

**COMPREHENSIVE AGREEMENT**

**between**

**THE FREDERICKSBURG CITY SCHOOL BOARD**

**and**

**FIRST CHOICE PUBLIC-PRIVATE PARTNERS: FREDERICKSBURG II, LLC**

**for**

**DESIGN AND CONSTRUCTION**

**of**

**NEW MIDDLE SCHOOL BUILDING**

**Date: \_\_\_\_\_, 2022**

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## COMPREHENSIVE AGREEMENT

THIS COMPREHENSIVE AGREEMENT (this “Agreement”) is dated and effective as of \_\_\_\_ November, 2022, between FREDERICKSBURG CITY SCHOOL BOARD (“the Owner” or “School Board”), a political subdivision of the Commonwealth of Virginia, and FIRST CHOICE PUBLIC-PRIVATE PARTNERS: FREDERICKSBURG II, LLC (“Design-Builder”), a limited liability company, organized and existing under the laws of the State of Virginia. The School Board and Design-Builder are referred to individually as a “Party” and collectively as “the Parties”.

### Recitals

1. On July 7, 2003, the School Board adopted the City of Fredericksburg School Board Guidelines for Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002 (“PPEA Guidelines”). The PPEA Guidelines as amended in May 2015 establish procedures for the development of public facilities through public-private partnerships, which procedures satisfy the requirements of the Public-Private Education Facilities and Infrastructure Act of 2002, Virginia Code § 56-575.1 et seq. (“PPEA”).

2. On June 24, 2021, the School Board issued a Request for Qualifications (#202105-001) for the construction of a new school to be built on a site owned by the City of Fredericksburg.

3. It received four responses (qualifications), including one from the Design-Builder dated July 16, 2021.

4. On or about July 27, 2021, the School Board issued a Request for Proposals (#202107-001) for PPEA proposals for the construction of a new middle school.

5. The new school will be designed for 1,100 students and encompass approximately 140,000 net square feet of new building space.

6. The School Board received three proposals, including one from the Design-Builder dated September 8, 2021.

7. The non-confidential portions of the proposals were posted on the School Board website and the School Board conducted a public hearing on the proposals on September 13, 2021, as required by the PPEA.

8. The School Board determined that, among other considerations, it would be advantageous to proceed with the Project using procedures for competitive negotiation, rather than using sealed, competitive bids, given the probable scope, complexity and urgency of the Project; the merits of risk-sharing and the potential for added value; and the economic benefit from the Project that might otherwise not be available.

9. Following evaluation, the School Board voted on September 27, 2021, to select the Design-Builder for negotiation of an Interim Agreement for preliminary design of a new

middle school to be located on the Idlewild tracts of property owned by the City (GPIN 7768-89-4502, GPIN 7769-80-8080 and GPIN 7769-80-7409) (“Site”) (the “Project”).

10. The Parties negotiated an Interim Agreement, consistent with the PPEA, other applicable law, the PPEA Guidelines, Design-Builder’s proposal, and discussions between representatives of the School Board and Design-Builder.

11. In accordance with Virginia Code § 56-575.16(5), the City Council of the City of Fredericksburg held a public hearing on March 24, 2022 and adopted Resolution 22-19 approving the School Board’s entering into the Interim Agreement.

12. On April 28, 2022, the Design-Builder met with the City’s Technical Review Committee and the Owner before the Schematic Design submission to determine any necessary approvals from the City for planning and land use.

13. The Design-Builder submitted the 10% Schematic Design Drawings to the Owner for approval.

14. The Design-Builder met with the Owner’s Steering Committee on April 29, 2022, and May 5, 2022.

15. On May 12, 2022, and May 18, 2022, the Design-Builder held public design workshops where members of the public were allowed to view and make comments on the Project.

16. At the School Board meeting on June 6, 2022, the Design-Builder provided a public briefing to the Owner.

17. As required by the Interim Agreement, the necessary environmental analysis (geotechnical survey), traffic engineering analysis, and a boundary line survey of the Site were performed as agreed.

18. On July 5, 2022, the Design-Builder submitted the 35% Design Development drawings which included details regarding structural and mechanical, electrical and plumbing (MEP) components of the design, and a contract cost estimate consistent with the Association for the Advancement of Cost Engineering (AACE) practices to permit the Owner’s evaluation of the proposed design and cost.

19. The Parties negotiated the First Amendment to the Interim Agreement consistent with the PPEA, other applicable law, the PPEA Guidelines, Design-Builder’s proposal, and discussions between representatives of the School Board and Design-Builder.

20. The First Amendment amended the Interim Agreement to include the development of the 65% Design Development drawings.

21. On September 12, 2022, the School Board approved entering into the First Amendment to the Interim Agreement.

22. The School Board, concluding that the Project is feasible, has selected Design-Builder for the negotiation of this Comprehensive Agreement under the PPEA to address the completion of design, construction and commissioning of the Project without further procurement.

23. The Parties have negotiated this Agreement consistent with the PPEA, other applicable law, the PPEA Guidelines, Design-Builder's proposals, and discussions between representatives of the School Board and Design-Builder.

24. The Parties acknowledge and agree that this Agreement and the General and Supplemental Conditions (as defined below) will function as the Design-Build Contract for purposes of the Project.

25. Having considered this Agreement and other information, the School Board has determined that the Project to be designed and constructed pursuant to this Agreement serves the public purpose of the PPEA under the criteria of Virginia Code § 56-575.4(C).

26. The Comprehensive Agreement was posted for public inspection in accordance with the PPEA and the PPEA Guidelines.

27. In accordance with Virginia Code § 56-575.16(5) and the City's 2021 PPEA Guidelines, the City Council of the City of Fredericksburg as the appropriating body held a public hearing on [ ], 2022 and adopted Resolution 22-[ ] approving the School Board's entering into the Comprehensive Agreement.

### **Agreements**

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. Contract Documents**

The Contract Documents are comprised of the following:

a. All written modifications, amendments, change directives and change orders to this Agreement issued in accordance with the General Conditions (Exhibit 2);

b. This Agreement, including all exhibits, attachments, and documents expressly incorporated herein;

- c. The General Conditions (sometimes referred to as “GC” and attached as Exhibit 2), including all exhibits, attachments, and documents expressly incorporated therein;
- d. The Supplemental Conditions (Exhibit 3), including all exhibits, attachments, and documents expressly incorporated therein; and
- e. Construction Documents prepared and approved in accordance with GC Section 2.4.

### **3. Definitions**

The following definitions apply to this Agreement.

