shall not make or allow any changes in the Plans and Specifications, including drawings and designs, without approval of the Owner's Representative.
- g. The GMP may be adjusted for overruns and underruns in any allowances identified in Exhibit E. Items covered by allowances shall be supplied for such amounts (without markup except as otherwise noted) and by such persons or entities as required to perform the Work, but the DB shall not be required to employ persons or entities to whom the DB has reasonable objection. Unless

otherwise provided in this Agreement, (1) allowances shall cover the cost to the DB of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts but no other costs; (2) DB's cost for unloading and handling at the Site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the GMP but not in the allowances; and (3) whenever costs covered by (1) are more or less than allowances, the GMP may be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs covered by (1) and the allowances. Materials and equipment under an allowance shall be selected by the Owner's Representative in sufficient time to avoid delay in the Work. Allowance overruns may be deducted from the Owner's portion of savings, if any, in the DB's contingency, with the DB's approval, such approval to be at the sole discretion of DB.

- h. The DB shall not proceed with any Change until the Owner has obtained and confirmed in writing all necessary approvals and any required appropriations of funds to pay for the Change.

17.2 Change Order Accounting

The Owner's Representative may require Change and Change Order accounting whenever the estimated cost of a Change or a series of related Changes exceeds \$50,000. The DB, for each such Change or series of related Changes, must maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of Work, both changed and not changed, allocable to the Change. The DB shall maintain such accounts until the parties agree to an equitable adjustment for the Changes ordered by the Owner's Representative or the matter is finally disposed of in accordance with Paragraph 17.6. However, DB shall continue to work on the Project without any interruption or delay. In the event the costs of the unresolved changes exceed \$50,000.00, the DB shall notify the Owner in writing of the amount of unresolved change costs. Both parties shall make all reasonable efforts to meet within five (5) business days from the date of the DB's notification. The parties shall engage in good faith negotiations intended to resolve the dispute regarding the unresolved changes. During the five (5) business days, the DB will continue to work on the Change. If the parties are unable to resolve the payment dispute within five (5) business days from the DB's notification, then the DB may stop work on the Change until the dispute regarding payment is resolved the DB is entitled to stop work on the change and change events until payment for said changes is resolved with the Owner.

17.3 Equitable Adjustments

a. Cost for Construction

1. There will be no monetary adjustment to the GMP under this Agreement except when the Scope of Work (including time) has been modified by the Owner by a Change and as allowable under the other provisions of this Agreement. All other changes required to complete the Work shall be the sole responsibility of the DB unless otherwise agreed to in writing.
2. In the event of such a Change by Owner, an appropriate monetary adjustment to the GMP may be made only if all the requirements of this Agreement are met. The DB's written statement of the monetary extent of any claim for equitable adjustment under this Agreement must be submitted in the form of a lump sum proposal (unless otherwise requested) with an itemized breakdown of all increases or decreases in the cost of the DB's and all subcontractors' Work, in at least the following detail:
 - (a) Material quantities and unit cost;
 - (b) Labor costs (identified with the specific item of material to be placed or operation to be performed);
 - (c) Construction equipment;

- (d) Workers' Compensation, Automobile and Commercial General Liability Insurance, Builder's Risk Insurance, Umbrella Insurance;
 - (e) Overhead and Profit; and
 - (f) Employment taxes under FICA and FUTA.
3. The Contractor's overhead, profit and commission will be included in any approved modification to the component of the cost (Fixed Fees and/or Reimbursable Costs) for Work, if required. The subcontractor's overhead and profit percentage included in the proposal will be considered to include, but not be limited to, insurance other than mentioned in Paragraph 17.3.b.2, use of small tools, incidental job burdens, and general office expense. No percentages for overhead, profit or commission will be allowed on employment taxes under FICA and FUTA. The percentages for overhead, profit and commission on approved modifications will be negotiated and may vary according to the nature, extent, and complexity of the Work involved.
4. For approved modifications, regardless of the number of tiers of subcontractors, in no event shall the total amount charged to and paid by the Owner exceed 20% for overhead and profit combined. The allowed markup shall adhere to the following schedule:
- (a) for the DB, for Work performed by the DB's own forces, 15 percent of the cost.
 - (b) for the DB, for Work performed by the DB's Subcontractors, 10 percent of the amount due the Subcontractors.
 - (c) for each Subcontractor involved, for Work performed by that Subcontractor's own forces or for Work performed by the Subcontractor's Sub-Subcontractor, 10 percent of the total cost.
 - (d) In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs in the manner prescribed above. Where major cost items are changes to Subcontracts, they shall be itemized also. In no case will a change involving over \$500.00 be approved without such itemization.

On proposals covering both increases and decreases of the Scope of Work, the overhead and profit will be computed on the net change only. On proposals for decreases in the amount of GMP, the overhead, profit, and where applicable, the commission, will be added to the decrease in the direct cost.

