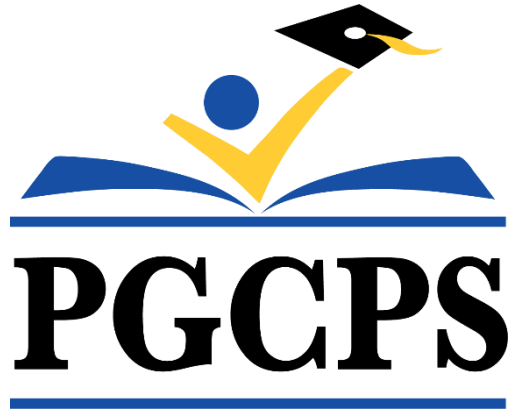


**Request for Proposals No. DCP19-24A
Public-Private Partnership
for the Design, Construction, Financing, and
Maintenance of
Prince George's County Public Schools
Alternative Construction Financing
Package 1 Schools**

(Inclusive of All Amendments)



PUBLIC-PRIVATE-PARTNERSHIP FOR THE DESIGN, CONSTRUCTION,
FINANCING, AND MAINTENANCE OF PRINCE GEORGE'S COUNTY PUBLIC
SCHOOLS ALTERNATIVE CONSTRUCTION FINANCING PACKAGE 1 SCHOOLS

REQUEST FOR PROPOSALS

RFP No. DCP19-24A

Date of Issue: November 20, 2019

(as amended 1/29/2020)

(as amended 6/19/2020)

(as amended 7/29/2020)

(as amended 8/5/2020)

(as amended 8/19/2020)

(as amended 9/2/2020)



PGCPS ACF Package 1 DBFM

SUMMARY OF KEY INFORMATION

RFP ISSUER	PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS
RFP TITLE	PGCPS ACF Package 1 DBFM
CONTACT PERSON	All communications relating to this procurement shall be in writing and directed to the PGCPS Representative at acf.proposals@pgcps.org . No telephone communications please.
RFP ISSUANCE	November 20, 2019
RFP COMMENT DEADLINE 1	January 8, 2020
INTERIM TECHNICAL SUBMITTAL	February 27, 2020 (by 4:00 p.m. EST)
INTERIM FINANCIAL SUBMITTAL	February 27, 2020 (by 4:00 p.m. EST)
RFP COMMENT DEADLINE 2	March 24, 2020
DEADLINE TO SUBMIT FINAL QUESTIONS AND COMMENTS ON RFP AND PROJECT AGREEMENT	August 12, 2020
ISSUE FINAL RFP AND PROJECT AGREEMENT	August 19, 2020
BENCHMARK INTEREST RATE AND CREDIT SPREAD SUBMISSION	September 4, 2020 (by 2 p.m. EDT)
TECHNICAL AND FINANCIAL PROPOSAL SUBMISSION DEADLINE	September 14, 2020 (by 2 p.m. EDT)
PROPOSALS SUBMISSION LOCATION	Via Email (details to be provided separately); and Via mail/courier/hand delivery to: Department of Capital Programs Department of Procurement 13300 Old Marlboro Pike, Trailer 6 Upper Marlboro, MD 20722
DELIVERY HOURS	Physical deliveries shall be accepted at the Submission Location on Business Days from 9:00am to 3:00pm Eastern Time.

PGCPS ACF Package 1 DBFM

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1. INTRODUCTION

1.1. Request for Proposals

Prince George’s County Public Schools (“**PGCPS**”) is issuing this Request for Proposals (“**RFP**”) to solicit competitive proposals (“**Proposals**”) from the Shortlisted Respondents (as defined below) for the design, construction, financing, and maintenance of the Alternative Construction Financing Package 1 Schools. PGCPS aims to enter into a long-term agreement (the “**Project Agreement**”) with a single entity for delivery of the Project.

1.2. Dual-Stage Procurement Process

This RFP is being issued as the second phase of a dual-stage procurement process. The RFP process shall commence with the issuance of this RFP and terminate upon the Effective Date of the Project Agreement or the date that PGCPS notifies Proposers that the procurement has been terminated, whichever occurs first.

1.3. Eligibility to Participate in this RFP

Pursuant to Request for Qualifications (“**RFQ**”) No. DCP19-24 issued by PGCPS on May 30, 2019, the following entities are eligible to participate in this RFP (collectively, the “**Shortlisted Respondents**”):

1. Community Academic Partners
2. Edgemoor-Star-HB Education Partners
3. Preston Hallow Capital / Provident Resource Group / SB Ballard Construction / Hess Construction / Aramark
4. Prince George’s County Education and Community Partners

Only the Shortlisted Respondents, subject to any organizational changes permitted by this RFP, may submit a Proposal or otherwise participate in this RFP process.

