

subcontractor, sub-subcontractor, supplier, or vendor, will have any person on the Site who is reasonably objectionable to Owner. Because at some point the Site may have ongoing school activities, Developer shall ensure, with respect to its performance under this Agreement or the Design-Build Contract, (i) that no persons furnishing services for the Project are registered sex offenders, (ii) that all persons furnishing services treat students, faculty, and school officials and employees with courtesy and respect, and (iii) that all persons furnishing services avoid contact with students except when necessary for safety or as authorized by the District's Superintendent. Replacement of any personnel deemed objectionable by Owner shall be at no increase in the Stipulated Sum.

10. Projected Payments to Developer.

(a) In connection with this Agreement, at the District's request, Developer will provide a schedule of payments to assist the District and City in determining financing needs. These projections will be tentative and subject to change in accordance with this Agreement. Each party shall notify the other and City of changes in these projections in sufficient time so that the District and the City can adjust financing to meet increases in requirements without incurring unnecessary additional financing costs.

(b) District may retain five percent (5%) of the construction (but not design or real estate acquisition) portion of each application for payment by Developer; provided, however, upon Substantial Completion of the Work all retainage shall be paid by District, but the District may withhold an amount which is 150% of the cost reasonably estimated by Owner to complete or correct punch list items. Additional provisions related to retainage are as set forth in the Design-Build Contract.

11. Liquidated Damages For Delay and Substantial Completion.

(a) Owner shall be entitled to assess, withhold, and collect liquidated damages from Developer as follows:

(1) If the date established in the Project Schedule (as may be amended pursuant to the terms of this Agreement or the Design-Build Contract) for Substantial Completion of the Work for the Project is not met, Developer shall pay to the District, as liquidated damages for such delay, the amount of \$1000.00 per day until Substantial Completion is achieved..

(2) Developer agrees that the liquidated damages under this paragraph 11 are reasonable and not a penalty and hereby waives any right to claim otherwise. Developer agrees it will not challenge liquidated damages imposed pursuant to this paragraph 11 except as to whether it is responsible for the delays for which damages are being imposed. The District shall be permitted, but shall not be obligated, to withhold liquidated damages from any payments due Developer.

(b) For purposes of this Agreement and the Design-Build Contract, “Substantial Completion,” or “substantial completion” with respect to the Work or to each part of the Work means the date determined by inspection and mutual agreement of the District and the Developer when the Work is sufficiently complete so that the District can fully occupy or utilize the Work, for its intended purpose, with the Project’s parts and systems reasonably and customarily needed to operate a school in Winchester operable as required by this Agreement and the Design-Build Contract, when a temporary or permanent certificate of occupancy has been issued, and when all the following requirements of this subparagraph have been met:

(1) The Developer shall test the domestic water supply system to the Project for the presence of lead and copper action levels in the system prior to connection to the building. Assuming that the water supply is in compliance, the Developer shall be responsible for providing an interior water system that also meets the requirements set forth in the Environmental Protection Agency's "Lead and Copper Rule", December 7, 1991, as adopted by the Virginia Department of Health. After the building is connected, cleaned and flushed, the domestic water shall be tested for the presence of lead and copper action levels at Developer's expense. Samples shall be taken in the kitchen and at water coolers, drinking fountains, sinks, and bubblers. All outlets in the building used for drinking water or food preparation shall not exceed the 15 ppb for lead and the 1.3 ppm for copper action levels as set forth by the above standard. If excessive lead and copper action levels are detected, the Developer shall isolate portions of the piping system to determine the source, correct the problem, and retest at the Developer's expense. The Developer shall continue testing, retesting and corrective measures until the system does not have lead or copper contamination in excess of the action levels stated above. All retesting and corrections shall be done at the Developer's expense.

(2) Before the Developer requests inspection by the District for determining the date of Substantial Completion, Developer shall take all actions required for Substantial Completion by the Design-Build Contract and the following actions below:

a. Prepare a list of items to be completed and corrected (punch list), the value of items on the punch list, and a description of why the Work is required for completion. Substantial Completion shall be for entire scope of Work (for example, both building and site Work) unless the District agrees to an alternative arrangement.