5. The DB must submit with its proposal its written request for time extension (if any), which must be based on a demonstrated impact to critical path activities.
6. In considering a modification to the GMP, the Owner may check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.
7. Payment for a Change involving construction Work will be made on the basis of direct construction costs and subcontractor costs up to the limit of the revised GMP. Payment for DB and Contractor services will be made on the bases of the negotiated fee.
8. After receipt of a proposal with a detailed breakdown, the Owner's Representative will act reasonably promptly thereon. However, when the necessity to proceed with a Change does not allow sufficient time to check a proposal, or in the event of a failure to reach an agreement on a revised GMP, the DB, if directed by Owner, shall proceed with the Work and will be reimbursed as provided for in this Agreement.

9. Upon written request by the Owner's Representative, the DB shall submit a proposal, in accordance with the requirements and limitations set forth in Subparagraphs 17.6.b.1 through 17.6.b.9 of this section, for Work involving contemplated changes covered by the request within the time limit indicated in this request or any extension of such time limit as may be subsequently granted. If, within a reasonable time after receipt of such proposal, the Owner's Representative orders the DB to proceed with the performance of the Work proposed, the proposal submitted prior to the order will constitute the DB's statement of the monetary extent of its claim for adjustment to the GMP as reasonably foreseen at the time of submission. Within five (5) business days of the discovery that the monetary extent of its proposal was incorrect, the DB shall notify the Owner in writing of the revised amount. At that time, the Owner may order that the Work proposed by the DB cease temporarily until it can further evaluate the increased costs of the Work and determine how to proceed. If the Owner elects to order the temporary cessation of work, it shall have ten (10) business days to determine whether to proceed with the proposed Work. During this time, the parties shall collaborate in good faith to determine an appropriate scope and cost of the proposed Change. At the conclusion of the ten (10) business day period, the Owner shall notify the DB in writing whether the proposed work will or will not proceed. Failure by DB to provide the written notice in the required time period may result the rejection of its claim for the portion of the cost over the originally submitted amount.

17.4 **Minor Changes in the Work**

Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

17.5 **Differing Site Conditions**

A geotechnical engineer selected by the Owner conducted a geotechnical investigation of physical and subsurface conditions at the Site. Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from conditions that would reasonably be anticipated by the Design-Builder, in the exercise of ordinary care and skill in interpreting such geotechnical engineer's report, on the basis of a geotechnical investigation conducted with the care and skill ordinarily used by members of the geotechnical engineering profession practicing in the Commonwealth of Virginia under similar conditions at the same time, or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to: (i) an adjustment in the Contract Price in the amount of the actual, reasonable costs incurred; and, (ii) an adjustment to the Contract Time(s) to the extent Design-Builder's time of performance is adversely impacted by the Differing Site Condition. Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

17.6 **Resolution of Disputes, claims and other matters**

Disputes, claims and other matters in question between the parties shall only be resolved as follows:

- a. The DB shall give Owner written notice of any claim for any additional compensation, damages, or delay within twenty (20) days of the beginning of the occurrence of the event, or of when the DB knows of such occurrence, leading to the claim being made and the DB shall submit the actual claim and any supporting data reasonably available within thirty (30) days after the occurrence giving rise to the claim ends unless otherwise agreed in writing by the parties. The "occurrence"

means the condition encountered in the field giving rise to the claim and not a later dispute about payment for that condition. Claims of delay will be resolved as they occur, and claims of cumulative impacts or deferral of claimed delay will be allowed. Complete satisfaction of this Paragraph 17.6.a is a condition precedent for the DB to pursue a claim arising under or relating to this Agreement, and failure by the DB to satisfy this Paragraph 17.6.a as to written notice or, unless otherwise agreed to by the parties, to submit its claim and reasonably available data in accordance with this Paragraph 17.6.a will waive any claim by the DB. Unless otherwise agreed by the parties, the Owner shall act on any claims as set forth below, within thirty (30) days of Owner's receipt of claim and supporting data.

