

INTERIM AGREEMENT

THIS INTERIM AGREEMENT (this "**Agreement**"), dated as of 3/30/2023 (the "**Effective Date**"), between THE SCHOOL BOARD OF THE CITY OF VIRGINIA BEACH, VIRGINIA, a public body established in accordance with the Constitution of Virginia Article VII, Section 7, dba **VIRGINIA BEACH CITY PUBLIC SCHOOLS**, a municipal corporation of the Commonwealth of Virginia ("**VBCPS**") and **S.B. Ballard Construction Company** a Virginia corporation, ("**Developer**"), recites and provides as follows:

RECITALS:

- A. On June 4, 2021 VBCPS received an unsolicited PPEA proposal from S.B. Ballard Construction Company. This proposal was accepted on August 24, 2021 and a solicitation PPEA Request for Conceptual Proposals #5083 was issued by VBCPS on October 20, 2021.
- B. On December 20, 2021, VBCPS received conceptual proposals, under the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 ("**PPEA**") and VBCPS's PPEA Guidelines ("**Guidelines**"), pursuant to a solicitation, PPEA Request for Conceptual Proposals #5083, by VBCPS, for three replacement schools (the "**Project**").
- C. After a request for detailed proposals, VBCPS received detailed proposals on *March 18, 2022*, for the Project pursuant to a request by VBCPS for such proposals.
- D. The Developer *has* submitted a conceptual and a detailed proposal (collectively, the "**Proposal**") in response to VBCPS's requests for conceptual and detailed proposals.
- E. As permitted by the PPEA, VBCPS and the Developer now desire to enter into this Agreement to facilitate and support the efficient and comprehensive evaluation of the Project, as hereinafter more particularly set forth.

INTERIM AGREEMENT

In consideration of the premises set forth in the Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VBCPS and the Developer (each, a "**Party**" and together, the "**Parties**") hereby agree as follows:

1. **Interim Agreement; Purpose.**

- a. **Interim Agreement.** This Agreement is an "interim agreement" (as that term is used under the PPEA and the Guidelines) between VBCPS and Developer in respect of the Project. Major components of the Project are outlined on the attached **Exhibit A** (unless otherwise indicated, or the context requires, each reference in this Agreement to an "**Exhibit**" or to a "**Section**" refers to an exhibit or a section of this Agreement, as applicable).

b. **Purpose.** This Purpose of this Agreement is to engage Developer to produce for VBCPS certain services, reports, plans, and recommendations (collectively, the "Deliverables") regarding the design and construction of the Project. The Deliverables are more specifically described in **Exhibit B**. The Parties anticipate that VBCPS will use all, or a portion of, the Deliverables to determine whether to approve the Project and whether to pursue a Comprehensive Agreement with the Developer pursuant to the PPEA and the Guidelines.

2. **Deliverables; Schedule; Reports; Meetings; Monitoring; Finder Activities.**

a. **Deliverables and Schedule.** Developer will provide to VBCPS the Deliverables in substantial compliance with the schedule set forth in **Exhibit D** (the "Schedule").

b. **Reports and Meetings.** Developer will deliver monthly written progress reports to VBCPS's designated project manager ("VBCPS's Project Manager") beginning on the 30th day of the Term and on each 30-day anniversary of that initial reporting date occurring during the Term and a final such report on the last business day of the Term. In addition to any meetings or similar conferences specified in Exhibit B, Developer's designees as its project managers for the Project (the "Developer's Project Principals"), along with its other principal development team members, consultants and subcontractors (collectively, the "Developer's Project Team"), Exhibit E-1, as appropriate, will participate in monthly meetings with all or portions of the group VBCPS designates as its management team for the Project (the "VBCPS's Management Team"), Exhibit E-2, and its selected consultants. VBCPS's Project Manager (or that manager's designee), in consultation with the designee of Developer's Project Principals, will specify the reasonable dates and times for these meetings. VBCPS's Project Manager is authorized to cancel, or waive, any of these monthly meetings, or opt to conduct any of these meetings via telephone, video conference, or other similar means. Among any other reasonable purpose that VBCPS's Project Manager may specify reasonably in advance, the participants in the monthly meetings will review (i) the then-current status of the Deliverables; (ii) new information related to the Deliverables or the Project; and (iii) Developer's performance under this Agreement.

c. **Monitoring.** Members of VBCPS's Project Management Team are entitled to monitor any of the work undertaken by, or for, Developer under this Agreement, so long as that monitoring does not unreasonably interfere with that work, or with Contractor, or any applicable subcontractor's business.

d. Drawings and Specifications are and shall remain the property of the Owner whether the Project is constructed or not. The Architect shall furnish the Owner with one digital copy and at least one reproducible printed copy of all deliverables, including associated reports, Schematic & Construction Drawings, and Specifications. If the Owner uses the Drawings and Specifications (or any part thereof) in connection with any other project without the written verification, adaptation, and consent of the Architect, such use shall be at the Owner's sole risk

and the Architect shall have no liability, therefore.

3. **Developer Compensation and Reimbursements: Payments: Limitations: Audit: Credit.**

a. **Compensation.** As full and complete compensation for its production and provision of the Deliverables and its performance of any other obligations under this Agreement, VBCPS will pay to Developer the amount set forth in **Exhibit C** - Cost Proposal Form, as the "Pre-Development Fee". The Pre-Development Fee, and its components as listed in **Exhibit C** and further described in **Exhibit B**, are subject to adjustment by amendment to this Agreement if material changes in the Project Components, schedule, or other details of Project Design are required by VBCPS.

b. **Payments.** Developer will present an invoice to VBCPS monthly, and will invoice VBCPS according to the percentage completion of each Task listed on **Exhibit C**. Payment to be made in full within thirty (30) days of VBCPS's receipt of each monthly invoice so long as the Developer is in substantial compliance with all the terms of this Agreement.