1.4. Comprehensive RFP

- (a) This RFP consists of the documents described below, as well any future modifications issued in the form of an Addenda:
 - (i) this RFP, including all Schedules and Forms attached hereto; and
 - (ii) the Project Agreement, including all exhibits attached thereto.
- (b) For the purposes of this RFP, if there are any conflicts or inconsistencies among the terms and conditions of any of the documents comprising the RFP, the following shall apply:
 - (a) with respect to matters of interpretation related to the RFP Process, this main body of the RFP shall have precedence over the documents in any other part of the RFP, including the Schedules; and
 - (b) with respect to matters of interpretation related to the Project or the Project Agreement, the Project Agreement shall prevail over the documents in any other part of the RFP.

1.5. Definition of Terms

Capitalized terms in this RFP that are not defined in this Section have the meaning given in the Project Agreement. In this RFP:

“ACF Package 1 Schools” mean the Schools identified in Table 2.4.1. of this RFP.

“Addenda” means any supplemental additions, deletions, and modifications to the provisions of the RFP after its initial issuance.

“Bank Debt Financing” means any debt financing, other than Bond Financing, provided by a bank or similar financial institution.

“Benchmark Interest Rates” means the benchmark interest rates further described in Section 2.5.6.c of this RFP to be used in establishing the Capital Charge.

“Board of Education” means the Board of Education of Prince George’s County.

“Bond Financing” means any financing comprising of bonds, which may include:

- (a) tax-exempt bonds issued by a Conduit Issuer, the proceeds of which bond are used for a defined, tax-qualified purpose by a private entity (other than the government entity issuing the bonds), acting as the conduit borrower; and/or
- (b) taxable bonds.

“Business Day(s)” means Monday through Friday, inclusive, other than days on which the administrative offices of PGCPS are closed.

“Commercial Close” means the Project Agreement being executed by the parties thereto.

“Conflict of Interest” is defined in Section 3.10.3 of the RFP (*Definition of Conflict of Interest*).

“Controlled Subsidiary” means, with respect to any referent person, any person who directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with such referent person. For purposes of this definition, “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a person, whether through voting right or securities, by contract, family relationship, or otherwise.

“Data Room” means the data room created by PGCPS to give Proposers access to select information related to the Project during the RFP Process.

“Deadline” means any applicable deadline set forth in the Section 3.1 (*RFP Schedule*).

“Developer” means the entity identified, or otherwise established, as the Successful Proposer to enter into the Project Agreement. The Developer shall design, build, finance, and maintain the Schools for the Term of the Project Agreement.

“Eligible Security Issuer” means a reputable financial institution authorized to issue bonds, letters of credit, or sureties in the State having either:

- (a) a long-term unsecured debt rating of at least (i) “A” by Standard & Poor’s Rating Services; (ii) “A” by Fitch, Inc., (iii) “A2” by Moody’s Investor Service, Inc., or (iv) “A” by DBRS, Inc.; or
- (b) a rating of at least “A-” and “Class VIII” from A.M. Best Company, Inc.

“Equity Member” means the members of a Proposer that will contribute shareholders’ equity to the Developer as part of the financing plan for the Project.

“Exclusive Negotiating Agreement” means the agreement to be executed by PGCPS and the Successful Proposer in the form of Proposal Form T-15.

“Exclusive Negotiating Period” means the period that the Exclusive Negotiating Agreement is in effect.

“Exempt Material” means information exempt from disclosure under Applicable Law.

“Final Agreement Draft” means the version of the Project Agreement attached to the Final RFP.

“Final RFP” means the last version of this Request for Proposals document package, including any and all Addenda.

“Financial Advisor” means the member of the Proposer’s team that will provide financial advisory services in connection with arranging and securing debt financing on behalf of the Developer.

“Financial Capacity Information” means the information to be provided in accordance with Section 2.3 of Schedule C-1 (*Financial Proposal Instructions*).

“Financial Close Security” is defined in Section 4.6.2 (*Proposal Security and Closing*).

“Financial Model” is defined in Section 2.5 of Schedule C-1.

“Financial Model Auditor” means the firm engaged by the Proposer, and approved by PGCPS, to provide a preliminary independent audit of the Proposal Financial Model.

“Financial Proposal” is detailed in Schedule C-1 (*Financial Proposal Instructions*).

“Financial Proposal Checklist” means the checklist of Financial Proposal requirements, as described in Schedule A (*Summary and Checklist of Proposal Contents*).

“Financial Proposal Due Date” means September 14, 2020.

“Financial Proposal Score” is defined in Section 5.5.2 (*Financial Proposal Scoring*) of this RFP.