- a. “Construction Documents” means these documents as defined in GC Section 1.2.3 and as referenced in Section 2.e of this document.
- b. “Contract Documents” means those documents listed in Article 2.
- c. “Contract Price” means the amount that the School Board will be obligated to pay the Design-Builder as stated at Article 6 of this Agreement, and is subject to upward or downward adjustment pursuant only to the Comprehensive Agreement.
- d. “Contract Time” has the meaning ascribed by Article 8 hereof, as may be adjusted pursuant to the Contract Documents.
- e. “Date of Commencement” means the date the Comprehensive Agreement is executed on behalf of the School Board.
- f. “Design-Build Contract” means this Agreement and the exhibits attached hereto, including the General and Supplemental Conditions.
- g. “Final Completion of the Work”, “Final Completion” or “final completion” means completion of all of the Work in conformance with the Construction Documents, as described in GC Section 2.4.2, and other Contract Documents, including without limitation any items identified in the punch list prepared under GC Section 6.6.1 and the submission of all documents set forth in GC Section 6.7.2 but not including warranty items.
- h. “General Conditions of Contract,” “General Conditions” or “GC” means ***Design-Build Institute of America Document No. 535***, “Standard Form of General Conditions of Contract between the School Board and Design-Builder”, as so modified by agreement of the School Board and Design-Builder, which is attached hereto as **Exhibit 2**.
- i. “Owner’s Representative” means the construction manager procured by and under separate contract with the School Board.

j. "Project" means the design and construction of the improvements as contemplated by the Contract Documents. "Project" includes both the entirety of the Project or a part thereof.

k. "Project Schedule" means that schedule defined in, and attached to the General Conditions as **Exhibit G**.

l. "Site" means the land on which the Project will be constructed as shown in **Exhibit P**.

m. "Substantial Completion of the Work," "Substantial Completion," or "substantial completion," with respect to the Project, shall have the meaning as defined in GC Section 1.2.18.

n. "Supplemental Conditions" means the Supplemental Conditions of Contract between the School Board and Design-Builder", attached as **Exhibit 3**.

#### **4. General Scope of Work; Interpretation; Intent and Incorporation**

a. **General Scope.** Design-Builder shall perform, provide or cause to be provided all design and construction services, and provide or cause to be provided all material, equipment, services and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents. Design-Builder 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 Design-Builder under this Agreement.

b. The Contract Documents are intended to permit the Parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents or the provisions thereto, such meaning, and the Contract Documents, shall be interpreted in the following order of precedence: this Comprehensive Agreement, and attachments hereto as well as any modifications and amendments thereto; the General Conditions, including any modifications, amendments or change orders thereto; the Construction Documents prepared and approved in accordance with GC Section 2.4; and the remaining documents in the order in which they appear in Article 24.

c. Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in this Agreement and the General and Supplemental Conditions.

d. In accordance with Article 23 hereof and as more fully provided thereby, the Contract Documents form the entire agreement between Owner and Design-Builder. No oral



representations or other agreements have been made by the Parties except as specifically stated in the Contract Documents.

e. The agreement between the Design-Builder and Moseley Architects, Inc. relating to design of the Project shall include a provision naming the School Board as a third-party beneficiary thereof.

## **5. Ownership of Work Product**

a. **Work Product.** All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under the Design-Build Contract (collectively, the “Work Product”) are deemed to be instruments of service and Design-Builder or Designer shall retain the ownership and property interests therein, including the copyrights thereto. Work Product is further defined and described in GC Section 3.9. Design-Builder grants Owner a limited license to use the Work Product in conjunction with its use and occupancy of the Project, and will arrange for a limited license from Designer to Owner.

b. **Owner’s Limited License Upon Owner’s Termination for Convenience or Design-Builder’s Election to Terminate.** If Owner terminates the Design-Build Contract for its convenience as set forth in Article 16 hereof, or if Design-Builder elects to terminate the Design-Build Contract in accordance with Article 15 hereof, Designer and Design-Builder shall, upon Owner’s payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently use the Project, conditioned on the following:

- i. Use of the Work Product is at Owner’s sole risk without liability or legal exposure to Design-Builder, including Designer and Design Consultants at any tier; and
- ii. Owner agrees to pay Design-Builder all design and consultant fees due at the time of termination as compensation for the right to use the Work Product in accordance with this Article 6 if Owner resumes the Project through its employees, agents, or third parties.

c. **Owner’s Limited License Upon Design-Builder’s Default.** If the Design-Build Contract is terminated due to Design-Builder’s default pursuant to Article 15 hereof, and (i) it is determined that Design-Builder was in default, and (ii) Owner has fully satisfied all of its obligations under the Contract Documents, Designer and Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner’s completion and occupancy of the Project. This limited license is conditioned on Owner’s express understanding that its use of the Work Product is at Owner’s sole risk and without liability or legal exposure to Design-Builder, including Designer and Design Consultants at any tier, except to the extent of the Design-Builder, Designer or Design Consultant’s negligence or gross or willful conduct.

## 6. Contract Price

Owner shall pay Design-Builder the Guaranteed Maximum Price (GMP) (as defined in GC Section 1.3.6) in accordance with Article 7, Article 10 and Article 13 hereof, subject to adjustment in accordance with the General Conditions, the total amount not to exceed the Construction Cost Limit of SEVENTY-FIVE MILLION FIVE HUNDRED EIGHTY THOUSAND DOLLARS (\$75,580,000). Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes imposed by law or any governmental authority.

## 7. Payment

a. **Progress Payments.** Design-Builder shall submit to Owner's Representative on the fifth (5th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment (as such term is used in the General Conditions) in accordance with GC Section 6. Owner shall make payment within thirty (30) days after approval by the Owner's Representative of each properly submitted and accurate Application for Payment in accordance with GC Section 6, but in each case less the total of payments previously made, and less amounts properly withheld under GC Section 6.3.

### b. **Retainage on Progress Payments**

i. Owner will retain five percent (5%) of the progress payments earned on the Reimbursable Costs of the construction portion of the Work and Design-Builder's fixed fee through Substantial Completion. Design-Builder shall include or cause to be included retainage provisions in all subcontracts at the rate set forth herein.

ii. Upon Substantial Completion of the entire Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to 200% of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

c. **Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with GC Section 6.7. 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, unless Owner's Representative directs a Change to the Scope of Work in accordance with GC Article 9. If the Design-Builder's claim to amounts payable under the Comprehensive Agreement has been assigned, with consent of Owner, as provided in the General Conditions, a release may also be required of the assignee. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within sixty (60) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in GC Section 6.7.2 .

d. **Interest.** Payments due and paid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing thirty (30) days after approval thereof by the Owner's Representative at the rate of one percent per month.

**8. Contract Time**

a. **Date of Commencement.** The Work shall commence upon execution of this Agreement by Owner ("Date of Commencement") unless the Parties mutually agree otherwise in writing. The Superintendent shall execute the Agreement on behalf of the School Board upon approval hereof by the School Board. Some Work (preliminary sitework, demolition, 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.

**b. Substantial Completion and Final Completion.**

i. Substantial Completion of all Work and Final Completion shall be achieved no later than the dates in the Project Schedule in Exhibit G ("Scheduled Substantial Completion Date" and "Final Completion of the Work"). On a monthly basis after the Date of Commencement, Design-Builder shall consult with the Owner's Representative with regard to the likely Substantial Completion date of each phase and earlier occupancy dates so as to allow the Owner to plan its move.

ii. Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable, not later than seventy-five (75) calendar days after Substantial Completion and within the time specified in the Project Schedule.

iii. All of the dates set forth in this Article 8 shall be subject to adjustment in accordance with the General Conditions.

