**COMPREHENSIVE AGREEMENT**

**between**

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

**and**

**C&S DESIGN & DEVELOPMENT COMPANY, LLC**

**For The New John Kerr Elementary School Project**

**April 21, 2014**

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**COMPREHENSIVE AGREEMENT**

**THIS COMPREHENSIVE AGREEMENT** ("Agreement") is entered into as of the 21st day of April, 2014, by and between **THE SCHOOL BOARD OF THE CITY OF WINCHESTER, VIRGINIA,** (the "District", "Public Schools", "School Board" or the "Owner"), and **C&S DESIGN & DEVELOPMENT COMPANY, LLC,** a Virginia limited liability company (the "Developer").

**Recitals**

R-1. On January 23, 2003, the District adopted its "Facilities Development Alternative Procurement Policies", which are its guidelines for implementation of the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 ("PPEA"), as amended, Va. Code 56-575.1, et seq. (the "Guidelines").

R-2. On May 13, 2013, the District, acting pursuant to the PPEA and its Guidelines, accepted an unsolicited proposal for a new John Kerr Elementary School ("New School") for Winchester Public Schools from Shockey P3, LLC ("Shockey").

R-3. After acceptance of the Shockey proposal, the District posted it as required by the PPEA and invited competing proposals. The District received an additional conceptual-phase proposal in response within the deadline specified from C&S Design & Development Company, LLC ("C&S"). A copy of C&S's conceptual-phase proposal is attached hereto as **Exhibit A**.

R-4. Copies of both proposals were provided to the City. To aid proposers, on August 13, 2012, the District provided certain information on its website, including without limitation (1) Project Narrative, (2) Outline Specification, (3) Existing Facility Study Report; (4) Geotechnical evaluation, and (5) Building Space Program – JKES. Copies are attached at **Exhibit B**.

R-5. The District subsequently selected both of the proposers, including C&S, as finalists to invite to submit detailed-phase proposals. A copy of the District's invitation is attached hereto as **Exhibit C**.

R-6. The finalists submitted detailed-phase proposals. A copy of C&S's detailed-phase proposal is attached hereto as **Exhibit D**.

R-7. Public hearings were held on the proposals including on September 9, 2013 and October 14, 2013.

R-8. After determining pursuant to Va. Code § 56-575.16 that selecting by competitive negotiation was justified and conducting negotiations with the finalists and finding that the purposes of the PPEA would be met, based upon the criteria in Va. Code § 56-575.4 c.1-3, on February 27, 2014, the District selected C&S as the private entity to proceed to develop this Agreement for the Project.

R-9. The parties have now finalized this comprehensive agreement consistent with the PPEA and the Guidelines, the terms and conditions of which are set out in this Agreement and its exhibits.

**NOW THEREFORE,** for and in consideration of the mutual promises, conditions and covenants herein set forth, the parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.

2. **General Scope.** Under this Agreement, Developer will be providing to the District certain real property, development services, design services, and construction for (a) new educational facilities and related improvements, utilities and amenities at the Site within the parameters of items (1), (2) and (5) of **Exhibit B** hereto to replace the current John Kerr

Elementary School with the New School, and (b) customary utility connections to utilities adjacent to the Site to allow operation of the New School as described in and consistent with **Exhibit D**. The Project will be delivered for a Stipulated Sum, as adjusted in accordance with the Contract Documents, unless the District, in its sole discretion, elects in writing to use additional funds from the District Contingency. Provided that this Agreement is entered into by both parties hereto and becomes effective on or before May 1, 2014, the New School is to be substantially complete by March 1, 2016.

3. **Definitions.** Capitalized terms not otherwise defined herein shall have the meanings set forth below.

(a) "Allowance" means a specified sum of money budgeted within the Project Budget for a specified portion of the Work that Developer has agreed to perform on the basis of the actual direct costs and fees for performing such portion of the Work, and not at a fixed price, such that, if the actual direct costs and fees for performing such portion of the Work are below the budgeted allowance amount to perform such Work, the difference shall not be paid to the Developer, but if the actual direct costs and fees for performing such portion of the Work are above the budgeted allowance amount to perform such Work, the District shall pay Developer the difference. The markup on actual direct costs allowed as total fees for any Allowance Work shall be the same as allowed for any Change.