- b. The parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, the parties may agree to non-binding mediation before a mediator agreed upon by the parties, with the Site of the mediation being the County of Lancaster, Virginia. The parties shall share equally in the cost of any mediator. Should the dispute, claim, or other matter in question remain unresolved for the shorter of (i) following negotiation, or (ii) more than ten (10) days after termination of mediation if mediation was undertaken, or (iii) more than thirty (30) days after either party has requested mediation, either party may proceed in accordance with Paragraph 17.4.f below. In no event shall binding arbitration be a permissible form of resolution of disputes under this Agreement.
- c. Nothing in Paragraph 17.4.b shall prevent a party from seeking immediate temporary injunctive or other temporary equitable relief in Lancaster County Circuit Court if circumstances so warrant.
- d. In the event of any dispute, claim, or other matter in question arising, the DB shall continue performance diligently during its pendency as if no dispute, claim or other matter in question has arisen. During the pendency of any dispute in connection with the payment of moneys, the DB shall be entitled to receive payments for non-disputed items as provided for in this Agreement. However, in the event the dispute, claim or other matter in question does not allow for payment to the DB for a period exceeding sixty (60) calendar days, the DB may suspend the Work, but only on the areas of the Project directly related to the disputed items. As a condition precedent to any suspension of the Work or suspension of a portion of the Work by the DB, it shall notify the Owner in writing of its intent to suspend all or part of the Work. Both parties shall make all reasonable efforts to meet within five (5) business days from the date of the DB's notification. The parties shall engage in good faith negotiations intended to resolve the dispute regarding payment and the continuation of the Work. If the parties are unable to reach an agreement within five (5) business days from the date of the DB's notification, the DB may stop work on the non-disputed items until the payment issue is resolved. DB will promptly resume work on the disputed items once the parties have resolved their dispute.
- e. No claim by the DB shall be allowed if notice of claim is first submitted after final payment, except as otherwise allowed by this Agreement.
- f. Contractual claims by the DB, whether for money or for other relief, including any disputes as to change orders or extra Work, shall be submitted, in writing, no later than sixty (60) days after final payment or payment designated as a final payment; provided, however, that the DB first gave notice of such claim as provided Paragraph 17.6.a. A written decision upon any such claim will be made by the Owner within thirty (30) days after submittal of the claim and any practically available additional supporting evidence required by the Owner. The DB may not institute legal action prior to receipt of the Owner's decision on the claim unless the Owner fails to render such decision within ninety (90) days from submittal of its claim. The decision of the Owner shall be final and conclusive unless the DB within six (6) months of the date of the final decision on a claim or from expiration of the ninety (90) day-time limit, whichever occurs first, initiates legal action as provided in Virginia Code § 2.2-4364. Failure of the Owner to render a decision within said ninety (90) days shall not result in the DB being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the Owner's failure to render a decision within said ninety (90) days shall be the DB's right to thereafter institute legal action. No administrative appeals procedure pursuant to

Section 2.2-4365 of the Code of Virginia has been established for contractual claims under this Agreement.

ARTICLE 18
TERMINATIONS

18.1 Termination for Convenience

- a. Performance under this Agreement may be terminated by the Owner for convenience, for any reason, with or without cause, in whole or in part at any time during the planning, design and construction of the Work. A termination may be affected by delivery to the DB of a notice of termination specifying the extent of Work terminated, and the effective date of the termination (thirty [30] days' minimum notice).
- b. Upon receipt of a notice of termination, unless otherwise directed by the Owner's Representative, the DB shall take the following actions:
 1. Stop Work to the extent specified in the notice.
 2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of the unterminated Work.
 3. Terminate all design, orders and subcontracts to the extent that they relate to the Work terminated.
 4. Settle all outstanding liabilities and claims arising out of the termination of orders and subcontracts.
 5. Transfer title to the Owner and deliver as directed by the Owner's Representative:
 - i. Work in process, completed Work, and other material produced as a part of or acquired for the Work terminated; and
 - ii. The completed or partially completed (in both hard copy and electronic format) plans, drawings, information, and other property that, if the Agreement had been completed, would have been furnished to the Owner.
 6. Complete performance of the Work not terminated.
 7. Take any action that may be necessary, or that the Owner's Representative may direct, for protecting and preserving any property related to this Agreement that is in the possession of the DB and in which the Owner has or may acquire an interest.
- c. At any time, the DB may submit to the Owner's Representative a list, certified as to quantity and quality, of termination inventory not previously disposed of, and may request the Owner to remove inventory items or enter into a storage agreement covering them. Not later than fifteen (15) days after receiving this request, the Owner will accept title to the items and remove them or enter into a storage agreement. The list will be subject to verification by the Owner's Representative upon removal of the items or, if the items are stored, within forty-five (45) days after submission of the list.
- d. After termination, the DB must submit to the Owner's Representative a termination claim in the form and with the certification prescribed by the Owner's Representative. The claim must be submitted promptly, but in no event more than ninety (90) days after the effective date of termination, unless an extension in writing is granted by the Owner's Representative. However, if

the Owner's Representative determines that the facts justify such action, any termination claim may be received and acted upon at any time after the 90 day period. Upon failure of the DB to submit a termination claim within the time allowed, the Owner's Representative may determine, on the basis of the information available, the amount, if any, due to the DB by reason of the termination which amount Owner shall pay. The termination claim may include costs incurred in its preparation for DB and its subcontractors.