**c. Liquidated Damages.**

i. Owner and Design-Builder 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 Substantial Completion is not attained by thirty (30) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder 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 \$2,000.00 as step one liquidated damages for each and every consecutive calendar 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 Design-Builder shall have sixty (60) calendar days in which to achieve Final Completion of the Work. If Final Completion of the Work is not achieved by the 90th day after Substantial Completion has been achieved, and if no extension of such time period has been granted by the Owner as required by this Agreement, then Design-Builder shall owe the Owner the additional amount of step 2 liquidated damages of \$1,500.00 for each and every consecutive calendar day thereafter that Final Completion of the Work is not achieved.

ii. Design-Builder further agrees that any liquidated damages Owner assesses against Design-Builder may also be withheld by Owner from any retainage or other sums Owner may otherwise owe to Design-Builder. Design-Builder 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 Design-Builder is not responsible for delays.

iii. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion.

**d. Consequential Damages<sup>1</sup>**

i. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 8.d.ii BELOW), NEITHER DESIGN-BUILDER, DESIGNER, CONTRACTOR OR PRIME CONSTRUCTION CONTRACTOR, NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING, BUT NOT LIMITED TO FRAUD, WILLFUL MISCONDUCT OR NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

ii. The consequential damages limitation set forth in Section 8.d.ii above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in this Article 8 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential. Unless expressly provided otherwise herein, the rights and remedies of the parties provided for under this Agreement are in addition to any other rights and remedies provided by law.

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<sup>1</sup> Language for 8.d. adapted from DBIA Document No 535, Article 10.

**9. Project Schedule**

a. The Project Schedule includes dates for Substantial and Final Completion of Work of the Project. TIME IS OF THE ESSENCE in achieving the Substantial Completion and Final Completion of Work dates for the Project.

b. The School Board and Design-Builder shall use their best efforts to maintain the Project Schedule, which can be modified by mutual written agreement of the Parties as circumstances warrant and consistent with the Design-Build Contract as set forth in GC Section 9.1.1, keeping in mind the importance of achieving the Substantial Completion dates for the Project. Design-Builder shall include in the Project Schedule sufficient allowance of time for permitting, reviews, and approvals as it takes in the normal course in the City of Fredericksburg for an expedited project.

**10. Plan of Finance; Appropriation; Filing With Auditor of Public Accounts**

The Owner intends to finance the costs of the Project through funds received from the City of Fredericksburg in the amounts and at the times required to meet the projected needs for the Project. The Parties recognize and acknowledge that financing of the Project depends on the sale of general obligation bonds by the City of Fredericksburg and on the appropriation of funds by the City Council of the City of Fredericksburg. The School Board's obligation under this Agreement will automatically terminate if it does not receive contributions from the City of Fredericksburg necessary to completely fund the Project. Within thirty (30) days after the date of this Agreement, the School Board shall submit a copy of this Agreement to the Auditor of Public Accounts, to the extent required by Virginia Code § 56-575.9(F).

**11. Design Submittal Phase**

Design submissions shall be made as outlined below. Following each submission, the Design-Builder, the Owner and the Owner's Representative shall work collaboratively to make any changes necessary to adjust the Scope of Work to ensure that a GMP will be established that will be less than the CCL.

a. **65% Construction Documents Submission**: The Design-Builder will submit the 65% Construction Documents as part of the First Amendment to the Interim Agreement. The Owner review period will be in accordance with the Project Schedule.

b. **90% Construction Documents Submission**: Following receipt of Owner's approval of the 65% Construction Documents submission, the Design-Builder shall prepare a 90% Construction Documents submission. Design-Builder shall submit the 90% Construction Documents submission to the Owner for review and approval in accordance with the Project Schedule. 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.

c. **100% Construction Documents Submission (“100% Construction Documents”)**: Following receipt of Owner’s approval of the 90% Construction Documents submission, the Design-Builder shall prepare a 100% Construction Documents submission. Design-Builder shall submit the 100% Construction Documents submission to the Owner for review and approval in accordance with the Project Schedule. 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.

**12. Construction Phase**

Construction services to be provided or caused to be provided by Design-Builder for the Project shall be performed pursuant to the Contract Documents. With Owner’s prior agreement in writing, and subject to imposition by Owner of reasonable conditions to assure a satisfactory GMP for the Project, construction may commence in accordance with the Project Schedule prior to the Owner’s Representative’s approval of all of the 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’s Representative prior to the start of construction of that phase.

**13. Contract Cost Limit, Guaranteed Maximum Price, Shared Savings**

a. **Contract Cost Limit (“CCL”)**

A Contract Cost Limit (“CCL”) (as defined by GC Section 1.3.1) has been agreed to by the parties, in the amount of SEVENTY-FIVE MILLION FIVE HUNDRED EIGHTY THOUSAND DOLLARS (\$75,580,000), which is stated in the General Conditions, attached as Exhibit 2.

Both parties further agree that the CCL included in this Agreement is reduced by the value of the Interim Agreement and the First Amendment to the Interim Agreement, as follows:

Gross Contract Cost Limit	\$75,580,000
Value of Interim Agreement	(\$1,300,000)
<u>Value of First Amendment to Interim Agreement</u>	<u>(\$1,205,000)</u>
Contract Cost Limit Net of Interim Agreements	\$73,075,000

The CCL is the maximum amount payable to Design-Builder and is a cap on Design-Builder’s compensation, which is the sum of Reimbursable Costs (see 13.b) and Fixed Fees (see 13.c) payable to complete the Scope of Work. As the design is refined, the Design-Builder, the Owner and the Owner’s Representative will adjust the Scope of Work accordingly to ensure

that a GMP will be established that will be less than the CCL unless Owner's Representative directs a Change to the Scope of Work in accordance with GC Article 9.

The Contract Cost Limit includes an amount of \$3,300,000 as the Design-Builder's Contingency for the project.

Design-Builder shall develop Design Development documents in accordance with Article 11, above, in order to arrive at a Guaranteed Maximum Price that will be less than the CCL. Design-Builder shall submit to Owner's Representative estimates of the GMP at the completion of the following design phases: Design Development Documents (65%) and Construction Documents (90%). If any estimate submitted, including without limitation, the final estimate of Reimbursable Costs and Fixed Fees established at the end of the Construction Documents phase, indicates that the Reimbursable Costs plus the Fixed Fees for the Project will exceed the CCL, as adjusted for any Change, the Design-Builder, the Owner and the Owner's Representative shall work collaboratively to revise the Plans and Specifications, without increasing the fixed fees, by making adjustments to the Scope of the Work or quality of the Work, so as to reduce the estimated Reimbursable Costs plus Fixed Fees making up the GMP to be less than the CCL.

**b. Reimbursable Costs**

i. Subject to the limitation that payments to Design-Builder shall not exceed CCL or the GMP, as applicable, Owner will reimburse Design-Builder for all the following costs (including as stated in General Condition, Exhibit 2.) for the Project:

(a) Prime Construction 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. Rental rates of the Prime Construction Contractor and its affiliates for the use of equipment in the performance of the Work shall be as set forth on Exhibit N.