- b. Advise the District of all pending insurance changeover requirements.
- c. Submit specific warranties, workmanship bonds, maintenance service agreements, final certifications, and similar agreements.
- d. Obtain and submit releases permitting the District use of the Work and access to services and utilities, including occupancy permits, operating certificates, and similar releases.
- e. Make final changeover of permanent locks, and deliver keys to the District. Advise the District of the changeover in security provisions.
- f. Complete startup of systems. Demonstrate that the automatic temperature control system is in control of all equipment as indicated and that HVAC and water systems have been tested and balanced.
- g. Remove temporary facilities from the Project Site, along with mockups, construction tools, and similar items.
- h. Advise the District of changeover in heat and other utilities.
- i. Submit changeover information related to the District's occupancy, use, operation, and maintenance.
- j. Complete final cleaning requirements, including touchup painting.
- k. Touch up and otherwise repair and restore marred exposed finishes to eliminate visual defects.

(3) Developer shall submit to the District a written request for inspection for Substantial Completion of the Work. Within five Business Days of receipt of this

request, the District will either proceed with inspection or notify the Developer of unfulfilled requirements. The District will prepare a Certificate of Substantial Completion after inspection or will notify the Developer of items either on the Developer's list or additional items identified by the District that must be completed or corrected before the certificate will be issued.

a. The Developer will request reinspection when the Work identified in previous inspections as incomplete is completed or corrected.

b. The results of completed inspections will form the basis of requirements for Final Completion.

(4) If a request for inspection for Substantial Completion of the Work results in issuance of a certificate of Substantial Completion, then the date of Substantial Completion of the Work will be deemed to be the date of the request.

(c) In no event shall the District's failure to install or provide any of the District FF&E for which it is responsible for be a basis for the denial of Substantial Completion to the Developer.

(d) Upon achievement of Substantial Completion, the District shall assume responsibility for the new school facilities, including but not limited to utilities and security.

12. Payment Bonds, Performance Bond and Other Security.

(a) Within 15 Business Days after execution of this Agreement, Developer shall cause to be furnished separate performance and payment bonds to the District in the amount of one hundred percent (100%) of the cost of construction for the Project, naming the District and Developer as co-obligees (with those to be protected under the payment bond as intended third-party beneficiaries), provided that the bonds or a rider to them shall clearly state that no default by the Developer/Design-Builder shall excuse the surety and/or Design-Builder from any

obligations the surety has to the District under the bonds and that the bonds are in a form acceptable to the District. For the purpose of determining the value of the bonds under this paragraph 12, the “cost of construction” shall be deemed to be the costs equal to the total of Items A.1, C, D, E and F as set forth in **Exhibit F**. The bonds shall be executed by a corporate surety or corporate sureties that are reasonably acceptable to the District, and duly authorized to do business in the Commonwealth of Virginia, and executed in a form acceptable to the District. If a surety upon any bond furnished in connection herewith becomes insolvent, or otherwise not authorized to do business in the Commonwealth of Virginia, Developer shall promptly cause the replacement of the bond or cause equivalent security acceptable to the District to be furnished at no increase to the Stipulated Sum. These bonds shall remain in effect until one year after the date when final payment is made, except as provided otherwise by Laws or Regulations or by the Contract Documents. Developer, by itself or through its Contractor, shall also furnish such other bonds as are required by the Contract Documents.

(b) Developer shall also furnish or cause to be furnished, any cash escrow, funds, cashiers checks, certified checks, or letters of credit required for the City’s issuance of any earth disturbing permits and any bonds or security required by VDOT or any other governmental authority, in relation to the Project.

13. Insurance.

(a) Developer shall maintain or cause to be maintained until Final Completion of the Work (as defined in the Design-Build Contract) for the Project the insurance set forth in paragraph 13(b) below (provided however that Developer shall have no responsibility to insure any portion of the Work following Substantial Completion of the Work (as defined herein) except for liability insurance if Developer is still performing Work). However, should a

disagreement exist between the District and Developer as to whether Substantial Completion of the Work has been achieved, then Developer shall continue to maintain or cause to be maintained insurance on the Project until the dispute is resolved, unless the District agrees otherwise; provided, however, that if the disagreement is resolved in favor of the Developer, then the District shall reimburse Developer for all costs associated with such continued maintenance of insurance. Developer shall also be responsible for administering the filing and settling of claims and liaison with insurance adjusters. Developer shall send a copy of all policies to the District.