“Financing Member” means each member of the Proposer’s team that will contribute equity to the Developer for purposes of executing the Project, as part of such Proposer’s financing plan or, in the case of a tax-exempt structure, will commit to holding Developer-issued subordinated debt as a long-term ownership interest in the Developer.

“Financing Plan” is defined in Section 2.6 (*Financing Plan*) of Schedule C-1 (*Financial Proposal Instructions*).

“Indicative Credit Spread” means the credit spread provided by Proposers and approved by PGCPS to be used in the Financial Model.

“Lead Design-Builder” means the entity (whether a single incorporated entity or an incorporated or unincorporated joint venture) with primary responsibility for the performance of design, engineering, and construction work for the Project, including subcontracting, management, supervision, and administration of the design and construction for the Project, as designated in the SOQ or duly approved by PGCPS under an Organizational Change.

“Lead Design-Builder Member” means, where the Lead Design-Builder is an incorporated or unincorporated joint venture, each member or joint venturer in the Lead Design-Builder, as designated in the SOQ or duly approved by PGCPS under an Organizational Change.

“Lead Services Provider” means the entity (whether a single incorporated entity or an incorporated or unincorporated joint venture) with primary responsibility for life cycle maintenance of the Schools over the term of the Agreement, as designated in the SOQ or duly approved by PGCPS under an Organizational Change.

“Lead Services Provider Member” means where the Lead Services Provider is an incorporated or unincorporated joint venture, each member or joint venturer in the Lead Services Provider, as designated in the SOQ or duly approved by PGCPS under an Organizational Change.

“Letter of Credit” or **“LC”** is defined in Proposal Form T-5 (*Form of Letter of Credit*).

“Major Participant” means each of the following:

- a) each Financing Member;
- b) if a Financing Member is an investment fund, the fund’s general partner(s);
- c) the Lead Design-Builder;
- d) each Lead Design-Builder Member (if any);
- e) the Lead Services Provider; and
- f) each Lead Services Provider Member (if any).

“Non-Collusion Affidavit” means the statement by the Proposer contained in Form A-3 (*Non-Collusion Affidavit*)

“Notice of Award” is defined in Section 5.7 (*Notice of Intent to Award and Notice of Award*) of this RFP.

“Notice of Intent to Award” is defined in Section 5.7 (*Notice of Intent to Award and Notice of Award*) of this RFP.

“One-on-One Meetings” is defined in Section 3.7 (*One-on-One Meetings*) of this RFP.

“Organizational Change” has the meaning set forth in Section 3.9.1 (*Changes in Organization*).

“PGCPS” or **“Prince George’s County Public Schools”** has the meaning set forth in Section 1.1 (*Requests for Proposal*) of this RFP.

“PGCPS Representative” has the meaning set forth in Section 3.3.1 (*PGCPS Representative*) of this RFP.

“Project Agreement” (or **“Agreement”**) means the contract to be entered into between PGCPS and the Developer for the design, build, finance, and maintenance of the Project upon the successful completion of this procurement process.

“Project Services” means, collectively, the Design-Build Work and the Services.

“Proposal” is defined in Section 1.1 (*Request for Proposals*) of this RFP.

“Proposal Security” is defined in Section 4.6.1(a) (*Proposal Security*).

“Proposal Submission Deadline” means the date by which the Proposal must be submitted, as indicated in Section 3.1 (*Schedule*) and Section 4.4 of this RFP.

“Proposal Validity Period” is defined in Section 4.6.3(a) (*Proposal Validity Period*) of this RFP.

“Proposer” or **“Proposers”** means any Shortlisted Respondent(s) that elect(s) to submit a Proposal in response to this RFP.

“Proposer Representative” is defined in Section 3.3.2 (*Communications Protocol*) of this RFP.

“Reimbursement Agreement” is defined in Section 3.12.1 (*Reimbursement Agreement*) of this RFP.

“Restricted Contact Period” means the period from issuance of the RFP to the earliest of:

- (a) execution of the Project Agreement;
- (b) PGCPS notifying each Proposer that it will not accept any of the Proposals;
- (c) PGCPS notifying each Proposer that it has cancelled the procurement; or
- (d) with respect to a Proposer, such Proposer being informed in writing by PGCPS that it has been disqualified or is otherwise considered removed from further involvement in the RFP Process.

“RFP” means this Request for Proposals No. DCP19-24A, including all Addenda issued during the RFP Process.

“RFP Process” means the procurement process to select a Successful Proposer to deliver the Project, as outlined in Section 3 (*RFP Process*).

“Section 4.14 Permitted Deviations” has the meaning given in Schedule B-1 (*Technical Proposal Instructions*).

“Selection Committee” means those members approved by the Director of Purchasing and Supply Services.

“SOQ” is each Proposer’s Statement of Qualifications delivered in response to RFQ No. DCP19-24.