(b) Prime Construction Contractor Labor: Labor costs for personnel performing labor at the Project site. Labor costs include hourly rates with all fringe benefits and taxes required by law and applicable contracts in force between the Contractor and its employees or its standard benefits package.

(c) 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" Work. The term "subcontracts" includes purchase orders. Design-Builder shall conduct the subcontractor bid process on an "open book" basis, and shall allow the Owner's Representative to observe the receipt and analysis of all bids. With the exception of Work specifically allocated to specific firm(s) in the Design-Builder's Detailed-Phase Proposal, Design-Builder shall cause the Prime Construction 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, equipment rentals or leases, materials, labor contracts, any other supplies or services, where the quotations are expected to exceed or actually exceed \$50,000, unless otherwise authorized by the Owner's Representative. The Owner's Representative may recommend additional subcontractor bidders to Design-Builder. Design-Builder shall furnish copies of quotations to the Owner's Representative for review prior to award. It is not required that the award be made to the lowest offeror, but shall be made on the basis of best value. Copies of all subcontracts, including all modifications and/or revisions will be furnished to the Owner's Representative within five (5) business days from issuance. Design-Builder and Prime Construction Contractor may select certain subcontractors without going through the bid process indicated above if they determine it is in the best interest of the School Board and Design-Builder to do so, and with the Owner's Representative's written approval.

(d) Other Project-related direct costs that shall be reimbursed under this Agreement include, but are not limited to, the following: Contractor direct expenses, insurance (including project specific insurance riders of any type and accounting (project related)); general conditions, payment and performance bonds, taxes including gross receipts tax, permits, utility availability, relocation and usage costs, "on site construction" supervision, quality control, testing, safety, training, engineering/layout, fire protection, cleanup, field office equipment and operation, but not including expenses incurred prior to the Effective Date of this Agreement.

(e) Costs of Field Office for the Owner's Representative. The Field Office requirements are set forth in Supplemental Condition Section 2.6.

(f) Reimbursable Costs for Non-construction portions of the Work will be documented with vendor's invoices to Design-Builder and other similar documentation.

**(ii) Owner will not reimburse Design-Builder for the following costs:**

(a) Prime Construction Contractor costs *not* associated with personnel assigned to the Project are considered to be indirect costs that are included as part of the Fixed Fees and are not Reimbursable Costs. Examples of indirect costs that are not Reimbursable Costs include, but are not limited to: bonuses to senior executives, travel by company executives or officers, and personnel whose services and/or responsibilities include multiple projects, e.g., accounting, home office estimating, and purchasing personnel. 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.

(b) 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) Costs incurred prior to the Effective Date of this Agreement, unless otherwise agreed to by the Owner in writing.

(iii) Expenditures from the Design-Builder's Contingency must be approved in advance by the Owner's Representative, whose approval will not be unreasonably withheld. The Design-Builder must submit a completely documented request for the Owner's Representative's review and approval justifying why the request is not included in the GMP. The Design-Builder's Contingency shall be available to Design-Builder to cover unanticipated or excess reimbursable costs. Design-Builder will keep the Owner advised of expenditures from the Contingency. The parties agree that any excess Contingency at the completion of the project shall be subject to Shared Savings, as described below. If the cost of the project exceeds the GMP as adjusted for any Changes, including the full amount of the Contingency, the Design-Builder shall be solely responsible for any such excess amount above the GMP as adjusted for any Changes.

**c. Fixed Fees**

The Owner shall pay the Design-Builder Fixed Fees, which consist of the architecture and engineering fees, development fees and expenses, and general contracting fees stated in Exhibit D. Fixed Fees include all compensation payable by Owner to Design-Builder beyond Reimbursable Costs for the Services and are intended to compensate for the Design-Builder's, Designer's and Prime Construction Contractor's home office support, overhead costs, and profit for the Project and for all design professional services. The Fixed Fees will not vary with either the estimated cost or actual cost of construction of the Project except as expressly allowed in this Article 13.c. The components of the Fixed Fees below will be adjusted as agreed by the parties in writing in accordance with GC Article 9 when a Change in the Project scope, schedule or cost of performance results in an increase in the reimbursable costs, such as an increase in materials, labor, supervision, management, architecture or engineering man-hours, or increased insurance costs. The Fixed Fees will not be reduced unless the Owner's Representative reasonably requires an equitable reduction in the Fixed Fees for any Change that reduces the Scope of Work, provided that such costs have not been incurred prior to the equitable reduction.

i. Designer Services for Design, Construction Documents and During Construction: This component of the Fixed Fees covers Services of Designer, including the design

and preparation of Construction Documents. This component of the Fixed Fees also covers construction contract administration by the Designer and includes, but is not limited to, review of shop drawings and samples, field interpretation of Construction Documents, preparation of required clarification drawings, and participation in quality control activities.

ii. Prime Construction Contractor Fee during Construction: This component of the Fixed Fees covers profit on construction plus home office support (including Project Manager, Project Engineer, Estimator, and Purchasing) and overhead costs.

d. **Guaranteed Maximum Price.**

i. A initial Guaranteed Maximum Price (GMP) shall be established by the parties for the Project at the time of approval of the 65% Construction Document submission and prior to commencement of construction. The final GMP, established on the 90% Construction Documents submission, is the maximum sum that the Owner shall pay to the Design-Builder in total for this Project, except as otherwise provided in this Comprehensive Agreement, and shall in no event exceed the CCL. It includes all the Reimbursable Costs as defined in Article 13.b that will be payable to Design-Builder and all Fixed Fees as defined in Article 13.c that will be payable to Design-Builder.

ii. If at any time during construction it becomes apparent that the final Reimbursable Costs and Fixed Fees will exceed the GMP, Design-Builder shall immediately notify the Owner's Representative. The Design-Builder, the Owner and the Owner's Representative shall promptly work collaboratively to revise the Plans and Specifications, without increasing the fixed fees, by making adjustments to the Scope of the Work or quality of the Work, so as to reduce the Reimbursable Costs plus Fixed Fees to be less than the CCL.

iii. All proposed revisions or changes to the approved Drawings and Specifications must be submitted to the Owner's Representative for review and approval for conformance with the approved Construction Documents, regardless of whether or not they affect the GMP. Owner's Representative's review and approval shall not be unreasonably conditioned.

iv. Design-Builder shall ensure that the GMP amount is not exceeded, but if such amount is exceeded, Design-Builder shall immediately notify the Owner's Representative. Design-Builder and the Owner's Representative shall work collaboratively to make such adjustments as necessary to the Scope of the Work to maintain the costs without exceeding the amount of the Design-Builder's Contingency.

v. No payment shall be made to Design-Builder in excess of the GMP except as adjusted for any Changes made in accordance with this Agreement.

e. **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% Drawings and Specifications, if such changes add to the Scope of Work, Design-Builder 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 Representative. The amounts payable by Owner for Change under this paragraph will be negotiated, and if the amount payable cannot be agreed upon, will be based upon the rates set forth in Exhibit I and a determination of a reasonable amount of time to complete such Change.

f. **Shared Savings.**

If the final Project Reimbursable Costs plus Fixed Fees, as presented by Design-Builder 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: 40% to the Design-Builder and 60% to the Owner. As stated in Article 13.b.iii above, the Design-Builder's Contingency amount of the GMP as indicated in Exhibit D shall be subject to Shared Savings.

g. **Direct Purchase of Materials**

Owner and Design-Builder agree to further evaluate the direct purchase of materials by the Owner to determine if the sales tax savings from implementation of such method of purchase would result in net savings to the Project and would be mutually beneficial to the Parties.