(b) Developer shall maintain, and shall cause the Architect and Contractor to maintain, worker's compensation insurance, commercial general liability insurance (on an occurrence basis), automobile liability insurance and umbrella/excess liability insurance with A-rated companies reasonably satisfactory to the District; provided, however, that any policies of such insurance, copies of which are delivered to the District, shall be deemed satisfactory unless the District objects in writing to the Developer within 30 days of their receipt and specifies the basis for such objection. The commercial general liability policy shall be for a minimum of \$1,000,000 each occurrence/\$2,000,000 general aggregate, and shall provide coverage, at a minimum, for (i) broad form contractual liability; (ii) products liability and completed operations; and (iii) broad form property damage coverage. The automobile liability policy shall be written for a combined single limit for bodily injury and property damage of not less than \$1,000,000. The umbrella/excess liability policy shall be for a minimum single limit of \$2,000,000 for supplementing the commercial general liability policy, employer's liability policy and automobile liability policy. In the case of worker's compensation coverage, insurance shall be in the amount statutorily required. The commercial general liability, automobile liability and umbrella/excess liability insurance policies shall name the District as additional insureds.

Developer shall also cause Contractor to procure and maintain a builder's risk insurance policy on an "all risk" 100% replacement cost basis. The District agrees that policies reflecting the minimum coverage limits shown on the certificates of insurance provided in the Detailed-Phase Proposal for Developer, Architect and Contractor shall be acceptable to the District. The Developer agrees to provide certificates of insurance updating coverage information for the Developer, Architect and Contractor following any policy renewals or changes throughout the term of this Agreement.

14. Architect and Other Professionals. Developer shall cause the Architect, engineers and other design professionals who are consultants of Developer or Architect for the Project to comply with the following:

(a) The Architect shall carry professional liability insurance, on a claims-made basis, in an amount not less than \$2,000,000 per claim and aggregate, and such other professionals shall carry professional liability insurance in lesser amounts reasonably acceptable to Developer and to the District. Such policies shall be on a claims-made basis kept in force for no less than five years after the Final Completion of the Project. Developer shall cause all such design professionals to agree to indemnify and hold harmless the District from claims, losses or damages, to the extent caused by (i) the negligent errors or omissions in such professionals' respective services resulting from the Work or (ii) claims of patent infringement, copyright infringement, or similar claims arising from such professionals respective services for the Project. Developer shall furnish the District with copies of Architect's professional liability insurance policy. The District may withhold any payments until the policy has been furnished;

(b) Developer shall deliver to the District copies, including reproducible copies, of the Plans and other related documents reasonably necessary for Owner's information

and reference in connection with the District's use and occupancy of the Project. Further, the Plans and other related documents may be used by the District, in whole or in part, or in modified form, for completion, additions to, and maintenance of the Project by others, without further employment of, or payment of any additional compensation to, Architect, engineers and other design professionals, in which event the District shall release Architect and such design professionals from any responsibility and liability arising out of such use by the District or others of the Plans. In the event of the termination of this Agreement for any reason, Developer shall immediately deliver to the District a full set of copies of the Plans and other related documents then in the possession or control of Developer, the Architect, and such other professionals retained by Developer, Architect, and/or Contractor; and the District may, upon fulfilling its obligation herein, use such Plans for completion of the Project, and the District shall release Developer, the Architect, and such design professionals from responsibility and liability arising out of the failure of the completed Work to conform to the Plans and from any responsibility and liability arising out of such use by the District or others of the Plans.

(c) The Plans are instruments of service and shall remain the property of Architect, who retains the copyright and all other interests in the Plans. The District is granted a limited license to use the Plans for the Project. Except as otherwise provided in this Agreement or in the Design-Build Contract for the Work, no Plans shall be used with Developer's or Architect's title block, logo, seals or company name without the written consent of, and compensation to, Developer or Architect, as applicable.

(d) Developer shall incorporate the requirements of this paragraph 14 into its contract with its Architect and other design professionals and shall ensure that they incorporate

these same requirements into their subcontracts with other design professionals so that the District is able to enjoy the full benefits of this paragraph 14.