- e. If the DB and the Owner's Representative fail to agree on the amount to be paid to the DB by reason of the termination, the Owner will only pay the DB the amount payable based on the progress obtained on the Project at the time of the termination, including profit and overhead Reimbursable Costs and Fixed Fees only to that point. In no event shall the DB be paid for any Work not actually and properly provided to and approved by Owner and no claim for lost profits or overhead shall be allowed for any time after termination.
- f. The Total sum to be paid to the DB may not exceed the total Agreement price (GMP) as reduced by the payments made and as further reduced by the Agreement price of Work not terminated plus the termination claim. Except for normal spoilage, and except to the extent that the Owner expressly assumed the risk of loss, there will be excluded from the amounts payable to the DB under Subparagraph 17.1.e above, the fair value, as reasonably determined by the Owner's Representative, of property destroyed, lost, stolen, or damaged so as to become undeliverable to the Owner.
- g. The DB has the right of review under Article 7 hereof of any determination made by the Owner's Representative under Subparagraphs 17.1.d, e and f above, except that that if the DB has failed to submit its termination claim within the time provided in Subparagraph 17.1.d above and has failed to request an extension of time, there may be no right of review.
- h. In arriving at the amount due the DB, there may be deducted:
 - 1. Any valid claim that the Owner may have against the DB under this Agreement or otherwise; and
 - 2. The agreed price for the proceeds of sale of materials, supplies, or other things kept by the DB or sold and not recovered by or credited to the Owner.
- i. If the termination is partial, the DB must file with the Owner's Representative a request in writing for an equitable adjustment of the price and time specified in the Agreement relating the continued portion of the Agreement.

18.2 **Termination for Default**

- a. The Owner may, subject to Subparagraphs 18.2.b and d below, by written notice of default to the DB, terminate this Agreement in whole or in part if the DB fails to:
 - 1. Substantially complete any of the material requirements of this Agreement within the time specified in the Agreement or any extension;
 - 2. Make progress, so as to materially endanger performance of this Agreement; or
 - 3. Provide services and/or workmanship and materials as called for by the Agreement; or
 - 4. Perform any of the other material provisions of this Agreement.

- b. Owner may terminate this Agreement under Subparagraph 18.2.a if the DB does not commence to cure the failure within ten (10) days (or more if authorized in writing by the Owner's Representative) after receipt of the notice from the Owner's Representative specifying the failure.
- c. Owner may terminate this Agreement without notice or opportunity to cure if DB declare declares bankruptcy or is involuntarily placed into bankruptcy.
- d. If the Owner terminates this Agreement in whole or in part, it may acquire similar supplies or services or complete the Work as reasonable and as Owner deems appropriate, and the DB will be liable to the Owner for any excess costs. However, the DB must continue the Work not terminated.
- e. If this Agreement is terminated for default, the Owner may require the DB to transfer title and deliver to the Owner, as directed by the Owner's Representative, any completed supplies, partially completed supplies, and materials, parts, tools, dies, jigs, fixtures, plans, drawings, specifications, electronic copies, information, and contract rights that the DB has specifically produced or acquired for the terminated portion of this Agreement. Upon direction of the Owner's Representative, the DB must also protect and preserve property in its possession in which the Owner has an ownership interest.
- f. The Owner will pay the Agreement price for completed items delivered and accepted and the Reimbursable Costs incurred for incomplete Work that the Owner requires to be delivered, and is delivered. The DB and Owner's Representative may agree on the amount of payment for items delivered and accepted under Subparagraph 18.2.e above for the protection and preservation of the property. Failure of the parties to agree will constitute a dispute under Paragraph 16.6 of this Agreement. The Owner may withhold from these amounts any sum the Owner's Representative determines to be necessary to protect the Owner against loss because of outstanding claims or for any other amounts the DB owes to the Owner.
- g. The rights and remedies of the Owner under this Paragraph 18.2 are in addition to any other rights and remedies provided by law or under this Agreement.

18.3 Termination for Owner Default

- a. The DB's sole remedies for any failure or delay in payment by the Owner shall be the remedies provided in Article 4 of the Virginia Public Procurement Act, Virginia Code §§ 2.2-4347, et seq.
- b. The DB may terminate the Contract if the Work is stopped for a period of 30 consecutive days or 120 days during any 12 month period through no act or fault of the DB or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the DB, for any of the following reasons:
 1. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
 2. An act of government, such as a declaration of national emergency that requires all Work to be stopped.
- c. The DB may terminate the Agreement for default if, through no fault of the DB, Contractor, subcontractor, sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the DB or Contractor, repeated suspensions, delays or interruptions of the entire Work have been solely caused by the Owner, the Owner's Representative or the Owner's other contractors, or any of them, other than resulting from a termination for convenience or termination of DB for default, as described in the Agreement, and such repeated suspensions, delays, or interruptions constitute in the aggregate more than ninety

(90) days in any three hundred sixty-five (365) day period. However, as a condition precedent to such action the DB shall have given written notice to the Owner and Owner's Representative of each such claimed delay and a reasonable opportunity to cure such delay.