“**Stakeholders**” is defined in Section 3.3(b)(v) (*Stakeholders*).

“**Subcontractor**” means any subcontractor identified in and evaluated as a part of the Proposer’s SOQ (and which is not otherwise captured by the definition of Major Participant).

“**Successful Proposer Selection**” means a determination by PGCPS of the Successful Proposer in accordance with the RFP.

“**Technical Proposal**” is defined in Section 4.3.3 (*Proposal Contents and Format*) and Schedule B-1.

“**Technical Proposal Checklist**” means the checklist of Technical Proposal requirements, as described in Schedule B (*Summary and Checklist of Proposed Content*).

“**Technical Proposal Score**” is defined in Section 5.5.1 (*Technical Proposal Scoring*) of this RFP, as further detailed in Schedule B-2 (*Technical Proposal Evaluation Criteria*).

“**Unauthorized Deviations**” has the meaning given in Schedule B-1 (*Technical Proposal Instructions*).

1.6. Interpretation

In this RFP:

- a) Any action, decision, determination, consent, approval, and any other thing to be performed, made, or exercised by or on behalf of PGCPS, including the exercise of “discretion” or words of like effect, unless the context requires it, is at the sole, absolute, and unfettered discretion of PGCPS.
- b) The use of headings is for convenience only, and headings are not to be used in the interpretation of this RFP.
- c) A reference to a Section, Appendix, Schedule, or Exhibit, unless otherwise indicated, is a reference to a section, appendix, schedule, or exhibit of this RFP.
- d) Words imputing any gender include all genders, as the context requires, and words in the singular include the plural and vice versa.
- e) The word “including” when used in this RFP is not to be read as limiting.
- f) Each appendix attached to this RFP is an integral part of this RFP as if set out at length in the body of this RFP.

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2. PROJECT OVERVIEW

2.1. Background

- a) PGCPS is issuing this RFP to Proposers for the design, build, finance, and maintenance of the Alternative Construction Financing (“**ACF**”) Package 1 Schools.
- b) This RFP is being issued pursuant to Section 126 of Division II, Title 4, Subtitle 1 of the Education Article of the Annotated Code of Maryland which permits county boards of education, with the approval of the county governing body, to utilize certain “alternative financing methods” in order to “finance or to speed delivery of, transfer risks of, or otherwise enhance the delivery of public school construction” and specifically in accordance with subsection (a)(2)(iii), which expressly authorizes the use of “public-private partnership agreements, in which a county board contracts with a county revenue authority or a private entity for the acquisition, design, construction, improvement, renovation, expansion, equipping, or financing of a public school”.
- c) In advancement of this Project, in May 2018, the County Council of Prince George’s County, Maryland (“**County Council**”), approved Resolution No. CR-33-2018 establishing a P3 Alternative Financing School Infrastructure Work Group (“**Work Group**”) for the purpose of supporting, encouraging, and establishing a work group to explore a Public-Private Partnership Alternative Financing School Infrastructure Program for public school construction and replacement projects in the County.
- d) After extensive analysis and deliberation, PGCPS, with the approval of the other members of the Work Group, initiated a dual-stage procurement process with the issuance of Request for Qualifications No. DCP19-24, Public-Private Partnership for the Design, Construction, Financing and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1 on May 30, 2019 (as amended, the “**RFQ**”). The RFQ process resulted in the shortlisting of the respondents identified in Section 1.3 of this RFP.
- e) On September 19, 2019, the Board of Education approved the Chief Executive Officer’s recommendation to procure six to eight schools as Alternative Construction Finance Package 1 under a Public Private Partnership Model (“*Resolution of General Terms for Alternative Construction Financing Package 1 under a Public-Private Partnership Model*”), authorizing PGCPS to issue an RFP to the Shortlisted Respondents and proceed with the second phase of the dual stage procurement.

2.2. Objectives

Specific objectives for the Project include the following:

- a) Accelerate delivery of critical school facilities by leveraging out-year funding and transferring schedule risk, thereby addressing the County’s school construction backlog and advancing the Educational Facilities Master Plan (“*EFMP*”);
- b) Create a positive educational environment for students and staff, ensuring that the Schools are maintained at prescribed standards over the life of the Project Agreement and will have a useful life significantly longer than the Term of the Project Agreement;

- c) Achieve cost-effectiveness and economies of scale by bundling multiple schools into a single package and by integrating design and construction with life cycle maintenance;
- d) Establish greater security around cost and schedule, as a result of involving at-risk private capital;
- e) Attain greater budget certainty and predictability by aligning payments with the performance of the Schools over the Term of the Project Agreement;
- f) Leverage the Project for the benefit of public education, as well as for the community, by linking the Project Agreement to other community benefits, such as workforce development, mentor-protégé programs, apprenticeship programs, MBE/CBB set-asides, etc.;
- g) Enhance transparency and accountability through the disclosure of targeted performance standards, independent monitoring, and financial disclosures; and
- h) Allow PGCPS to retain public ownership of all Schools and control of critical matters, such as design parameters and output standards.

