

**COMPREHENSIVE
AGREEMENT**

Between

MONTGOMERY COUNTY SCHOOL BOARD

and

BRANCH & ASSOCIATES, INC., a Virginia corporation

DESIGN AND CONSTRUCTION OF THE
BLACKSBURG HIGH SCHOOL
AUBURN HIGH SCHOOL
AUBURN MIDDLE SCHOOL

Date _____, 2011

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EXHIBITS

- A – Land (3 pages)
- B – Scope of Work (1 page)
- C – Contract Cost Limit Summary with all Clarifications and Assumptions (5 pages)
- D – <INTENTIONALLY OMITTED>.
- E – Draw Schedule (4 pages)
- F – Payment Application (6 pages)
- G – Project Schedule Milestones (1 page)
- H – Vendor's Certification (1 page)
- I - List of A-E Direct Labor Rates (3 pages)
- J - Guarantees of Performance- <INTENTIONALLY OMITTED>.
- K - Design Guidelines (28 pages)
- L - Extensions to Contract Times due to Unusually Severe Weather (1 page)
- M - Sample Performance Bond (4 pages)
- N - Montgomery County Public Schools – Policies and Procedures <INTENTIONALLY OMITTED>.
- O - Certification of No Crimes Against Children (1 page)
- P - 29 C.F.R. § 5.5 (7 pages)
- Q - Wage Rates (3 pages)

THIS COMPREHENSIVE AGREEMENT (the "Agreement") is dated and effective as of this ___ day of _____, 2011 (the "Effective Date"), by and between MONTGOMERY COUNTY SCHOOL BOARD, (the "Owner"), and Branch & Associates, Inc., a Virginia corporation (the "Private Entity") of Roanoke, Virginia.

RECITALS

- R-1. The Owner adopted a document entitled, "Guidelines for Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002," dated December 7, 2010.
- R-2. The Owner subsequently received an unsolicited proposal for the Project pursuant to the Public-Private Education Facilities and Infrastructure Act, Virginia Code sections 56-575.1, et seq. (the "PPEA").
- R-3. The Owner accepted the unsolicited proposal for consideration.
- R-4. The Owner advertised for competing proposals. Three additional proposals were received and evaluated.
- R-5. The Owner determined in writing that proceeding with the procurement that was the subject of the proposal using competitive negotiation procedures pursuant to the PPEA was likely to be advantageous to the Owner and the public based upon probable scope, complexity, or urgency of the Project (as defined below), risk sharing and added value, and/or economic benefit from the Project.
- R-6. The Owner determined that the Project is a qualifying project that serves the public purpose of the PPEA and is in the public interest to pursue.
- R-7. Based upon the Private Entity's proposal, estimated price and presentation, Owner has selected the Private Entity for entry into a comprehensive agreement for the Project, and the Owner and the Private Entity now wish to enter into this Agreement for the Project.

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

ARTICLE I

DEFINITIONS

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

- 1.1. **A-E** means each of the Private Entity's two (2) design professional firms responsible for the architectural and engineering services for the Project, including, without limitation, its design. The Private Entity has proposed its A-E for the Project in its proposals to the Owner, and the Private Entity shall use this A-E for the Project unless the Owner approves otherwise in writing.
- 1.2. **Change** means any addition to, deletion from, or modification of the Project or the Services that is made in accordance with the provisions of this Agreement. A Change may be made by a written Change Order if the Owner and the Private Entity agree as to adjustments to the CCL or GMP, as applicable, and schedule, or unilaterally by the Owner by a written Change Directive, with any adjustments to the CCL or GMP, as applicable, and schedule, to be determined subsequently pursuant to Article XVII of this Agreement. Notwithstanding the foregoing, no Change that would result in any increase to the CCL shall be effective unless and until approved by the Owner and, in the Owner's sole discretion, by the Montgomery County Board of Supervisors.
- 1.3. **Change Directive** means a written order by the Owner, specifically identified as a Change Directive, directing a Change, which the Private Entity shall follow.
- 1.4. **Change Order** means a Change made by a written agreement in which the Owner and the Private Entity have indicated agreement as to the Change and adjustments to price and/or schedule due to the Change and have evidenced their agreement by executing such written agreement.
- 1.5. **Codes and Standards** means all local, state and federal statutes, regulations, ordinances, codes, laws, or other requirements applicable to the Project, including, without limitation, the most current Virginia Uniform Statewide Building Code.
- 1.6. **Construction Documents** means the Plans and Specifications that are approved by the Owner, A-E, and the Private Entity.
- 1.7. **Contract Cost Limit or CCL** means the initial limit established at the time of execution of this Agreement on total amounts payable to the Private Entity under this Agreement absent a Change pursuant to this Agreement.
- 1.8. **Contract Documents** means the following listed in their order of precedence:
 - a. Any written modifications to this Agreement made in accordance with this Agreement;
 - b. This Agreement, including all exhibits thereto;
 - c. Any written Change Orders made in accordance with this Agreement;
 - d. Any written Change Directives issued in accordance with this Agreement;
 - e. The Construction Documents;
 - f. Documents incorporated by reference in this Agreement; and
 - g. The Private Entity's revised Detailed-Phase Proposal dated July 8, 2011, which is incorporated herein by reference. The Private Entity represents, warrants and covenants to the Owner that all financial information on the Private Entity, its parent and subsidiaries attached to such Proposal were true, complete and correct in all respects.
- 1.9. **Contractor** means the Private Entity, and, with the prior written consent of the Owner in each instance, any entity to which the Private Entity subcontracts the construction portion of the Work or its responsibilities under this Agreement.
- 1.10. **Day** means a calendar day, and "days" mean calendar days, unless the contrary is expressly indicated. Where the term "working day" or "work day" is used, such term shall mean any day from Monday through Friday exclusive of nationally or state recognized holidays.

- 1.11. Defect, Defective, or Deficient** is an adjective or noun which when modifying or referring to the word Work refers to Work or any part thereof that is unsatisfactory, faulty, or does not conform to the Contract Documents, or does not meet the requirements of any inspections, standards, tests or approvals referred to in the Contract Documents.
- 1.12. Draw Schedule** means the schedule attached hereto as Exhibit E to be used as a basis for payment of the Fixed Fees component of payments to Private Entity, setting forth the anticipated completion date of the various components of the Project and the value assigned to those different components.
- 1.13. Fixed Fees** mean the amounts payable to the Private Entity as specified in Section 5.4 for the Services in addition to Reimbursable Costs.
- 1.14. Final Completion of Work, Final Completion or final completion** means completion in conformance with this Agreement, the Construction Documents, and other Contract Documents of all of the Work required by this Agreement, including without limitation, Punch List Items so that the Project will be properly completed and result in a fully functional and properly operating Project.
- 1.15. Guaranteed Maximum Price or GMP** means the amount established as the maximum amount payable to the Private Entity absent a Change.
- 1.16. Land** means the real property described in Exhibit A hereto.
- 1.17. Owner** means the Montgomery County School Board.
- 1.18. Owner's Representative** means that person designated by the Owner in writing to perform the functions of Owner's Representative specified in this Agreement.
- 1.19. Person(s) or person(s)** means any individual, partnership, joint venture, association, joint-stock company, corporation, limited liability company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other legal entity.
- 1.20. Plans and Specifications** mean the surveys, plans and specifications that Private Entity causes to be prepared for the Project that are approved by the Owner, A-E, and the Private Entity.
- 1.21. Private Entity** means Branch & Associates, Inc., a Virginia corporation.
- 1.22. Project** means the complete and proper design and construction of three fully functional and properly operating schools - Blacksburg High School (the "Blacksburg Portion"), Auburn High School (the "AHS Portion") and Auburn Middle School (the "Middle School Portion") - in Montgomery County, Virginia and as called for in the Contract Documents, to be designed and constructed by the Private Entity on the Land in accordance with the Construction Documents and the terms of this Agreement, and any related upgrades and/or modifications ordered by Change, Change Order, or Change Directives.
- 1.23. Project Schedule** means the schedule for design and construction of the Project, which, in its initial version, is set forth in Exhibit G attached hereto.
- 1.24. Punch List Items** means a list of items of Work to be completed and deficiencies to be corrected, identified by the Owner's Representative and A-E, that do not affect the attainment of Substantial Completion. If the Owner's Representative and A-E do not agree as to an item or items, any such items not agreed upon shall be considered a punch list item until a contrary determination is made pursuant to Article XVII of this Agreement. Such items must be complete before Final Completion can take place.
- 1.25. Reimbursable Costs** mean the amounts payable to the Private Entity as specified in Section 5.3 for the Services in addition to the Fixed Fees.
- 1.26. Requisition** means an application for payment in the form attached as Exhibit F.
- 1.27. School** means any of the three schools comprising the Project.
- 1.28. Services** means all pre-construction and development services and all architectural and engineering design, procurement and construction services related to the Project furnished by the Private Entity, including, without limitation, all labor, services, materials and facilities, and all other things that are required to provide for the development of the site and the design, construction and equipping of the Project so that such Project is properly completed. Services are a part of the Work.
- 1.29. Substantial Completion** means the date determined by inspection by the Owner's Representative, the Private Entity and A-E that construction of the Project is so sufficiently complete in accordance with the Construction Documents, including an occupancy permit, startup, functional performance testing, testing & balancing, and punchlist (other than cosmetic items), that it may be utilized and can be used for all of its intended uses, including that the Project is ready to accept move-in by the Owner and all life/safety items are operational, and other items which are critical in nature, as determined by the Owner, are complete.
- 1.30. Unusually Severe Weather** means weather that impacts major Work activities on the critical path of the Project and deviates significantly from that which could be reasonably expected due to the time of year or as compared to standard averages for the area as compiled through the National Oceanic and Atmospheric Administration ("NOAA") or other authorized local sources. See Exhibit L.
- 1.31. Work** means all the work and materials for the Project required by this Agreement to be provided by the Private Entity, and that may be required to result in a fully functional and properly operating Project, and all of which is set forth in Exhibit B attached hereto and shall be provided by the Private Entity within the GMP, except as may be modified by any Change.

ARTICLE II

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

2.1. GENERAL DESCRIPTION

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

2.2. TERM OF AGREEMENT

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

2.3. INDEPENDENT CONTRACTOR

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

2.4. SUBCONTRACTORS

- a. The Private Entity may subcontract any portion of the Services to be performed hereunder, but the Private Entity shall not thereby be relieved of any of its obligations set forth herein. The Private Entity may subcontract the construction Work to the Contractor. The Private Entity shall use the Contractor proposed in its proposals unless the Owner, in its sole discretion, approves otherwise in writing. The Private Entity shall furnish to the Owner's Representative, for its information, not later than ten (10) days before the date scheduled for issuance of the notice to proceed with construction, a list of all Persons being considered to be subcontractors to the Contractor. The Owner's Representative shall, within ten (10) days of receipt of this list, notify the Private Entity in writing if it has any objection to any such subcontractor. A failure to notify the Private Entity within ten (10) day period shall not waive the right of the Owner's Representative to later object to any proposed subcontractor for cause. The receipt of such list shall not require the Owner's Representative to investigate the qualifications of any listed subcontractor.
- b. Prior to performing any Work on the Project, the Contractor and subcontractors shall provide copies of their current licenses to the Owner's Representative. The Private Entity shall ensure that all such subcontractors shall be properly licensed and authorized to do business in Virginia, shall have the proper insurance coverage, and shall comply with all state, federal, and local laws, including obtaining any necessary City/County business license (if applicable). The Private Entity shall comply with Title 54.1, Chapter 11, of the Code of Virginia, with respect to licensure of itself and all subcontractors employed to work on the Project. The Private Entity represents that it has verified that all subcontractors hold all required state and local licenses, including any state contractor's license and local business license. The Private Entity will verify that any additional subcontractors employed to work on the Project, subject to initial verification, hold all required state and local licenses, including any state contractor's license and local business license. The Private Entity shall submit the Contractor's Certification as to Licensure of Subcontractors Form to the Owner. This constitutes a material part of this Agreement.
- c. Subcontractors shall not be changed without the prior written approval of the Owner's Representative. Notwithstanding the foregoing, the Private Entity may, without the Owner's prior written approval, remove from the Project any subcontractor that is in default under such subcontractor's agreement(s) with the Private Entity, the Contractor or any other subcontractor; provided, however, that (1) the Private Entity shall give to the Owner prompt written notice of such subcontractor's removal, and (2) any replacement subcontractor for such removed subcontractor shall be subject to the prior written approval of the Owner's Representative.
- d. Private Entity further agrees that it is as fully responsible to the Owner for the acts and omissions of its subcontractors, suppliers, and invitees on the jobsite and of persons either directly or indirectly employed by them, as the Private Entity is for the acts and omissions of Persons directly employed by it.

ARTICLE III

THE WORK

3.1. WORK/SPECIFICATIONS

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

3.2. CONDITIONS AFFECTING THE WORK

- a. The Private Entity is responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions that can affect the Work or its costs, including, but not limited to available parking and staging areas and existing building materials and components. Any failure by the Private Entity to reasonably ascertain the conditions affecting the Work does not relieve the Private Entity from responsibility for successfully performing the Work without additional expense to the Owner. Each party assumes no responsibility for any representations concerning conditions made by any of its officers, employees or agents before execution of this Agreement unless such representations are expressly stated in the Agreement.

3.3. INTERPRETATION OF CONTRACT DOCUMENTS

- a. The Contract Documents are intended to be complementary and to be interpreted in harmony to avoid conflict if this can reasonably be accomplished.
- b. The following rules regarding correlation and intent of the Contract Documents are first to be employed in the event of any inconsistency, conflict, or ambiguity: (1) anything mentioned in the specifications and not shown on the plans, or shown on the plans and not mentioned in the specifications, is of like effect as if shown or mentioned in both; (2) in the case of conflicts between plans and specifications, the specifications will govern; (3) in the case of a difference between small and large-scale drawings, the large-scale drawings will govern; (4) schedules on any contract drawing take precedence over conflicting information on that or any other contract drawing; (5) on any of the drawings in which a portion

of the Work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out will apply also to all other like portions of the Work.

- c. If, despite application of the rules in 3.3b, an inconsistency, conflict, or ambiguity still exists between or among the Contract Documents that cannot be reasonably harmonized, then precedence shall be given to the Contract Documents in the order in which they are enumerated in Paragraph 1.7. of this Agreement.

ARTICLE IV

PROJECT DEVELOPMENT

4.1. DESIGN AND CONSTRUCTION

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

4.2. DRAWINGS AND SPECIFICATIONS

Based upon the scope of Work and/or requirements furnished by the Owner in writing and included herein, the Private Entity shall prepare the complete contract working Plans and Specifications. All design submissions for this Project shall be made in both paper drawing/document form and AutoCAD electronic file form compatible with Owner's CAD system. The minimum scale for building drawings shall be 1/8 inch = 1 foot except for small scale drawings of the floor plan of the entire building with space tabulation. Design submissions shall be made as outlined below. The Owner review and/or approval period shall be in accordance with the "Project Schedule Milestones" (see Exhibit G), but not less than ten (10) working days for each of the following submissions.