ARTICLE 19
INSPECTION AND ACCEPTANCE

19.1 Inspection of Professional Services

The Owner's representative may, at any time or place, inspect the Services performed and the Work Product, including documents and reports. Notwithstanding any other provision in this Agreement to the contrary, the Owner's Representative may reject any Services or products that do not meet the requirements of this Agreement. No payment will be due for any Services or products rejected under this paragraph.

19.2 Inspection and Acceptance

- a. Owner inspection and testing of materials and workmanship will be made at reasonable times at the Site of the Work or off the Site as the Owner's Representative may direct. Off-site inspection or testing does not relieve the DB of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Owner after acceptance of the completed Work under the terms of Subparagraph 19.2.f.
- b. The DB must, without charge, replace any material or correct any workmanship found by the Owner not to conform to the Agreement requirements, unless the Owner consents to accept such material or workmanship with an appropriate adjustment in Agreement price. The DB must promptly segregate and remove rejected material from the premises.
- c. If the DB does not promptly replace rejected material or correct rejected workmanship, the Owner may replace or correct it and charge the cost to the DB.
- d. The Owner may examine completed Work by removing or tearing it out. The DB must replace or correct any Work found not to conform to Agreement requirements. If Work is torn out and found to comply with Agreement requirements, the Owner's Representative must make an equitable cost and time adjustment for the Services provided for the section and replacement of the Work.
- e. The Owner will inspect the Work as soon as practicable after completion.
- f. The Owner may terminate this Agreement for default and seek any remedy allowed by law and/or this Agreement if the DB does not, within thirty (30) days of written notification, follow Owner directions to replace or correct incorrect or defective items, which is material to completion of the Work as required by this Agreement.

19.3 Approval of Design

- a. The Owner's Representative must approve all final Plans and Specifications. However, phased or fast track construction may commence prior to approval of final Plans and Specifications, provided the Owner's Representative has approved Plans and Specifications covering only that phase of the Work. The Owner's Representative's review will be primarily for general arrangement and compliance with Owner requirements included as part of the Agreement.

Owner's Representative's approval shall not be construed as:

1. Permitting any departure from the Agreement requirements, without specific prior written approval;
 2. Relieving the DB of responsibility for any errors, including, but not limited to, details, dimensions, and materials;
 3. Relieve the DB of responsibility for compliance with all applicable requirements of local, state, or federal codes, regulations and laws.
- b. After approval of Plans and Specifications, the DB shall be responsible for revising Plans and Specifications to correct all deficiencies from requirements of this Agreement. Copies of revised Plans and Specifications will be furnished to the Owner's Representative. There will be no modification to any fee or to the GMP to the Agreement as a result of corrections of such deficiencies.

19.4 **Project Closeout**

Unless specified for an earlier date elsewhere in this Agreement, the DB must process all documents, changes, claim submissions, complete all Project closeout items, provide warranties, as-built drawings, and submit a final report certifying that such action has been taken not later than sixty (60) days after the date of Final Completion.

19.5 **Asbestos Free and Lead-Based Paint Free Certification.**

The DB must certify that no asbestos-containing building materials or lead-based paints (interior or exterior) were used in this Project. The DB must include completed and unaltered asbestos free and lead-based paint certifications as a closeout submittal document. The only acceptable alternative for asbestos and lead based paint certification is to conduct a post-construction asbestos and lead paint survey in accordance with AHERA requirements.

ARTICLE 20 **MISCELLANEOUS**

20.1 **Representations and Warranties of Authority**

- a. DB represents and warrants that it has legal authority to enter into this Agreement and perform all of its obligations herein, that all Work under this Agreement shall be performed by appropriately licensed entities or individuals when required, and that the execution of this Agreement by it has been duly and properly authorized. As a condition to this Agreement's effectiveness, DB shall provide to Owner a certificate in form and with attachments satisfactory to Owner showing to Owner's satisfaction DB's legal existence and authority to enter into this Agreement.
- b. Owner represents and warrants that it has legal authority to enter into this Agreement and perform all its obligations herein and that the execution of this Agreement by it has been duly and properly authorized, including by the local governing body in accordance with Virginia Code § 56-575.16 (as evidenced by the signature of approval on behalf of Owner affixed to this Agreement).

20.2 **Approval of Lancaster County Board of Supervisors as a Condition Precedent to Agreement's Effectiveness**

It shall be a condition precedent to this Agreement's effectiveness that the Lancaster County Board of Supervisors has authorized the School Board to enter into this Agreement as evidenced by the signature of its Superintendent on behalf of the School Board on the signature pages hereof.