c. **Limitations.** VBCPS's aggregate total liability to compensate and reimburse Developer in connection with this Agreement (whether as part of the Pre-Development Fee, as Compensable Cost, or otherwise) will not exceed \$15,404,544 unless this Agreement is amended in accordance with paragraph 3.a above. Moreover, no travel, lodging or meal expenses associated with the Deliverables, nor any fines or similar penalties, associated with Developer's performance under this Agreement, and no costs or expenses associated with the negotiation or execution of this Agreement, nor any costs or expenses associated with the negotiation or execution of any Comprehensive Agreement, will be reimbursable as Compensable Costs. The Compensable Costs shall be limited to costs and expenses incurred in connection with the Deliverables and not costs and expenses previously incurred by Developer in connection with the Proposal or other actions taken prior to *Effective Date*.

d. **Audit.** During the Term, and for a period not less than five years after the last payment is made to Developer under this Agreement, or the last day of the Term, whichever is later, Developer will keep and maintain complete and accurate records, books of account, reports, and other data (the "**Books and Records**") pertaining to its performance, and the computation of compensation and reimbursements payable to Developer, under this Agreement. Upon reasonable notice from VBCPS, the Developer will make the Books and Records available during normal business hours for inspection and audit by VBCPS and its designee, which may include VBCPS and any other governmental entity providing funding in connection with VBCPS's possible participation in the Project. VBCPS will be entitled to copy all or any part of the Books and Records.

e. **Credit.** As offered in the Proposal and accepted by VBCPS as part of this Interim Agreement, Developer to provide a credit to VBCPS in a maximum amount of \$500,000 as a cost reimbursement to the extent VBCPS decides to hire outside consultants, service providers, financial advisors, or other consultants to review and evaluate the Developer's Proposal, the Deliverables for this Interim

Agreement, and information necessary to progress toward the execution of a Comprehensive Agreement.

4. **Project Approval: Possible Comprehensive Agreement.**

a. **Approval Status.** VBCPS has included the related replacement school projects as part of its Capital Improvement Program. Accordingly, this Agreement is not, and is not intended to be, evidence of any such approval, or a promise or assurance that VBCPS will approve the Project, or that VBCPS will approve Developer; any Developer Principal; any Developer employee, manager, member, officer, owner, or principal; any entity in which Developer (or any Developer affiliate, manager, member, officer, owner, or principal) is a member or owner; any member of Developer's Project Team; or any other person or party, will be approved as the Project developer. Moreover, VBCPS is not obligated, and will not be obligated, to provide such approval, or to enter into a Comprehensive Agreement (as that term is used under the PPEA and the Guidelines), another interim agreement, a partnership or joint venture agreement, or any other form of contract, arrangement or relationship with Developer; any Developer Principal; any Developer employee, manager, member, officer, owner, or principal; any entity in which Developer (or any Developer affiliate, manager, member, officer, owner, or principal) is a member or owner; any member of Developer's Project Team; or any other person or party with respect to the Project (or any other project), the Project developer, or for any other purpose. Developer has submitted the Proposal, has entered into the engagement evidenced by this Agreement, and will contribute to the evaluation process of the Project at its own risk and cost, except for its rights to compensation expressly set out in this Agreement. Moreover, should further negotiations in respect of the Project, or the Project developer (including any as to an amendment of this Agreement, or as to any possible Comprehensive Agreement for the Proposed Project) occur involving VBCPS, or any representative of VBCPS, or the School Board of VBCPS and Developer; any Developer Principal; any Developer employee, manager, member, officer, owner, or principal; any entity in which Developer (or any Developer affiliate, manager, member, officer, owner, or principal) is a member or owner; any member of Developer's Project Team; or any other person or party, VBCPS is not, and will not be, obligated to complete or continue those negotiations, and VBCPS may terminate any of those negotiations, as well as its evaluation of the Project, for any reason, or for no reason, in its sole discretion without liability, except for compensation expressly provided under this Agreement that may have been earned, and therefore due and payable, on or before such termination. The approval of the Project, any Project developer, and any further contract, arrangement, or relationship as to the Project, requires approvals from the School Board of Virginia Beach City Public Schools and the City of Virginia Beach.

b. **Possible Comprehensive Agreement.** That approval status described in **Section 4(a)** notwithstanding, during the Term, VBCPS (in its sole discretion) may determine that it is appropriate to attempt to negotiate the form of a Comprehensive Agreement with Developer (or a Developer-designated affiliate or other Developer-designated party) that is acceptable to VBCPS and the applicable party. If VBCPS so determines, VBCPS and that applicable party (to the extent not anticipated by the then-existing Schedule) will formulate a

negotiating and drafting schedule for this task and will endeavor to produce such a Comprehensive Agreement in accordance with the applicable timetable.

5. **Term/Expiration/Termination of Term.**

The term of this Agreement (the "Term") becomes effective as of the Effective Date and continues in effect so long as Developer and VBCPS are continuing negotiations and the work contemplated by this Agreement is in progress. Expiration/Termination shall be as follows:

a. This Agreement will automatically end upon the earliest of: (i) execution of a Comprehensive Agreement, or another interim agreement, in respect of the Project; (ii) the 5th business day after the date that either Party receives notice from the other that the Party giving notice does not intend to approve, or proceed with development of, the Project, or that it does not intend to otherwise pursue the Project with the other Party and elects to end this Agreement; or (iii) the expiration of the Term. If a Party ends this Agreement under clause (ii), immediately above, or the Term expires, all Deliverables then made or in production, including any work product, plans, projections, design concepts and other items delivered or due to be delivered to VBCPS on or before the date of termination, or expiration, will become the property of VBCPS upon delivery, the date of the termination, or the date of expiration of the Term, whichever is earlier; provided that VBCPS has paid to Developer all sums which are due and payable to Developer as required by the terms of this Agreement.

b. Upon expiration of this Agreement for any reason other than Developer's default declared in accordance with section 13 below, VBCPS shall pay Developer for all completed or partially completed Tasks, according to the Fee for each Task in **Exhibit C**.