- a. **10% Schematic Design Submission ("Schematic Design"):** The Owner and the Private Entity acknowledge that the conceptual design delivered with the Private Entity's Detailed-Phase Proposal inclusive of the post-proposal changes is an adequate basis for proceeding to the Schematic Design submission. The Private Entity will provide the Owner with revised drawings or descriptions as necessary to verify and document mutual understandings since the submission of the Detailed-Phase Proposal, and submit Schematic Design to the Owner for approval.
- b. **35% Design Development Submission ("35% Design Development"):** Following receipt of Owner's approval of the Schematic Design submission, the Private Entity shall prepare a 35% Design Development submission including updated drawings and specifications. Private Entity shall submit the 35% Design Development submission to the Owner for review and approval in accordance with the Project Schedule shown in Exhibit G. The Owner review period will be in accordance with the Project Schedule shown in Exhibit G. This submission shall include details regarding the structural and mechanical, electrical and plumbing ("MEP") components of the design, and a cost estimate consistent with the Association for the Advancement of Cost Engineering ("AACE") practices (detailed labor and material estimate by Construction Specification Institute (CSI) division) to permit the Owner's value-engineering analysis. See Exhibit K, Section 2.1.1, concerning value engineering study.
- c. **65% Construction Documents Submission ("65% Construction Documents"):**
Following receipt of Owner's approval of the 35% Design Development submission and resolution of any value engineering cost reduction suggestions, the Private Entity shall prepare a 65% Construction Documents submission. Private Entity shall submit the 65% Construction Documents submission to the Owner for review and approval in accordance with the Project Schedule shown in Exhibit G. The Owner review period will be in accordance with the Project Schedule shown in Exhibit G.
- d. **95% Construction Documents Submission ("95% Construction Documents"):**
Following receipt of Owner's approval of the 65% Construction Documents submission, the Private Entity shall prepare a 95% Construction Documents submission. Private Entity shall submit the 95% Construction Documents submission to the Owner for review and approval in accordance with the Project Schedule shown in Exhibit G. On an exception basis, intermediate submissions may be provided for the design of sitework, foundations, structural steel and other items or systems requiring either advance procurement or construction start prior to the completion of the overall design in accordance with the approved schedule. The Owner review period will be in accordance with the Project Schedule shown in Exhibit G.
- e. **100% Construction Documents Submission ("100% Construction Documents"):**
Following receipt of Owner's approval of the 95% Construction Documents submission, the Private Entity shall prepare a 100% Construction Documents submission. Private Entity shall submit the 100% Construction Documents submission to the Owner for review and approval in accordance with the Project Schedule shown in Exhibit G. On an exception basis, intermediate submissions may be provided for the design of sitework, foundations, structural steel and other items or systems requiring either advance procurement or construction start prior to the completion of the overall design in accordance with the approved schedule. The Owner review period will be in accordance with the Project schedule shown in Exhibit G.

4.3. CONSTRUCTION

With Owner's prior agreement in writing, and subject to imposition by Owner of reasonable conditions to assure a satisfactory Guaranteed Maximum Price for the Project, construction may be allowed to commence in accordance with the Project Schedule prior to the Owner's Representative's approval of all 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.

4.4. SCHEDULED SUBMITTALS

Upon receipt of a scheduled submittal by the Private Entity for the Owner's review and approval, the Owner shall provide its approval, conditional approval or a single consolidated list of exceptions within the period of time specified by the Private Entity; provided, however that the Owner shall have not fewer than ten (10) work days to review and act upon any initial submission. If a submittal is not specified in this Agreement, the period for review shall be fifteen (15) work days. Acceptance of a particular scheduled submittal(s) shall be deemed made by the Owner if the Owner's Representative has not delivered a consolidated list of exceptions prior to the expiration of the applicable period for review. Upon receipt of any "conditional" approval, work shall proceed on the approved portions of the Work and a re-submittal of the conditional Work will be submitted, or not submitted, as directed.

Upon receipt of a consolidated list of exceptions from the Owner's Representative regarding any submittal, the Private Entity shall change or correct, and redeliver the submittal to the Owner's Representative within the period of time specified in the Project Schedule Milestones, or within ten work (10)

days if not specified. The Owner's Representative shall then provide the Private Entity its approval or single consolidated list of exceptions within ten (10) work days. Any re-review after 35% Design Development approval shall strictly confine itself to the corrections or changes relative to the original consolidated list of exceptions. All exceptions taken at any time must be relative only to the requirements set forth in this Agreement and identify the area of non-compliance. Owner and Private Entity will use their best efforts to accelerate these timelines where practicable.

ARTICLE V

PRICES

5.1. PRICES

The Private Entity must provide all Work called for under this Agreement, including furnishing all material, services, labor and equipment to perform the Services for the Contract Cost Limit as indicated in Exhibit C.

5.2 CONTRACT COST LIMIT

- a. A Contract Cost Limit has been agreed to by the parties, the amount of which is stated in Exhibit C. The CCL is the maximum amount payable to Private Entity and is a cap on Private Entity's compensation, which is the sum of Reimbursable Costs (see section 5.3) and Fixed Fees (see section 5.4) payable to complete the Work. As the design is refined, a Guaranteed Maximum Price will be established that will be less than or equal to the CCL.
- b. The Private Entity shall develop Design Development documents in accordance with Article IV in order to arrive at a Guaranteed Maximum Price that will be less than the CCL. The Private Entity shall submit to Owner's Representative estimates of the GMP at the completion of the following design phases: 35% Design Development submission, 65% Construction Documents submission, and 95% Construction Documents submission. The GMP estimate at 65% Construction Documents submission and 95% Construction Documents submission must be supported by detailed subcontractor quotes for all major trades, and detailed labor and material estimates for self-performed work, general conditions, and for work to be sub-contracted or purchased at a later date. 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 Private Entity may, at no increase in Fixed Fees, revise the Plans and Specifications, with no reduction to the scope of the Work or quality of the Work, subject to reasonable approval of such revisions by the Owner's Representative, so as to reduce the estimated Reimbursable Costs plus Fixed Fees making up the GMP to be less than the CCL.

5.3 REIMBURSABLE COSTS

- a. Subject to the limitation that payments to Private Entity shall not exceed the GMP, the Owner will reimburse the Private Entity for all the following costs (including as stated in Exhibit C) for the Project:
 1. 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.
 2. Contractor 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.
 3. Subcontractor costs for Work on items directly related to and/or incorporated into the finished construction for the Project including the cost of completing Punch List Items. The term "subcontracts" includes purchase orders. The Private Entity shall conduct the subcontractor bid process on an "open book" basis, and shall allow the Owner's Representative to observe the receipt and analysis of all bids. The Private Entity shall cause the Contractor to invite at least six (6) bidders, if practical, and endeavor to receive price quotations from at least three (3) firms for all subcontracts for, but not limited to, equipment, 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 the Private Entity. The Private Entity shall furnish copies of quotations to the Owner's Representative for review and approval 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) working days from issuance. The Private Entity shall not "bid shop" subcontracts after selection.
 4. 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.
 5. Provide a field office for the Owner's Representative ready for use and occupancy within fourteen (14) days from the construction Notice to Proceed through Final Completion. Field office shall be an approved equal to Williams Scotsman model MO5010, 10' x 46', with restroom, vinyl or wood paneled walls, vinyl tile floors, gypsum ceiling, private office furnished with built-in desks, file cabinets, plan table, overhead shelves, overhead fluorescent lights, breaker panel, central HVAC, windows with insect screens, security window screens, entry door security bars and locks, skirting, anchors, entry steps and/or ramp. Furniture shall include a plan rack to hold working drawings, padded swivel arm chair for each representative, drafting stools, two (2) four drawer legal size metal filing cabinets, and one (1) 36 x 30 inch tack board, Provide temporary utility service, including, but not limited to, water, sewage, trash, electric (generator if needed), telephone and high speed internet service. Provide a minimum of two (2) telephone lines and a high speed internet service, modem and router. Restroom shall be connected to sanitary sewer and water lines, or approved equal. Drinking water shall be provided by bottled water from an outside vendor. Provide weekly janitorial cleaning and maintenance service, and daily trash removal and disposal. At the completion of work, or as directed by the Owner's Representative, remove off site the field office and related structures and restore area to the original site condition or as indicated in the Construction Documents.
 6. Reimbursable Costs for non-construction portions of the Work shall be documented with vendor's invoices to Private Entity and other similar documentation. Detailed information regarding vendor's hourly rates, materials costs or other expenditures will not be provided.
- b. Owner will not reimburse Private Entity for the following costs:
 1. 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; provided, however, that costs for such personnel on multiple projects may be reimbursed if the Private Entity requires each of such personnel to maintain accurate timesheets of any time applicable to

the Project, if such time allocated to the Project is reasonable, and if the Private Entity makes such timesheets available to the Owner at any time and from time to time as requested by the Owner. 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.

2. 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.
 3. Costs incurred prior to the Effective Date of this Agreement, except design or preconstruction services included in the Contract Cost Limit and authorized in advance of this agreement to expedite the schedule, unless the same have already been paid, or with the consent of the Owner prior to the Effective Date are to be paid, outside of this Agreement.
- c. Expenditures from the Private Entity's contingency must be approved in advance by the Owner's Representative, whose approval will not be unreasonably withheld. The Private Entity 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 parties agree that any excess contingency at the completion of the Project shall be subject to shared savings, as indicated in Paragraph 5.7. If the cost of the Project exceeds the GMP as adjusted for any Changes, including the full amount of the contingency, the Private Entity shall be solely responsible for any such excess amount above the GMP as adjusted for any Changes.

5.4 FIXED FEES

The Owner shall pay the Private Entity Fixed Fees, which consist of the architecture and engineering fees, pre-construction fees and expenses, and general contracting fees stated in Exhibit C. The Fixed Fees include all compensation payable by Owner to Private Entity beyond Reimbursable Costs for the Services and are intended to compensate for the Private Entity's and Contractor's home office support, overhead costs, and profit for the Project and for all design professional, including (A-E), 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 5.4. The components of the Fixed Fees below may be increased (i) pursuant to the terms of Section 2.1.2 (entitled Design Freeze) of Exhibit K, or (ii) when a significant Change in the Project scope, schedule or cost of performance results in a significant increase in the Reimbursable Costs, such as significant increase in materials, labor, supervision, management, architecture or engineering man-hours, or 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 significantly reduces the scope of the Work, provided that such costs have not been incurred prior to the equitable reduction.

- a. A-E Services for Design, Construction Documents and During Construction: This component of the Fixed Fees covers the design and preparation of Construction Documents. The A-E will provide coordination with all jurisdictions, authorities, planning and zoning, and building officials to obtain all necessary input, approvals and permits. This component of the Fixed Fees also covers construction administration by the A-E 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. Notwithstanding the forgoing, the Owner and the Private Entity acknowledge and agree that (1) the Owner has already incurred substantial design costs for the AHS Portion (the "Existing AHS Design Costs") under a certain agreement by and between the Owner and RRMM Architects, one of the two firms mentioned above in Section 1.1 (the "Existing RRMM Agreement"), (2) the Existing AHS Design Costs are already included in the Fixed Fees and CCL set forth on Exhibit C, (3) under no circumstances shall the Owner pay again any portion of the Existing AHS Design Costs, and (4) the Private Entity shall, upon the full execution of this Agreement, obtain from RRMM Architects the complete termination of the Existing RRMM Agreement, in such form and on such terms as are acceptable to the Owner.
- b. Contractor Fee during pre-construction and construction: This component of the Fixed Fees covers all pre-construction services, including design reviews, cost estimates, preparation of a GMP, profit on construction plus home office support (including project manager, project engineer, estimator, and purchasing agent) and overhead costs.

5.5 GUARANTEED MAXIMUM PRICE

- a. A 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 GMP is the maximum sum that the Owner shall pay to the Private Entity in total for this Project, except as otherwise provided in this Agreement, and shall in no event exceed the CCL. It includes all the Reimbursable Costs as defined in Section 5.3 that will be payable to Private Entity and all Fixed Fees as defined in Section 5.4 that will be payable to Private Entity.
- b. If at any time during construction it becomes apparent that the final Reimbursable Costs and Fixed Fees will exceed the GMP, the Private Entity shall immediately notify the Owner's Representative and advise him/her of the action it proposes to take to reduce costs. However, no change to the Owner's scope or reduction in quality will be approved.
- c. All proposed revisions or changes to the approved Plans and Specifications must be submitted to the Owner's Representative for review and approval for conformance with the approved Construction Documents plans and specifications, regardless of whether or not they affect the GMP. Owner's Representative's review and approval shall be not be unreasonably conditioned.
- d. Private Entity shall ensure that the GMP amount is not exceeded, but if such amount is exceeded, Private Entity shall be solely responsible for any such excess amount.
- e. No payment shall be made to Private Entity in excess of the GMP except as adjusted for any Changes made in accordance with this Agreement. The Private Entity shall be wholly responsible to complete the Project at no compensation above the GMP as adjusted for any Changes made in accordance with this Agreement, and the Owner shall have no obligation to pay the Private Entity such excess amount or any portion thereof.

5.6 CHANGE IN FEES RELATING TO SERVICES FOR MODIFICATION OF DESIGN

For Changes to the Work requested by the Owner in writing after Owner's approval of the 35% Plans and Specifications, if such Changes add to the scope of the Work, the Private Entity 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 indicated in Exhibit I hereto and a determination of a reasonable amount of time to complete such Change.

5.7. SHARED SAVINGS

If the final Project Reimbursable Costs plus Fixed Fees, as presented by Private Entity within sixty (60) days after Final Completion and then reviewed and audited by the Owner, are less than the GMP, as adjusted for any Changes made in accordance with this Agreement, then savings represented by the difference shall be shared on the following basis. Only if Substantial Completion is obtained on or before the date in Exhibit G, as adjusted for any

Changes, savings shall be shared as follows: 25% to the Private Entity and 75% to the Owner for the first two million dollars of savings; 50% to the Private Entity and 50% to the Owner for the second two million dollars of savings; and 0% to the Private Entity and 100% to the Owner for any savings after 4 million dollars of aggregate savings. As stated in Paragraph 5.3.c above, the Private Entity's Contingency amount of the GMP as indicated in Exhibit C shall be subject to Shared Savings. The maximum shared savings to the Private Entity shall not exceed \$1,500,000.

ARTICLE VI

SAMPLES

6.1. SAMPLE APPROVAL

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

6.2. LABELS

Each sample must be labeled to show:

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

6.3. MARKINGS

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

6.4. COVER LETTER

The Private Entity shall mail, under separate cover, a letter, in triplicate, submitting each shipment of samples and containing the information required in Sections 6.2 and 6.3 above. The Private Entity shall also enclose a copy of that letter with the shipment and fax or send a copy to the Owner's Representative on the Project.

6.5. USE OF SAMPLES

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

6.6. FAILURE

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

6.7. TESTING

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

6.8 COST OF TESTING

- a. The Private Entity shall pay for all costs of construction testing, including sampling, field tests, laboratory tests, and inspection services as required by the specifications. . The Private Entity shall provide written reports of observations, recommendations, and testing activities as the Project progresses. Private Entity shall make a written report on a biweekly basis to the Owner. All tests pertaining to physical or chemical properties of materials must be made in a laboratory approved by the Owner's Representative. The Private Entity shall include all applicable tests required by ASTM in the specifications. The specifications will also include all tests and inspections required by Codes and Standards.
- b. The Owner will pay for the costs of special inspections and any additional tests the Owner deems necessary. However, if such tests indicate that the workmanship or materials used by the Private Entity are not in conformance with the Construction Documents, approved shop drawings, or the approved materials, the Private Entity shall pay for the tests and/or re-tests and remove all Work and material failing to conform, and replace with Work and materials in full conformity, without additional cost to the Owner, and to the Owner's satisfaction.
- c. The Private Entity shall provide a listing in the specifications of all testing, inspections, and special inspections required by the building commissioner.
- d. The special inspections scope of work may include, but is not limited to sampling, field tests, laboratory tests, inspection services to verify soil classifications, moisture density of soils, observation of subgrades to receive compacted structural fill for building and pavement support, observation of pavement subgrades to receive compacted base course material, observation of fill placement and field density testing, observation of footing subgrades to evaluate suitable bearing, observation of concrete pours, field concrete slump testing, air content testing, molding of concrete cylinders, laboratory curing and compression testing of concrete, observation of steel installation, ultra-sonic testing of steel moment connections, steel weld testing and any other tests required by standards or codes referenced in the specifications to include, but not limited to

IBC, IEC, IPC ASTM, ACI, PCI, AISC, NFPA, of NEC, etc. It shall also include reporting to the Owner and Private Entity the status of the testing bi-weekly or at a schedule established by the Owner's Representative.