20.3 **Nondiscrimination**

- a. During the performance of this Agreement, the DB agrees as follows:
- (1) The DB 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 law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the DB. The DB agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - (2) The DB, in all solicitations or advertisements for employees placed by or on behalf of the DB, will state that such DB is an equal Employment Opportunity Employer.
 - (3) Notice, 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.
- b. The DB will include the provisions of the foregoing Subsections a(1),(2), and (3) in every subcontract or purchase order of over \$10,000, including but not limited to any agreement with the Contractor, so that the provisions will be binding upon each subcontractor or vendor.

20.4 **Immigration Reform and Control Act of 1986**

The DB 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.

20.5 **Organizational Status**

- a. To the extent the DB is organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, the DB 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 Contractor shall provide to the Owner the DB's identification number issued to it by the Virginia State Corporation Commission.
- b. The DB 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.
- c. The Owner may void this contract and any other contract with the DB if the DB is a business entity and the DB fails to remain in compliance with the provisions of this section.

20.6 **Drug-Free Workplace**

- a. During the performance of this Agreement, the DB agrees to (i) provide a drug-free workplace for the DB'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 DB'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 DB that the DB maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- b. "Drug-free workplace" means a site for the performance of Work done in connection with a specific contract awarded to the DB, 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 Agreement.
- c. The DB shall post a copy of the policy in a conspicuous place at the jobsite and assure that all DB, subcontractor, and supplier personnel entering the jobsite are informed of the policy.

20.7 Non-Discrimination pursuant to Virginia Code § 2.2-4343.1

Be advised that the Owner does not discriminate against faith-based organizations. The DB shall not discriminate against faith-based organizations during the performance of this Agreement.

20.8 Copy of Agreement to Auditor of Public Accounts

As required by Virginia Code § 56-575.18, the Owner shall submit a copy of this Agreement to the Virginia Auditor of Public Accounts within thirty (30) days of the Effective Date.

20.9 Certifications

The DB has executed and provided to Owner a Private Entity Certification (Exhibit F) contemporaneously with the execution of this Agreement. The DB shall require all subcontractors who will perform more than \$10,000 of Work pursuant to this Agreement to execute this document (Exhibit F) prior to commencement of such subcontractor's Work.

20.10 Ethics in Public Contracting

Be advised that the provisions, requirements, and prohibitions as contained in Virginia Code §§ 2.2-4367 through 2.2-4377, pertaining to bidders, offerors, contractors, and subcontractors are applicable to this Agreement.

20.11 Minority and Women-Owned Business Enterprise and Small Business Certification

The DB shall use reasonable efforts to use minority and women-owned business enterprises and small businesses for Work on the Project. The DB shall complete and submit the "Minority and Women-Owned Business 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 this Agreement.

20.12 Required Payment Provisions Under Virginia Code § 2.2-4354

- a. The DB shall take one of the two following actions within seven (7) days after receipt of amounts paid to the DB by the Owner for work performed by a subcontractor under this Agreement:
 - (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
 - (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.
- b. The DB shall provide its federal employer identification number to the Owner.
- c. The DB shall pay interest to the subcontractor on all amounts owed by the DB that remain unpaid after seven (7) days following receipt by the DB of payment from the Owner for work performed by the subcontractor under this Agreement, except for amounts withheld as allowed in subdivision a(2), above.

- d. Unless otherwise provided under the terms of this Agreement, such interest shall accrue at the rate of one percent (1%) per month.
- e. The DB 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 to each lower-tier subcontractor.
- f. The DB'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.

20.13 No Crimes Against Children

The DB acknowledges that the implementation of this Agreement may require the DB, the DB's employees other persons that will provide services under this Agreement, including but not limited to Contractor and subcontractors, to have direct contact with Lancaster County Public Schools students. Therefore, the DB hereby certifies that neither the DB, the DB's employees nor any person that will provide services under this Agreement, including but not limited to Contractor 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.

The DB understands that, pursuant to Virginia Code § 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. Lancaster County Public Schools shall not be liable for materially false statements regarding the certifications required under this Agreement.

The DB shall execute and deliver to the Owner upon execution of the Agreement the CERTIFICATION OF NO CRIMES AGAINST CHILDREN attached hereto as Exhibit G. The DB shall require Contractor and all other subcontractors to execute such certification prior to performing any Work.

20.14 Notices

All notices and demands by any party to any other shall be given in writing and sent by a nationally-recognized, overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To the Owner:

Jessica Davis, Superintendent
The School Board of Lancaster County
2330 Irvington Rd.
Weems, VA 22576
Phone: 804.462.5100
Email: jdavis@lcs.k12.va.us

With copies to:

Heather Hays Lockerman
Sands Anderson, PC
1111 E. Main Street, Suite 2400
Richmond, Virginia 23219
Phone: 804.783.72.68
Email: hlockerman@sandsanderson.com

To the Design-Builder

Berton Austin, Vice President
3635 Peters Creek Rd
Roanoke, VA 24019
Phone (540) 989-5215
Email: berton.austin@branchbuilds.com

With Copies to:

Jeff Bourne, General Council
4490 Cox Road,
Glenn Allen, VA 23060
Phone (804) 525-5458
Email: jeff.bourne@branchgroup.com

Any party may, upon prior notice to the others, specify a different address for the giving of notice. Notices shall be effective one day after sending if sent by overnight courier or three (3) days after sending if sent by certified mail, return receipt requested.