(b) "Architect" means Developer's subcontracted professional design firm that will provide certain architectural and engineering services for the Project, including, without limitation, its design and the Site design. Developer has proposed RRMM Architects as its Architect for the Project and Pennoni Associates as the civil engineer for the Project in its proposals to the District, and Developer shall use RRMM Architects as Architect and Pennoni

Associates as civil engineer for the Project unless the Developer and the District approve otherwise in writing.

(c) "Budget" or "Project Budget" means the total funds available to the District for the Project"Developer's Budget" means that portion of the the Developer's Stipulated Sum pricing proposal as set forth on **Exhibit F**.

(d) "Business Days" are days that the District's administrative offices are open for business.

(e) "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 District and Developer agree as to adjustments, as applicable, to the Developer's Budget and the Project Schedule, or unilaterally by the District by a written Change Directive, with any adjustments, as applicable, to the Developer's Budget and Project Schedule, to be determined subsequently by either mutual agreement on the part of the District and Developer or through dispute resolution in accordance with Section 18 of this Agreement.

(f) "Change Directive" means a written order by the District specifically identified as a Change Directive, either (i) directing a Change, or (ii) directing Developer to perform work that the District contends to be within the requirements of the Contract Documents and that Developer contends does not. In the case of circumstance (i) in the preceding sentence, the Developer shall receive an adjustment to compensation and/or time as is equitable under the circumstances, which shall be memorialized in a Change Order. In the case of circumstance (ii) in the preceding sentence, if the District contention is correct, Developer is not entitled to any

additional compensation or extension to time despite the directive being labeled a "Change Directive."

(g) "Change Order" means a Change made by a written agreement in which the District and Developer have indicated agreement as to the Change and adjustments to the Developer's Budget and Project Schedule due to the Change and have evidenced their agreement by executing the written agreement; Change Orders are only valid if approved within the limitations established under "Change Order Approval Authority".

(h) "Change Order Approval Authority" means that the District Superintendent or designee is authorized to execute Change Orders subject to the following limitations: any Change Order exceeding $100,000.00 requires prior approval of the School Board; any Change Order which results in the total Project budget of $20,000,000.00 being exceeded requires approval of the School Board and Winchester City Council.

(i) "City" means the City of Winchester, Virginia.

(j) "Codes and Standards" means all local, state and federal regulations, ordinances, codes, laws, or requirements applicable to the Project, including, without limitation, the Virginia Uniform Statewide Building Code.

(k) "Contingencies" means funds in the Project Budget reserved for those events that the Parties cannot determine with sufficient certainty how to include at the time of execution of this Agreement. There will be two (2) Contingencies in the Project Budget, as shown on **Exhibit F**. The "District's Contingency" is funds which are controlled by the District and which belong 100% to the District if unused, subject to appropriation by the governing body, all in accordance with Section 22.1-100 of the Code of Virginia. The "Developer Contingency" shall be funds reserved for the Developer's use but which shall require the prior written consent

of the District before they can be applied, and which, if unused, shall be returned to the Owner. The District Contingency shall not be counted in the Stipulated Sum but the Developer Contingency shall be; if any Developer Contingency is unused and returned to the District at the end of the Project, the Parties shall execute a Change Order that reflects an adjustment in the Stipulated Sum that accurately reflects the actual amount of the Developer Contingency used for the Project.

(l) "Contract Documents" means the following:

(1) Any written modifications to this Comprehensive Agreement made in accordance with this Agreement;

(2) Any written Change Orders made in accordance with this Agreement;

(3) Any written Change Directives issued in accordance with this Agreement;

(4) This Comprehensive Agreement;

(5) Any written modifications to the Design-Build Contract made in accordance therewith;

(6) Any written Change Orders made in accordance with the Design-Build Contract;

(7) Any written Change Directives issued in accordance with the Design-Build Contract;

(8) The Design-Build Contract;

(9) Exhibits and documents incorporated by reference by this Agreement, other than the Design-Build Contract; and

(10) The Construction Documents.