- e. If such tests indicate that the workmanship or materials used by the Private Entity are not in conformance with the Construction Documents, approved shop drawings, or the approved materials, the Private Entity shall pay for the re-tests. The Private Entity shall remove all Work and material failing to conform, and replace with Work and materials in full conformity, without additional cost to the Owner, and to the Owner's satisfaction.

6.9 INVENTORY OF SAMPLES

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

ARTICLE VII

MEASUREMENTS, DRAWINGS, SPECIFICATIONS

7.1. REQUIREMENT FOR VERIFICATION OF MEASUREMENTS/ON SITE DOCUMENTS

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

7.2. PLANS AND SPECIFICATIONS REQUIREMENTS

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

- a. Required technical specifications shall be prepared in accordance with the applicable standards. Specifications must be complete, concise, and reasonably free of repetition and ambiguity. Care must be exercised to avoid specifying the same Work in more than one section and to avoid duplication or conflict with the general provisions, special provisions, and the Plans and Specifications.
- b. Specifications shall be submitted on 8-1/2"x11" sheets, punched for 3-ring binders for ease in adding addenda.
- c. If guide specifications are not furnished, typical specifications developed and used by the A-E in general practice shall be used in preparing contract specifications. The CSI Format for Construction Specifications, CSI Document MP-2A, shall be used in the arrangement of Project specifications.
- d. Testing to establish compliance with the Contract Documents for critical items or critical portions of the Work shall be specified as the Private Entity's responsibility, subject to Section 6.8. Testing shall be consistent with that required under standard commercial practices as approved by the Owner's Representative and/or the local building officials. Any testing requirements specified do not limit the Owner from having additional testing and inspection performed at the Owner's discretion.
- e. Submittals such as shop drawings, samples, and certificates shall be specified as necessary to establish compliance with the Contract Documents for critical portions of the Work. The Private Entity should not require submittals for minor commercial items or for items of marginal value. The Private Entity shall include in the mechanical and electrical sections the extent of a manufacturer's literature, rating data, performance curves, spare part lists, and shop drawings that must be furnished for review and approval before procurement.
- f. The Plans and Specifications shall require the Private Entity to make tests of heating and air conditioning systems, as installed, to demonstrate that the equipment will perform as required. The results of the tests are to be submitted before the final inspection. Manufacturer's representatives may be required for inspection, start-up, and instructions in the operation and maintenance of equipment and the Private Entity shall ensure their presence for such purposes if requested by the Owner. Commissioning may be provided by the Owner and the Private Entity shall cooperate with the commissioning agent providing all documentation and demonstrations required.
- g. The Plans and Specifications shall require that the Private Entity furnish manufacturer's manuals, spare parts lists, diagrams, instructions, performance data, curves, and shop drawings as approved for major items of equipment to be installed in the Work.
- h. All required plans shall be prepared and furnished as reproducible tracings. All final plans must be 8-1/2"x11, 11"x17," 18"x24," 24"x36," or 30"x42," trim-to-trim, with Owner title block, graphic scale, and metric conversion table. Drawing methods and quality must permit satisfactory, clear, and legible one-half (1/2) size reproduction. Lettering on the plans will not be smaller in height than .12 (1/8) inch freehand or .10 inch mechanical.
- i. All final plans shall be detailed as necessary for efficient execution of the construction Work. They must conform to the above general requirements and the requirements previously stated. All original Plans must be prepared at an adequate scale to properly present the design data development including detailed features. Drawing scales for buildings or structures smaller than 1/8-inch = 1'-0" are not permitted without prior written approval of the Owner's Representative.
- j. The electrical design must be separated into two plans, when necessary to avoid congestion: one devoted to the power, receptacle, telephone, fire alarm and intercommunication systems, and the other to lighting. Similarly, the plumbing and heating/air conditioning must be separated, when necessary to avoid congestion. A minimum scale of 1/4-inch = 1'-0" must be used for all details of areas of congestion such as mechanical rooms, toilet rooms, and the like, and as may otherwise be reasonably designated by the Owner's Representative. Drawing scale for site, utility, or other related Work outside five foot building line), including details (engineer's) must clearly and adequately reflect the design data developed. Plans must be organized and provide appropriate details of the site Work (layout, grading, paving, and drainage) and the utilities (water, sewer, gas, power, and communications) separate from the building and/or structure plans.
- k. All design submissions prepared using CADD support shall be accompanied by electronic files of the submission in AutoCAD, in a version compatible with the Owner's computer system which uses Autodesk® Architectural Desktop.

- l. Any discrepancies in figures, or the Plans and Specifications, or submittals shall be promptly resolved by the Private Entity. The Private Entity shall immediately notify the Owner's Representative of any discrepancies in such Plans and Specifications and confirm such notice in writing within five (5) days.
- m. Specifications shall include, to the satisfaction of the Owner, training of Owner's personnel on the operation and maintenance of systems and equipment. In addition, the Plans and Specifications shall include, to the satisfaction of the Owner, the development and submittal of operations and maintenance manuals, to include three (3) copies of each such document.
- n. The Private Entity shall be responsible for making all changes in the Work necessary to adapt and accommodate any equivalent product or item that it uses. The necessary changes shall be made at the Private Entity's sole expense.
- o. The Private Entity shall, as requested by the Owner's Representative, provide all design calculations, which may include, but are not limited to, structural steel, mechanical, electrical, plumbing and civil calculations.

7.3. SHOP DRAWINGS, SUBMITTALS, COORDINATION DRAWINGS, AND SCHEDULES

- a. The Private Entity shall submit to the Owner's Representative, in triplicate, a schedule listing all items that will be furnished for review and approval no later than thirty (30) days after Owner's final approval of Plans and Specifications. For example, the schedule must include shop drawings and manufacturer's literature, test procedures, test results, certificates of compliance, material samples, and special guarantees, etc. The schedule must indicate the type of item, contract requirement reference, the Private Entity's scheduled date for submitting the above items, identification of the first scheduled activity and projected needs for approval answers to support procurement or installation. In preparing the schedule, reasonable time will be allowed for review, approval, and possible re-submittal. Also, the scheduling shall be coordinated with the approved construction progress chart. The Private Entity must revise and/or update the schedule as the Owner's Representative reasonably directs. Such revised schedule must be made available to the Owner's Representative for monitoring.
- b. The Private Entity shall submit to the Owner's Representative shop drawings, coordination drawings, and schedules for approval as required by the Specifications or requested by the Owner's Representative, as follows:
 - 1. Shop drawings shall include fabrication, erection, and setting drawings, schedule drawings, manufacturer's scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.
 - 2. Drawings and schedules, other than catalogs, pamphlets and similar printed material, shall be reviewed, signed and submitted in reproducible form with three prints made by a process approved by the Owner's Representative. Upon approval, the reproducible form will be returned to the Private Entity who shall furnish the number of additional prints, not to exceed ten. The Private Entity shall submit shop drawings in catalog, pamphlet, and similar printed form in a minimum of four copies plus as many additional copies as the Private Entity may desire or need for the use of subcontractors.
 - 3. Approval by the Owner's Representative is to validate conformance with the owner's intent, and does not relieve the Private Entity from any design liability for the approved submittals.
- c. Before submitting shop drawings on the mechanical and electrical Work, the Private Entity shall obtain the Owner's Representative's written approval of lists of mechanical and electrical equipment and materials as required by the Specifications.
- d. The Private Entity must check the drawings and schedules and coordinate them (by means of coordination drawings whenever required) with the Work of all trades involved before submission, indicating approval on them. Drawings and schedules submitted without evidence of subcontractors/trades' approval may be returned for resubmission.
- e. Each shop drawing or coordination drawing must have a blank area 5 x 5 inches, located adjacent to the title block. The title block must display:
 - 1. Number and title of drawing;
 - 2. Date of drawing or revision;
 - 3. Name of Project building or facility;
 - 4. Name of Private Entity and, if appropriate, of subcontractor submitting drawing;
 - 5. Clear identity of contents and location on the Work; and
 - 6. Project title and contract number.
 - 7. Provide a unique 9 digit alphanumeric transmittal number containing the Specification number (5 digits), sequence number (3 digits), and iteration letter (1 digit) clearly identifying the stage of the submittal process.
- f. Unless otherwise provided in this Agreement, or otherwise directed by the Owner's Representative, shop drawings, coordination drawings, and schedules must be submitted by Private Entity sufficiently in advance of construction requirements to permit fourteen (14) days, excluding delivery time to and from the Contractor, for checking and appropriate action by the A-E. Such items shall be submitted to the Owner's Representative (2 copies) for review concurrently with the A-E's review.
- g. Except as otherwise provided in Section 7.3. h below, approval of drawings and schedules will be general and may not be construed as:
 - 1. Permitting any departure from the requirements of the Contract Documents; or
 - 2. Relieving the Private Entity of responsibility for any errors, including details, dimensions, and materials.
- h. If drawings or schedules show variations from the requirements of the Contract Documents because of standard shop practice or for other reasons, the Private Entity must clearly describe the variation in the letter of transmittal. If acceptable, the Owner's Representative may approve any or all variations and issue an appropriate Change Order. If the Private Entity fails to describe these variations, it is not relieved of the responsibility for executing the Work in accordance with the Contract Documents, even though the drawings or schedules have been previously approved.
- i. Shop drawings, samples, color schedules, catalog cuts, construction schedule, etc. submitted to Owner's Representative must first be reviewed by the A-E to verify compliance with the Construction Documents. The Owner's Representative reserves the right to review building shop drawings, and formwork and falsework drawings. Such submittals shall be only in response to a specific request by the Owner's Representative.
- j. The Private Entity shall prepare and submit equipment room layout drawings and drawings of areas where the equipment proposed for use could present interface or space difficulties. Room layout drawings must conform to the requirements established for drawings. Layouts must be submitted within forty (40) days after completion of final construction drawings. Submittals describing the various mechanical and electrical equipment items which are to be installed in the areas represented by the layout drawings must be assembled and submitted concurrently and accompanied by the room layout drawings. Room layout drawings must show all pertinent structural and fenestration features and other items

such as cabinets required for installation and which will affect the available space. All mechanical and electrical equipment and accessories must be shown in scale in plan and also in elevation and/or section in their installed locations. Duct work and piping also must be shown. Equipment room layout designs must ensure all equipment is accessible for maintenance, repair and replacement.

- k. All shop drawings, ductwork drawings, and sprinkler drawings must be on 30" by 42" sheets to fit the size of the Project plans.
- l. At the completion of the Project, updated ductwork drawings and sprinkler drawings must be submitted as part of the "As-Built" drawings submission.
- m. All certificates required for demonstrating proof of compliance of materials with specification requirements, including mill certificates, statements of application, and extended warranties, must be executed in quadruplicate and furnished to the Owner's Representative. It is the Private Entity's responsibility to review all certificates to ensure compliance with the requirements of the Contract Documents and that all affidavits are properly executed prior to submission to the Owner's Representative. Each certificate must be signed by an official authorized to certify on behalf of the manufacturing company. Each certificate must contain the name and address of the manufacturer, the Project name and location, and the quantity and date(s) of shipment or delivery to which the certificate(s) apply. Copies of laboratory test reports submitted with certificates must contain the name and address of the testing laboratory and the date(s) of the tests to which the report applies. Certification shall not be construed as relieving the Private Entity from furnishing satisfactory material, if, after test(s) are performed on selected sample(s), the material is found not to meet the specified requirements.
- n. A-E shall review and take action on all shop drawings and samples. All approvals must be in accordance with the terms of the Contract Documents. Processing will be accomplished in accordance with the following procedure:
 - 1. The Contractor shall transmit reproducible copies of shop drawings etc. to A-E for review. Information copies of the letter of transmittal, clearly identifying shop drawings, etc., shall at the same time be furnished to the Owner's Representative.
 - 2. As a result of A-E's review, each submittal will be marked by A-E as follows:
 - "Approved": The fabrication, manufacture and/or construction may proceed providing the Work is in compliance with the Contract Documents.
 - "Approved as Noted": The fabrication, manufacture and/or construction may proceed providing the Work is in compliance with A-E's notations and the Contract Documents.
 - "Rejected": No Work shall be fabricated, manufactured or constructed and a new submittal is required. No Work for a submittal marked "C-Action" shall be permitted on site.
 - (a) The Private Entity is responsible for obtaining prints of all "Approved" and "Approved as Noted" reproducible shop drawings and distributing them to the field and to the subcontractors. Concurrently, two (2) copies of each print shall be provided to the Owner's Representative.
 - (b) The Private Entity is responsible for obtaining copies of all "Approved" and "Approved as Noted" manufacturer's descriptive literature, literature, catalog cuts and brochures and distributing them to the Contractor. Concurrently, two (2) copies of each shall be provided to the Owner's Representative.
 - (c) The Private Entity is responsible for submitting new shop drawings, brochures and/or samples to replace all "Rejected" items and furnishing two (2) copies to the Owner's Representative.
- 3. The Private Entity is responsible for maintaining the a log of all shop drawings. An updated copy of this log shall be furnished to the Owner's Representative no less than monthly.
- 4. At the option of the Owner in the Owner's sole discretion, the Owner may direct that any review conducted, or required to be conducted, by A-E be submitted to a third-party of the Owner's choosing for an independent evaluation.

7.4. RECORD "AS BUILT" DRAWINGS

- a. The Private Entity shall, during the progress of the Work, keep a master set of prints on the job site (Record or also referred to as "As-Built" drawings) on which is kept a complete, careful and neat record of all deviations from the Construction Documents made during the course of the Work.
- b. The Private Entity shall provide the Owner with one, complete, reproducible set of the Construction Documents incorporating the revisions and changes made during construction up to acceptance of the Project. These updated Plans and Specifications shall reflect all changes to the Construction Documents to indicate the "As-Built" conditions, including revisions in site and building area tabulations. These Plans and Specifications must be certified as to their correctness by the signature of the Private Entity and A-E and used in preparing a permanent set of "As-Built" drawings.
- c. In addition to reproducible submissions, the Private Entity must submit a CADD system electronic file for these "As Built" documents prepared with a CADD system compatible with the Owner's AutoCAD system.
- d. The Owner reserves the right to review "As-Built" documents at any time during the Project.
- e. The Private Entity shall forward all "As-Built" drawings, specifications and photographs to the Owner's Representative not later than thirty (30) days after Project completion.
- f. Any part of the costs associated with the preparation and completion of the "As-Built" drawings will not be paid to Private Entity by Owner until the As-Built drawings are provided to and approved by the Owner's Representative.