20.15 **Successors and assigns**

Except as expressly otherwise provided, all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, when assignment is authorized. This Agreement may not be assigned without the prior written consent of the parties to this Agreement.

20.16 **No Waiver**

The failure of the Owner or the DB to insist upon the strict performance of any provisions of this Agreement, the failure of either to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by the Owner of any act by the DB requiring the Owner's consent or approval shall not be construed to waive or render unnecessary the requirement for the Owner's consent or approval of any subsequent similar act by the DB. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged.

20.17 **Severability**

If any term or provision of this Agreement shall be determined to be invalid or unenforceable in any respect, it shall be replaced with a substantially similar provision to the greatest extent possible and the Agreement shall remain in full force and effect.

20.18 **Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of 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.

20.19 **Governing Law**

This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia without regard for Virginia's conflicts of laws rules. Venue for any litigation arising from this Agreement shall only be proper in the Circuit Court of Lancaster County, Virginia or in the General District Court of Lancaster County, Virginia if the amount in controversy is within the jurisdictional limit of each 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. The provisions of this Agreement shall not be construed in favor of or against either party but shall be construed according to their fair meaning as if both parties jointly prepared this Agreement.

20.20 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 DB shall cooperate in executing any documents reasonably necessary to aid Owner in implementing its plan of finance for the Project.

20.21 Financial Statements

The DB agrees to provide the Owner with copies of its complete and current financial statements upon reasonable written request by the Owner. The DB 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 implementation procedures.

20.22 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 DB 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 DB or Owner unless reduced to writing and signed by each party.


SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Parties have executed this Comprehensive Agreement as of the day and year first above written.

THE SCHOOL BOARD OF LANCASTER COUNTY, VIRGINIA



Lancaster County School Board




Date

By: Jessica Davis

Title: Superintendent, Lancaster County Public Schools

Approved as to form:

By: 

Heather Hays Lockerman, School Board Attorney

Branch Builds, Inc.

Date

By: Catherine Underwood

Title: President

IN WITNESS WHEREOF, the Parties have executed this Comprehensive Agreement as of the day and year first above written.

THE SCHOOL BOARD OF LANCASTER COUNTY, VIRGINIA

Lancaster County School Board

Date

By: Jessica Davis

Title: Superintendent, Lancaster County Public Schools

Approved as to form:

By: _____
Heather Hays Lockerman, School Board Attorney



Branch Builds, Inc.

16 December 2022
Date

By: Catherine Underwood

Title: President

Exhibit A – Preconstruction Services

PROJECT NAME: Lancaster Middle/High School PPEA

Scope of Preconstruction Services

We include the following services in our preconstruction costs:

- Program review and refinement
- Schematic design
- Construction document submissions
- Value engineering efforts
- Constructability analysis
- Project Schedule development

- Design Services include the following:
 - Architectural
 - Structural
 - Civil
 - Landscape
 - MEPFP
 - Food Service
 - Construction Services support
 - Specialty design services include the following:
 - Security
 - IT
 - Data, & Voice
 - A/V
 - Acoustics & Athletics Sound Systems
 - Theatre
 - Graphics and Signage
 - Wetland Impact
 - Building Pressure Testing with Thermography
 - Enhanced Commissioning

- Project Cost Analysis at the following benchmarks per Exhibit D:
 - 100% Schematic Design (includes Constructability Review analysis)
 - 100% Design Development (includes Constructability Review and Value Engineering analysis)
 - 65% Construction Drawings (GMP Establishment)
 - 100% Construction Drawings (Cost Review and confirmation only)

- We exclude all scope and costs associated with Net Zero Energy Modeling, Photovoltaic Solar and Geothermal Systems, and Sanitary Pumping Station.