6. **Designated Project Personnel.**

a. **Developer.** Developer's Project Principals, and the members of Developer's Project Team are all listed on **Exhibit E-1**. While this Agreement is in effect, Developer will cause each of Developer's Project Principals to devote sufficient time and attention to directing and overseeing Developer's performance under this Agreement, participate in all meetings and conferences specified in the Schedule or required under this Agreement, and to interact with members of VBCPS's Project Management Team and VBCPS's consultants and representatives for purposes of this Agreement. Developer may change the composition of Developer's Project Principals only upon receiving the prior consent of VBCPS, which will not be unreasonably withheld.

b. **VBCPS.** VBCPS's Project Manager and the members of VBCPS's Project Management Team are all listed on **Exhibit E-2**. While this Agreement is in effect, VBCPS will cause all VBCPS's Project Management Team to devote sufficient time and attention to directing and overseeing VBCPS's performance under this Agreement, and to interact with members of Developer's Project Principals for purposes of this Agreement.

7. **Accuracy of Proposal: Representation & Warranties.** Developer represents and warrants to VBCPS that (i) to the best of Developer's knowledge and belief as of the date of this Agreement all factual statements made in Developer's submissions to VBCPS evidencing the Project (including those pertaining to prior experience and expertise) are true, accurate, and not misleading in any material respects, (ii) Developer has the expertise and capacities to produce and provide the Deliverables and to perform its other obligations under this Agreement, (iii) the data and other information contained within the Deliverables will be accurate and complete and its use for the purposes of this Agreement will not violate any law, or infringe or violate any property right, and (iv) Developer has full power and authority to enter into this Agreement, and the person[s] signing this Agreement on behalf of Developer has full power and authority to bind Developer under this Agreement.

8. **Indemnification.** Developer will indemnify VBCPS (and the members of its School Board and its officers, employees and authorized representatives) from and against any loss, damage, expense, liability and expense (including reasonable attorneys' fees) arising from (i) bodily injury or property damage to the extent caused by the negligent or wrongful act, error, or omission of Developer, any member of Developer's Project Team, or any of Developer's or any of Developer's Project Team's employees, officers, contractors, agents or others for which Developer is legally responsible or who were otherwise acting on Developer's behalf, or (ii) the claims of third parties to the extent caused by the Developer's failure to perform its obligations, or its breach of any representation or warranty made, under this Agreement, provided in each case that the applicable claim is presented within two (2) years after the expiration or earlier termination of the Term. This indemnification provision (i) will survive the expiration of the Term or its earlier termination, and (ii) is not, and is not to be construed as, a limitation of liability.

9. **Independent Contractors.** Developer and each of Developer's Project Team are each independent contractors for all purposes of this Agreement. Neither Developer, each of Developer's Project Team, nor any of their employees, agents, subsidiaries, or subcontractors is an employee, servant, agent, partner, or joint venturer of, or with, VBCPS by reason of this Agreement, or any other reason. Neither VBCPS, nor any of its employees, agents, or subcontractors is an employee, servant, agent, partner, or joint venturer of, or with, Developer by reason of this Agreement.

10. **No Liability of Officials, Employees or Agents.** No director, officer, official, employee, agent, or representative of VBCPS is, or will be, personally liable to Developer any of Developer's Project Team, or any successor in interest of any of them, as a consequence of any default or breach by VBCPS for any sum that may become due to Developer, any of the Developer Project Team, or any successor in interest of any of them, or on any obligation incurred under this Agreement. No officer, official, employee, agent or representative of Developer or Developer's Project Team will be personally liable to VBCPS, or any successor in interest, as a consequence of any default or breach by Developer or Developer's Project Team for any amount which may become due to VBCPS or any successor in interest, or on any obligation incurred under this Agreement.

11. **Insurance.**

11.1 **CONTRACTORS LIABILITY INSURANCE:**

The Contractor shall purchase and maintain in a company or companies licensed to do business in the state in which the project is located such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by an Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- a. Claims under workers or workmen's compensation, disability benefit and other similar employee benefit act;
- b. Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;
- c. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
- d. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person directly related to the employment of such person by the Contractor, or (3) by any other person;
- e. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use therefrom;
- f. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle;
- g. Liability insurance shall be on an Occurrence Form, including all major divisions of coverage and be on a comprehensive basis including:
 - (1) Premises – Operations.
 - (2) Independent Contractors Protective.
 - (3) Products and Completed Operations.
 - (4) Contractual – including specified provision for the Contractor's obligations.
 - (5) Owned, non-owned, and hired motor vehicles.
 - (6) Broad form coverage for property damage.

11.1.1 The insurance required by Section 11.1 shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater. The Contractor shall furnish insurance with the following minimum limits:

1. Workers Compensation:

- a. State and Federal: Statutory
 - b. Employer's Liability: Injury By Accident: \$100,000/Accident
 Injury By Disease: \$500,000 Policy Limit
 Injury By Disease: \$100,000/Employee
2. Comprehensive General Liability (Including Premises-Operations; Independent Contractor's Protective; Products and Completed Operations; Broad Form Property Damage):
 - a. \$1,000,000 Each Occurrence, \$2,000,000 Annual Aggregate, \$2,000,000 Products, Completed-Operations Aggregate for bodily injury and property damage.
 - b. Products and Completed operations Insurance shall be maintained for a minimum period of 1 year after final payment and Contractor shall continue to provide evidence of such coverage to Owner on an annual basis during the aforementioned period.
 - c. Property Damage Liability Insurance shall include coverage for the following hazards: X (Explosion), C (Collapse, U (Underground).
 - d. Contractual Liability (hold Harmless Coverage).
 - e. Contractor shall name School Board of the City of Virginia Beach, its officers, employees and agents as Additional Insured, including Products and Completed Operations.
 - f. Waiver of Subrogation in favor of School Board of the City of Virginia Beach shall be included.
 3. Comprehensive Automobile Liability (owned, non-owned, hired): \$1,000,000 Combined Single Limit of Liability.
 4. Excess Liability Umbrella: \$10,000,000 for General Contractors performing new construction or major renovations. \$2,000,000 for Trade Contractors.
 5. Sub-contractors shall maintain the same limits as indicated above. It will be the responsibility of the Contractor to ensure all sub-contractors maintain the same limits indicated above.
 6. Insurance required in items 2-4 above shall be primary and School Board's insurance shall be non-contributory.
 7. The Contractor shall provide builder's risk coverage on the full insurable value of the Work; and shall be responsible for any deductible expenses. See section 11.3 for more details.
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11.1.2 Certificates of insurance acceptable to the Owner shall be approved by the Architect and then filed with the Owner prior to commencement of the Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the Owner. Certificates shall be issued on the attached form. Furnish to the Owner copies of any endorsements that are subsequently issued amending coverage limits. The Certificate shall indicate the project name.