7.5. SPARE PARTS DATA

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

ARTICLE VIII

Warranty

8.1. WARRANTIES

The Private Entity warrants that all the Work furnished as part of the Services is in substantial accordance with the requirements of the Contract Documents, free from any defect or inferior materials or equipment, and is of such quality workmanship as to meet the applicable standard of care in Virginia for the type of Work performed, for a period of two (2) years after the date of Substantial Completion of the Work as defined by Exhibit G, and, unless otherwise agreed by the Owner in writing, in Owner's sole discretion, all materials and equipment are new. The Private Entity shall provide a list of extended warranties at 35% design that Private Entity is providing, or will be providing, or is or will be assigning from manufacturers and which shall be in addition to the warranty mentioned above. All warranties are subject to the reasonable approval of the Owner. The Private Entity shall include provisions in the Specifications that such warranties do not contain any limitation on liability, any reduction of the applicable statute of limitations, any indemnity requirements from the Owner, any venue or forum selection clause other than Montgomery County, Virginia, or any requirement for mediation or arbitration. In addition, the Private Entity shall, after the third and fifth anniversaries of the Substantial Completion of the Work, conduct walk-through inspections with the Owner for the detection and correction by the Private Entity, at the Private Entity's expense, of latent defects that have by then appeared.

8.2. REPAIRS

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

- a. Place in a condition consistent with the warranties and satisfactory to the Owner such warranted Work;
- b. Correct all damage to equipment, the site, the building, or its contents that is the result of such unsatisfactory Work in a manner satisfactory to the Owner; and
- c. Correct any Work, materials, or equipment disturbed in fulfilling the warranty in a manner satisfactory to the Owner; and
- d. Should the Private Entity fail to proceed promptly in accordance with the warranty, the Owner may have the Work performed by others at the Private Entity's expense and Private Entity agrees to promptly pay the Owner for all such costs, including reasonable attorney's fees.

8.3 TRANSFER OF WARRANTIES

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

8.4 NON-WAIVER

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

ARTICLE IX

INSURANCE, BONDS AND RISK

9.1 BONDS

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

9.2 INSURANCE

- a. During the term of this Agreement, the Private Entity and its subcontractors shall maintain the insurance required by this Section 9.2, the Private Entity can include such subcontractors under the Private Entity coverage, and/or the subcontractors can include Private Entity under their coverage. The Private Entity is fully responsible to verify the insurance coverage of any subcontractors, and the Private Entity proof of coverage documentation must specifically so state that there exists no exclusion for Private Entity subcontractors. Insurance companies providing such insurance shall be licensed in Virginia and shall be rated at least AVIII or higher by A.M. Best. Policies shall include all terms and provisions normally included in a policy of the type specified. The Owner, its officers, employees, agents and representatives shall be included as an additional insured on the liability policies, including each professional liability policy under Section 9.3, but not for any Worker's Compensation/Employers Liability Coverage.
- b. Neither the Private Entity nor any subcontractor shall commence Work for this Project until the Private Entity has provided proof of insurance as required under this Section and such insurance has been approved by the Owner. The following minimum insurance requirements apply:

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

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

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

Products/Completed Operations
Personal Injury and Advertising Injury

Bodily Injury
Delete X, C, U exclusions
Rigger's Liability stating 'on hook' coverage

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

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

Umbrella Coverage:

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

- c. The required certificates of insurance shall be on an Acord form and shall contain substantially the following statement: "The insurance covered by this certificate shall not be canceled except after a thirty (30) day advance written notice has been received by the Owner. If changes to Acord Certificate form, which are made at Owner's request, require endorsement of any policy, then any additional premiums for such endorsement(s) shall be a Reimbursable Cost.
- d. The Private Entity and its subcontractors must furnish a certificate of insurance or, if required by the Owner's Representative, true copies of liability policies and manually countersigned endorsements of any changes required by this Agreement. Insurance must be effective, and evidence of acceptable insurance furnished by Private Entity to Owner, before beginning performance under this Agreement. Evidence of renewal must be furnished not later than five (5) days before a policy expires.
- e. The maintenance of insurance coverage as required by this Section 9.2 is a continuing obligation, and the lapse or termination of insurance coverage without replacement coverage being obtained will be grounds for termination of this Agreement for default.
- f. The Owner will carry builder's risk insurance coverage.
- g. Private Entity shall be responsible for filing and settling of all claims and liaison with insurance adjusters.
- h. Neither the Private Entity nor any subcontractor shall commence Work under this Agreement until the Private Entity has obtained and provided proof of the required insurance under this section to the Owner. The Private Entity shall confirm that all subcontractors have provided the Private Entity with proof of insurance. Private Entity further warrants that proof of coverage as provided to the Owner responds on a primary basis in the event of an uninsured or underinsured subcontractor. All such insurance shall be primary and non-contributory to any insurance or self-insurance the Owner may have in force.
- i. The required certificates of insurance shall name the Owner, its officers, agents, volunteers, and employees as additional insureds except with regard to the professional liability, workers' compensation and employers' liability coverages. All coverages, except Worker's Compensation and professional liability insurance, shall contain a waiver of subrogation in favor of the Owner. Additional insured and waiver endorsements shall be received by the Owner from the insurer within thirty (30) days after the Effective Date.
- j. Property Coverage – Installation Floater (and Rigger's Form, if applicable) will be required for the installation of contents or equipment, coverage will begin with supplier and continue until equipment/contents has been fully installed. Floater will be valued for the replacement cost value of equipment/contents including all costs. The Private Entity 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 Private Entity's insurance coverage, or may be a certificate from the crane company supplying this coverage and listing the Owner, its officers, agents, volunteers, and employees, and the Private Entity and the subcontractors as additional insureds.
- k. Special Hazards - In the event special hazards required by the Contract Documents, the Private Entity 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 Private Entity 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 Private Entity by the Owner, otherwise the Private Entity shall assume full responsibility for the purchase with no charge back to the Owner.
- l. Limit of Liability - Nothing contained in these insurance requirements is to be construed as limiting the liability of Private Entity. Owner does not in any way represent that the coverages or the limits of insurance specified is sufficient or adequate to protect Private Entity's interests or liabilities, but are merely minimums. The obligation of the Private Entity to purchase insurance herein shall not in any way limit the obligation of the Private Entity in any event and/or in the event that the Owner should suffer an injury or loss in excess of the amount recoverable through insurance.

9.3 ERRORS AND OMISSIONS

- a. The Private Entity shall obtain and maintain, and shall ensure that the A-E shall obtain and maintain, Professional Liability insurance in the amount of \$2,000,000 per claim.
- b. Unless the Private Entity's policy is prepaid, non-cancelable, and issued for a period at least equal to the term of this Agreement on an occurrence basis, the Private Entity shall have the policy amended to include substantially the following provision: "It is a condition of this policy that the company shall endeavor to furnish written notice to the Owner thirty (30) days in advance of the effective date of cancellation of this policy."
- c. The Private Entity shall furnish a certificate of insurance or, if required by the Owner's Representative, true copies of liability policies and manually countersigned endorsements of any changes. Insurance must be effective, and evidence of acceptable insurance furnished by Private Entity to Owner, before beginning performance under this Agreement. Evidence of renewal shall be furnished not later than five (5) days before a policy expires.

9.4 INDEMNIFICATION

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

from the negligent act or omission of the Private Entity or any of its subcontractors, and/or arising in any way out of or resulting from this Agreement or any of the Work provided thereunder, except to the extent such failure is caused by the gross negligence or willful misconduct of the Owner.

9.5 BANKRUPTCY

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

9.6 GUARANTORS OF PERFORMANCE

<INTENTIONALLY OMITTED>.

ARTICLE X

NOTICES TO PROCEED, COMMENCEMENT AND COMPLETION

10.1 INITIAL NOTICE TO PROCEED

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

10.2 NOTICE TO PROCEED FOR CONSTRUCTION, PROSECUTION, AND COMPLETION OF WORK

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

- a. Commence Work under this Agreement within ten (10) days after the date of the Notice to Proceed from the Owner's Representative,
- b. Prosecute the Work diligently, and
- c. Substantially complete each phase of the construction Work in accordance with Exhibit G, TIME BEING OF THE ESSENCE.

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. Private Entity shall achieve Final Completion as soon as possible but not later than sixty (60) days after Substantial Completion of each phase. At the time of receipt of the building permit and monthly thereafter, Private Entity 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.

10.3 NOTICE OF DELAY

Immediately, and in no event no later than ten (10) days after the Private Entity first believes an event may give rise to or result in a Change due to any delay under this Agreement, the Private Entity shall notify the Owner's Representative in writing of such event. The notification must identify the difficulties, the reasons for them, and the estimated period of delay anticipated. Failure to give such notice in strict compliance with this Section 10.3 will waive any right by Private Entity to make a claim based upon such delay. Such notice shall be a condition precedent to Private Entity's right to pursue any claim for an adjustment to payment or schedule based upon such delay.

10.4 LIQUIDATED DAMAGES FOR DELAY

- a. Owner and Private Entity recognize that time is of the essence in the completion of the Work and that Owner may suffer loss or damages if the Work is not completed within the period of time stipulated, plus any extensions thereof allowed in accordance with the Agreement. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss or damages suffered by Owner if the Work is not completed on time. Accordingly, if such Work is not fully and satisfactorily completed within the period of time set forth in this Agreement, the Private Entity 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 Two Thousand Five Hundred Dollars (\$2,500) per School as step one liquidated damages for each and every consecutive day of unexcused delay after the date established for Substantial Completion. Once the Work is Substantially Complete, the accrual of step one liquidated damages shall stop and the Private Entity shall have sixty (60) days in which to achieve Final Completion of the Work. If Final Completion of the Work is not achieved by the 60th day after Substantial Completion has been achieved, and if no extension of such time period has been granted by the Owner as required by this Agreement, then Private Entity shall owe the Owner the additional amount of step 2 liquidated damages as set forth in "b" below.
- b. The Private Entity agrees it shall owe to and pay to Owner as liquidated damages the sum of Five Hundred Dollars (\$500) per School as step two liquidated damages for each consecutive day during which full and satisfactory completion of the Work is delayed or exceeds the number of days provided for in this Agreement to complete the Work. Private Entity further agrees that any liquidated damages Owner assesses against Private Entity may also be withheld by Owner from any retainage or other sums Owner may otherwise owe to Private Entity. Private Entity 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 Private Entity is not responsible for delays. All such liquidated damages are in addition to any other damages other than for delay that the Owner may be entitled to recover from Private Entity.

10.5 SUSPENSIONS AND DELAYS

- a. If the performance of all or any part of the Work of this Agreement is unreasonably suspended, delayed, or interrupted solely by:
 1. An order or act of the Owner's Representative in administering this Agreement; or
 2. By a failure of the Owner's Representative to act within the time specified in this Agreement or within a reasonable time so as not to delay the Work of the Private Entity;

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

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

10.6 EXCUSABLE DELAYS

Private Entity shall not be in default by reason of an excusable failure in performing this Agreement in accordance with its terms (including any failure by the Private Entity to make progress in the prosecution of the Work that endangers performance) if such failure arises out of causes beyond the reasonable control and without the substantial fault or negligence of the Private Entity or those providing any services through Private Entity. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Owner, fires, severe floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe and extreme weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Private Entity or those providing any of the Services through Private Entity, including without limitation, the A-E, the Contractor, and any subcontractor, who shall plan for all contingencies which can be reasonably anticipated, such as unfavorable weather. Contingencies which can be reasonably anticipated shall not be considered a basis for claiming an excusable delay. However, Private Entity must notify Owner's Representative in writing within ten (10) days of any such event and such notice is a condition precedent to any such claim. Furthermore, Private Entity shall not be entitled to any additional compensation for such events, but only to a reasonable time extension as determined by the Owner. Owner's Representative may disallow such a claim for an excusable delay if such claim does not meet all the requirements of this Agreement.

10.7 CONSTRUCTION SCHEDULE/ PROGRESS CHART

- a. Within ten (10) working days after receiving Notice to Proceed for each phase, the Private Entity shall prepare and submit to the Owner's Representative a complete detailed design and construction schedule in the form of a electronic file and six (6) copies of a practical progress chart. The schedule shall show the principal categories of work, corresponding with those used in the breakdown on which progress payments are based, the order in which the Private Entity proposes to carry on the Work, the date on which it will start each category of Work, and the contemplated dates for completion. The design and construction schedule must be in suitable scale to indicate graphically the total percentage of Work scheduled to be in place at any time. The Private Entity shall use a Critical Path Method (CPM) format. This schedule shall use Primavera Scheduling software (Primavera Contractor, P3 or P6), with at least 100 activities including sitework, procurement, delivery, significant owner activities, and installation of construction materials and equipment. Activities shall be organized by work areas, and work breakdown structure, and shall be fully cost loaded such that the sum of all activities equals the total GMP and shall be used as the feeder report for the Schedule of Values for the purpose of determining progress payment. No activity shall have a value exceeding \$40,000 dollars, or a duration longer than ten (10) working days, without prior approval of the Owner's Representative. A critical path shall be developed based on scheduling logic that identifies all successor and predecessor activities and float. Activities of like duration, programmed for different times of the year shall be modified to account for weather that can reasonably be expected by the Private Entity as indicated in Exhibit L. Activity constraints shall be avoided. Such software and schedule shall be compatible with the Owner Representative's computer system and scheduling software. This will allow the Owner's Representative to efficiently process each pay application in Expedition, using the AIA G702/G703 format where the G703 back up listing will be the Schedule of Values in CSI division format as explained in Section 16.3, so that the Owner will only be paying for work actually completed by the Private Entity.

At the end of each progress payment period, or at such reasonable intervals as directed by the Owner's Representative, the Private Entity shall:

1. Revise the design and construction schedule to reflect any changes in the Work, completion time, or both, as approved by the Owner's Representative;
 2. Enter on the design and construction schedule the total percentage of Work actually in place; and
 3. Submit three (3) copies of the adjusted design and construction schedule, and a complete electronic update, to the Owner's Representative.
- b. If at any time the Work falls behind the design and construction schedule after taking into consideration any excusable delays as defined above, the Private Entity shall take such action as necessary to improve progress. The Owner's Representative may require the Private Entity to submit a revised design and construction schedule demonstrating its proposed recovery plan to make up the lag in scheduled progress. The plan shall show how the Private Entity shall achieve recovery by increasing resources and/or work times, (if approved by Owner). If the Owner's Representative finds the proposed plan unacceptable, the Private Entity may be required to submit a new plan. If the new plan submitted is not reasonable, after consultation with the Private Entity, the Owner's Representative may require the Private Entity to increase the work force, accelerate the planned construction volume, increase assigned construction equipment, or the number of work shifts, or take other appropriate action, all without increase to the GMP.
- c. The Private Entity shall update the schedule and issue a progress report each month. If after any update has been performed the actual durations of recurring activities are longer than the original durations, the Private Entity shall issue a written plan that indicates the additional resources to be allocated to those activities showing how they will achieve the planned duration. Alternatively, the durations of all subsequent occurrences of that type of activity shall be increased to reflect actual production, and the Private Entity shall issue a recovery plan to the Owner's Representative within ten (10) days showing how the Project will get back on schedule.
- d. Failure of the Private Entity to comply with any of these requirements will be considered grounds for a determination by the Owner's Representative that the Private Entity is failing to prosecute the Work with such diligence as will ensure its completion within the time specified.