15. Representations and Warranties of Developer and District.

(a) Developer represents and warrants that it has legal authority to enter into this Agreement and perform all of its obligations herein (with the understanding that necessary state construction and design licenses shall be held by the Contractor, the Architect, and their subcontractors and sub-consultants, as applicable, at the time services are rendered) and that the execution of this Agreement by it has been duly and properly authorized. Developer shall provide the District with certified copies of any documents that the District requests to evidence such authorization.

(b) The District represents that it has legal authority to enter into this Agreement upon approval by the Winchester City Council and to perform all its obligations hereunder and that execution of this Agreement has been duly and properly authorized by the School Board of the City of Winchester, Virginia.

16. Termination of Agreement and Other Remedies For Default.

(a) Termination by District for Cause.

(1) If Developer defaults or fails or neglects to carry out its Work in accordance with this Agreement, the District may give written notice that the District intends to terminate this Agreement, which notice shall contain a reasonably detailed explanation of the reasons for the proposed termination. Developer shall correct the defaults, failure or neglect within 45 days after being given such notice; provided, however, if (i) the nature of such defaults, failure or neglect is such that they are not reasonably capable of being corrected within such 45-day period and (ii) Developer notifies the District of a reasonable alternative period

reasonably acceptable to the District within fifteen (15) days of receipt of such notice, Developer shall be allowed such reasonable alternative period to correct the defaults, failure or neglect so long as Developer promptly commences and diligently pursues such corrections to completion. If Developer fails to make such corrections within the 45-day period or fails to commence and diligently pursue to completion such corrections within the alternative period, then the District may, at its sole discretion and without prejudice to any other remedy, upon written notice to Developer, which shall also be deemed notice to its Contractor and Architect, with a copy of such notice given to the surety on any bonds, immediately terminate the employment of Developer, and the District may, in its sole discretion, also take possession of the Project Site, and, if the District so chooses, finish construction of the Project by whatever method the District may deem expedient; provided, however, that if the District elects to take possession of the Project Site, it may not do so unless and until it has closed on the Property with the Developer for the price set forth in Item A of **Exhibit F** and generally in accordance with the terms of closing as described in paragraph 5 of this Agreement. Upon termination under this subparagraph (1), (i) those contracts and/or such contracts for the design and/or construction of the Project designated by the District shall, at the District's option, be assigned to the District for the District to use at the District's option to complete the Work, and, (ii) Developer will promptly provide the District all Plans and related documents for the Project that have been done to date, regardless of whether they are complete. The Developer shall cause to be included in its contracts and in the subcontracts of those with whom it and its subcontractors contract provisions that ensure smooth continuity of services and the automatic assignment of contracts to the District, at the District's option, to carry out this paragraph's requirements in the event of such termination, and Developer shall use diligent efforts to ensure that the termination occurs such

that design and construction of the Project may continue smoothly without interruption if a termination occurs before Final Completion of the Work for the Project.

(2) If Developer fails to cause the Property to be conveyed to the District in full compliance with Section 5 of this Agreement, the District may give written notice to the Developer that the District intends to terminate this Agreement unless the Developer remedies its failure to convey the Property within 30 days after being given such notice. If Developer fails to convey the Property within the 30-day period, then the District may, at its sole discretion and without prejudice to any other remedy, upon written notice to Developer, which shall also be deemed notice to its Contractor and Architect, with a copy of such notice given to the surety on any bonds, immediately terminate the employment of Developer.

(3) The District may terminate this Agreement for material breach without any need for providing Developer notice and an opportunity to cure (i) for commission by Developer, its Architect, or its Contractor of actual fraud or a crime that is a felony, provided that such fraud or crime is related to the Project, or (ii) if Developer or its Contractor declare bankruptcy or is involuntarily placed into bankruptcy. If the District terminates this Agreement pursuant to this subparagraph (3), Developer's contracts with Contractor and Architect, or either of them may, at the District's option, upon written notice, be automatically assigned to the District.

(4) If not sooner terminated pursuant to subparagraphs (1), (2) or (3) above, or by mutual agreement, the Agreement shall terminate when all terms and conditions of the Design-Build Contract have been satisfied and all of Developer's and District's obligations under this Agreement have been fulfilled.

(5) Notwithstanding the foregoing, the District or Developer may terminate the Design-Build Contract according to its terms.