In the event of any conflict between any of the Contract Documents, precedence shall be given to the Contract Documents in the order listed; provided, however, that the parties agree that items (3) and (4) of Exhibit B are for reference only and are not applicable to the Project and will not provide a standard for comparison or direction for the Project.

(m) "Construction Documents" means the sealed Plans and specifications developed through the design process by Architect or its consultants for the Work, and approved by the Developer and District, that are suitable to construct the Work for the Project.

(n) "Contractor" means the entity to which the Developer subcontracts the construction Work portion of its responsibilities for the Project. Developer has proposed Caldwell and Santmyer, Inc. as its Contractor for the Project in its proposals to the District, and Developer shall use Caldwell and Santmyer, Inc. as Contractor for the Project unless the Developer and the District approve otherwise in writing.

(o) "Day" means a calendar day, and "Days" mean calendar days, unless the contrary is expressly indicated.

(p) "Design-Build Contract" means the contract to be entered into between the Developer and the District for all the design and construction Work for the Project at **Exhibit E** hereto, which is a modified AIA Document A141-2004 and modified Exhibits A141-A and A141-C thereto. Developer shall be the Design-Builder under the Design-Build Contract.

(q) "Final Completion" means when all the Work has been completed in accordance with the Contract Documents except for warranty work that is not a punch list item.

(r) "Guidelines" means the District's Guidelines for Implementation of the Virginia Public-Private Education Facilities and Infrastructure Act of 2002, as amended, ("PPEA") as adopted by the District on January 23, 2003, as its "Facilities Development Alternative Procurement Policies".

(s) "New School" means the new John Kerr Elementary School to be developed, designed and constructed pursuant to this Agreement.

(t ) "Parties" means the Developer and the District; each may also be referenced as a "Party". The City is not a party to this Agreement.

(u) "Plans" means the plans, drawings, specifications, and schedules prepared by the Architect and its design consultants for the Project approved as described in paragraph 8(d) of this Agreement.

(v) "Project" means the conveyance of the Property, development, design, and construction of the education facilities, utilities, infrastructure, utility connection, and amenities contemplated by the proposals from C&S and this Agreement.

(w) "Property" means the real estate that Developer is to convey to the District, which is described at **Exhibit I** hereto.

(x) "Site" means the Property that Developer will have caused to be conveyed to the District upon which the New School facilities will be constructed, as more fully described in **Exhibit I**.

(y) "Stipulated Sum" means the fixed amount stated in **Exhibit F** that will be payable to Developer for the Project.

(z) "Substantial Completion" means the date determined in accordance with Section 11(c) of this Agreement.

(aa) "Work" means all of Developer's furnished development, design, and construction services as defined by this Agreement, the Design-Build Contract, and/or the Construction Documents, including procuring and furnishing all materials, equipment, permits, services and labor reasonably inferable therefrom and not excluded by this Agreement or its exhibits. "Work" includes the entirety of "Work" or any portion thereof, as applicable from the context.

4. **Project Schedule.** Attached hereto as **Exhibit G** is the initial Project Schedule. The Project Schedule shall be further developed and interim dates added consistent with this Agreement, with such Project Schedule to be reasonably based on required completion dates for the Project. The Developer shall use reasonable efforts to maintain the Project Schedule, which can be modified by mutual agreement of the parties as circumstances warrant, keeping in mind the importance of achieving the Substantial Completion of Work date for the Project.

5. **Real Property and Its Conveyance.** The District acknowledges its receipt and approval of the following materials provided by the Developer as part of its detailed phase proposal submission: a Phase 1 Environmental Site Assessment of the Property dated October 11, 2013, a proposed boundary drawing of the Property prepared by Marsh & Legge Land Surveyors, P.L.C. dated October 9, 2013; two (2) title certification letters applicable to the Property prepared by Benjamin M. Butler dated October 1, 2013; and copies of the applicable purchase contract and option for the lands comprising the Property; and also a reliance letter from the preparer of the Phase 1 Environmental Site Assessment as provided by Developer on March 25, 2014.