10.8 EXCEPTION TO COMPLETION SCHEDULE AND LIQUIDATED DAMAGES

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

ARTICLE XI

PRIVATE ENTITY RESPONSIBILITIES

11.1 PERFORMANCE AND SUPERINTENDENCE OF WORK BY PRIVATE ENTITY

- a. The Private Entity shall be responsible for providing all the Services called for by this Agreement. In addition, the Private Entity or its Contractor shall perform on the site, with its own organization, work equivalent to at least 10% percent of the total amount of Work to be performed under this Agreement. The percentage of Work required to be performed by the Private Entity or its Contractor may be reduced with written approval of the Owner's Representative.
- b. The Private Entity must give personal superintendence to the Work either in person or by having a foreman or superintendent on the Contractor's or Private Entity's payroll, approved by the Owner's Representative, with authority to act on behalf of the Private Entity, on the site at all times Work is in progress.
 1. A minimum of one such superintendent must be provided on site to be responsible for coordinating, directing, inspecting, and expediting the Work of the Contractor and its subcontractors.
 2. It is contemplated that all Work will be performed during normal working hours, between the hours of 7:00 a.m. until 7:00 p.m., Monday through Friday, local time, unless otherwise specified in this Agreement or unless otherwise prohibited by the local jurisdiction. Work performed by the Private Entity at its own volition outside such normal working hours shall be at no additional expense to the Owner. The Private Entity's material and equipment deliveries must not interfere with the arrival or departure of Owner employees, staff and visitors to existing facilities.
- c. The Private Entity must refer requests received from occupants of buildings included in the immediate Work area to change the hours of Work, including anticipated cost and schedule impact, to the Owner's Representative for resolution.
- d. The Private Entity shall submit a daily construction report by close of business of the following working day on a form provided by or approved by the Owner's Representative or other form customarily used in the industry. The report shall indicate the number of people by trade or craft, and the type and location of Work. The report shall include subcontractors, safety and quality violations observed, corrective measures taken to correct the violations, and other information requested by the Owner's Representative. The Owner's Representative may modify the requirements of this report as the Project progresses.

11.2 MATERIALS AND WORKMANSHIP

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

11.3 RESPONSIBILITY FOR DESIGN

- a. It is understood and agreed that this Agreement includes design services. The Private Entity agrees not to assign or transfer any of Private Entity's interests in this Agreement. The Private Entity agrees not to transfer or delegate, to others, its responsibilities under this Agreement except the Private Entity shall be allowed to subcontract portions of the Scope of Work. The Private Entity may, by subcontract, engage persons who are design and engineering professionals to provide design services for the Project. The Private Entity represents that the design professionals providing services for the Project include Persons with required Virginia licenses and registrations or are otherwise permitted by law to provide such services. The Private Entity further represents that the structural, electrical, mechanical and other engineering disciplines provided for the design of the Project will be under the direct supervision of licensed professional engineers who are registered in Virginia or who are persons in responsible charge of an engineering firm registered in Virginia.
- b. The Private Entity is responsible to Owner for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other Services furnished by the Private Entity's design professionals under this Agreement. The Private Entity must, without any changes to the CCL, GMP or schedule, correct any errors or deficiencies in any of the designs, drawings, specifications, and other Services, all at no costs to the Owner, and, provided that such errors or deficiencies do not arise out of, or as a result of, information or directives furnished by Owner or Owner's Representative, and further provided, that because of such errors or deficiencies the Work does not conform to the requirements of this Agreement.
- c. As part of the Private Entity's responsibility under this Agreement, the Private Entity shall ensure that the design and construction of the Project shall comply with all applicable Codes and Standards, including without limitation the VUSBC, the National Fire Protection Association Codes, the Uniform Federal Accessibility Standards, and the Americans with Disabilities Act, Section 504, Rehabilitations Act 1973 Handicapped Standards.

Any Owner review, approval, or acceptance of, or payment for, any of the Services required under this Agreement shall not be construed to and does not relieve Private Entity of any obligation under this Agreement. The Private Entity shall remain liable to the Owner for all damages caused by the Private Entity's performance of any Services furnished under this Agreement that fails to meet the requirements of this Agreement.
- e. The rights and remedies of the Owner provided for under this Agreement are in addition to any other rights and remedies provided by law.

11.4 USE OF PREMISES

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

11.5 LICENSES, PERMITS AND RESPONSIBILITIES

- a. Except as otherwise noted in this Agreement, the Private Entity is responsible for identifying and obtaining any necessary licenses and permits, at the Private Entity's expense and for complying with the Codes and Standards in connection with the prosecution of the Work. The Owner will directly pay actual costs for all permits as set forth in Section 5.3.a. The Private Entity is responsible for all injury to persons or damage to property that occurs as a result of its actions. The Private Entity must take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Private Entity is responsible also for all materials delivered and Work performed until completion and acceptance by the Owner of the entire construction Work. There shall be no mark-up on any permit or other costs paid for by the Owner for the items covered by the allowances.
- b. The Private Entity shall demonstrate compliance with all environmental permits and regulations identified in the Contract Documents and/or as may be required by law prior to, and during construction.

11.6 BUILDING CODES, FEES, AND CHARGES

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

11.7 FEDERAL, STATE, AND LOCAL TAXES

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

11.8 IDENTIFICATION OF CONTRACT DELIVERABLES

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

- a. Name and business address of the Private Entity.
- b. Contract number.
- c. Name, position, and office location of the Owner's Representative.
- d. Date of document.

11.9 PATENT AND COPYRIGHT INDEMNITY.

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

11.10 NON-DISCLOSURE

The Private Entity shall not disclose any information received from the Owner that is marked confidential unless such disclosure is required by law or approved by the Owner, such approval not to be unreasonably withheld or delayed.

11.11 DEBRIS AND CLEANUP

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

11.12 HEAT

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

11.13 ENGLISH LANGUAGE REQUIREMENT OF ON-SITE SUPERINTENDENT

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

11.14 SUBSTITUTE MATERIALS OR METHODS

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

- a. Once a substitute has been selected and approved by the Owner's Representative, it must be used for the entire Project unless the Private Entity has proposed, and Owner's Representative has approved, the substitute for a limited application
- b. The Private Entity must coordinate its selection with the Plans and Specifications and the A-E.
- c. Substitutions proposed by Private Entity shall be at no increase to the GMP.

11.15 ADVERTISING OF AWARDS

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

11.16 GROUND BREAKING CEREMONIES

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

ARTICLE XII

OWNER RIGHTS AND RESPONSIBILITIES

12.1 OWNER'S REPRESENTATIVE

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

12.2 SITE VISITS

- a. The Owner from time to time during construction may desire to conduct groups of guests on visits to the site of the Work. These tours will be authorized by the Owner's Representative or his/her appointed representative. In such event the Private Entity shall cooperate by providing reasonable access to and posting signs to give notice of dangerous areas, providing hard hats, and making such other arrangements for the safety and convenience of the guests as may be required. The Owner's Representative shall give the Private Entity as much advance notice of any such visits as is practical and to the maximum practicable extent shall schedule any such visits so as not to interfere with the progress of the Work.
- b. The Private Entity's indemnification of the Owner contained in the "indemnification" clause of this Agreement shall not apply during any such visits to the Project by visitors or guests of the Owner or to Owner's officers, employees, or agents who are engaged in conducting, guiding, or accompanying any such visits, leaving the Owner and the Private Entity and its subcontractors responsible for their own acts and omissions according to applicable law and other clauses of this Agreement. This limited exception in this 12.2.b to Private Entity's indemnification obligation does not apply to inspectors, investigations, or other site visits provided for elsewhere in this Agreement or conducted for the purpose of aiding in the enforcement of law.

12.3 OWNER-DIRECTED STAFFING CHANGES

- a. Should the Owner's Representative reasonably deem it to be in the best interests of the Owner to require the removal of any person working on or under this Agreement, that person must be immediately removed from the Work. If Private Entity does not agree with such action, the Private Entity may within three (3) days request the Owner to review and make a decision on the matter, which decision shall be final.
- b. "Person," as used in this clause, includes any persons providing Work through or under the Private Entity.

12.4 EXAMINATION OF RECORDS

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

12.5 OWNERSHIP OF WORK PRODUCT

- a. Work Product: The Plans and Specifications, including electronic copy of them, furnished by the Private Entity to the Owner under this Agreement and the copyrights thereto ("Work Product") shall become the property of the Owner upon payment for such item(s). Private Entity, A-E, and Contractor shall have the right to use the Work Product, except as a re-use of the same design on another project.
- b. The Owner may use the Work Product in connection with the Owner's occupancy and use of the Project, including for maintenance and repairs, future renovations, and expansions, and for any other purpose the Owner deems appropriate. Such Work Product is not intended or expected to be suitable for use on other projects. Such use of Work Product by Owner or any other person to whom the Owner has furnished such Work

Product shall be at the user's sole risk of liability and without liability or legal exposure to Private Entity, A-E, Contractor, or any of their subcontractors and consultants, or any of their officers or employees.

- c. The Private Entity shall include in its contract with its A-E and have included in contracts with any design professionals providing any services for this Project provisions that require all design professionals providing any services for the Project to agree to this Section 12.5, and the Private Entity shall indemnify, defend and hold harmless the Owner and its agents, employees, architects, engineers, consultants and contractors from any claim of copyright infringement by any Person based upon the Owner's use of the Work Product pursuant to this Section 12.5 for this or any other project.
- d. Nothing in this Section 12.5 shall be deemed to relieve the Private Entity or any design professionals providing services through the Private Entity of their obligation under this Agreement that all design and design services provided for this Project shall conform to the applicable standard of care defined herein for the applicable design professional providing such design or services.

12.6 SURVEY MONUMENTS AND BENCHMARKS

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

12.7 OWNER PARTIAL OCCUPANCY

- a. The Owner's Representative reserves the right of partial occupancy or use of facilities, services, and utilities, before final acceptance, without implying completion or acceptance of any part of the Project by the Owner. Before such occupancy or use, the Owner's Representative must furnish the Private Entity an itemized list of Work remaining to be performed or corrected. Failure to list an item will not relieve the Private Entity of the responsibility for complying with the terms of the Contract Documents. Responsibility for damage to the Work within the partially occupied area shall be transferred to the Owner for any such partial occupancy or use.
- b. Costs incurred and delays to the completion of the Project as a direct result of such partial occupancy or use of facilities, services, and utilities may be subject to equitable adjustment under Article XVII, Section 17.1.

12.8 OWNER PROPERTY

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

- g. Within forty-five (45) days after Notice to Proceed with construction, the Private Entity must submit a schedule to the Owner's Representative, in an acceptable format and giving desired dates for delivery of items and property furnished by the Owner. Approved dates of delivery must be confirmed by the Owner's Representative in writing. Approved dates of delivery must be confirmed by the Private Entity thirty (30) days prior to scheduled delivery. The Private Entity must submit a written report to the Owner's Representative within forty-eight (48) hours after receipt, noting any shortages or damage to the Owner-furnished property, other than for the Land.
- h. If Owner-furnished equipment is to be installed and is not on the construction site, the Owner will make separate arrangements to provide delivery to the site. Any costs to Private Entity for labor associated with loading or unloading this Owner-furnished equipment may be negotiated.
- i. Upon completing this Agreement, the Private Entity shall follow the Owner's Representative's instructions regarding the disposition of all Owner property not consumed in performing this Agreement or previously returned to the Owner. The Private Entity shall prepare for shipment, deliver f.o.b. origin, or dispose of the Owner property, as directed or authorized by the Owner's Representative. The net proceeds of any such disposal will be credited to award amounts due Private Entity or will be paid to the Owner as directed by the Owner's Representative.

12.9 OTHER CONTRACTS

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

12.10 OWNER PROPERTY FURNISHED "As Is"

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

12.11 Owner's Right to Stop Work

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

ARTICLE XIII

ADMINISTRATIVE ITEMS

13.1 STANDARD REFERENCES

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

ARTICLE XIV

SUBCONTRACTING

14.1 SUBCONTRACTS

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

ARTICLE XV

PROTECTION OF PERSONS AND PROPERTY

15.1 ACCIDENT PREVENTION

- a. All construction and other Work on this Project must be performed in compliance with the Occupational Safety and Health Act of 1970 and with local, state and federal occupational safety and health regulations enforced by an agency of the locality or state under a plan approved by the U.S. Department of Labor, Occupational Safety and Health Administration ("OSHA"). Where requirements are different or in conflict, the more stringent requirement will apply.
- b. The Private Entity shall maintain or require maintenance by the Contractor of an accurate record of exposure data and all accidents incidental to Work performed under this Agreement resulting in death, traumatic injury, occupational disease, or damage to property, material, supplies, or equipment. The Private Entity shall submit regular Project safety reports, exposure data, and accident reports, as prescribed by the Owner's Representative.
- c. A written comprehensive health and safety plan (the "Health and Safety Plan") is required as follows:
 1. Prior to commencing on-site Work, the Private Entity shall submit to the Owner's Representative, in triplicate, a Health and Safety Plan designed to provide a system by which hazards on the Project site will be controlled to minimize or eliminate occupational injuries or illnesses during performance of the contract.
 2. The Health and Safety Plan shall state that the Contractor, A-E, and all subcontractors are required to comply with the Private Entity's Project safety rules and requirements issued under the authority of that program.
 3. The Health and Safety Plan shall identify, by name, the Private Entity's representative responsible for the execution of the Project safety program. The Private Entity's Project safety representative shall have the express written authority from the Private Entity to stop work, to abate hazardous conditions or unsafe practices, and to eject any Private Entity, subcontractor, or vendor employees from the Project site for failure to comply with safety requirements.
 4. The Health and Safety Plan must include the precautionary measures to be taken to protect the Owner's staff, employees, students and the public.
- d. The authority, responsibilities, and duties of the Private Entity's Project safety representative must be incorporated as part of the Health and Safety Plan. The safety responsibilities include, but are not limited to, conducting subcontractor construction safety program reviews, conducting employee safety orientation training, conducting weekly safety meetings, conducting daily site safety inspections, auditing subcontractor safety compliance, and preparing required periodic and special safety reports.
- e. In addition to the general requirements of Health and Safety Standards, the Private Entity, A-E and Contractor, specifically must comply with applicable OSHA requirements concerning hazard communications standards. Details of the Private Entity's hazard communications program shall be included in the Health and Safety Plan.

15.2 HEALTH AND SAFETY STANDARDS

- a. In performing this contract, the Private Entity must:
 1. Comply with applicable Occupational Safety and Health Standards promulgated pursuant to the authority of the Occupational Safety and Health Act of 1970 (OSHA).
 2. Comply with any other applicable federal, state, or local regulations governing workplace safety to the extent they do not conflict with a.1 above; however, the more stringent standard shall apply.
 3. Comply with any Owner standard unless the OSHA standard contains more rigorous or stringent safety requirements, in which case the OSHA standard governs and takes precedence.
 4. Take all reasonable precautions to protect the safety and health of the Private Entity's employees, Owner's staff, employees, students and the public.
- b. The Private Entity shall coordinate its use of existing Owner premises with the Owner's Representative. Subjects of this coordination include the designation of work and storage areas; the extent, if any, of use by the Private Entity of Owner tools and equipment; the furnishing by the Private Entity of appropriate signs and barricades to exclude unauthorized personnel from the work areas and to call attention to hazards and dangers; and other matters relating to the protection of the Owner's staff, employees, students, property and the public.
- c. Materials, supplies, articles, or equipment manufactured or furnished under this Agreement or order must conform to the Occupational Safety and Health Standards pursuant to the authority of OSHA, and to other safety and health requirements specified in this Agreement or order. When conducting work on existing facilities, the Private Entity must provide the Owner's Representative copies of Material Safety Data Sheets (MSDS) for any hazardous material, as defined by OSHA's Hazard Communications Standards, to be used on the job.
- d. If no OSHA standard exists, federal or other nationally recognized standards apply. Copies of current Occupational Safety and Health Standards are available from regional and/or area offices of OSHA.