(b) Right to Correction or Completion of Defective Or Incomplete Work By the District.

(1) If Developer fails to provide any Work in accordance with the Contract Documents and Developer, after 15 days from receipt of written notice from the District, has not remedied the failure, then the District may, in its sole discretion, correct or complete, or have the others correct or complete, the Work that Developer has failed to remedy, and Developer shall be liable to the District for all costs and expenses incurred by the District, including without limitation, for costs and expenses for design consultants and attorneys; provided, however, if the nature of the failure is not reasonably capable of being corrected within such 30-day period and Developer notifies the District of a reasonable alternative period, Developer shall be allowed such reasonable alternative period so long as Developer promptly pursues such correction to completion. Nothing in this subparagraph shall relieve Developer from its obligations to provide all Work in accordance with the Contract Documents. Developer shall have the same obligations to insure and safeguard Work done by the District or others pursuant to this subparagraph as it has toward any other portion of the Work.

(c) Termination By Developer for District Default

(1) The Developer may terminate this Agreement for default if, through no fault of Developer or any persons or entities performing portions of the Work under direct or indirect contract with the Developer, (a) the District has failed to issue a certificate for payment and has not notified the Developer of the reason for withholding the certificate for payment within forty five (45) calendar days of receipt of a valid invoice, or the District has failed to make payment within forty five (45) calendar days after the time required by the

Agreement for payment, or (b) District has failed to fulfill a material obligation or duty herein, and) after receiving written notice of such failure, the District fails to cure such failure within forty five (45) days; provided, however, if the nature of the failure under (b) is not reasonably capable of being corrected within such 45-day period and the District notifies Developer of a reasonable alternative period, the District shall be allowed such reasonable alternative period so long as the District promptly pursues such correction to completion.

(2) The Developer may terminate this Agreement for default if, through no fault of the Developer, Contractor, a subcontractor, a sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work through the Developer or Contractor, repeated suspensions, delays or interruptions of the entire Work or any material portion thereof by the District, constitute in the aggregate more than one hundred twenty (120) calendar days in any three hundred sixty five (365) calendar day period.

(d) Right of Developer to Suspend or Stop the Work

Developer may, in addition to any other rights afforded by this Agreement or at law, suspend or stop part or all of the Work for the following reasons:

(1) The District's failure to pay to Developer amounts when properly due under this Agreement; or

(2) The failure of the City and District to take reasonably adequate steps to pay for the Project.

Before suspending or stopping Work for any of the events in subparagraphs (1) or (2) above, Developer shall first notify the District in writing that Developer will suspend or stop a part, parts, or all of the Work unless said event is cured within thirty (30) days from District's receipt of Developer's notice. If the District does not cure the event within such thirty (30) day

period, Developer may suspend or stop Work as provided herein, and such suspension or stoppage shall be deemed to be a Change to this Agreement, and upon resumption of the Work, if that occurs, the Developer shall be entitled to receive an extension of time and additional compensation necessary to address the effects of the suspension or stoppage on the schedule and price of the Work, including but not limited to the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

17. Indemnification.

(a) Developer shall indemnify and hold the District harmless, to the extent permitted by law, from any and all third-party claims or causes of action for loss, liability, damage or expense, including reasonable attorney's fees and disbursements, directly arising out of (i) bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) in connection with the performance of the Work by Developer under this Agreement to the extent caused by the negligent acts or omissions of the Developer or anyone providing any of the Work through Developer under this Agreement; (ii) any mechanics', construction, or other liens arising as a result of the Work; (iii) any claim of patent infringement, copyright infringement, or violation of any other intellectual property right relating to the Work except to the extent such claim relates solely to a particular process or product directed by the District that was not offered or recommended by Developer or that such claim arises solely from modifications to the Work by the District after its acceptance; or (iv) any failure of the Project to comply with any applicable Codes and Standards, except to the extent directed or agreed in writing by the District or City. Such obligation by Developer to indemnify and hold the District harmless shall not apply to any loss, liability, damage or expense, including attorneys' fees, to

the extent proximately caused by the sole negligence or misconduct by the District or any officer, employee, agent, representative or separate contractor of the District.

(b) Developer's obligations to indemnify the District and hold it harmless under this Paragraph 17 do not supersede any obligations by Developer or anyone else under the Design-Build Contract or elsewhere in this Agreement to indemnify the District and hold it harmless, any such indemnification obligations being intended to be cumulative.