2.3. Schedule

In accordance with the Technical Proposal Submittal Instructions in Section 1.3 of Schedule B-1, Proposers are required to propose a Scheduled School Occupancy Readiness Date for each School on Proposal Form T-7.

SCHEDULED SCHOOL OCCUPANCY READINESS DATES CAN BE EITHER JULY 15, 2023 OR JULY 15, 2024 FOR THE FOLLOWING SCHOOLS:

- Adelphi Area Middle School;
- Drew-Freeman Middle School;
- Hyattsville Middle School;
- Kenmoor Middle School;
- Southern Area K-8 School; and
- Walker Mill Middle School.

SCHEDULED SCHOOL OCCUPANCY READINESS DATES MAY ALSO BE DECEMBER 30, 2023 FOR THE FOLLOWING SCHOOLS ONLY:

- Kenmoor Middle School; and
- Walker Mill Middle School

In light of the analysis, planning, and investment that already went into initially selecting the ACF Package 1 Schools for delivery in July 2023, PGCPS continues to have a strong preference for all Schools to achieve School Occupancy Readiness on July 15, 2023. However, given the delays that have occurred in the procurement schedule as a result of COVID-19, Proposers have the ability to choose later Scheduled School Occupancy Readiness Dates as outlined above. Any Proposal proposing a Scheduled School Occupancy Readiness Date after July 15, 2024 for any School shall be deemed non-responsive and rejected by PGCPS. Further, given the complexity of the planning and investment that has already gone into preparing for delivery of each of the ACF Package 1 Schools, including how all of the schools in the PGCPS system work together and the need for boundary changes, requirements and existing commitments

related to swing space, and the varying needs of the impacted populations, PGCPS' preferred order of priority for delivery of Schools is as follows:

- Adelphi Area Middle School
- Drew-Freeman Middle School
- Hyattsville Middle School
- Walker Mill Middle School
- Kenmoor Middle School
- Southern Area K-8 School

Except as required by this Section 2.3, Proposers have flexibility to propose a schedule that they deem to be optimal.

To achieve School Occupancy Readiness, the School Occupancy Readiness Conditions in Section 10.2.1 of the Project Agreement must be satisfied. So long as Developer diligently prosecutes to completion, Developer may complete the Athletic Fields at a School within eleven (11) months following the School Occupancy Readiness Date and may demolish the existing school on the Walker Mill Middle School Land within eleven (11) months following such School Occupancy Readiness Date; all other Design-Build Work, including Demolition Work, must be completed prior to School Occupancy Readiness in accordance with the terms of the Project Agreement.

2.4. Project Description

2.4.1. ACF Package One Schools

The Project is comprised of ACF Package 1, a bundle of six (6) Schools located throughout Prince George's County, Maryland (the "County"). Table 2.4.1 provides basic information about each School:

Table 2.4.1: ACF Package 1 Schools

	School	Site Location	Scope	As-Built Enrollment Capacity	Specialty Programs	Estimated Square Feet	Description
1	Adelphi Area Middle School	8820 Riggs Road, Adelphi, MD 20783	Modification or New Construction and Demolition	1,200	Health Center	160,769	Developer may modify existing School or demolish and construct a new middle school. The Expected Site Availability Date is July 15, 2021. Athletic Fields must be replaced if new School is located on existing fields. Students will not be present in the existing school during construction.
2	Hyattsville Middle School	6001 42 nd Avenue, Hyattsville, MD 20784	New Construction and Demolition	1,200	Health Center and Black Box Theatre	163,919	The Expected Site Availability Date is July 15, 2021. Students will not be present in the existing school during construction. Existing facility to be demolished and replaced with the new School.
3	Kenmoor Middle School	2500 Kenmoor Drive, Landover, MD 20785	New Construction	1,200	Health Center	159,661	The Expected Site Delivery Date is the Effective Date. New construction on unused section of existing Site. Students to remain in existing facility during construction. Existing facility will not be demolished but will remain “as is” for future administrative use. Athletic Fields must be replaced if the new School is located on existing Athletic Fields.
4	Drew-Freeman Middle School	2600 Brooks Drive, Suitland, MD 20746	New Construction and Demolition	1,200	Health Center	161,557	The Expected Site Delivery Date is July 15, 2021. Athletic Fields will be available on the Effective Date. Replacement school to be built on existing Athletic Fields. Existing facility to be demolished and replaced with Athletic Fields.