15.3 PROTECTION OF THE ENVIRONMENT, EXISTING VEGETATION, STRUCTURES, UTILITIES, AND IMPROVEMENTS

- a. The Private Entity shall perform all Work necessary to implement and accomplish a program to prevent environmental pollution during or as a result of construction performed under this Agreement. At a minimum, the Work must conform to all requirements of applicable federal, state and local law.
- b. The Private Entity shall preserve, protect and maintain all existing vegetation (such as trees, shrubs, and grass), landscape features, athletic fields, and structures on or adjacent to the site of Work that are not to be removed. In removing trees authorized by the Owner's Representative for removal, the Private Entity shall avoid damage to vegetation that will remain in place. Any trees or other landscape features scarred or damaged by the Private Entity's equipment or operations shall be restored by the Private Entity. The Owner's Representative shall decide what method of restoration may be used and whether damaged trees and/or shrubs will be treated or replaced. The Private Entity shall use guard posts or barriers as necessary to control vehicular traffic passing close to trees and/or shrubs to remain. Areas disturbed, such as temporary roadways or embankments, shall be restored to near natural conditions that will permit the growth of vegetation. Disturbed areas shall be graded and filled as required, covered with six inches of topsoil and landscaped as per the Contract Documents.
- c. The Private Entity shall protect from damage all existing buildings, improvements or utilities at or contiguous to the site of the Work, the location of which is known, and must repair or restore any damage to these facilities resulting from failure to comply with the requirements of this Agreement

or to exercise reasonable care in performing the Work. If the Private Entity fails or refuses to repair such damage promptly, the Owner's Representative may have the necessary remedial work performed and charge the cost to the Private Entity, who shall pay such costs to the Owner in a prompt manner.

- d. The Private Entity shall obtain approval from the Owner's Representative for any temporary roads, embankments and disposal areas not included in the Plans and Specifications and restore such areas to original conditions, including appropriate landscaping, upon the completion of Work.
- e. Monuments, markers and works of art must be protected. Items discovered that have potential historical or archeological interest must be preserved. The Private Entity shall leave the archeological find undisturbed and must immediately report the find to the Owner's Representative so that the proper authority may be notified. The GMP and time may be equitably adjusted in accordance with the provisions of this Agreement if the Private Entity incurs additional cost or time to perform as a result of any such discovery.
- f. Private Entity shall follow all Environmental Protection Agency, Virginia Department of Environmental Quality and other applicable governmental regulations and guidelines, as to the labeling, use, storage and disposal of "hazardous waste", which shall for the purposes of this agreement be defined as (a) any chemical, substance, material, mixture, contaminant or pollutant, now or hereafter defined as a "hazardous substance" under the comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time; (b) petroleum, crude oil, or any fraction thereof; (c) any pollutant, contaminant, special waste or toxic substance now or hereinafter listed, defined by or subject to regulation under any federal, state or local statute, ordinance, rule, regulation, standard, policy, guidance, permit, order, administrative or judicial decision or pronouncement, previously, currently or hereafter in effect, as amended from time to time, pertaining to health, safety, or the environment, including without limitation, natural resources, environmental regulation, contamination, pollution, cleanup, or disclosure. Private Entity agrees to indemnify, hold harmless and defend Owner and all Owner's successors, employees, officers, the Montgomery County Board of Supervisors and its members, representatives, and agents from any liability, claim, demand, action, cause of action, suit, loss, damage, injury, expense, cost, settlement, or judgment of any kind or nature including but not limited to demands, fines, remediations, or penalties asserted by any governmental entity, as a result of the treatment, storage, disposal, handling, spillage, leakage, or presence in any form in soils, surface waters, ground-waters, air, or property, of any wastes or "hazardous waste" as defined in this paragraph, at the subject property, caused or to the extent contributed to by Private Entity or Private Entity's subcontractors.

15.4 ACCESS TO SITE

- a. The Private Entity and the Owner's Representative shall agree upon the Private Entity's access to the sites and the use of existing roads, including issuing vehicle passes for construction and private vehicles.
- b. The Private Entity shall not permit workers to carry firearms or other deadly weapons onto any Owner construction site or into any facility, including in their personal or construction vehicles. This supersedes any state or local law permitting the carrying of firearms or weapons. Violation of this clause shall be grounds for removal of individuals or contractors from the site or termination for default.

15.5 HANDLING ASBESTOS AND OTHER HAZARDOUS MATERIALS

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

15.6 ELEVATOR WORK-QUALIFICATIONS

- a. The Private Entity, Contractor, or the subcontractor whom the Private Entity uses for performance of the elevator work, must have had at least three (3) years of successful experience in installing and servicing elevators.
- b. In addition, the Private Entity, the Contractor, or its subcontractor must have installed, on at least two prior projects, elevators comparable to those required for this Project that have performed satisfactorily under conditions of normal use for a period of not less than one (1) year. To be considered comparable, prior installations must have not less than the same number of elevators operating together in one group as the largest number in any group specified for this Project, except that a group of four may be considered comparable to a large group specified for this Project.
- c. A list of the prior comparable installations by the Private Entity, the Contractor, or its subcontractor, together with the names and addresses of the buildings, the names of the owners or managers, and any other pertinent information required must be submitted promptly upon request of the Owner.
- d. The names, addresses, experience, and statement of work to be performed by each subcontractor or second-tier subcontractor whom the Private Entity, Contractor, or the principal subcontractor, as the case may be, will use for performance of minor portions of the installation of elevators must also be submitted promptly upon request of the Owner.
- e. The Owner's Representative may reject the proposed elevator subcontractor if it is determined that it has failed to meet the experience requirements, or if it has been found to have an unsatisfactory record of prior elevator installations. In the case of rejection, the Private Entity must resubmit another name within ten (10) days for renewed consideration.

ARTICLE XVI

PAYMENTS

16.1 INVOICES

- a. The Private Entity may make requests for progress payments on a monthly basis. Such requests shall be in compliance with Section 10.7, above. No request for payment will be made without the Owner's Representative approval of a monthly design and construction schedule update, including a recovery plan if required. The Private Entity's invoices must be submitted before payment can be made.
- b. The Private Entity agrees that submission of an invoice to the Owner for payment is a certification that:
 - 1. Any services being billed for have been performed in accordance with the requirements of the Contract Documents; and

2. Any supplies for which the Owner is being billed have been delivered or suitably stored off site, with appropriate insurance coverage, and in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated in the Contract Documents. Private Entity shall provide, suitable to Owner's Representative approval, evidence of insurance for storage facility, a complete inventory of items, a written right of access to the items, and certification of title to the Owner.
- c. To ensure proper payment, Private Entity must furnish all documents required elsewhere in the Contract Documents and/or as reasonably required by the Owner's Representative.

16.2 PAYMENT

- a. The Owner will make progress payments on a monthly basis for Work properly completed. Such payments shall be made within (30) days of receipt and approval by the Owner's Representative of the Private Entity's invoice. Before the first progress payment becomes due, the Private Entity must prepare a schedule of values reasonably acceptable to the Owner's Representative for each of the three (3) portions of the Project – the Blacksburg Portion, the AHS Portion and the Middle School Portion. The values in the breakdown will directly correlate to the cost loaded schedule and be used for determining progress payments as referred to in Section 10.7.
- b. If material delivered to the Project site that will be incorporated into the Project will be taken into consideration in computing progress payments, before each payment is made, the Private Entity must furnish the Owner's Representative proof of the quantity, value, and delivery of such material.
- c. In making progress payments, the Owner will retain five percent (5%) of the progress payments earned on both the Reimbursable Costs and the Fixed Fees, except on those Fixed Fees set forth in Section 5.4.a. Retainage with regard to a given portion of the Project – the Blacksburg Portion, the AHS Portion and the Middle School Portion - will be held by the Owner until Owner's Final Acceptance of that portion of the Project.
- d. All material and Work covered by progress payments will be the sole property of the Owner. However, this paragraph does not:
 1. Relieve the Private Entity of responsibility to protect and safeguard material and Work for which payment has been made or for restoration of any damaged Work; or
 2. Waive the right of the Owner to require fulfillment of all terms of the Contract Documents.
- e. Before receiving a progress payment or final payment under this Agreement, the Private Entity must certify to the Owner's Representative that payment due to the Contractor and subcontractors have been made from the proceeds of prior payments or will be made in a timely fashion from the payment then due the Private Entity. Private Entity agrees to comply with the provisions of Virginia Code Section 2.2-4354 regarding payments to others.
- f. Upon completion and acceptance of all Work, the amount due the Private Entity under this Agreement shall be paid upon presentation of a properly executed invoice, after the Private Entity has furnished the Owner with a release of all claims against the Owner arising by virtue of this Agreement, other than claims in stated amounts that must be specifically excepted by the Private Entity from the operation of the release. If the sum of all progress payments and the final invoice is greater than the GMP, the final invoice shall be adjusted so that the sum of all progress payments and the final payment is not greater than the GMP. If the Private Entity's claim to amounts payable under the Agreement has been assigned, with consent of Owner, as provided in the Assignment of Claims clause, a release may also be required of the assignee.
- g. The Private Entity's sole remedies for any failure or delay in payment by the Owner shall be the remedies provided in Article 4 of the Virginia Public Procurement Act, Virginia Code sections 2.2-4347, *et seq.* The Private Entity may neither terminate this Agreement nor stop the Work due to a failure or delay in payment, and any attempt to terminate this Agreement or stop the Work shall constitute a default on the part of the Private Entity.

16.3 CONSTRUCTION COST BREAKDOWN AND ACCOUNTING

The Private Entity's submission of its Guaranteed Maximum Price must include a "schedule of values" type construction cost breakdown by CSI Division and other breakdowns as reasonably requested by Owner's Representative. Upon written request by the Owner's Representative, the Private Entity shall provide copies of its contract with its Contractor and construction subcontracts and a comparison to the GMP, for approval by the Owner's Representative, and for use in verifying monthly construction invoices. The Private Entity shall maintain separate accounting for each of the three (3) portions of the Project – the Blacksburg Portion, the AHS Portion and the Middle School Portion, and such books for each portion shall be open and available for inspection at any time and from time to time as the Owner may request.

16.4 ALLOWABLE COST AND PAYMENT

- a. **Invoicing:** The Owner will make payments to the Private Entity as set forth in Section 16.2(a), but not more than monthly, in amounts approved by the Owner's Representative, such approval not to be unreasonably withheld. The Private Entity must submit an invoice or voucher to the address specified by Owner, supported by a statement of claimed allowable costs of performing this Agreement, in such form and detail as required by Exhibit F hereto.
- b. **Audit:** At any time or times before final payment, the Owner's Representative may have the Private Entity's invoices or vouchers and statements of cost audited. Any payment may be:
 1. Reduced by amounts found by the Owner's Representative not to be proper or supported by sufficient documents; or
 2. Adjusted for prior overpayments or underpayments.
- c. **Final Payment**
 1. The Private Entity must submit a completion invoice or voucher, designated as such, promptly upon Final Completion of the Work by Private Entity, but not later than 30 days (or longer, as the Owner's Representative may approve in writing) from the completion date. Upon Owner's approval of that invoice or voucher, and upon the Private Entity's compliance with all terms of this Agreement, the Owner will promptly pay any balance not previously paid.
 2. In exchange for final payment the Private Entity shall and does release the Owner and its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Agreement, except for those that have been identified as open in the final invoice. Final payment shall be considered Owner's final acceptance of the Work, subject to this Agreement.

ARTICLE XVII
CHANGES/CLAIMS/DISPUTES

17.1 CHANGES

- a. The Owner may at any time, without notice to any sureties, by written change specifically designated or indicated to be a Change Order or Change Directive, make a Change, including, without limitation, one that:
 1. Changes the Plans and Specifications (including drawings and designs);
 2. Changes the method or manner of performance of the Work;
 3. Changes the Owner-furnished facilities, equipment, materials, services, or site; or
 4. Directs acceleration in the performance of the Work.
 5. Other changes referred to in this Agreement.
- b. Any other written or oral order, direction, instruction, interpretation, or determination from the Owner or the Owner's Representative that causes a change to the scope of Work or its time of performance will only be treated as a Change Directive, allowing a change in compensation or schedule, only if (1) the Private Entity gives the Owner's Representative written notice promptly, but not later than within twenty (20) days, of the receipt by Private Entity or the Contractor whichever has first receipt of such order, direction, instruction, or determination, stating (i) the date, circumstances, and source of the order, direction, instruction or determination, and (ii) that the Private Entity regards the order, direction, instruction or determination as a Change, and (2) the Private Entity does not incur additional costs attributable to such order, direction, instruction or determination without first receiving a Change Directive from Owner, unless waiting for a Change Directive is unreasonable under the circumstances. Such notice is a condition precedent to any such claim.
- c. Except as provided in this Section 17.1, no order, direction, instruction, interpretation, determination, statement, or conduct of the Owner's Representative may be treated as a Change or entitle the Private Entity to any adjustment in compensation or schedule.
- d. Only if any Change under this Article adds to or increases the scope of Work, other than minor changes, and causes an increase or decrease in the Private Entity's cost of, or the time required for, the performance of any part of the Work under this Agreement, the Owner shall issue a Change Order or Change Directive for such Change. However, no claim for any Change shall be allowed for which the Private Entity has not strictly complied with the requirements of Paragraph b as well as all other requirements of this Agreement. No claims will be allowed for Plans or Specifications prepared by or for the Private Entity and not in conformance with this Agreement. Accordingly, the GMP shall only be increased if there is an addition requested by the Owner to the scope of Work, other than minor changes, and increased cost or time to the Private Entity. The GMP shall be decreased for any Owner requested reduction to the scope of Work.
- e. No claim by the Private Entity will be allowed if first asserted after final payment under this Agreement, except as provided herein.
- f. After approval of final Plans and Specifications, except for the correction of errors and omissions, the Private Entity shall not make or allow any changes in the Plans or Specifications, including drawings and designs, without approval of the Owner's Representative.
- g. The GMP may be adjusted for overruns and underruns in any allowances identified in Exhibit C. Items covered by allowances shall be supplied for such amounts (without markup except as otherwise noted) and by such persons or entities as required to perform the Work, but the Private Entity shall not be required to employ persons or entities to whom the Private Entity has reasonable objection. Unless otherwise provided in this Agreement, (1) allowances shall cover the cost to the Private Entity of materials and equipment delivered at the site and all required taxes, less applicable trade discounts but no other costs; (2) Private Entity's cost for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the GMP but not in the allowances; and (3) whenever costs covered by (1) are more or less than allowances, the GMP may be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs covered by (1) and the allowances. Materials and equipment under an allowance shall be selected by the Owner's Representative in sufficient time to avoid delay in the Work. Allowance overruns may be deducted from the Owner's portion of savings, if any, in the Private Entity's contingency, with the Private Entity's approval, such approval to be at the sole discretion of Private Entity.
- h. The Private Entity shall not proceed with any Change until the Owner has obtained and confirmed in writing all necessary approvals and any required appropriations of funds to pay for the Change.

17.2 CHANGE ORDER ACCOUNTING

The Owner's Representative may require Change and Change-order accounting whenever the estimated cost of a Change or series of related Changes exceeds \$100,000. The Private Entity, for each such Change or series of related Changes, must maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of Work, both changed and not changed, allocable to the Change. The Private Entity shall maintain such accounts until the parties agree to an equitable adjustment for the Changes ordered by the Owner's Representative or the matter is finally disposed of in accordance with Section 17.5. However, Private Entity shall continue to work on the Project without any interruption and/or delay.