11.1.3 Contractor or Subcontractor performing asbestos, mold or other remediation work, shall provide occurrence-based environmental liability insurance with limits not less than \$1,000,000 and shall name the following as additional insureds: The School Board of the City of Virginia Beach, its officers, its employees and its agents; the Architect/Engineer (if not the Project Designer);

and the Contractor (where the work is being performed by the Subcontractor).

11.2 OWNER'S LIABILITY INSURANCE:

The Owner shall be responsible for purchasing and maintaining his own liability insurance and, at his option, may purchase and maintain such insurance as will protect him against claims which may arise from operations under the Contract.

11.3 PROPERTY INSURANCE:

11.3.1 The Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the Contractor, subcontractors, and sub-subcontractors in the Work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including, without duplication of coverage, flood, windstorm, theft, vandalism, and malicious mischief. The property insurance shall include such boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the Owner, the Contractor, subcontractors, and sub-contractors in the Work. If not covered under the all risk insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included in an application for payment under Section 3.

11.3.2 Any loss insured under Section 11.3.1 is to be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause and Section.

11.3.3 The Contractor shall pay each subcontractor a just share of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each subcontractor to make payments to his sub-subcontractors in similar manner.

11.3.4 If the Contractor requests in writing that insurance for risks other than those described in Sections 11.3.1 or other special hazards be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

11.3.5 If requested in writing by any party in interest, the Owner as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of his duties. He shall deposit in a separate account any money so received, and he shall distribute it in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate Change Order.

11.3.6 The Owner as trustee shall have power to adjust and settle any loss with the insurers.

11.3.7 If the Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy or use. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be reasonably withheld. The Contractor and the Owner recognize that partial or total occupancy prior to Substantial Completion may become necessary to allow use of the Work and agree that such occupancy shall in no event be construed as constituting Substantial Completion or grounds for an increase to the Contract Price.

11.3.8 The Owner will furnish certificates as evidence of the insurance carried by the Owner upon the Contractor's written request.

11.3.9 If by the terms of this insurance any mandatory deductibles are required, the Contractor shall be responsible for payment of such mandatory deductibles or purchase deductibles not otherwise required, he shall be responsible for payment of such additional deductible amounts.

12. Default: Remedies: Limitations.

a. **Default.** If a Party fails to perform any of its obligations under this Agreement (a "**Default**"), the other Party is entitled to give notice to the defaulting Party, which must specify the Default and demand of performance. The defaulting Party must cure the specified Default within ten (10) calendar days after it receives the notice of Default.

b. **Remedies.** If the defaulting Party does not cure the Default within that 10-day period, the non-defaulting Party will be entitled to (i) terminate this Agreement immediately by giving notice of termination to the defaulting Party and (ii) pursue all other available remedies at law, or in equity, subject to the pre-conditions and limitations specified in this Agreement.

c. **Limitations.** Notwithstanding anything in this Agreement, neither VBCPS nor Developer will be liable to the other Party for any punitive, indirect, or consequential damages arising in connection with this Agreement (including lost profits, opportunity costs, or any other damages).

13. **Notices.** To be effective, each notice, consent, approval, waiver, or similar communication or action required or permitted to be given under this Agreement (a "**Notice**") must be in writing and must be delivered either by private messenger service (including a nationally **recognized** overnight courier), or by USPS mail, addressed as provided in this provision. Each Notice will be considered given on the date it is provided to the applicable messenger, or to the USPS, as the case may be, and will be considered received on the date actually received, unless delivery is evaded, in which case, the date delivery is attempted will be considered the date the Notice is received. Each address set forth in this provision will continue in effect for all purposes under this Agreement unless a Party replaces its address information by appropriate new information by a Notice to the other Parties in compliance with this provision:

To VBCPS: David Sandloop
Virginia Beach City Public Schools
Office of Purchasing Services, Room
210 2512 George Mason Drive
Virginia Beach, Virginia 23456
Telephone: (757) 263-1175
Email: David.Sandloop@vbschools.com

To Developer:

Stephen Ballard
President / CEO
S.B. Ballard Construction Company
2828 Shipps Corner Road
Virginia Beach, VA 23453
(757) 440-5555 – Office
(757) 647-5555 – Cell
Email: steve@sballard.com

14. Various Contract Matters.

a. **Governing Law; Binding Contract; Waiver.** This Agreement is governed by the laws of the Commonwealth of Virginia without giving effect to its choice of law principles. This Agreement is binding upon, and inures to, the benefit of each of the Parties and their respective permitted legal successors and permitted assigns. The failure of a Party to demand strict performance of any provision, or to exercise any right conferred, under this Agreement is not, and is not to be construed as, a waiver or relinquishment of that Party's right to assert or rely on that provision or right in the future. Either Party, however, may elect to waive any right or benefit to which it is entitled under this Agreement.

b. **No Third Party Beneficiary or Other Similar Rights.** There are no third-party beneficiaries to this Agreement. Accordingly, no third-party is entitled to make any claim under this Agreement for failure to perform or other breach under this Agreement. Only the Parties (and their respective permitted successors and permitted assigns) are entitled to rely upon the provisions of this Agreement.