18. Resolution of Disputes, Claims and Other Matters. Claims, as hereinafter defined, and other disputes between the parties arising under or relating to this Agreement shall only be resolved as follows:

(a) The Developer shall give the District written notice in accordance with Section 23 of this Agreement of any Claim for any additional compensation, damages, or delay within thirty (30) days of the later of the beginning of the occurrence of the event leading to the Claim being made or when Developer first knows or reasonably should have known of the Claim, and shall submit the actual Claim and any supporting data reasonably available within thirty (30) days after the occurrence giving rise to the Claim ends. The written notice shall be a document addressed to the District that reasonably communicates Developer's intention to make a Claim and the occurrence involved and shall be transmitted in a manner to ensure prompt receipt by the District. 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 time impacts will be resolved as they occur, and no claims of cumulative impacts or deferral of claimed time impacts will be allowed. Complete satisfaction of this subsection 18(a) is a prerequisite for Developer to pursue a Claim arising under or relating to this Agreement; provided, however, that the District may, acting in good faith, in its reasonable discretion, excuse

this prerequisite for good cause shown. Failure by Developer to satisfy this subsection 18(a) shall constitute a waiver by Developer of the Claim for which such failure occurs except when excused for good cause shown. The District shall respond to any Claim within 60 days of Developer's submission of the Claim and supporting data.

(b) The parties shall first endeavor to resolve any Claims or other disputes between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation conducted pursuant to the Rules of the American Arbitration Association, with the site of the mediation being Winchester, Virginia. Should the Claim or dispute remain unresolved for the shorter of (i) following negotiation and mediation, or (ii) more than 90 days after mediation is requested by a party, either party may proceed in accordance with Section 18(c) below; provided, however, that mediation of a Claim valued at less than \$50,000 shall be deferred until Substantial Completion has been achieved or until there are multiple Claims awaiting mediation that in the aggregate total at least \$50,000, or the parties agree to proceed to mediate such a small value Claim. However, nothing in this Section 18(b) excuses the Developer from compliance with all the provisions of Section 18.

(c) If the procedures of Section 18 have been followed, but, more than 90 days have passed since a party has invoked mediation, and the Claim or dispute remains unresolved, then either party may institute an action in the Circuit Court of the City of Winchester, Virginia, or if the subject or amount in controversy is within its jurisdiction, the General District Court of the City of Winchester, Virginia, and may thereafter pursue all available appeals in Virginia state courts, to the extent they have jurisdiction.

(d) Nothing in Section 18(b) and 18(c) shall prevent a party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of the City of Winchester if circumstances so warrant.

(e) In the event of any Claim arising, Developer shall continue its performance diligently during its pendency as if no Claim had arisen. During the pendency of any Claim or other dispute in connection with payment, Developer shall be entitled to receive payments for non-disputed items, which District hereby agrees to make.

(f) The provisions of this Agreement supersede any right at common law by Developer for a claim of material breach or for rescission of the Agreement.

(g) For purposes of this Section 18, "Claim" means a demand or assertion by the Developer, seeking, payment of money, or other relief arising from or relating to the Agreement or any other Contract Document, any of its respective terms or conditions, or any of the Work.

19. Additional Guaranty And Assurance Of Performance Due To Developer Being An LLC.

(a) The parties recognize that the District's selection of Developer for entry into this Agreement has been premised on the capabilities and resources of various members of Developer's team proposed for the procurement leading to this Agreement, including Contractor, who is not a party to this Agreement and who is not in privity of contract with the District under this Agreement. The District thus has premised entry into this Agreement upon receipt of adequate guaranties directly from Developer and Developer's Contractor of performance of obligations under this Agreement.

(b) As a condition of entry into this Agreement, Developer shall furnish a guaranty executed in the form of **Exhibit L** by Developer and Contractor.

(c) Failure by Developer to provide the District the guaranty required in the form of **Exhibit L** shall render the District's obligations under this Agreement null and void.