17.3 EQUITABLE ADJUSTMENTS

a. Cost for A-E Services

1. There will be no monetary adjustment to A-E Services under this Agreement except where the scope of Work has been modified by the Owner as provided herein. The A-E component of such Scope of Work Changes will only be adjusted when the Owner-requested change requires a duplication or revision of Work that has already been accomplished, causes an appreciable increase in direct labor, material or other costs to Work included under the A-E component, or requires new labor, material or other direct costs of Work not included under the existing A-E component. All other changes required to properly complete the Work will be the responsibility of the Private Entity.
2. Adjustment in the A-E component will be based upon the extent of change to the Work and not upon a percentage of construction costs. The Owner will negotiate an adjustment on the basis of the costs per discipline for the production of drawings, calculations, specifications, estimating and other services. Prior to negotiations, the Private Entity shall submit an Estimate of Fee for Modification of Design.
3. Where a proposal for cost modification is submitted by the Private Entity, the overhead (fringe plus overhead), profit and commission percentages included in the proposal shall be based solely on changes in labor, material, or other direct costs under the Agreement. No percentages for overhead, profit, or commission will be allowed on employment taxes under FICA and FUTA. The percentages for overhead, profit and commission will be negotiated and may vary according to the nature, extent, and complexity of the Work involved. Not more than two percentages, not to exceed the maximum percentages shown below, will be allowed regardless of the number of tiers of subcontractors;

that is, the markup on Work subcontracted by the A-E will be limited to one overhead percentage and one profit percentage. On proposals covering both increases and decreases of the GMP, the overhead, profit, and where applicable commission, will be computed on the net change only. Notwithstanding the foregoing, no A-E nor A-E subcontractor shall receive either the overhead percentage or the profit percentage until such time as such A-E or A-E subcontractor, as the case may be, provides to the Owner proof, to the Owner's reasonable satisfaction, of the direct labor rates applicable to such A-E or A-E subcontractor.

	Overhead & Fringe	Profit	Commission
To A-E and/or the A-E's subcontractors for that portion of Work performed with their respective forces	140%*	10%*	0%

* Maximum billable rate multiplier applied to direct labor rate

4. The Private Entity must submit with its proposal its request for time extension (if any).
5. In considering a proposal, the Owner may check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.
6. Upon written request by the Owner's Representative, the Private Entity must submit a proposal, in accordance with the requirements and limitations set forth in Subparagraphs (a.1) through (a.6) of this section, for Work involving proposed changes covered by the request, within the time limit indicated in the request or any extension of such time limit as may be subsequently granted. If, within a reasonable time after the receipt of such proposal, the Owner's Representative orders the Private Entity to proceed with the performance of the Change to the Work contemplated, the proposal submitted prior to the order will constitute the Private Entity's statement of the monetary extent of claim for equitable adjustment for the A-E component of Fixed Fees.

b. Cost For Construction

1. There will be no monetary adjustment to the GMP under this Agreement except when the Scope of Work (including time) has been modified by the Owner by a Change and as allowable under the other provisions of this Agreement. All other changes required to complete the Work shall be the sole responsibility of the Private Entity.
2. In the event of such a Change by Owner, an appropriate monetary adjustment to the GMP may be made only if all the requirements of this Agreement are met. The Private Entity's written statement of the monetary extent of any claim for equitable adjustment under this Agreement must be submitted in the form of a lump sum proposal (unless otherwise requested) with an itemized breakdown of all increases or decreases in the cost of the Private Entity's and all subcontractors' Work, in at least the following detail:
 - (a) Material quantities and unit cost
 - (b) Labor costs (identified with the specific item of material to be placed or operation to be performed)
 - (c) Construction equipment
 - (d) Worker's Compensation, Automobile and Commercial General Liability Insurance, Builders Risk Insurance, Umbrella Insurance
 - (e) Overhead
 - (f) Profit
 - (g) Employment taxes under FICA and FUTA
3. The Contractor's overhead, profit and commission will be included in any approved modification to the component of the cost (Fixed Fee and/or Reimbursable Costs) for Work, if required. The subcontractors' overhead and profit percentage included in the proposal will be considered to include, but not be limited to, insurance other than mentioned in b.2. of this section, use of small tools, incidental job burdens, and general office expense. No percentages for overhead, profit or commission will be allowed on employment taxes under FICA and FUTA. The percentages for overhead, profit and commission on approved modifications will be negotiated and may vary according to the nature, extent, and complexity of the Work involved.
4. Not more than three percentages, not to exceed the maximum percentages shown below, will be allowed for approved modifications regardless of the number of tiers of subcontractors; that is, the markup on Work subcontracted by a subcontractor will be limited to one overhead percentage (7.5% maximum) and one profit percentage (7.5% maximum) which may be distributed among the subcontractors as decided by the Private Entity. In addition, the Private Entity's or Contractor's (either and not both) commission percentage on approved modifications is limited (5% maximum) and no additional overhead or profit markup will be allowed. On proposals covering both increases and decreases of the Scope of Work, the overhead and profit will be computed on the net change only. On proposals for decreases in the amount of the GMP, the overhead, profit, and where applicable, the commission, will be added to the decrease in the direct cost.
5. The Private Entity must submit with its proposal its written request for time extension (if any) which must be based on a demonstrated impact to critical path activities.
6. In considering a modification to the GMP, the Owner may check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.
7. Where modification is made to the GMP, appropriate adjustment will be made to the Fixed Fees and Reimbursable Costs for construction Work. This adjustment should include the Contractor's profit and overhead costs only for Work which:
 - (a) Requires a duplication or modification of Work that has already been accomplished;
 - (b) Causes an appreciable increase in direct labor, material or other costs included under the fee; or
 - (c) Requires new labor, material or other direct costs of Work not included under the fee.
8. Payment for a Change involving construction Work will be made on the basis of direct construction costs and subcontractor costs up to the limit of the revised GMP. Payment for Private Entity and Contractor services will be made on the basis of the negotiated fee.
9. After receipt of a proposal with a detailed breakdown, the Owner's Representative will act reasonably promptly thereon. However, when the necessity to proceed with a Change does not allow sufficient time to check a proposal, or in the event of a failure to reach an agreement on a revised GMP, the Private Entity, if directed by Owner, shall proceed with the Work and will be reimbursed as provided for in this Agreement.

10. Upon written request by the Owner's Representative, the Private Entity shall submit a proposal, in accordance with the requirements and limitations set forth in Subparagraphs (b.1) through (b.9) of this section, for Work involving contemplated changes covered by the request, within the time limit indicated in the request or any extension of such time limit as may be subsequently granted. If, within a reasonable time after receipt of such proposal, the Owner's Representative orders the Private Entity to proceed with the performance of the Work proposed, the proposal submitted prior to the order will constitute the Private Entity's statement of the monetary extent of its claim for adjustment to the Guaranteed Maximum Price.

17.4 DIFFERING SITE CONDITIONS

The Private Entity represents that it has had full opportunity to inspect the site to determine suitability for this Project. The Private Entity has undertaken certain limited site investigations, including soil borings as described herein; therefore the Private Entity waives any claim to any adjustment in the GMP arising from any subsurface conditions of the Project site and voluntarily assumes the risk of any increased costs associated with the possible, and/or actual existence of any such conditions, except as otherwise provided for in this Agreement. Private Entity has not assumed or included, and is therefore not responsible for, any deep or otherwise abnormal subsurface conditions such as mines, sink holes, karst or other similar conditions. Private Entity would be entitled to an adjustment in cost and/or schedule should such conditions be encountered. Private Entity has only assumed responsibility for the unclassified site as it pertains to rock and minor undercut for unacceptable bearing capacity of soils.

17.5 RESOLUTION OF DISPUTES, CLAIMS AND OTHER MATTERS

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

- a. The Private Entity shall give Owner written notice of any claim for any additional compensation, damages, or delay within twenty (20) days of the beginning of the occurrence of the event, or of when the Private Entity knows of such occurrence, leading to the claim being made and Private Entity shall submit the actual claim and any supporting data reasonably available within thirty (30) days after the occurrence giving rise to the claim ends unless otherwise agreed in writing by the parties. The "occurrence" means the condition encountered in the field giving rise to the claim and not a later dispute about payment for that condition. Claims of delay will be resolved as they occur, and no claims of cumulative impacts or deferral of claimed delay will be allowed. Complete satisfaction of this Section 17.5.a is a condition precedent for Private Entity to pursue a claim arising under or relating to this Agreement, and failure by Private Entity to satisfy this Section 17.5.a as to written notice or, unless otherwise agreed in writing by the parties, to submit its claim and reasonably available data in accordance with this Section 17.5.a will waive any claim by Private Entity. Unless otherwise agreed by the parties, the Owner shall act on any claims as set forth below, within thirty (30) days of Owner's receipt of claim and supporting data.
- b. The parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, the parties may agree to non-binding mediation before a mediator agreed upon by the parties, with the site of the mediation being the County of Montgomery, Virginia. The parties shall share equally in the cost of any mediator. Should the dispute, claim, or other matter in question remain unresolved for the shorter of (i) following negotiation, or (ii) more than ten (10) days after termination of mediation if mediation was undertaken, or (iii) more than thirty (30) days after either party has requested mediation, either party may proceed in accordance with Section 17.5.f below. In no event shall binding arbitration be a permissible form of resolution of disputes under this Agreement.
- c. Nothing in Section 17.5.b shall prevent a party from seeking immediate temporary injunctive or other temporary equitable relief in Montgomery County Circuit Court if circumstances so warrant.
- d. In the event of any dispute, claim, or other matter in question arising, Private Entity shall continue performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. During the pendency of any dispute in connection with the payment of moneys, Private Entity shall be entitled to receive payments for non-disputed items as provided for in this Agreement.
- e. No claim by the Private Entity shall be allowed if notice of claim is first submitted after final payment, except as otherwise allowed by this Agreement.
- f. Contractual claims by the Private Entity, whether for money or for other relief, including any disputes as to change orders or extra Work, shall be submitted, in writing, no later than sixty (60) days after final payment or payment designated as a final payment; provided, however, that the Private Entity first gave notice of such claim as provided in Section 17.5.a. Such notice is a condition precedent to the assertion of any such claim by the Private Entity. A written decision upon any such claims will be made by the Owner within thirty (30) days after submittal of the claim and any practically available additional supporting evidence required by the Owner. The Private Entity may not institute legal action prior to receipt of the Owner's decision on the claim unless the Owner fails to render such decision within one hundred twenty (120) days from submittal of its claim. The decision of the Owner shall be final and conclusive unless the Private Entity within six (6) months of the date of the final decision on a claim or from expiration of the 120 day time limit, whichever occurs first, initiates legal action as provided in Section 2.2 – 4364, of the Code of Virginia. Failure of the Owner to render a decision within said one hundred twenty (120) days shall not result in the Private Entity being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the Owner's failure to render a decision within said one hundred twenty (120) days shall be Private Entity's right to thereafter institute legal action. No administrative appeals procedure pursuant to Section 2.2-4365, of the Code of Virginia, has been established for contractual claims under this Agreement.

ARTICLE XVIII

TERMINATIONS

18.1 TERMINATION FOR CONVENIENCE

- a. Performance under this Agreement may be terminated by the Owner for convenience, for any reason, with or without cause, in whole or in part at any time during the planning, design or construction of the Work. A termination may be effected by delivery to the Private Entity of a notice of termination specifying the extent of Work terminated, and the effective date of the termination (thirty [30] days minimum notice).
- b. Upon receipt of a notice of termination, unless otherwise directed by the Owner's Representative, the Private Entity shall take the following actions:
 1. Stop Work to the extent specified in the notice.
 2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of the unterminated Work.
 3. Terminate all design, orders and subcontracts to the extent that they relate to the Work terminated.
 4. Settle all outstanding liabilities and claims arising out of the termination of orders and subcontracts.

5. Transfer title to the Owner and deliver as directed by the Owner's Representative:
 - (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.
 6. Use its best efforts to sell, as directed by the Owner's Representative, any property of the types referred to in Paragraph b.5 above, provided that the Private Entity 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 the Private Entity, 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.
 7. Complete performance of the Work not terminated.
 8. 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 Private Entity and in which the Owner has or may acquire an interest.
- c. At any time, the Private Entity may submit to the Owner's Representative a list, certified as to quantity and quality, of termination inventory not previously disposed of, and may request the Owner to remove inventory items or enter into a storage agreement covering them. Not later than fifteen (15) days after receiving this request, the Owner will accept title to the items and remove them or enter into a storage agreement. The list will be subject to verification by the Owner's Representative upon removal of the items or, if the items are stored, within forty five (45) days after submission of the list.
 - d. After termination, the Private Entity must submit to the Owner's Representative a termination claim in the form and with the certification prescribed by the Owner's Representative. The claim must be submitted promptly, but in no event more than ninety (90) days after the effective date of termination, unless an extension in writing is granted by the Owner's Representative. However, if the Owner's Representative determines that the facts justify such action, any termination claim may be received and acted upon at any time after the 90 day period. Upon failure of the Private Entity 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 the Private Entity by reason of the termination which amount Owner shall pay. The termination claim may include costs incurred in its preparation for Private Entity and its subcontractors.
 - e. If the Private Entity and the Owner's Representative fail to agree on the amount to be paid to the Private Entity by reason of the termination, the Owner will only pay the Private Entity the amount payable based on the progress obtained on the Project at the time of the termination, including profit and overhead Reimbursable Costs and Fixed Fees only to that point. In no event shall the Private Entity be paid for any Work not actually and properly provided to and approved by Owner and no claim for lost profits or overhead shall be allowed for any time after termination.
 - f. The total sum to be paid to the Private Entity may not exceed the total Agreement price (CCL or GPM 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 the Private Entity 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.
 - g. The Private Entity has the right of review under the Article VII hereof of any determination made by the Owner's Representative under Paragraph d, e and f above, except that, if the Private Entity 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 Private Entity, there may be deducted:
 1. Any valid claim that the Owner may have against the Private Entity under this Agreement or otherwise; and
 2. The agreed price for or the proceeds of sale of materials, supplies, or other things kept by the Private Entity or sold and not recovered by or credited to the Owner.
 - i. If the termination is partial, the Private Entity 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.

18.2 TERMINATION FOR DEFAULT

- a. The Owner may, subject to Paragraph b and d below, by written notice of default to the Private Entity, terminate this Agreement in whole or in part if the Private Entity fails to:
 1. Substantially complete any of the material requirements of this Agreement within the time specified in the Agreement or any extension;
 2. Make progress, so as to materially endanger performance of this Agreement; or
 3. Provide services and/or workmanship and materials as called for by the Agreement; or
 4. Perform any of the other material provisions of this Agreement.
- b. Owner may terminate this Agreement under Paragraph a if the Private Entity does not commence to cure the failure within ten (10) days (or more if authorized in writing by the Owner's Representative) after receipt of the notice from the Owner's Representative specifying the failure.
- c. Owner may terminate this Agreement without notice or opportunity to cure if Private Entity declares bankruptcy or is involuntarily placed into bankruptcy.
- d. If the Owner terminates this Agreement in whole or in part, it may acquire similar supplies or services or complete the Work as reasonable and as Owner deems appropriate, and the Private Entity will be liable to the Owner for any excess costs. However, the Private Entity must continue the Work not terminated.
- e. If this Agreement is terminated for default, the Owner may require the Private Entity to transfer title and deliver to the Owner, as directed by the Owner's Representative, any completed supplies, partially completed supplies, and materials, parts, tools, dies, jigs, fixtures, plans, drawings, specifications, electronic copies, information, and contract rights that the Private Entity has specifically produced or acquired for the terminated portion of this Agreement. Upon direction of the Owner's Representative, the Private Entity must also protect and preserve property in its possession in which the Owner has an ownership interest.
- f. The Owner will pay the Agreement price for completed items delivered and accepted and the Reimbursable Costs incurred for incomplete Work that the Owner requires be delivered, and is delivered. The Private Entity and Owner's Representative may agree on the amount of payment for items delivered and accepted under Paragraph e above for the protection and preservation of the property. Failure of the parties to agree will constitute a dispute under Section 17.5 of this Agreement. The Owner may withhold from these amounts any sum the Owner's Representative

determines to be necessary to protect the Owner against loss because of outstanding claims or for any other amounts the Private Entity owes to the Owner.