c. **Compliance with Laws.** Developer must comply, and must cause Developer Project Team, Developer's agents, and subcontractors to comply, with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of its obligations under this Agreement.

d. **Prior Agreements and Discussions.** Any agreements (whether in writing or oral) between VBCPS and Developer existing before or contemporaneously with this Agreement relating to the Project (or any prior versions of the Project) are superseded by this Agreement. All prior discussions and negotiations as to the Project (or any prior versions of this project) are merged into this Agreement. The submission of any unexecuted copy of this Agreement does not constitute an offer to be legally bound by the provisions of the document submitted; and no Party will be bound by this Agreement until it is approved, executed and delivered on behalf of by both of the Parties.

e. **Assignment.** Developer is not entitled to assign its rights, nor delegate its duties, under this Agreement without the prior consent of VBCPS, which consent VBCPS may be withheld in its sole discretion.

f. **Entire Agreement; Amendment; Counterparts.** This Agreement constitutes the entire agreement of the Parties as to the Project. This Agreement may only be amended or modified by a writing signed on behalf of each of the Parties. This Agreement may be signed in any number of counterparts, and, so long as each Party signs at least one counterpart, each signed counterpart evidences an original Agreement, but all signed counterparts together constitute but one Agreement.

g. **Rules of Usage and Interpretation.** The captions in this Agreement are for convenience only and are not to be used in its interpretation. This Agreement shall not be construed against one Party, or the other Party, on the basis that its counsel drafted it or participated in its drafting. The words "include," "including," or words to similar purport are not to be construed to be words of limitation. References to a Party means and includes that Party and its permitted successors and permitted assigns.

h. **Venue.** Any legal action, equitable cause, or other judicial proceeding with respect to this Agreement must be brought in the courts of the Commonwealth of Virginia in VBCPS of Virginia Beach, or of the United States of America for the Eastern District of Virginia (Norfolk Division) and in no other courts. By signing this Agreement, each Party accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of those courts.

[Signatures on next page.]

In witness whereof, the Developer, has caused this Interim Agreement to be executed in its corporate name and on its behalf by its Authorized President.

S.B. Ballard Construction Company

CORPORATE NAME

BY:

PRESIDENT

(SEAL)
Attest:

CORPORATE SECRETARY

STATE OF Virginia

VBCPS/COUNTY OF City of Virginia Beach to-wit:

The foregoing Contract was acknowledge before me this 30 day of March, 2023 by Stephen Ballard

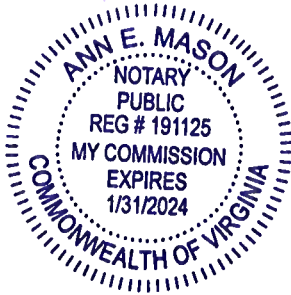
, Authorized President and Stephen Ballard, Jr., Corporate Secretary of

S.B. Ballard Construction Company, on its behalf. He/She/They is/are personally known to me or has/have produced a drivers license as identification.

[AFFIX NOTARY SEAL]

NOTARY PUBLIC (Notary # 191125)

My Commission Expires: January 31, 2024



In witness whereof, The School Board of the City of Virginia Beach, Virginia has caused this Agreement to be executed in its corporate name and on its behalf by its Superintendent and its Seal to be hereunto affixed and attested by its School Board Clerk.

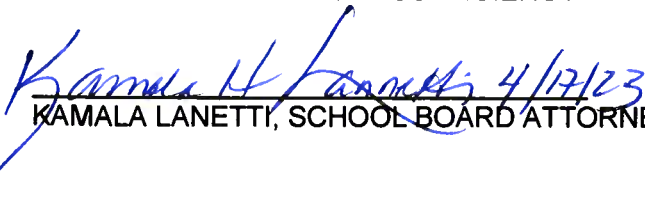
APPROVED AS TO CONTENT


MELISA INGRAM, EXECUTIVE DIRECTOR, FACILITIES SERVICES

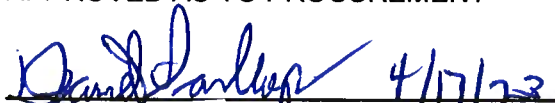
APPROVED AS TO AVAILABILITY OF FUNDS


DANIEL G. HOPKINS, DIRECTOR, OFFICE OF BUSINESS SERVICES

APPROVED AS TO LEGAL SUFFICIENCY


KAMALA LANETTI, SCHOOL BOARD ATTORNEY

APPROVED AS TO PROCUREMENT


DAVID SANOLOP, COORDINATOR, OFFICE OF PROCUREMENT SERVICES

SCHOOL BOARD OF THE CITY OF VIRGINIA BEACH, VIRGINIA

[Signature]
Aaron C. Spence, Ed.D., Superintendent

STATE OF VIRGINIA
VBCPS OF VIRGINIA BEACH, to wit:

I, Ebony Huber a Notary Public in and for the School Board and State aforesaid, do hereby certify that Aaron C. Spence, Ed.D., Superintendent, Pursuant to School Board Policy 3-90, of the School Board Policy, whose name is signed to the foregoing writing, bearing date the 24 day of April, has acknowledged the same before me in my School Board and State aforesaid this 24 day of April, 2022. He is personally known to me.

Ebony Huber 7977504
NOTARY PUBLIC (Notary #)

My Commission Expires: 11/30/2026



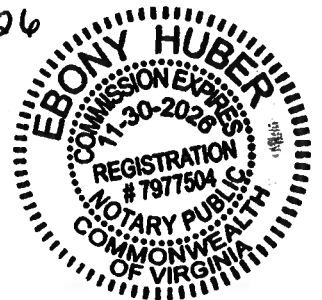
[Signature]
Regina M. Toneatto, Clerk of School Board

STATE OF VIRGINIA
VBCPS OF VIRGINIA BEACH, to wit:

I, Ebony Huber, a Notary Public in and for School Board and State aforesaid, do hereby certify that Regina M. Toneatto, Clerk of the School Board of the City of Virginia Beach, Virginia whose name is signed to the foregoing writing, bearing date the 24 day of April, has acknowledged the same before me in my School Board and State aforesaid this 24 day of April, 2022. She is personally known to me.