20. Equal Opportunity Employment.

(a) During the performance of this Agreement, the Developer agrees as follows:

- (i) The Developer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by federal or state law relating to discrimination in employment, except where there is a bona-fide occupational qualification reasonably necessary to the normal operation of the Developer. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- (ii) The Developer, in all solicitations or advertisements for employees placed by or on behalf of the Developer, shall state that Developer is an equal opportunity employer.
- (iii) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the notice, advertisement, and solicitation requirements of this paragraph.

(b) The Developer shall cause to be included the provisions of the foregoing paragraphs (a)(i), (a)(ii), and (a)(iii) (substituting the subcontractor or vendor for Developer as

the obligated party) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

21. Drug-Free Workplace; Compliance with Immigration Laws.

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

(b) For the purposes of this paragraph, "drug-free workplace" means a site for the performance of work done in connection with this Agreement by Developer where its employees 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 Developer does not, and shall not during the performance of this Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

22. Records Inspection and Copying. Developer agrees that the District and its authorized representative may, at District's option and expense, at reasonable times during business hours and upon reasonable prior notice, inspect and copy all records relating to the Project to the extent necessary to confirm compliance with the terms of the Agreement, until three (3) years after the earlier of final payment to Developer or termination of this Agreement. The Developer agrees to provide District adequate and appropriate work space at the Developer's facilities in order to conduct such examinations.

The District and its representatives shall use their best efforts to protect the confidentiality of (i) proprietary information from the records it inspects, (ii) trade secrets, and (iii) information exempt or protected from disclosure pursuant to applicable law.

23. Notices.

(a) All notices and demands required under Sections 5, 16, 18 and 30 of this Agreement shall be given in writing and sent by facsimile (with receipt confirmed) to the facsimile number below with confirmation at the telephone number below and a copy of the notice sent by United States first-class mail, postage prepaid, or by a nationally recognized overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To the District:

Kevin J. McKew
Executive Director
Winchester Public Schools
12 N. Washington St.
Winchester, VA 22601
Phone 540-667-4253
Fax 540-722-6198

With a copy to:

Thomas R. Folk
Reed Smith LLP
3110 Fairview Park Drive, Suite 1400
Falls Church, VA 22042

Telephone: 703-641-4294

Facsimile: 703-641-4340

To Developer:

C&S Design & Development Company, LLC

c/o Thomas R. Conaboy

409-A Jack Enders Boulevard

Berryville, VA 22611

Telephone: 540-955-5701

Facsimile: 540-955-5707

With a copy to:

Ashley H. Harrison

McGuireWoods LLP

901 E. Cary Street

Richmond, VA 23219

Phone: 804/775-1370

Fax: 804/698-2240

To the City:

Dale Iman

City Manager

City of Winchester

15 N. Cameron St.

Winchester, VA 22601

With a copy to:

Anthony C. Williams

City Attorney

City of Winchester

15 N. Cameron Street

Winchester, VA 22601

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 by facsimile (provided that, in the case of a facsimile, confirmation is made by telephone and first-class mail), or three days after sending if sent by certified mail, return receipt requested.

(b) With respect to any other notices required hereunder, including but not limited to those related to design approvals described in Sections 6 and 8 of this Agreement, "notice" shall require written communication (e-mail is acceptable) only between the District and Developer and not the City or any counsel to the City or the Parties.

24. **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. This Agreement may not be assigned without the prior written consent of the parties to this Agreement.

25. **Time of the Essence.** The times within which Developer agrees to complete construction of the Project and to achieve Substantial Completion and Final Completion for the Work are of the essence of this Agreement. The Developer shall proceed expeditiously with adequate forces and make diligent efforts to keep the Project on schedule, and the Developer shall achieve for the Project Substantial Completion of the Work and Final Completion of the Work within the completion times specified in this Agreement, the Project Schedule, and the Design-Build Contract. The District shall cooperate reasonably with Developer's efforts to keep the Project on schedule.

26. **Independent Contractor.** It is expressly understood and agreed by the parties hereto that Developer, in performing its obligations under this Agreement, shall be deemed an independent contractor and not an agent, employee or partner of the District.

27. **No Waiver.** The failure of the District or the Developer to insist upon the strict performance of any provisions of this Agreement, the failure of the District or the Developer 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 either party of any act by the other party requiring the first party's consent or approval shall not be construed to waive or render unnecessary the requirement for the first party's consent or approval of any

subsequent similar act by the other party. 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.