(a) Developer shall take the following actions with respect to the Property:

(1) Within thirty (30) days of the date of this Agreement, tender the following to the District regarding the Property: provide estoppel certificates verifying that the previously-submitted contract(s) or option(s) to acquire the Property within the schedule contemplated for the Project remain in full force and effect and are not in default;

(2) Diligently pursue all measures reasonable and necessary to ensure that the Property may be developed for a school use as contemplated by this Agreement.;

(3) Upon completion of the zoning and subdivision of the Property, the Developer shall provide written notice to the District that such process has been completed and the Parties shall close on the transfer of the Property to the District within thirty (30) Days. At closing between the Developer and the District, the Developer shall either convey or cause to be conveyed the Property to the School Board in fee simple absolute by special warranty deed with title insurance obtained by the Developer on behalf of the District from an insurer and in a form acceptable to the District, for which the District shall pay the Developer the amount

specified as "Total Cost of Site" in Item A of **Exhibit F**. If Developer shall not have provided written notice of completion of the zoning and Subdivision of the Property by December 1, 2014, then the District may terminate this Agreement; if District does not provide notice of termination as required by this Agreement, then it shall be deemed to have waived this timing requirement and agrees to accept conveyance of the Property at a later time when zoning and subdivision have been completed. If the Property is not conveyed to the District for any other reason, the District may, in its sole discretion, (i) acquire the Property by exercising its power of eminent domain and condemnation, or (ii) terminate this Agreement. If the District acquires any of the Property by eminent domain or condemnation, Developer shall pay all costs of doing so that exceed the Property's acquisition costs as set forth in **Exhibit F.** If the District elects to terminate this Agreement due to the failure to convey the Property, then neither party shall have any further liability to the other under this Agreement..

6. **Site Design and Sitework.**

(a) Services: Developer will provide the following site design and sitework services to the School Board:

(1) Review any existing reports regarding the Site, including, without limitation, subsurface tests, geotechnical reports, soil tests, borings, water surveys, wetlands studies, topographical surveys, sewage disposal surveys and drainage determinations, determine what additional reports must be done for the Site, and cause to be made any and all additional reports reasonably necessary to be made in order to provide for the development of the Site contemplated in this Agreement;

(2) Have the site design for the Site done and have all site work done necessary to prepare the Site for the Project, including without limitation, obtaining engineering

services, preparing site plans and obtaining their approval, site demolition, removal of debris, clearing, grubbing, and grading, removal and disposal of excess soil and rock, provision of suitable soil, doing storm water management, utilities, curb and gutter, and landscaping, all in accordance with Developer's detailed-phase proposal and standards applicable at the time of execution of this Agreement. All civil engineering, site design, and site plans are subject to review and approval by the District (which approval shall not be unreasonably withheld, conditioned or delayed). If the District disapproves of civil engineering, site design or site plans or any portion thereof or any modifications thereto, the District shall provide Developer with a notice of disapproval specifying in detail the reasonable basis for such disapproval. If the District fails to give Developer written notice of disapproval of any civil engineering, site design or site plans within seven (7) Business Days after receipt of any submittal by Developer, and, (i) after that time expires, Developer sends a written notice requesting action by the District; and (ii) the District takes no action within two (2) Business Days following receipt of such written notice, then the District shall be deemed to have approved the same. Developer shall cause its Architect and its consultants to work closely with the District and cooperate with the District and its consultants, always acting in good faith and consistent with the applicable professional standards of professional care, judgment, and attention. The Developer shall ensure that its site design is compatible with the Architect's design for the new school facilities and is reasonably acceptable to the District and its consultants. The Developer shall take all actions necessary so that the Site is ready for construction in conformance with the approved site plan and complies with all requirements of Codes and Standards. The sitework for the Project shall include all the work identified in **Exhibit H** unless the parties subsequently agree otherwise in writing;

(3) Do all permitting and obtain all approvals for the Project and its Site that are required for sitework, construction and occupancy; provided, however, that the District will provide the District's signatures when required and will assist Developer in securing timely issuance of permits and approvals of other governmental bodies, including the City; and

(4) Off-Site Tasks – obtain rights to allow connections, and make connections to, utilities off site required for the operation of the New School.