Ebony Huber 7977504
NOTARY PUBLIC (Notary #)

My Commission Expires: 11/30/2026



DEVELOPER BACKGROUND CERTIFICATION

In a contract for services to be provided on School Board property or any property at which a school sponsored event takes place, as set forth in Code of Virginia 22.1-296.1, as amended, the Developer certifies that neither the Developer nor the Developer's employees, agents, subcontractors or subcontractors' employees who will have direct contact with Virginia Beach VBCPS Public Schools ("VBCPS") students while performing such services have been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child. The Developer may require the above listed individuals to personally certify this information, but the Developer will be responsible for submitting such certifications to the School Board. The certification requirement will be binding throughout the term of the contract and Developer has a continuing duty to inform the School Board of any event that renders the certifications untrue. The Developer certifies that it has procedures in place to inform its employees, agents, subcontractors or subcontractors' employees of these requirements. Certifications with materially false statements may constitute reason to terminate the contract and may subject the person certifying the information to criminal prosecution.

- Developer represents that none of its employees who will be in the presence of VBCPS students have been convicted of a felony or an offense involving the sexual molestation or physical or sexual abuse or rape of a child.
- Developer will obtain a Background Certification from all present and future employees and update VBCPS of any felony convictions and any convictions for offenses involving the sexual molestation or physical or sexual abuse or rape of a child.
- Developer has established a process to maintain compliance with the terms set forth in this Developer Background Certification and will provide verification to VBCPS on request.

Developer's signature on this form indicates that Developer is deemed to have provided the certification described herein.



Developer's Signature

Stephen B. Ballard

Printed Name

President/CEO

Title

S.B. Ballard Construction Company

Company

2828 Shippo Corner Road Virginia Beach, VA 23453

Business Address

March 30, 2023

Date

VBCPS PPEA #5083 Interim Agreement
Exhibit A – Major Components of Project

Princess Anne High School

Replacement

- CIP 1-015
- Optimal Capacity: 1800 students
- New School Planning Size: +/-330,000 sf
- Team Sport Buildings: +/-12,000 SF

Program Assumptions

- Comprehensive high school including NJROTC Program and the International Baccalaureate (IB) Program
- Program also includes replacement of the Special Education Center (West Wing/Round Building) which supports division wide programs. PAHS West Building has students served in adapted academic foundations (AAF) and functional academic foundations (FAF) classes.

Swing Space

- The “old” Kellam High School, Holland Road Annex, (2323 Holland Road) will be used as swing space for Princess Anne High School staff/students during construction. Minor renovations will be required at the designated swing space facility. Included in these renovations will be improvements to temporarily accommodate the Special Education Center housed in the West Wing/Round Building, IB Academy, and NJROTC. Additionally, lighting will need to be provided for the stadium field along with a new synthetic turf field.

Bayside High School

Replacement

- CIP 1-029
- Optimal Capacity: 1900 students
- New School Planning Size: +/-325,000 sf
- Team Sport Buildings: +/-12,000 SF

Program Assumptions

- Comprehensive high school including the Health Sciences Academy. The existing Bayside H.S. facility houses four dedicated science labs that are used as medical science classes in support of the Health Sciences Academy.
- The new Bayside High School design should be developed as a “prototype” plan for future use when VBCPS replaces First Colonial, Kempsville and Green Run High Schools.

Swing Space

- The “old” Kellam High School, Holland Road Annex, (2323 Holland Road) will be used as swing space for Bayside High School staff/students during construction. Minor renovations will be required at the designated swing space facility. Included in these renovations will be improvements to temporarily accommodate the Health Sciences Academy. Additionally, lighting will need to be provided for the stadium field along with a new synthetic turf field.

Bettie F. Williams/Bayside 6th Grade Replacement

- CIP-1-028
- Optimal Capacity: 950 students
- New School Planning Size: +/-145,000 sf

Program Assumptions

- Combines Bettie F. Williams (4th and 5th grades) students with the Bayside 6th grade campus students who are currently housed in the original Aragona Elementary School Building.

Swing Space

- It is anticipated that the new school will be built on the same site adjacent to the existing Bettie F. Williams School, where staff/students will remain while the new building is built. Staff/students from the Bayside 6th grade campus (original Aragona) will also remain in their building while the new building is built. The balance of the site work for the new school will be done as part of the demolition of the existing Bettie F. Williams school after staff/students move into the new school. The project should also include demolition of the original Aragona Elementary School building after staff/students move into the new school. After demolition of older buildings, site improvements shall be completed to include sports facilities, trails, or grass & seed where no programmed space is planned.

Sustainability Requirements

- Building shall achieve LEED Silver certification at a minimum.
- Building shall incorporate rainwater harvesting. Roof rainwater harvesting for toilet flushing and potentially irrigation of play fields.
- Building shall incorporate daylight harvesting.
- Building shall incorporate geothermal heating and cooling.
- Building shall incorporate vegetated roof area(s) with accompanying patios.
- Site shall retain stormwater during a 10-year rain event at a minimum.
- Site shall incorporate a greenhouse with water and power and raised bed gardens.

Exhibit B – List of Deliverables

List of Deliverables
SCHEMATIC DESIGN PHASE
Site Survey
Geotechnical Report
Environmental Analysis
Educational Programming
Preliminary Schematic Design (15%)
Summary Report Based on Public Input Options / Charettes
Conceptual Site Plan Options & Building Options with Cost Evaluations (Minimum of Three per Replacement Project)
Planning & Program Scope Requirements Summary Report including Educational Specifications
Final Schematic Design (15%)
DESIGN DEVELOPMENT PHASE
Initial 30% Design & Engineering
Utilities Coordination Reports and Analysis
Educational Programming
Food Services Programming
LEED Project Components
Net Zero Analysis
Landscape and Open Space Plans
Traffic Studies
Sports Programming
Final 30% Design & Engineering
Offer of Guaranteed Maximum Price
Total Project Schedule

Exhibit B Deliverables/Criteria Clarifications

All deliverables should be provided in both print and electronic format.