28. **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.

29. **Cooperation.** The parties agree to cooperate to achieve the objectives of this Agreement and to use reasonable and good faith efforts to resolve all disputes and disagreements that may arise hereunder. Each party agrees to designate representatives with the authority to make decisions binding upon such party (subject in the case of the District to those matters requiring an appropriate School Board or City Council vote) so as to not unduly delay the Project Schedule.

30. **Parties' Representatives.** The parties shall each appoint a representative, who may be either an employee or a specifically authorized contractor or other authorized agent of the party. The name, responsibilities and authority, address and telephone number of the party's representative will be provided to the other party in writing. The party's representative may be removed or replaced at any time without prior notice to the other party, but notification of the change, including the name and address of any successor representative, will be provided promptly to the other party in writing.

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

32. **Entire Agreement.** This Agreement and the exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between Developer and the District 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 Developer or the District unless reduced to writing and signed by each party. Excerpts of Developer's proposals are incorporated by reference for purposes of providing details concerning the overall intent of the parties. However, no document incorporated by reference is intended to contradict this Agreement or contradict approved Scope Documents or Plans, such Scope Documents or Plans being the parties' expression of their intent concerning the design, finish and equipping of the Project.

33. **Waiver of Claims for Consequential Damages.** The District and Developer waive claims against the other for consequential damages arising out of or relating to this Agreement or the Design-Build Contract. Developer also waives any claims for principal office or home office overhead. Nothing contained in this paragraph shall be deemed to preclude an award of liquidated damages or payment of any amount due in accordance with this Agreement.

34. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia. Exclusive and binding jurisdiction and venue for any disputes arising under or relating to this Agreement shall be in a court sitting in the City of Winchester, Virginia. 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.

35. **Annual Appropriation.** The financial obligations of the City and District in this Agreement are subject to appropriation. The District shall use reasonable efforts to secure the annual appropriations necessary to meet its financial obligations under this Agreement and the Design-Build Contract, and shall take all acts reasonably necessary to cause the City to make the annual appropriations to enable the timely availability of funds as contemplated pursuant to Section 7 of this Agreement.

36. **Financial Statements.** Developer agrees to provide the District with copies of complete and current financial statements for itself, and the Contractor, on an annual basis, or more frequently if requested by the District. The Developer may designate such financial statements as confidential proprietary information exempt from release under the Virginia Freedom of Information Act, and the District shall use reasonable efforts to maintain the confidentiality of such information.

37. **Copy of Agreement to Auditor of Public Accounts.** The District shall submit a copy of this Agreement to the Virginia Auditor of Public Accounts within thirty (30) days of its effective date.

38. **Approval by City of Winchester Condition Precedent to Agreement's Effectiveness.**

It shall be a condition precedent to this Agreement's effectiveness that entry into it first be approved by the Winchester City Council. If this Agreement is not approved by the Winchester City Council by _____, 2014 it shall be null and void unless Developer and the District both agree otherwise in writing.

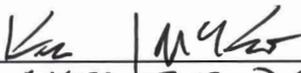
39. **Exhibits.** The following exhibits are hereby deemed to be part of this Agreement:

- Exhibit A – Excerpts from Developer’s Conceptual-Phase Proposal
- Exhibit B – District-Provided Information
- Exhibit C – Invitation to Submit Detailed-Phase Proposals
- Exhibit D – Developer’s Detailed-Phase Proposal
- Exhibit E – Design-Build Contract, including Terms and Conditions and Insurance and Bond exhibits (AIA A141-2004 Agreement, A141-A and A141-C documents as modified)
- Exhibit F – Project Budget, Stipulated Sum
- Exhibit G – Project Schedule
- Exhibit H – Scope of Work
- Exhibit I – Property to Be Conveyed and Description of Site
- Exhibit J – Design Development and Review Process
- Exhibit K – Conceptual Site Plan
- Exhibit L – Supplemental Guaranty of Developer’s Performance

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

“DISTRICT”

**SCHOOL BOARD OF CITY OF
WINCHESTER, VIRGINIA**

By: 
Its: EXECUTIVE DIRECTOR .

“DEVELOPER”

**C&S DESIGN & DEVELOPMENT
COMPANY, LLC**
a Virginia limited liability company

By: 
Its Designee

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