**7. Plan of Finance.**

The District shall include in its budget requests to the City that the City appropriate funds to the District to pay for, and finance or cause financing of, the costs of the Project in a manner that results in the availability of funds in the amounts and at the times required, subject to annual appropriation. The District shall include in such budget requests $20,000,000.00 for the Project. Unless expressly authorized by the Winchester City Council, the total cost of the Project shall not exceed $20,000,000.00.

**8. Design Services.**

(a) Developer will retain Architect to provide design services and construction phase services and will pay Architect for those services, the cost to Owner of which is part of the amount indicated in Item B of **Exhibit F**, and which is part of the total Stipulated Sum. The payment to Developer of the amount indicated in Item B of **Exhibit F**, as adjusted by this Agreement, is the District's sole obligation for payment for all architectural and engineering services to be provided under this Agreement, whether from the Architect or its consultants or other consultants retained separately by the Developer, and if Developer is unable to provide all such services for the amount indicated in Item B of **Exhibit F**, as adjusted by this Agreement, Developer shall nonetheless cause such services to be provided at no additional cost to the

District. Any payment from the District to Developer for services provided by Architect shall be deemed to also be payment to Architect. The Developer shall ensure that the Architect's contract with Developer (i) does not limit damages payable by Architect for acts or omissions, including without limitation, for professional liability for failure to meet the standard of care; (ii) requires insurance coverage at least equal to that required by Section 13 of this Agreement; (iii) requires indemnification at least equal to that required by Section 17 of this Agreement for acts or omissions of the Architect or anyone providing services for the Project through the Architect; and (iv) incorporates all obligations of the Architect under this Agreement and the Design-Build Contract. At the time of execution of this Agreement, it is the Developer's intention to contract directly with a civil engineer for civil engineering services, but have all other architectural and engineering services provided by the Architect or by a consultant with whom the Architect contracts.

(b) Because the Project is to use the design-build method of delivery, the District does not provide any warranty, express or implied, regarding the suitability of any design for the Project. Rather the Developer agrees as follows: services of Developer, Architect and their consultants shall meet the standards of care for a comparable project in Virginia.

(c) Developer shall require Architect's and its consultants' personnel to have the necessary expertise and experience, and such personnel shall be reasonably acceptable to the District. The following are key design professionals who shall be involved in Design Services for the Project and may not be removed from the Project without Owner's consent, which consent shall not be unreasonably withheld: (1) Benjamin Mottley, RA, and (2) Ronald Mislowsky, PE.

(d) Unless otherwise agreed by the District, Developer shall follow the procedures in **Exhibit J** hereto to develop the design and Construction Documents for this Project. Developer shall develop or cause to be developed, a "Building Description and Outline Specifications", "Schematic Building Plans" and "Master Site Plans" for the Project consistent with **Exhibits B** and **H** (the "Scope Documents"). The District shall review and comment on the Scope Documents in accordance with the Project Schedule (as further developed in accordance with Paragraph 4 of this Agreement). Once the District has reviewed and approved the Scope Documents, Developer will cause to be delivered to the District proposed drawings, specifications and schedules pursuant to the provisions of **Exhibit J** hereto. Such deliverables shall be reviewed, revised and approved or disapproved by the parties in order to produce a final set of mutually-agreeable approved plans, drawings, specifications and schedules for the Project (collectively, the "Plans"). The Developer shall also furnish copies of the Scope Documents and the Plans to the City Building Official, the City Planning Department, and the State Board of Education. The District's approval of the above Plans shall not be unreasonably withheld, conditioned or delayed, and the District shall not be entitled to condition its approval of such Plans upon the inclusion of any design specifications that are materially inconsistent with the Scope Documents. The District's approval of such Plans shall not be deemed a representation or warranty by the District that any of such Plans meet code or represent good engineering, design or construction practices or be deemed to be a waiver by the District of any failure of the Plans to conform to the standard of care, of any of the requirements of any Codes and Standards, or of any of the standards for design and construction at Section 8 of this Agreement. The District may not later disapprove of Plans that it has previously approved.