**14. Reserved**

**15. Stop Work and Termination for Cause**

a. **School Board's Right to Stop Work.**

i. The School Board may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

ii. Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost to perform and/or time to achieve Substantial Completion of the Work have been significantly impacted by any suspension or stoppage of Work by the School Board.

b. **School Board's Right to Perform and Terminate for Cause.**

i. If Design-Builder persistently fails to (i) provide or cause to be provided a sufficient number of design professionals or skilled workers; or (ii) supply the materials or equipment required by the Agreement; or (iii) comply with applicable Legal Requirements; or (iv) timely pay, without cause, Designer, Design Consultants or Subcontractors; or (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted; or (vi) perform material obligations under the Contract Documents, or if Design-Builder (i) becomes insolvent; or (ii) makes a general assignment for the benefit of its creditors; or (iii) commences or consents to any action seeking reorganization, liquidation or dissolution under any law relating to bankruptcy or relief of debtors; or (iv) commences or consents to any action seeking appointment of a receiver or trustee for itself or its assets, then the School Board, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Articles 15.b.ii and 15.b.iii below.

ii. Upon the occurrence of an event set forth in Article 15.b.i above, the School Board may provide written notice to Design-Builder that it intends to terminate the Design-Build Contract, in whole or in part, unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or commence to cure, such problem, then the School Board may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or commence to cure, such problem, then the School Board may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

iii. Upon declaring the Design-Build Contract terminated pursuant to Article 15.b.ii above, the School Board may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tool and appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to the School Board for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by the School Board in completing the Work, such excess shall be paid by the School Board to Design-Builder. If the School Board's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to the School Board. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, and expenses, incurred by the School Board in connection with the procurement and defense of claims

arising from Design-Builder's default, subject to the waiver of consequential damages set forth in GC Section 10.4.

iv. If the School Board improperly terminates the Agreement for cause, the termination for cause in accordance with the provisions of Article 16 hereof and the School Board will reimburse Design-Builder for such costs and expenses incurred in connection with the improper termination as provided in Article 16.

**c. Design-Builder's Right to Stop Work**

i. Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop work upon the Owner's failure to pay amounts approved by Owner's Representative pursuant paragraph 7(a)(i) above.

ii. Should the event set forth in Article 15.c.i above occur, Design-Builder has the right to provide the School Board with written notice that Design-Builder will stop work unless said event is cured within fifteen (15) days from the School Board's receipt of Design-Builder's notice. If the School Board does not cure the problem within such fifteen (15) day period, Design-Builder may stop work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

**d. Design-Builder's Right to Terminate for Cause.**

i. Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons specified in clauses ii. through v. below:

ii. The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of an order by a court or any government authority having jurisdiction over the Work, or orders by the School Board under Article 15.a.i hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

iii. The School Board's failure to provide Design-Builder with any information, permits or approvals that are the School Board's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though the School Board has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Article 15.a.i. hereof.

iv. Upon the occurrence of an event set forth in Article 15.d.i above, Design-Builder may provide written notice to the School Board that it intends to terminate the Design-Build Contract unless the problem cited is cured, or commenced to be cured, within seven (7) days of the School Board's receipt of such notice. If the School Board fails to cure, or

commence to cure, such problem, then Design-Builder may give a second written notice to the School Board of its intent to terminate within an additional seven (7) day period. If the School Board, within such second seven (7) day period, fails to cure, or commence to cure, such problem, then Design-Builder may declare the Design-Build Contract terminated for default by providing written notice to the School Board of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if the School Board had terminated the Design-Build Contract for its convenience under Article 16 of the Design-Build Contract.

e. **Bankruptcy of School Board or Design-Builder.**

i. If either the School Board or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such Party being referred to as the “Bankrupt Party”), such event may impair or frustrate the Bankrupt Party’s ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

ii. The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

iii. The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Design-Build Contract within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

iv. If the Bankrupt Party fails to comply with the foregoing obligations listed in clauses ii. and iii. above, the non-Bankrupt Party shall be entitled to request that the bankruptcy court reject the Design-Build Contract, declare the Design-Build Contract terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 15.

v. The rights and remedies under Article 15.e.i above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of the Contract Documents.

**16. Termination for Convenience**

Upon fourteen (14) days written notice to Design-Builder, the School Board may, for its convenience and without cause, elect to terminate the Design-Build Contract, in whole or in part.

- a. In such event, the School Board shall pay Design-Builder for the following:
  - i. All Work executed in connection with the Design-Build Contract (including general conditions and fixed fee associated with the Work completed); and
  - ii. The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants.
  - iii. The School Board shall not be obligated to pay Design-Builder for profit on Work not performed as a result of such termination.
- b. Upon receipt of a notice of termination, unless otherwise directed by the Owner's Representative, the Design-Builder must take the following actions:
  - i. Stop Work to the extent specified in the notice.
  - ii. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of the non-terminated Work.
  - iii. Terminate all design, orders and subcontracts to the extent that they relate to the Work terminated.
  - iv. Settle all outstanding liabilities and claims arising out of the termination of orders and subcontracts.
  - v. Transfer title to the Owner and deliver as directed by the Owner's Representative:
    - (a) Work in process, completed Work, and other material produced as a part of or acquired for the Work terminated; and
    - (b) 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.
  - vi. Use its best efforts to sell, as directed by the Owner's Representative, any property of the types referred to in Paragraph b.v above, provided that the Design-Builder may acquire property under the conditions prescribed and at prices approved by the Owner's Representative, and the proceeds of any such transfer will be applied in reduction of any payments to be made by the Owner to Design-Builder, or be credited to the price or cost of the Work covered by this Agreement, or be paid in any manner directed by the Owner's Representative.
  - vii. Complete performance of the Work not terminated.

viii. 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 Design-Builder and in which the Owner has or may acquire an interest.

c. At any time, Design-Builder 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) calendar 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, Design-Builder 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 ninety (90) day period. Upon failure of Design-Builder 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 Design-Builder by reason of the termination which amount Owner shall pay. The termination claim may include costs incurred in its preparation for Design-Builder and its subcontractors.

e. If Design-Builder and the Owner's Representative fail to agree on the amount to be paid to Design-Builder by reason of the termination, the Owner will only pay Design-Builder the amount payable based on the progress obtained on the Project at the time of the termination, including Reimbursable Costs and Fixed Fees only to that point. In no event shall Design-Builder 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 Design-Builder may not exceed the total Agreement price (CCL or GMP as applicable) 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 Design-Builder under Paragraph 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, or to a buyer.

g. Design-Builder has the right of review under the "Resolution of Disputes, Claims and Other Matters" clause of any determination made by the Owner's Representative under Paragraph d, e and f above, except that, if the Design-Builder has failed to submit its termination claim within the time provided in Paragraph 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 Design-Builder, there may be deducted:
  - i. Any valid claim that the Owner may have against the Design-Builder under this Agreement or otherwise; and
  - ii. The agreed price for or the proceeds of sale of materials, supplies, or other things kept by Design-Builder or sold and not recovered by or credited to the Owner.
- i. If the termination is partial, Design-Builder 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 to the continued portion of the Agreement.