Conceptual Site Plan Options & Building Options with Cost Evaluations

The Developer shall prepare a minimum of three different conceptual site plans for the Project, for each of the 3 school replacement projects. Each site plan shall show building orientation for that particular site as well as impacts to existing utilities (water, sewer, stormwater, natural gas, electrical, etc.). Each building option shall show general learning areas and other educational requirement locations.

Planning & Program Scope Requirements Summary Report

The Developer shall provide a copy of the planning study report containing the VBCPS approved program requirements upon completion of the study. The planning study will be conducted with VBCPS representatives, Developer, Designers, and other essential stakeholders over the initial months of the process. For each of the three school replacements, the planning study will evaluate at least three scenarios for building programs and design layouts for the building and site, detailed in the Schematic Design. The different building options will include, but not be limited to identifying layouts and capacity in terms of general building / site space for; core teaching spaces, special needs, gym / physical education, multi-purpose spaces (auditorium / schola, etc), media center, administration, and cafeteria / food service, indoor and outdoor sport facilities, alternate designs discussed with developer including Princess Anne HS synthetic turf & rubber track, Bayside HS rubber track upgrade, Category 2 Hurricane Shelter for Bayside HS prototype, and sanitary sewer force main adjustments and new pump station with generator at Princess Anne HS, parking (including bus loops and designated traffic entrances), and unique spaces at schools listed in **Exhibit**

A. Each different scenario presented will show building orientation and pros / cons with programmatic costs, potential impacts to utilities (water, sewer, stormwater, natural gas, electrical, etc.), and impacts to construction scheduling. The Owner will use this deliverable to obtain a building program and site location approval from School Board and City Council. The schedule date for this deliverable is November 1, 2023.

Schematic Designs (15%):

The Developer shall review the program furnished by VBCPS to ascertain the requirements of the Project and arrive at a mutual understanding of such requirements with VBCPS.

The Developer shall provide a preliminary evaluation of the Program and the Project budget requirements, each in terms of the other, for each of the three school replacements. Floor plans & site plans shall be submitted with scope and initial budget at the end of the Preliminary Schematic Design review. Floor plans, site plans, and layout modifications required by the VBCPS will be incorporated in the Final Schematic Design submission.

The Developer shall review with VBCPS alternative system approaches to design and construction of the Project. The Architect shall be prepared to discuss the probable cost ramifications with each alternative approach to determine approach for Preliminary design. Opportunities for Net Zero Energy and LEED Project Components along with other general system components should also be included.

This schedule shall include allowances for periods of time required for VBCPS's review and approval of submissions and for review and approval of authorities having jurisdiction over the Project. It is anticipated that the majority of VBCPS reviews will take place during the bi-monthly meetings, ~~allowing the design-build to fast-track design in accordance with the provided~~ **Exhibit D**, Schedule, and not have to stop work during a "review period."

The Developer shall submit to VBCPS a preliminary cost estimate (based on current area, volume or other unit costs) and six sets of progress prints (shall include site plan, floor plans, and main elevations) at each submission as indicated on **Exhibit D**.

Cost Estimates will be provided at the following stages:

- Completion of the Preliminary 15% Schematic Design
- Completion of the Final 15% Schematic Design
- Completion of the Initial 30% Design & Engineering Documents
- Completion of the Final 30% Design & Engineering Documents

Preparation of GMP

The Developer shall schedule and present their proposed design in a review meeting with the VBCPS's Team.

30% Design & Engineering Documents:

Based on the approved VBCPS's Final Schematic Design Documents the Developer shall prepare, for approval by the VBCPS, 30% Design & Engineering Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to architectural, landscape architectural, exterior renderings/elevations, civil, structural, mechanical, and electrical systems, materials, furniture and equipment, and such other elements as may be appropriate. Level of detail shall meet or exceed the level of detail provided by the *SBBC* team in the Schematic Design phases.

The Developer shall research pertinent and applicable regulations and code requirements which affect this Project.

The Developer's design shall meet the Building Code requirements established by the authority having jurisdiction.

The Developer shall submit to VBCPS a preliminary cost estimate based on (based on current area, volume or other unit costs) and two sets of progress prints and specifications for each scenario. The Developer's design shall include the requirements established in the educational specifications provided as a supporting document to this process and any other building, or site guidelines, such as those of City of Virginia Beach Public Works.

The Developer shall schedule and present their proposed design in a review meeting with VBCPS's Team.

Site Survey

The Developer shall provide VBCPS with 2 printed copies of the site surveys for each of the project sites and one electronic copy.

Review Fees & Permitting

All fees for governmental reviews, including but not limited to Planning, Boards, State, third party, etc. reviews, are to be paid out of the Interim Agreement non-to-exceed funds shown in Exhibit C.

Geotechnical Report

The Developer shall provide VBCPS with 2 printed copies of the completed geotechnical report and one electronic copy. The report shall include any geotechnical borings or subsurface investigation required for the Project.

Guaranteed Maximum Price for the Design Build Agreement

The Developer shall submit to VBCPS a detailed Guaranteed Maximum Price for the approved building program and location of the Project necessary to complete the Project. Design, all divisions of construction, schedule, and contingencies (both VBCPS and Developer) necessary to provide a complete Project shall be included in the Guaranteed Maximum Price. The Guaranteed Maximum Price for the Project shall be submitted to VBCPS by February 1, 2024.

Total Project Schedule

The Developer shall provide an accurate detailed schedule for the approved project to include for Construction Document Development, Bidding and Award, and the Construction Phases. Schedule shall include design milestones, construction milestones, major equipment installation, long lead items,

substantial completion, final completion, turnover /occupancy, start of operations by the Owner, and demolition. The Total Project Schedule shall be submitted to VBCPS by November 1, 2023.