(e) If the District disapproves of Plans or any portion thereof or any modifications thereto, the District shall provide Developer with a notice of disapproval specifying in detail the reasonable bases for such disapproval. Developer shall promptly either respond to such disapproval with additional information addressing the District's objections or cause to be made such revisions to the Plans as may be necessary to address the District's reasonable objections, and shall resubmit the revised Plans addressing the bases in the District's notice of disapproval to the District for the District's approval to maintain the Project Schedule. The District shall review such revisions and notify Developer whether the District approves or reasonably disapproves the Plans as modified. This process shall be repeated, if necessary, until the District's reasonable objections have been addressed and the District has approved the Plans.

(f) If the District fails to give Developer written notice of disapproval of any Plans within seven (7) Business Days after receipt of any submittal by Developer, or in the case of a resubmittal of a previously disapproved submittal, within two (2) Business Days after the District's receipt thereof, and, if after receiving a written reminder notice of such failure, the District continues to fail for another two (2) Business Days to give written notice of disapproval, the District shall be deemed to have approved the same.

(g) Not used.

(h) Not used.

(i) Developer shall ensure that the design and construction for the Project meet or exceed the Virginia Department of Education Regulations for Public School Buildings Construction, meet the standards of quality of design and workmanship of **Exhibits B** and **H**, meet applicable Codes and Standards, and meet the standards specifically identified or established in this Agreement and in Developer's proposals except to the extent standards in the

proposals are qualified by **Exhibits B** and **H** of this Agreement; provided, however, that (a) the District and the Developer agree that the size and location of the Site is acceptable for the development of the Project and any parcel size of location requirements set forth in any of the standards referenced in this Section 8(i) shall not be applicable to the Project and (b) where there is any material conflict between the number, size, and type of rooms, other indoor spaces, and outdoor amenities found in the Virginia Department of Education Regulations for Public School Buildings Construction and those proposed in the Detailed Phase Proposal, the Detailed Phase Proposal shall govern.

(j) Developer shall maintain at the Site during construction in good order one record copy of the Construction Documents, Change Orders, Change Directives, and any other related documents, marked currently to record changes made during construction. During construction, the District shall have the right to review all Construction Documents, Change Orders, Change Directives, and other related documents during regular business hours, provided that the District does not unreasonably interfere with performance of the Work. Upon completion of the design and construction of the Work, Developer shall deliver to the District the following:

(i) a complete set of as-builts for the Project;

(ii) all written specifications, as amended;

(iii) complete copies of all operations and maintenance manuals for all major equipment installed; and

(iv) all warranties required pursuant to this Comprehensive Agreement and all warranties required by the Design-Build Contract.

(k) Not used.

(l) No material deletion of the Project Scope of Work that is reflected in **Exhibit H** shall be effective unless the District specifically agrees in writing to such deletion.

**9. Construction Services.**

(a) Construction services to be provided by Developer shall be performed pursuant to the Design-Build Contract, which shall be entered into no later than fourteen (14) days after execution of this Comprehensive Agreement. Developer will use the Contractor for preconstruction and construction services and will pay Contractor for those services. Any payment from the District to Developer for services provided by Contractor shall be deemed also to be payment to Contractor. Developer's contract with Contractor shall (i) not limit Contractor's liability; (ii) require insurance coverages consistent with Section 13 of this Agreement; (iii) require indemnification consistent with Section 17 of this Agreement for acts or omissions of the Contractor or anyone providing any of the Work through Contractor; (iv) not materially deviate from the Design-Build Contract and its exhibits; and (v) incorporate all obligations of the Contractor contained in this Agreement and the Design-Build Contract.