**17. Payment Bonds, Performance Bonds, and Other Security**

a. Design-Builder shall furnish at commencement of construction, separate performance and payment bonds in the amount of one hundred percent (100%) of the costs of construction. All bonds shall be executed by a corporate surety or corporate sureties that are reasonably acceptable to the School Board, and duly authorized to do business in the Commonwealth of Virginia, that meet the requirements of Virginia Code § 2.2-4337 and are executed in a form acceptable to the School Board. Design-Builder shall cooperate with the School Board to fulfill any reasonable requirements in connection with the financing for the Project with respect to the form of performance and payment bonds provided hereunder.

b. Design-Builder shall also furnish any cash escrow, funds, cashier's checks, certified checks, or letters of credit required for the issuance of any earth-disturbing or other permit and any bonds or security required by VDOT or any other governmental authority.

**18. Insurance**

a. Design-Builder shall obtain, maintain and comply with the terms and conditions of, and shall pay all premiums with respect thereto as the same become due and payable, the following insurance with companies that are reasonably satisfactory to the School Board with at least an A (financial strength) and a VI (size) or greater rating by A.M. Best;

- i. Worker's Compensation insurance in the amount statutorily required;
- ii. Commercial General Liability insurance (on an occurrence basis) for a combined single limit for bodily injury and property damage of not less than \$1,000,000, with coverage, at a minimum, for (i) blanket contractual liability; (ii) products liability and completed operations; and (iii) broad form property damage coverage;
- iii. Business Automobile Liability insurance for a combined single limit for bodily injury and property damage of not less than \$1,000,000. Auto liability should be written with a symbol "1" which will provide owned, non-owned, and hired auto liability coverage;

- iv. Umbrella or Excess Liability insurance for a minimum single limit of \$4,000,000 supplementing the Commercial General Liability policy and Business Automobile Liability policy; and
- v. Professional Liability insurance, on a claims made basis, in an amount not less than \$2,000,000 per occurrence and not less than \$4,000,000 in the aggregate, covering damages resulting from negligent professional errors, omissions or wrongful acts or services performed by a certified, licensed or registered architect or professional engineer, as required by applicable law.
- vi. Design-Builder may satisfy the minimum liability limits required above for Commercial General Liability and Business Automobile Liability under an Umbrella or Excess Liability policy.
- vii. Design-Builder shall be responsible for the filing and settling of claims and liaison with insurance adjusters.
- viii. Design-Builder shall send a copy of all policies and certificates of coverage to the School Board, which shall be deemed to have approved of such policies unless, within thirty (30) days after receipt thereof, the School Board shall by notice in writing advise Design-Builder to the contrary.
- ix. The Commercial General Liability and Business Automobile Liability insurance policies shall name the School Board and the security trustees, if any, as part of any financing, if any, as Additional Insureds. Design-Builder shall provide a policy endorsement in the form as follows:

*Additional Insured - School Board, Lessees or Contractors  
(Form B)*

*This endorsement conditions insurance provided under the following policy:*

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**SCHEDULE**

*Name of Design-Builder as named insured, Project Name or Number, and Article II is amended to include as an insured the person or organization shown in the Schedule (School Board), but only with respect to liability arising out of "your work" for that insured by or for you. Design-Builder also agrees to endorse the School Board as "Additional Insureds" on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a pure "True Follow-Form" basis. The Design-Builder further agrees to endorse the School*

*Board as an Additional Insured and Loss Payee, on the Builder's Risk Insurance.*

b. The School Board reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, sub-limits, deductibles, self-insured retentions, coverages and endorsements based upon any material adverse change in insurance market conditions after the date of this Agreement affecting the availability or affordability of coverage, or changes in the scope of work/specifications affecting the applicability of coverage, and the costs of any such change shall be an adjustment to the compensation payable to Design-Builder. Additionally, the School Board reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein and to reject any insurer providing coverage due to its poor financial condition or failure to operate legally.

c. Design-Builder agrees to provide, or cause to be provided to, the School Board Certificates of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and are in full force and effect. The Certificates of Insurance shall clearly indicate the project name and project number. Said Certificates of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. The Certificate Holder address shall read:

Dr. Marceline Catlett, Superintendent  
Fredericksburg City Public Schools  
210 Ferdinand Street  
Fredericksburg, VA 22401

d. Design-Builder, prior to notice to proceed with or commencement of any construction, whichever occurs first, will cause Builder's Risk insurance to be provided and maintained that names the School Board as named insured by means of an endorsement to the policy and gives coverage to protect the interests of the School Board, and Design-Builder, its Subcontractors and its Design Consultants. The Builder's Risk coverage shall include property in transit, on or off-premises, which will become part of the Work, and for "acts of terrorism" coverage under the Terrorism Risk Insurance Act of 2002. Design-Builder shall procure and maintain, or cause to be procured and maintained, the Builder's Risk insurance policy on an "all risk", 100% replacement cost basis, until completion of the Project and final payment to Design-Builder under the Design-Build Contract. The Design-Builder agrees to have the policy endorsed with a manuscript endorsement eliminating the automatic termination of coverage in the event the building is occupied in whole or in part, or put to its intended use, or partially accepted by the School Board. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the School Board's interest in the building ceases, or the building is accepted and insured by the School Board. Cessation of the Builder's Risk coverage shall be affirmatively coordinated with the School Board's property insurer, as identified by the School Board. Copies of required endorsements shall be received prior to commencement of the Project.

- i. 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 Design-Builder 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 Design-Builder’s insurance coverage, or may be a certificate from the crane company supplying this coverage and listing the School Board, its officers, agents, volunteers, and employees, and the Design-Builder and the subcontractors as additional insureds.
  
- ii. Special Hazards - In the event special hazards required by the Contract Documents, the Design-Builder 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 Design-Builder 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 Design-Builder by the Owner, otherwise the Design-Builder shall assume full responsibility for the purchase with no charge back to the Owner.
  
- e. Owner’s Liability Insurance. Owner shall procure and maintain from insurance companies authorized to do business in Virginia such liability insurance to protect the School Board from claims which may arise from the performance of the School Board’s obligations under the Agreement or the School Board’s conduct during the course of the Project. The liability insurance obtained by the School Board shall include as additional named insureds the interests of the School Board and Design-Builder.
  