5	New Southern Area K-8 School	Plat: A05-6553 & A05-6554, Fort Washington, MD 20744	New Construction (Integrated K-8 with Elementary School and Middle School)	2,000 (800 ES & 1,200 MS)	Health Center	251,710	The Expected Site Delivery Date is the Effective Date. New elementary school and new middle school with shared administrative, custodial, health, and media spaces. Greenfield site is currently undeveloped (wooded and without existing buildings).
6	Walker Mill Middle School	800 Karen Blvd, Capitol, MD 20743	New Construction and Demolition	1,200	Health Center	160,011	The Expected Site Delivery Date is the Effective Date. New construction on existing site. Students to remain in existing facility during construction. Existing facility to be demolished and replaced with Athletic Fields.

2.5. Key Project Elements

The Developer shall be responsible for performing the Design-Build Work and the Services.

2.5.1. School Sites

All Sites are located within the County. For the duration of the Term of the Project Agreement, the Sites will be owned by, or leased to, PGCPS, and PGCPS will own all Schools.

a) Zoning

All Sites are zoned for schools. A copy of the applicable zoning bylaw is available in the Data Room.

b) Site Investigations

The following information is being made available in the Data Room for each Site:

- (1) Site Plan;
- (2) Geotechnical investigation;
- (3) Environmental assessment; and
- (4) Legal survey.

Other materials that become available throughout the RFP Process shall be uploaded to the Data Room.

2.5.2. Design and Construction

The Developer shall be responsible for all aspects of the design and construction of the Schools in accordance with the Project Agreement, including the Technical Requirements.

Proposers shall develop a master Project Schedule with construction schedules for each School and Scheduled School Occupancy Readiness Dates that meet the requirements outlined in Section 2.3.

The Project Agreement sets forth certain minimum performance-based standards which the Developer must comply. PGCPS encourages innovation in the development of Technical Proposals. PGCPS is providing Proposers with flexibility to innovate and develop creative and cost-effective design solutions in the Technical Proposal, which will be considered and evaluated by the Selection Committee.

2.5.3. Maintained Elements and Moveable FF&E

The Developer shall be responsible for procuring and for designing the Schools to accommodate the delivery, installation, operation, repair, and maintenance of all furniture, fixtures, and equipment required as part of the Schools operations, or for the intended uses of the Schools, in accordance with the Project Agreement. Such equipment shall be comprised of the Moveable FF&E, for which Developer will have no obligation after installation, and the Base FF&E, to be maintained by Developer. A list of the Required FF&E is included in the Technical Requirements. Moveable FF&E shall be deemed to be part of the Project only to the extent of Developer's obligation to procure, deliver, and install such Moveable FF&E.

2.5.4. Services

The Developer shall be responsible for providing Services over the Term of the Project Agreement.

2.5.5. Handback Requirements

The Developer shall be responsible for ensuring that, upon the Expiration Date of the Project Agreement, the Project meets the Handback Requirements set forth in the Project Agreement.

2.5.6. Financing

a) No Recourse

The Developer shall be solely responsible for obtaining and repaying all private financing necessary for the Project at its own cost and risk and without recourse to PGCPS or the County. All debt or other obligations issued or incurred by the Developer in connection with the Project Agreement shall be issued or incurred only in the name of the Developer or, if applicable, a Conduit Issuer. Neither PGCPS, nor the County, shall have any obligation to pay debt service on any such debt or other obligations, or to join in, execute or guarantee any note or other evidence of indebtedness of the Developer.

b) Financing Plan

The Financing Plan is not required to be fully committed, however, will require a Financial Plan Narrative describing the Proposer's proposed financing solution (the "Indicative Financing Plan"), along with substantiation of the level of diligence completed to date, and must set out a detailed process for securing financing and reaching Financial Close. While key terms and pricing on debt financing may reasonably fluctuate from those assumptions used in the Financial Proposal as the debt financing is finalized during the ENA Period, any changes to the proposed debt instruments or Benchmark Interest Rates used in the Indicative Financing Plan will, without PGCPS' approval, be considered to be a repudiation of the Proposal. For example, if a Proposer proposes a tax-exempt financing structure in its Indicative Financing Plan and Financial Proposal, the Proposer cannot simply switch to a taxable financing structure during the ENA Period, unless PGCPS elects to approve in its sole discretion. Proposers should expect that PGCPS will not agree to any changes to the Indicative Financing Plan unless such changes will result in a decrease in costs payable by PGCPS. The Financing Plan must comply with the requirements set forth in Section 2.6 of Schedule C-1 of this RFP.

c) Benchmark Interest Rate and Credit Spread Risk

PGCPS will bear the risk and reap the reward of movements in Benchmark Interest Rates between those included in the Financial Proposal and those at Financial Close, subject to the terms and conditions of the Project Agreement. PGCPS will bear the risk and reap the reward on movements in credit spreads between the Proposal Due Date and the Final Availability Payment Proposal due date, except in the case of publicly issued bonds, in which case PGCPS will bear the risk and reap the reward on 85% of the movements in credit spreads between the Proposal Due Date and Financial Close.