(b) Compensation to Developer and subcontracting shall be as follows:

(1) Developer shall be paid for Work actually performed in accordance with the agreed schedule of values as set forth in **Exhibit F**, including Developer's fee and overhead, subject to retainage and in accordance with this Agreement and the Design-Build Contract, such that total payments to Developer by Owner under this Agreement equal the Stipulated Sum as set forth in **Exhibit F**, subject to adjustments as permitted under this Agreement and the Design-Build Contract.

(2) Developer shall cause Contractor to use reasonable efforts to obtain subcontracts, equipment, and materials using competitive bid processes wherever

practicable in accordance with the PPEA. Developer's procurement of the Work shall be pursuant to the terms of the Design-Build Contract. Developer shall provide and cause Contractor to provide any documents or information Owner reasonably requests relating to Developer's and Contractor's obligations under this paragraph.

(c) Not used.

(d) If the parties are unable to agree as to the reasonable cost of a design Change, the District may direct in writing that a Change nonetheless be made, with the price adjustment to the Stipulated Sum for such Change to be determined pursuant to this Agreement, the Design-Build Contract, and the following rules. For Changes and portions thereof involving design services, the Architect and its consultants shall be compensated for time expended by design professionals at reasonable hourly rates not to exceed those at **Exhibit F** hereto. For Changes to the Work involving construction or sitework, besides reasonable direct subcontractor costs and reasonable direct costs of labor, materials, and equipment, an amount of (i) 5% of Contractor's and 10% of the first-tier of the subcontractor's (other than Architect's) direct costs, will be allowed to compensate for overhead and profit, and (ii) the Architect's 1.1 multiplier on fees of its consultants and reimbursable costs. No mark ups will be allowed for Developer except that any increased costs of payment and performance bonds shall be reimbursed by the District. The Stipulated Sum, as adjusted in accordance with this Agreement and the Design-Build Contract, constitutes all amounts due Developer for its services provided pursuant to this Agreement, including without limitation, conveyance of property, development services, design services, Site preparation and construction, subject to (i) payment for Change Orders approved by the District in writing and for comparable Changes directed by the District in writing pursuant to this paragraph, (ii) any additional costs for Owner delay or time extension payable under 9(e),

and (iii) any additional costs associated with Developer's purchase, construction, or installation of any of the District's FF&E as defined in **Exhibit H**.

(e) (1) The District shall have no liability to pay any amounts to Developer, or to increase the Stipulated Sum, due to any delay Developer, or anyone providing services through Developer, experiences in the progress of the Work except (i) to the extent such delay was caused by, or precipitated by, a breach under any of the Contract Documents on the part of the District or its authorized representatives and was not the fault of the Developer or anyone providing services through the Developer, including, without limitation, the Architect, Contractor, or any subcontractor or supplier; (ii) the delay was to the critical path of Project activities on the Project Schedule; (iii) the delay was unreasonable; (iv) the delay was not reasonably avoidable or could not reasonably be mitigated by Developer; and (v) all requirements of this Agreement and the Design-Build Contract for making a claim, have been met. Any amounts payable to Developer due to any delay shall be limited to the categories of costs specified in paragraph 8(e)(2) and shall only be for days of delay meeting all the criteria of the preceding sentence.

(2) When a delay or time extension is compensable by the District under the terms of this Agreement, additional costs payable to Developer shall include the reasonable costs of the additional time, which includes extended on site management costs, extended cost for labor, materials and equipment on site, additional charges related to payment and performance bonds and extended costs for utilities on site, but only to the extent that these costs could not reasonably be mitigated, but such additional costs shall not include lost profit or home office overhead. These restrictions on additional costs recoverable for delay or time extension apply to this Agreement and the Design-Build Contract. Except as expressly allowed

by subparagraph 9(e) of this Agreement, Developer shall not be entitled to any damages for delay or extended duration of the Project regardless of cause.