- g. If, after termination, it is determined that the Private Entity was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for convenience and such termination shall be deemed to have been for convenience.
- h. The rights and remedies of the Owner under this Section 18.2 are in addition to any other rights and remedies provided by law or under this Agreement.

18.3 TERMINATION FOR OWNER DEFAULT

- a. The Private Entity's sole remedies for any failure or delay in payment by the Owner shall be the remedies provided in Article 4 of the Virginia Public Procurement Act, Virginia Code sections 2.2-4347, *et seq.* The Private Entity may neither terminate this Agreement nor stop the Work due to a failure or delay in payment, and any attempt to terminate this Agreement or stop the Work shall constitute a default on the part of the Private Entity.
- b. The Private Entity may terminate the Agreement for default if, through no fault of the Private Entity, Contractor, subcontractor, sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Private Entity or Contractor, repeated suspensions, delays or interruptions of the entire Work have been solely caused by the Owner, the Owner's Representative or the Owner's other contractors, or any of them, other than resulting from a termination for convenience or termination of Private Entity for default, as described in the Agreement, and such repeated suspensions, delays, or interruptions constitute in the aggregate more than ninety (90) days in any three hundred sixty five (365) day period. However, as a condition precedent to such action the Private Entity shall have given written notice to the Owner and Owner's Representative of each such claimed delay and a reasonable opportunity to cure such delay.

ARTICLE XIX

INSPECTION AND ACCEPTANCE

19.1 INSPECTION OF PROFESSIONAL SERVICES

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

19.2 INSPECTION AND ACCEPTANCE

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

19.3 TECHNICAL SUPERVISION

- a. Performance of the Work is subject to technical input by representatives of the Owner. Technical input includes suggestions to the Private Entity which fill in technical details, suggest possible lines of inquiry, or otherwise clarifies the Work, but do not constitute new scopes of Work.
- b. The Owner reserves the right to use Project Management Support Services (PMSSC) personnel, or other qualified personnel under contract to the Owner, to provide such technical supervision.

19.4 APPROVAL OF DESIGN

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

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

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

19.5 PROJECT CLOSEOUT

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

19.6 ASBESTOS FREE AND LEAD-BASED PAINT FREE CERTIFICATION.

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

ARTICLE XX
MISCELLANEOUS

20.1 REPRESENTATIONS AND WARRANTIES OF AUTHORITY

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

20.2 NONDISCRIMINATION

- a. During the performance of this Agreement, the Private Entity agrees as follows:
 - (1) The Private Entity 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 Private Entity. The Private Entity agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - (2) The Private Entity, in all solicitations or advertisements for employees placed by or on behalf of the Private Entity, will state that such Private Entity is an equal Employment Opportunity Employer.
 - (3) 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.
- b. The Private Entity 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.
- c. Pursuant to the Code of Virginia, Section 2.2-4343.1, be advised that the Owner does not discriminate against faith-based organizations. The Private Entity shall not discriminate against faith-based organizations during the performance of this Agreement.

20.3 DRUG-FREE WORKPLACE

- a. During the performance of this Agreement, the Private Entity agrees to (i) provide a drug-free workplace for the Private Entity 's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Private Entity '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 Private Entity that the Private Entity maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- b. For the purpose of this section, "drug-free workplace" means a site for the performance of Work done in connection with a specific contract awarded to a Private Entity, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.
- c. The Private Entity shall post a copy of the policy in a conspicuous place at the jobsite and assure that all contractor, subcontractor, and supplier personnel entering the jobsite are informed of the policy.

20.4 NOTICES

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

To the Owner: Brenda Blackburn
 Superintendent
 200 Junkin Street
 Christiansburg, Virginia

 Telephone: (540) 382-5104
 Telefax: (540)381-6118

With copies to: Owner's Representative
 Walter Shannon
 200 Junkin Street

Christiansburg, Virginia

Telephone: (540) 381-6139

Telefax: (540)381-6118

To Private Entity: Branch & Associates, Inc.
Attn: Cathy Underwood, Vice President
5732 Airport Road, NW
Roanoke, VA 24012
Telephone: (540) 989-5215 x 30043 (office)
(540) 400-1405 (cell)
Telefax: (540) 989-0883

To Contractor: Branch & Associates, Inc.
Attn: Cathy Underwood, Vice President
5732 Airport Road, NW
Roanoke, VA 24012
Telephone: (540) 989-5215 x 30043 (office)
(540) 400-1405 (cell)
Telefax: (540) 989-0883

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

20.5 SUCCESSORS AND ASSIGNS

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

20.6 No WAIVER

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

20.7 SEVERABILITY

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

20.8 COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterpart.

20.9 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 Montgomery County, Virginia or in the General District Court of Montgomery County, Virginia if the amount in controversy is within the jurisdictional limit of such court, and all parties to this Agreement voluntarily submit to the jurisdiction and venue of such courts, regardless of the actual location of such parties. The provisions of this Agreement shall not be construed in favor of or against either party but shall be construed according to their fair meaning as if both parties jointly prepared this Agreement.

20.10 ANNUAL APPROPRIATION AND PLAN OF FINANCE

The financial obligations of the Owner contained in this Agreement are subject to annual appropriation and availability of funds for the Project, and the Owner shall be bound under this Agreement only to the extent that there are funds available to perform its obligations hereunder. The Private Entity shall cooperate in executing any documents reasonably necessary to aid Owner in implementing its plan of finance for the Project.

20.11 FINANCIAL STATEMENTS

The Private Entity agrees to provide the Owner with copies of its complete and current financial statements upon reasonable written request by the Owner. The Private Entity may designate such financial statements as confidential proprietary information exempt from release under the Virginia Freedom of Information Act by following the procedure for such designation indicated in the Owner's PPEA implementation procedures.

20.12 COPY OF AGREEMENT TO AUDITOR OF PUBLIC ACCOUNTS

The Owner shall submit a copy of this Agreement to the Virginia Auditor of Public Accounts within thirty (30) days of the Effective Date.

20.13 APPROVAL BY MONTGOMERY COUNTY BOARD OF SUPERVISORS AS A CONDITION PRECEDENT TO AGREEMENT'S EFFECTIVENESS.

It shall be a condition precedent to this Agreement's effectiveness that the Montgomery County Board of Supervisors has authorized the School Board to enter into this Agreement.

20.14 CERTIFICATIONS

The Private Entity has executed and provided to Owner a Vendor's Certification (Exhibit H) contemporaneously with the execution of this Agreement. The Private Entity shall require all subcontractors who will perform more than \$10,000.00 of Work pursuant to this Agreement to execute this document (Exhibit H) prior to commencement of such subcontractor's Work.

20.15 ETHICS IN PUBLIC CONTRACTING

The provisions, requirements, and prohibitions as contained in Sections 2.2-4367 through 2.2-4377, of the Virginia Code, pertaining to bidders, offerors, contractors, and subcontractors are applicable to this Agreement.

20.16 HEADINGS

[Intentionally omitted].

20.17 MINORITY & WOMEN-OWNED BUSINESS ENTERPRISE AND SMALL BUSINESS CERTIFICATION

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

20.18 ENTIRE AGREEMENT

This Agreement and the attachments and exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between Private Entity and Owner concerning the Project, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. No alteration, amendment, change or addition to this Agreement shall be binding upon Private Entity or Owner unless reduced to writing and signed by each party. Extracts from Private Entity's Detailed-Phase Proposals at Exhibit B are attached and incorporated by reference for purposes of providing details concerning the overall intent of the parties. However, Exhibit B is not intended to contradict this Agreement, and in the event of inconsistencies, this Agreement shall control.

20.19 Required Payment Provisions under Virginia Code Section 2.2-4354

- a. The Private Entity shall take one of the two following actions within seven (7) days after receipt of amounts paid to the Private Entity by the Owner for work performed by the 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 Private Entity shall provide its federal employer identification number to the Owner.
- c. The Private Entity shall pay interest to the subcontractor on all amounts owed by the Private Entity that remain unpaid after seven (7) days following receipt by the Private Entity 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 Private Entity 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 with respect to each lower-tier subcontractor.
- f. The Private Entity's obligation to pay an interest charge to a subcontractor pursuant to the payment clause above may not be construed to be an obligation of the Owner.

20.20 No Aliens

The Private Entity does not, and shall not during the performance of this Agreement for goods and services in the Commonwealth of Virginia, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

20.21 Crimes Against Children

The Private Entity acknowledges that the implementation of this Agreement may require the Private Entity, the Private Entity's employees or other persons that will provide services under this Agreement, including but not limited to Contractor and subcontractors, to have direct contact with Montgomery County Public Schools students. Therefore, the Private Entity hereby certifies that neither the Private Entity, the Private Entity's employees nor any person that will provide services under this Agreement, including but not limited to Contractor and subcontractors, who will have direct contact with students on school property during regular school hours or during school-sponsored activities have been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child.

The Private Entity understands that, pursuant to Code of Virginia §22.1-296.1. making a materially false statement regarding offenses which are required to be included in the certification referenced above is a Class I misdemeanor and, upon conviction, the fact of such conviction shall be grounds for the revocation of the contract to provide such services and, when relevant, the revocation of any license required to provide such services. Montgomery County Public Schools shall not be liable for materially false statements regarding the certifications required under this Agreement.

The Private Entity 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 Private Entity shall require Contractor and all other subcontractors to execute such certification prior to performing any Work.

20.22 Wage Rates.

The Private Entity understands, acknowledges and agrees that some or all of the Blacksburg Portion of the Project may be financed with bonds involving federal funds under the American Recovery and Reinvestment Act of 2009 ("ARRA"). The Private Entity shall comply, and shall cause all subcontractors, including but not limited to the Contractor, to comply, with all provisions of ARRA, and all regulations related thereto, applicable to the Blacksburg Portion of the Project, including but not limited to Section 1601 of Division B of ARRA regarding "Application of Certain Labor Standards to Projects Financed with Certain Tax-Favored Bonds" and related regulations set forth in the Code of Federal Regulations ("CFR"), including but not limited to 29 CFR §§ 5 et seq. Without in any way limiting the provisions of Section 3.7.2.2, the Contract Documents hereby incorporate (a) each and every provision, without modification, set forth in §§ 29 CFR 5(a)(1) through 5(a)(10) and §§ 29 CFR 5(b)(1) through 5(b)(4), all of which provisions are

set forth on Exhibit P attached hereto and incorporated herein, and (b) the wage rates for Montgomery County set forth on Exhibit Q attached hereto and incorporated herein (the "Wages Rates"). Without limiting the foregoing, the Private Entity shall incorporate each of such provisions and the Wage Rates into each and every subcontract on the Blacksburg Portion of the Project and shall require each subcontractor to likewise incorporate the same into each lower tier subcontract. Notwithstanding the inclusion of the Wage Rates on Exhibit Q, the Private Entity shall (i) confirm, and shall require each subcontractor and lower tier contractor to confirm, the accuracy of the Wage Rates, and (ii) use, and shall require each subcontractor to use, updated Wage Rates as necessary to comply with all applicable laws. The Private Entity shall indemnify and save the Owner harmless from and against loss, liability, claim, damage, fee, expense, including but not limited to reasonable attorney's fees, of any kind whatsoever arising out of or in any way connected with any failure of the Private Entity or any subcontractor to comply with ARRA and any regulations related thereto, and the Private Entity shall defend at the Private Entity's own expense, with attorneys chosen by Owner, any suit in connection with any such failure, and if a judgment shall be rendered against the Owner in connection with any such failure, the Private Entity shall pay or satisfy any such judgment and shall pay all costs, fees, expenses, including but not limited to reasonable attorney's fees, disbursements and liabilities of whatsoever kind in connection therewith.

20.23 Key Personnel

The Private Entity agrees that the success of the design/build program depends on consistency and continuity throughout the design and construction project. The Private Entity agrees not to re-assign, replace, or re-locate to another project key personnel without the written permission of the Owner's Representative. Key personnel include Cathy Underwood (Branch & Associates), William Bradley (SHW Group), and Benjamin Motley (RRMM Architects). The Private Entity agrees to credit the Owner \$25,000 per person for any unauthorized replacement of any key personnel.

20.24 Organizational Status

- a. To the extent the Private Entity is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, the Private Entity shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law, and in which case the Contractor shall provide to the Owner the Private Entity's identification number issued to it by the Virginia State Corporation Commission.
- b. The Private Entity shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the contract.
- c. The Owner may void this contract and any other contract with the Private Entity if the Private Entity is a business entity and the Private Entity fails to remain in compliance with the provisions of this section.

SIGNATURE PAGES TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have signed this Agreement by their duly authorized representatives.

Branch & Associates, Inc., a Virginia corporation

Catherine R. Underwood, Vice President

Attest/Witness:

Sign: _____
Print: _____
Title: _____

COMMONWEALTH of VIRGINIA
City/County of _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by Catherine R. Underwood, Vice President of Branch & Associates, Inc., a Virginia corporation, by and on behalf of the corporation.

My commission expires: _____
My Notary Registration No.: _____

Notary Public

<BALANCE OF PAGE INTENTIONALLY BLANK – OWNER & RELATED APPROVALS FOLLOW>

IN WITNESS WHEREOF, the parties hereto have signed this Agreement by their duly authorized representatives.

School Board of Montgomery County, Virginia

Brenda Blackburn, Superintendent of the
Montgomery County Public Schools

Attest/Witness:

Sign: _____
Print: _____
Title: _____

COMMONWEALTH of VIRGINIA
City/County of _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by Brenda Blackburn, Superintendent of the Montgomery County Public Schools, by and on behalf of the School Board of Montgomery County, Virginia.

My commission expires: _____
My Notary Registration No.: _____

Notary Public

Approval by the Board of Supervisors of Montgomery County, Virginia, the local governing body under Virginia Code Section 56-175.16.5, for the Montgomery County School Board to enter into this Comprehensive Agreement:

Authorized by Resolution No. _____

Date: _____

Approval by the Montgomery County School Board to enter into this Comprehensive Agreement, subject to the authorization of the Board of Supervisors and the approval of the School Board's attorney, and to have the Superintendent of the Montgomery County Public Schools execute this Comprehensive Agreement on behalf of the School Board:

Authorized by Motion and Approval by a Unanimous 7-0 Vote of the School Board at a meeting of the School Board held on the following date:

Date: July 5, 2011

Approved as to form:

Bradford A. King
Montgomery County School Board Attorney
Thompson McMullan, P.C.
100 Shockoe Slip
Richmond, Virginia 23219