Each Proposer was required to provide information on the debt instruments and the corresponding Benchmark Interest Rates that the Proposer intended to use so that PGCPS could provide approval to the Proposers of the debt instruments and the corresponding Benchmark Interest Rates being used. Proposers provided such information as part of their **Interim Financial Proposal**.

The requested Benchmark Interest Rates that the Proposer intends to use must be independently verifiable by PGCPS using Bloomberg U.S.-based screens or another independently verifiable source acceptable to PGCPS, as appropriate.

Proposers are required to submit their requested **Benchmark Interest Rates** on the date specified in the Procurement Schedule in Section 3.1 of this RFP. The Benchmark Interest Rates will be priced as of 10:00 a.m. Eastern time on such date. If a Proposer wishes to request PGCPS approval for two debt instruments and corresponding Benchmark Interest Rates and credit spreads, that will be permissible assuming that both instruments were previously approved in the Interim Financial Proposal. However, Proposer must select and utilize a single financing solution in their Financial Proposal, including in the Financial Model and Indicative Financing Plan.

If the Proposer elects to include interest rate swaps as a Benchmark Interest Rate for a bank financing, PGCPS intends to review and approve the market curves used to price the interest rate swaps and the process for determining the reference swap rate based on such market curves and estimated notional drawdown and repayment profiles. Pricing should not include any swap margin.

If a Proposer elects to use US Treasuries as a Benchmark Interest Rate for a bond financing, PGCPS intends to review and approve the underlying US Treasury yield curve and the process for determining the benchmark rate.

Pricing should not include any forward component. Proposers must provide detailed supporting documentation in order for PGCPS to verify and approve the requested Benchmark Interest Rates, such as screenshots on Bloomberg or pricing calculations. PGCPS reserves the right to request additional information, if needed, to verify and approve the requested Benchmark Interest Rates.

PGCPS will use reasonable efforts to respond within two (2) days to the requested Benchmark Interest Rates submitted in accordance with the Procurement Schedule. If the Requested Benchmark Interest Rates are not approved by PGCPS, the Proposer shall be required to submit revised Benchmark Interest Rates, and PGCPS will use reasonable efforts to respond within two (2) Business Days of receipt of the submittal.

Each Proposer's Financial Proposal and Proposed Financial Model, submitted as part of its Financial Proposal, shall be solely based upon the duly approved Benchmark Interest Rates for Proposer's selected financial solution.

In addition to submitting Benchmark Interest Rates, at the same time Proposers will be required to submit a proposed credit spread for each debt instrument and Benchmark Rate submitted for PGCPS approval, which represents their best estimate of what the credit spread / margin above its Benchmark Interest Rate would be based on the discussions with lenders up to that date. Proposers are to provide substantiation, to the extent possible, for the estimated credit spread / margin. PGCPS will review this information and approve the credit spread / margin (with the Benchmark Interest Rates). Proposers must use the approved Indicative Credit Spread for the Proposer's selected financial solution in their Financial Model.

Thus, each Proposer's Financial Proposal and Proposed Financial Model shall be solely based upon the PGCPS approved Benchmark Interest Rates and Indicative Credit Spread. The Financial Model shall then be updated to reflect the final interest rates as of the date of Financial Close as set forth in the Project Agreement.

2.5.7. Community Investment Program

PGCPS is committed to leveraging the Project to expand opportunities and improve the quality of life for people who live and work in Prince George’s County. To this end, the Developer shall propose a Community Investment Program to support and invest in community services and amenities, local community benefits, such as mentor-protégé programs, apprenticeship programs, scholarships, workforce development, student education, etc. Each Proposer shall submit its proposed Community Investment Program, which shall be evaluated and scored by the Selection Committee in accordance with this RFP. Proposers are encouraged to be creative with respect to the Community Investment Program designed and provide impact to both students and County residents that are not affiliated with the Schools throughout the life of the Project. At a minimum, Community Investment Programs should include apprenticeship programs. Community investment Programs should have a component that directly impacts students and a component that benefits the community at large. The Proposed Community Investment Program of the Successful Proposer will be incorporated into the Project Agreement as a Developer obligation.

2.6. Payment Mechanism & Developer Compensation

The Developer will be paid subject to and in accordance with the terms of Project Agreement.