(f) (1) If Developer is delayed in the performance of the Work due to conditions, events or circumstances beyond its control, such as Change in the Work, differing site conditions, hazardous conditions, wars or terrorism or other acts of a public enemy (or threats thereof), floods, labor disputes, unusual delay in transportation, epidemics, earthquakes, "unusual weather" within the meaning of subparagraph (f)(2), or other acts of God, then time of performance of the Work shall be equitably adjusted and Developer shall be excused from delays to the Work and the Project due to such conditions, events or circumstances. Additional days to perform the Work represent the only relief due to the Developer for these circumstances, no additional compensation being payable by the District.

(2) Developer shall be entitled to an extension in the time to achieve, Substantial Completion or Final Completion under the following circumstances: (i) the delay is not the fault of Developer or anyone providing services through Developer, including without limitation, the Architect, Contractor, or any subcontractor or supplier; (ii) the delay could not reasonably be avoided by Developer, the Contractor or the Architect; (iii) the delay is to an activity on the critical path of the Project Schedule; and (iv) Developer has met all the requirements of this Agreement and the Design-Build Contract for making a claim. Additional days to perform the Work represent the only relief due to the Developer for these circumstances, no additional compensation being payable by the District.

(g) All the warranties indicated in the proposals submitted by Developer and the warranties indicated in the Design-Build Contract shall apply to the Project, it being the parties' intent that these warranties are cumulative and are to be construed to give the District the

maximum protection consistent with their terms. Developer shall cause warranty rights obtained by it from third parties under this Agreement and under the Design-Build Contract to be assigned to the District. All warranties shall commence at Substantial Completion.

(h) Developer shall submit to the District the Developer's staffing plan for the construction of the Project, together with the names, qualifications, and years of service of management. No changes to such management shall be made which are reasonably objected to by the District (except for changes which are outside the control of Developer, such as a person leaving its employ). The following persons are designated key personnel for construction, and Developer agrees to ensure that they shall remain working on the Project through Substantial Completion unless the District agrees otherwise in writing or unless the District directs their removal from the Project as objectionable:

(1) Project Manager: Aaron Aulabaugh.

(2) Project Superintendent: Raymond Clarke.

Any replacement of any key personnel shall be with personnel of equal ability and experience who are reasonably acceptable to the District.

(i) The District reserves the right to coordinate certain work in connection with its providing the District FF&E for the Project, including without limitation, such items as lockers, closed circuit television systems, intrusion detection systems, and administrative phone systems, provided the same do not unreasonably interfere with the progress of construction by Developer. Developer will provide in its design and construction of the Project for conduit, rough-in, mechanical and electrical and other features to accommodate any of the District FF&E, and District and Developer will cooperate and coordinate reasonably and with the District's contractors to ensure that Developer's design and construction accommodate the District FF&E.

Nothing herein is intended to prevent the District from reserving to itself the right to install the District FF&E under its own direction and at its own expense. If the District's furnished items are damaged as a result of the negligence or willful misconduct of Developer or anyone providing any of the work through Developer, Developer shall repair or replace them. If Developer is directed to purchase, construct, or install any of the District FF&E, the Stipulated Sum shall be adjusted, and Developer shall be liable for any loss or damage to them until Substantial Completion and change over of insurance.

(j) The District retains the right to retain and pay for a "Clerk of the Works" and consultants to inspect from time to time the progress of the construction Work in order to perform a quality control function on behalf of the District. The costs or fees for the District's use of a Clerk of the Works and consultants shall be at the District's sole expense; provided, however, Developer shall provide space, furniture, utilities and a telephone line for their use at the Site as part of the Stipulated Sum.

(k) The Developer agrees that all sitework shall be based upon the Site being "unclassified," with all costs associated therewith included in the Stipulated Sum. Developer shall not be entitled to any adjustment to the Stipulated Sum or schedule based upon site conditions and/or site conditions being different from those assumed by Developer and/or those typical in the area.

(l) Except as otherwise indicated herein, to the extent of any inconsistency between a provision contained in the Design-Build Contract and a provision of this Agreement, the provision contained in this Agreement shall prevail.

(m) Developer shall ensure that it does not have, and that no one providing services through it, including without limitation, the Architect, the Contractor, and any