Exhibit B – Clarifications & Assumptions

PROJECT NAME: Lancaster Middle/High School PPEA

GENERAL CLARIFICATIONS & ASSUMPTIONS

- Design Services: We include program review, schematic design, construction document submissions, value engineering efforts, and construction administration services per the scope of work in Exhibit A.
- Design Services associated with the Net Zero Energy Modeling, Photovoltaic Solar and Geothermal Systems, and Sanitary Pumping Station are not included.
- Preconstruction and design fees proposed in Exhibit C are based on an assumed \$61M project cost and may vary upon reconciliation of final GMP amount.
- Preconstruction and design fees proposed in Exhibits A and C are based on the schedule set forth in Exhibit D. Should additional time or services be required beyond the established scope or duration, additional costs will apply.
- All project stakeholders are committed to working collaboratively in the best interest of the project and the students this project will serve.
- Our current project schedule assumes the permit process can be expedited to meet the owners requested completion date.
- LCPS construction or quality standards have not been specifically included in this proposal. The standards will need to be reviewed during the design process to determine the level of inclusion and the associated costs if any.
- Any attorney fees are excluded.
- We have not included land acquisition costs.
- Geotechnical studies (soil borings, etc.) are not included.
- BMP inspections and as-built survey & certification is included.
- UG utility designation is not included.
- Easement plat and preparation is not included.
- Wetland delineation, confirmation, or construction cost, if needed, is not included.
- We have excluded the purchase of any water quality credits.
- Rezoning assistance, if needed, is not included.
- Utility connection/availability fees are not included.
- All utility services (primary power, gas, fiber, cable, telephone) are to be provided by others.
- City review/permit/inspection cost is not included.
- Special or third-party testing in by others.
- Inspections are by others.
- We have not included any special foundations due to our current knowledge of the existing soil conditions at the Kilmarnock site.
- A traffic study and potential costs for signalization or turn lane extensions on Irvington Rd. are excluded.
- Design reviews will be reviewed in a timely manner according to the durations set forth in Exhibit C.
- The Concept Design provides a walking and cross-country trail network around the perimeter of the immediate site, with connections to the existing golf cart paths for further recreational use.
- Adequate utility connections for all required utilities are assumed to be adjacent to the edge of the site.
- Utility relocation will be kept to a minimum, including power or other dry utilities along the frontage.
- Parking is included for 230 cars and 10 buses.
- CSI/Trade cost breakdowns will be provided in the detail phase.
- Alternative pricing for various design/construction options can be provided during the detail phase.

Exhibit C – Preconstruction Draw Schedule

PROJECT NAME: Lancaster Middle/High School PPEA

Schedule of Values

100% Schematic Design – Budget & Constructability Review analysis	\$ 1,050,119
100% Design Development Set – Budget and Value Engineering	\$ 1,271,993
65% Construction Drawings Set – GMP Estimate established	\$ 1,639,209
100% Construction Drawings Set – Cost review and confirmation	\$ 205,202
Construction Services	\$ 1,320,575
	\$5,487,098

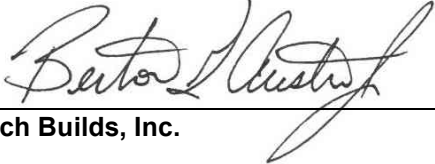
Exhibit F

PRIVATE ENTITY CERTIFICATION

**Comprehensive Agreement between
The Lancaster County School Board and Branch Builds, Inc.:
New Combined Middle School/High School
Lancaster County, Virginia - PPEA**

On behalf of Branch Builds, Inc., the undersigned hereby certifies that no officer or employee of the Lancaster County School Board, or members of his or her immediate family, including spouse, parents, or children, or any person representing or purporting to represent the Lancaster County School Board, has been promised or has received, directly or indirectly, any financial benefit by way of fee, commission, finder's fee, political contribution, payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, or any similar form of remuneration on account of the acts of negotiating, awarding and/or executing this Agreement, or for any purpose following the submission of the proposal under the PPEA until the execution of this Comprehensive Agreement, from BRANCH BUILDS, INC., or any officer or director of such private entity. BRANCH BUILDS, INC. further agrees to comply with the provisions of Virginia Code §§ Sections 2.2-4367 through 2.2-4377, Ethics in Public Contracting.

Signatures of Authorized Principal(s):



Branch Builds, Inc.

17 November 2022
Date

By: Berton Austin

Title: Vice President

[Name of Additional Private Entity, as appropriate]

Date

By: _____

Title: _____

Exhibit G

CERTIFICATION OF NO CRIMES AGAINST CHILDREN

Design-Builder acknowledges that the implementation of this Contract requires Design-Builder, Design-Builder's employees or other persons that will provide services under this Contract to have direct contact with students who attend **Lancaster County Public Schools**. Therefore, Design-Builder hereby certifies that neither Design-Builder, Design-Builder's employees nor any person that will provide services under this Contract who will have direct contact with students on school property during regular school hours or during school-sponsored activities have been convicted of a violent felony set forth in the definition of barrier crime in subsection A of § 19.2-392.02; any offense involving the sexual molestation, physical or sexual abuse, or rape of a child; or any crime of moral turpitude.

Design-Builder 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. **The Lancaster County School Board** shall not be liable for materially false statements regarding the certifications required under this Contract.

Have you, your employees, or any person who will have direct contact with students under this contract been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child?

NO

YES (please explain) _____

_____.



Branch Builds, Inc. (Design Builder)

17 November 2022
Date

By: Berton Austin

Title: Vice President