- f. Owner’s Property Insurance.
  - i. The Owner shall procure and maintain, or cause to be procured and maintained, from insurance companies authorized to do business in Virginia, property insurance as appropriate upon the existing property that is part or adjacent to the Project, to its full insurable value, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by the Owner shall include as additional named insureds the interests of Design-Builder, Prime Construction Contractor, Designer and their subcontractors and shall insure against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Design-Build Contract, and shall be primary coverage for the School Board’s facilities.

ii. The Owner shall procure and maintain, or cause to be procured and maintained, boiler and machinery insurance as appropriate that will include the interests of the School Board and Design-Builder, Prime Construction Contractor, Designer and their subcontractors.

iii. Prior to Design-Builder commencing any Work, the School Board shall provide Design-Builder with certificates evidencing that (i) all the Owner's insurance obligations required by the Design-Build Contract are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from the School Board and (ii) no insurance coverage will be canceled or renewal refused, unless at least thirty (30) days prior written notice is given to the School Board and Design-Builder. The Owner's property insurance shall not lapse or be canceled if the School Board occupies a portion of the Work pursuant to GC Section 6.6.3 (Substantial Completion). The School Board shall provide Design-Builder with the necessary endorsements from the insurance company prior to using a portion of the Work.

iv. Any loss covered under the Owner's property insurance shall be adjusted with the School Board and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 20 hereof.

g. The School Board and Design-Builder may agree to waive all rights against each other for all losses and damages caused by any of the perils covered by the policies of insurance provided and also to waive all such rights against the Design-Builder, Subcontractors, Sub-Subcontractors, Design Consultants and all other parties named as insured in such policies for losses and damages so caused. If the School Board and Design-Builder agree to waiver of subrogation, then such insurance policies of the School Board and Design-Builder shall be endorsed to provide for this waiver of subrogation, pursuant to the Design-Build Contract. None of the above waivers shall extend to the rights that any of the insured parties may have to the proceeds of insurance held by the School Board or Design-Builder as trustee or otherwise payable under any policy so issued.

## **19. Representations and Warranties**

Design-Builder represents and warrants that it has legal authority to enter into this Agreement and perform all of its obligations herein (including necessary state construction and design licenses and obligations required by Virginia Code § 56-575.8) and that the execution of this Agreement by it has been duly and properly authorized. The School Board 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 approval by the School Board of the School Board's entry into this Agreement.

## **20. Resolution of Disputes, Claims and Other Matters**

Disputes, claims and other matters in question between the Parties under the Design-Build Contract shall only be resolved as follows:

a. If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to this Article 20.

b. If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in this Agreement. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. No claim by Design-Builder will be allowed if first asserted after final payment under this Agreement, except as expressly provided herein.

b. The Parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations. To the extent that the dispute concerns costs of services, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations.<sup>2</sup>

c. If such direct negotiations fail, by non-binding mediation, with the site of the mediation being the City of Fredericksburg, Virginia, which is agreed to be the sole and exclusive venue. Should the dispute, claim, or other matter in question remain unresolved for the shorter of (i) following negotiation and mediation, or (ii) more than ninety (90) days after mediation is requested by a Party, either Party may proceed in accordance with subparagraph 20(c) below.

d. If the procedures of subparagraph 20(b) have been followed, but, more than ninety (90) days have passed since a Party has requested mediation, and the dispute, claim or matter in question remains unresolved, then either Party may institute a lawsuit, as appropriate, in the Circuit Court of the City of Fredericksburg, Virginia, and may pursue all available appeals in Virginia state courts, to the extent they have jurisdiction. Design-Builder hereby consents to jurisdiction and venue in Circuit Court of the City of Fredericksburg, Virginia.

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<sup>2</sup> Language for 20.a. adapted from DBIA Document No 535, Article 10.

e. Nothing in paragraphs (b) or (c) shall prevent a Party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of the City of Fredericksburg, Virginia if circumstances so warrant.

f. In the event of any dispute, claim, or other matter in question arising, Design-Builder shall continue its performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. Owner shall continue to satisfy its payment obligations to Design-Builder. During the pendency of any dispute in connection with the payment of moneys, Design-Builder shall be entitled to receive payments for non-disputed items and amounts. However, if payment is delayed more than sixty (60) days due to no fault of the Design-Builder, then, prior to the Design-Builder stopping work, it shall notify the Owner in writing of its intent to stop the Work. Both parties shall make all reasonable efforts to engage in negotiations pursuant to 20.b. above. If, however, the parties are unable to resolve the dispute within five (5) business days from the date of the Design-Builder's notification, the Design-Builder may stop the Work until the payment issue is resolved.

g. No claim by Design-Builder will be allowed if first asserted after final payment under this Agreement, except as expressly provided herein.

**21. 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 School Board:  
Dr. Marceline Catlett, Superintendent  
Fredericksburg City Public Schools  
210 Ferdinand Street  
Fredericksburg, VA 22401

With copies to:  
Heather Hays Lockerman, Esq.  
Sands Anderson PC  
1111 E. Main Street, Suite 2400  
Richmond, VA 23219

To Design-Builder:  
W. Alex Amos  
English Construction Company, Inc.  
615 Church Street  
Lynchburg, Virginia 24505

With copies to:  
Stephen Halsey

Moseley Architects, P.C.  
3200 Norfolk Street  
Richmond, Virginia 23230

Any party may, upon prior notice to the others, specify a different address for the giving of notice. Notices shall be effective one (1) day after sending if sent by overnight courier or three (3) days after sending if sent by certified mail, return receipt requested.

## **22. Miscellaneous**

**22.1 Authorization to Conduct Business in Virginia.** The provisions of Virginia Code § 2.2-4311.2 are incorporated by reference. If Design-Builder, is a business entity described in Virginia Code § 2.2-4311.2.A, Design-Builder, must be authorized to transact business in Virginia if required by law to be so authorized and shall not allow its existence or certificate authority or registration to transact business to lapse or be revoked or cancelled during the term of this Agreement.

**22.2 Conditions Precedent and Subsequent to Agreement's Effectiveness.** It shall be a condition precedent to this Agreement's effectiveness that it first be approved by School Board of the City of Fredericksburg as evidenced by the signature of its Superintendent on behalf of the School Board on the signature pages hereof.

**22.3 Confidential Information.** Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

**22.4 Cooperation.** The Parties agree to cooperate to achieve the objectives of the Design-Build Contract 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 School Board to those matters requiring an appropriate vote by the School Board) so as to not unduly delay the Project Schedule.

**22.5 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.

**22.6 Drug-Free Workplace**



a. During the performance of the Design-Build Contract, the Design-Builder agrees to (i) provide a drug-free workplace for the Design-Builder's employees; (ii) post in conspicuous places, available to employees and applicants for employment, statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Design-Builder'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 Design-Builder that the Design-Builder maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order exceeding \$10,000 in value, 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 the Design-Build Contract by Design-Builder 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 Design-Build Contract.

c. The Design-Builder shall post a copy of the policy in a conspicuous place at the jobsite and assure that all Design-Builder, subcontractor, and supplier personnel entering the jobsite are informed of the policy.

**22.7 Equal Opportunity Employment.** During the performance of the Design-Build Contract, the Design-Builder agrees as follows:

a. The Design-Builder 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 Design-Builder. The Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The Design-Builder, in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder, will state that Design-Builder is an Equal Employment Opportunity Employer.

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

d. The Design-Builder 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.