Allowances

Allowances are contingent services to be authorized by VBCPS should additional effort be required during the Interim Agreement.

VBCPS PPEA #5083 Interim Agreement
Exhibit C – Cost Proposal Form

Djy/Item	Description	Total
Interim Agreement		
Project Planning Requirements, Review Fees & Permitting		
	- Surveying	\$147,622
	- Easement Plats	\$23,504
	- Stormwater Pollution Prevention Plan (SWPPP)	\$12,478
	- Site and Environmental Analysis (Includes Wetland & CBPA)	\$54,137
	- Traffic Impact Analysis	\$95,950
	- Site Plan Options and Building Options - Concept Designs and Analysis (Minimum of Three per Replacement Project)	\$ 2,208,496
	- Final Schematic Design (15%) with Planning & Program Scope Requirements Summary Report including Educational Specifications (Includes Ed Spec with BrainSpaces)	\$ 3,178,500
	-LEED Process Documentation and Building Modeling	\$363,660
Preliminary Site Work		
	- Geotechnical Investigation and Report	\$197,185
	- Hazardous Materials Investigation and Report	\$91,446
	- Private Utility Locating & Recordation (Note: Actual utility relocations not included in Interim Agreement)	\$88,000
	- Preconstruction Services	\$350,000
30% Design and Engineering (School options have been reviewed and narrowed down to final layout for each school at this point in the process)		
	30% Design and Engineering Documents for Architectural, Structural, Mechanical, Plumbing, and Electrical Design Disciplines (Design Development Documents)	\$5,479,070
	30% to 95% Design and Engineering Documents for Civil & Landscaping Disciplines (Construction Documents)	\$1,075,073
	Complete Holland Road Annex design	\$314,600
Deliverable for Comprehensive Agreement		
	- Offer of Guaranteed Maximum Price	\$45,000
Allowances		
	- Acquisition of land parcel at Corporation Lane	\$300,000
	-Fees for Alternate Designs in Exhibit B	\$255,308
	-PAHS Sanitary Force main relocation Allowance and relocation generator	\$390,965
	Owner's Contingency @ 5%*	\$733,550
NOT-TO-EXCEED TOTAL		\$ 15,404,544

*VBCPS will receive any unspent contingency funds.

Exhibit D – Proposed Schedule for Interim Agreement

Milestones	
Interviews & Negotiate Interim Agreement with Preferred Proposer	May – July 2022
School Board Public Hearing	July 2022
Obtain Approvals by School Board and City Council	August – Sept. 2022
Execute Interim Agreement	Sept. 2022
<i>Educational Specifications Process</i>	Sept. – Oct. 2022
Planning Charette-Program Requirement/Scope Work Sessions	Oct. – Dec. 2022
Submit Site and Building Option Pricing Summary Reports	Dec. 16, 2022
Prepare Preliminary Schematic Design (Price #1)	Jan. 13, 2023
Preliminary Schematic Review Meeting	Jan. 27, 2023
Revise Preliminary Schematic Design (15%)	Feb. 23, 2023
Collaboration Meeting – Initial Cost Review and Code Review	Feb. 10, 2023
Prepare Final Schematic Design (Price #2)	Feb. 17, 2023
Collaboration Meeting – Review Final Schematic Design	Feb. 24, 2023
Prepare Initial 30% Design & Engineering Documents (Price #3)	Feb. 17– March 17, 2023
Collaboration Meeting – Cost Review and Code Review for Initial 30% Design & Engineering Documents	March 24, 2023
Prepare Final 30% Design & Engineering Documents (Price #4)	March 24 – April 14, 2023
Collaboration Meeting – Cost Review and Code Review for Final 30% Design & Engineering Documents	April 21, 2023
Prepare Project Schedule to Completion, including Demolition	April 21, 2023
GMP Pricing	April 14 – May 19, 2023
Finalize GMP and Comprehensive Agreement (Price #5)	May 26, 2023
Obtain Approvals by School Board and City Council	July 30, 2023 +/-
NOTE AS OF 3/30/2023: All dates above have been modified and most are currently being worked on by SBCC team. New 100% schedule to be submitted by Nov. 1, 2023. Deliverable of Obtaining Approvals by School Board and City Council is estimated to be March 2024.	

Exhibit E-1 – Project Principals: Project Team

PROJECT PRINCIPALS

Developer –

Stephen Ballard
President / CEO
S.B. Ballard Construction Company
2828 Shipp's Corner Road
Virginia Beach, VA 23453
(757) 440-5555 – Office
(757) 647-5555 - Cell

PROJECT TEAM

Construction Contractor	<i>S.B. Ballard Construction Company</i>
Architects	<i>HBA Architecture & Interior Design Inc.</i> <i>RRMM Architects</i> <i>Livas Group, Inc</i>
Mechanical/Electrical/Plumbing Consultant	<i>Thompson Consulting Engineers</i>
Structural Consultant	<i>Speight Marshall Francis</i> <i>Lynch Mykins</i>
Civil Engineer	<i>Timmons Group</i> <i>Kimley Horn</i> <i>VHB</i>
Geotechnical Consultant	<i>GET Solutions, Inc</i>
Educational Programming Consultant	<i>BrainSpaces, Inc.</i>
Food Services Consultant	<i>Food Service Consultants Studio</i>
Sustainability Consultant	<i>Sustainable Building Partners</i>
Legal	<i>Kaufman & Canoles</i>

Exhibit E-2 – VBCPS Management Team

VBCPS Procurement Specialist – PPEA Lead	David Sandloop
VBCPS Director of Business Services	Daniel Hopkins
VBCPS Staff Architect	Donald Bahlman
VBCPS Executive Director, Facilities Services	Melisa Ingram
VBCPS Sustainability Officer	Tim Cole
VBCPS Project Manager	Ryan Hersey
VBCPS Senior Executive Director of High Schools	Matthew Delaney