**22.8 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.

**22.9 Financial Statements.** Design-Builder agrees to provide the School Board with copies of complete and current financial statements for the Design-Builder on an annual basis upon request. The financial statements provided need not be audited, but if Design-Builder does have the financial statements audited, they shall supplement their initial submission of unaudited financial statements for the year concerned with copies of audited statements within thirty (30) days after they become available. The Design-Builder hereby designates such financial statements as confidential proprietary information exempt from release under the Virginia Freedom of Information Act.

**22.10 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 the City of Fredericksburg, Virginia or in the General District Court of the City of Fredericksburg, Virginia if the amount in controversy is within the jurisdictional limit of each court, 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.

**22.11 Headings.** The headings used in this Agreement, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**22.12 Immigration Reform and Control Act of 1986.** The Design-Builder 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.

**22.13 Independent Contractor.** It is expressly understood and agreed by the Parties hereto that Design-Builder, in performing its obligations under the Design-Build Contract, shall be deemed an independent contractor and not an agent, employee or partner of the School Board.

**22.14 Minority and Women-Owned Business Enterprise and Small Business Certification.** The Design-Builder shall use reasonable efforts to use minority and women-owned business enterprises and small businesses for Work on the Project. The Design-Builder 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.

**22.15 Modifications.** This Contract shall not be amended, altered, or modified unless such amendment, modification or alteration is reduced to writing signed by both parties and attached hereto.

**22.16 No Crimes Against Children.** Design-Builder acknowledges that any contract resulting from this solicitation for services may require Design-Builder, Design-Builder's employees or other persons within Design-Builder's control to have direct contact with City of Fredericksburg Public School students on school property during regular school hours or during school-sponsored activities. As evidenced by the authorized signature below, Design-Builder hereby certifies to the City of Fredericksburg and to the Fredericksburg City School Board that all persons who will provide such services for or on behalf of the Design-Builder on public school property have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child.

Design-Builder hereby acknowledges that, pursuant to Virginia Code § 22.1-296.1, any person making a materially false statement regarding any such offense shall be guilty of 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. Fredericksburg City Public Schools shall not be liable for materially false statements regarding the certifications required under this Agreement. Design-Builder hereby agrees that this Certification shall be binding throughout the contract term, and that it will provide immediate notice to the Fredericksburg City School Board of any event that renders this certification untrue.

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

**22.17 Non-Discrimination pursuant to Virginia Code § 2.2-4343.1.** Be advised that the Owner does not discriminate against faith-based organizations. The Design-Builder shall not discriminate against faith-based organizations during the performance of this Agreement.

**22.18 No Waiver.** The failure of the School Board or Design-Builder to insist upon the strict performance of any provisions of the Design-Build Contract, the failure of the School Board or Design-Builder 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 School Board of any act by Design-Builder requiring the School Board's consent or approval shall not be construed to waive or render unnecessary the requirement for the School Board's consent or approval of any subsequent similar act by Design-Builder. No provision of the Design-Build Contract

shall be deemed to have been waived unless such waiver shall be in writing signed by the Party to be charged.

**22.19 Required Payment Provisions Under Virginia Code § 2.2-4354**

a. The Design-Builder shall take one of the two following actions within seven (7) days after receipt of amounts paid to the Design-Builder 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 Design-Builder shall provide its federal employer identification number to the Owner.

c. The Design-Builder shall pay interest to the subcontractor on all amounts owed by the Design-Builder that remain unpaid after seven (7) days following receipt by the Design-Builder 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 Design-Builder 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 Design-Builder'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.

**22.20 Severability.** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**22.21 Smoke Free Environment.** The Design-Builder and its employees are prohibited from using tobacco products of any kind while on any School Board property. This policy also applies to all subcontracts awarded under the contract or order. The Design-Builder

shall ensure that each of its employees, and any subcontractor staff, is made aware of, understand, and comply with this policy.

**22.22 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. Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

**22.23 Tax ID Number.** The provisions of Virginia Code § 2.2-4308.2 are incorporated by reference. In accord with Virginia Code § 2.2-4308.2 registration and participation in the E-Verify program (electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C, Title IV, § 403(a), as amended) is required. Design-Builder agrees to provide its federal tax ID number to the School Board.

**22.24 Time of the Essence.** The time to complete construction of the Project is of the essence. The Design-Builder shall proceed expeditiously with adequate forces and make diligent efforts to keep the Project on schedule, and the Design-Builder 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 School Board will cooperate reasonably with Design-Builder's efforts to keep the Project on schedule.

### **23. Entire Agreement and Order of Precedence**

This Agreement, including any other Contract Documents, and the Exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between Design-Builder and the School Board 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. The applicable portions of the detailed phase proposal are incorporated herein as **Exhibit 1** for purposes of providing details concerning the requirements of this Agreement. In the event of any conflict or inconsistency between or among the meaning of any provision of the Contract Documents, such meaning, and the Contract Documents, shall be interpreted in the following order of precedence: this Comprehensive Agreement, including any exhibits (but specifically excluding **Exhibit 2** (the General Conditions)) and attachments hereto as well as any modifications and amendments thereto; the General Conditions, including any modifications, amendments or change orders thereto; and the Construction Documents prepared and approved in accordance with GC Section 2.4. **Exhibit 1** is not intended to contradict the Design-Build Contract or this Agreement, and in the event of any inconsistencies or conflicts, this Agreement shall prevail.

### **24. Exhibits**

The following exhibits are hereby deemed to be part of this Agreement:

- Exhibit 1: Design-Builder’s PPEA proposal**
- Exhibit 2: General Conditions of Contract (DBIA Form 535, as revised)**
- Exhibit 3: Supplemental Conditions**
- Exhibit 4: Parent Guarantees**
- Exhibit A *Not Used*
- Exhibit B *Not Used*
- Exhibit C Clarifications and Assumptions (5 pages)**
- Exhibit D Contract Cost Limit (1 page)**
- Exhibit E Draw Schedule (1 page)**
- Exhibit F Payment Application (4 page)**
- Exhibit G Project Schedule Milestones (1 page)**
- Exhibit H Vendor’s Certification (1 page)**
- Exhibit I List of A-E Rates (1 page)**
- Exhibit J *Not Used*
- Exhibit K Design Guidelines (22 pages)**
- Exhibit L *Not Used*
- Exhibit M Sample Performance Bond, Payment Bond (6 pages)**
- Exhibit N Rental Rate Sheet (3 pages)**
- Exhibit O Vendor’s Certification – No Crimes Against Children (1 page)**
- Exhibit P Site Plan (1 page)**

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

**FREDERICKSBURG CITY SCHOOL BOARD**

By: \_\_\_\_\_  
Dr. Marceline Catlett, Superintendent

**CITY COUNCIL OF THE CITY OF  
FREDERICKSBURG, VIRGINIA**

By: \_\_\_\_\_  
Timothy J. Baroody, City Manager

Approved as to form:

By: \_\_\_\_\_  
School Board Attorney

**FIRST CHOICE PUBLIC-PRIVATE PARTNERS: FREDERICKSBURG II, LLC**

By: \_\_\_\_\_