2.6.1. Progress Payment and Milestone Payments

The Developer shall be responsible for providing all construction financing during the Design-Build Period. PGCPS will pay to Developer, in accordance with Section 14 in the Project Agreement, a single lump-sum Progress Payment in the amount of Fifteen Million Dollars (\$15,000,000.00) and a single lump-sum Milestone Payment in the amount of Five Million Dollars (\$5,000,000.00) per School. Such Progress and Milestone Payments are intended to amortize a portion of the Developer’s Project financing. The balance of the Project financing will be imputed into the Availability Payment made to the Developer over the Term of the Project Agreement.

2.6.2. Availability Payments

As further described in Section 14.3 and Exhibit X-1 of the Project Agreement, PGCPS will make, through an Escrow Account, monthly Availability Payments to the Developer that include both a capital component (“Capital Charge”, or “CC”) and a services component (“Services Charge or “SC”). Availability Payments shall be subject to Deductions for performance failures, as detailed in Exhibit X-2 of the Project Agreement.

The CC may be escalated uniformly throughout the Project Term by no more than 1.5% annually utilizing the methodology detailed in the Project Agreement.

The SC shall be escalated for inflation and cannot exceed 40% of the Availability Payment in the first Contract Year that an Availability Payment is made. Indexation for the SC shall be based on CPI-U Washington-Arlington-Alexandria, DC-VA-MD-WB (BES Series ID: CUURS353ASA0).¹ For purposes of comparability a rate of 2.25% shall be used as the index value for the CPI in the calculation of the indicative Services Charge.

¹https://data.bls.gov/timeseries/CUURS353ASA0?amp%253bdata_tool=XGtable&output_view=data&include_graph_s=true

2.7. Funding and Affordability

2.7.1. Funding Sources

Any Progress Payment, Milestone Payments, and Availability Payments will be paid to Developer through an Escrow Agent from an Escrow Account. Funds will be deposited into the Escrow Account in advance of any obligations becoming due to pay the Developer under the Project Agreement.

2.7.2. Affordability Goals

A key objective of this Project is to deliver the Project scope within certain budget limits. PGCPS has a target for the Project of Thirty Million Dollars (\$30,000,000.00) for the Availability Payment during the first Contract Year that Project Readiness is achieved (disregarding the impact of pro rate calculations of the first Billing Period). While Proposers are strongly encouraged to adhere to this target, it is PGCPS' expectation that the Availability Payment will not exceed Thirty-Two Million Dollars (\$32,000,000) for the first Contract Year that Project Readiness is achieved (disregarding the impact of pro rate calculations of the first Billing Period). For clarity, Proposals with an Availability Payment above \$32,000,000 will not be deemed non-responsive.

2.8. MBE/CBB Subcontracting

PGCPS is committed to creating a competitive and balanced economic environment by ensuring non-discrimination and equal opportunity in the procurement of goods and services, as well as community growth through local business opportunities. The goal of PGCPS is to promote the growth and success of minority and County-based businesses and to increase the percentage of PGCPS procurement dollars flowing to minority and local businesses. Contractors and subcontractors who are a Party to the Project Agreement may include businesses certified as Minority Business Enterprises or County Based Businesses.

To this end, the Developer shall be required to cause at least thirty percent (30%) of the Total Contract Value, in connection with the Project to be incurred pursuant to contracts with certified Minority Business Enterprises ("MBE"), with a minimum of twenty percent (20%) of those MBE contracts being directed towards County Based Businesses ("CBB"). For purposes of this MBE minimum quantitative requirement, the Total Contract Value shall refer to the Developer's total design and construction expenditures during the Design-Build Period, as well as the Developer's total Services expenditures during the Services Period, excluding financing, financing costs, interest on the financing, and related fees. For clarity, MBE Financing Members will not count toward meeting the minimum MBE contracting requirements. The Developer shall only be credited towards this MBE minimum quantitative requirement for funds disbursed to MBE companies that perform a commercially useful function. Commercially useful functions are defined as when an MBE:

- a) Is responsible for the execution of a distinct element of the work of the contract.
- b) Carries out its responsibilities by actually performing, managing, and supervising the work involved.
- c) Furnishes supervision, labor, tools, equipment, materials, and supplies necessary to perform a distinct element of the contract work.

Proposers shall submit its proposed MBE/CBB Subcontracting Plan in accordance with Section 1.2.4 of Schedule B-1 of this RFP, which shall be incorporated as an exhibit in the Project Agreement. Proposers shall also complete Form T-12. Pursuant to the terms of the Project Agreement, the Developer shall be

required to meet stipulated minimum quantitative requirements and shall provide regular MBE/CBB compliance reports over the Term of the Project Agreement.

Pursuant to State Law HB 389 and SB 611, prime contractors are prohibited by law from including a certified MBE in a bid or proposal without requesting, receiving, or obtaining the MBE's authorization. The contractor must also use the MBE's services to perform the contract. In addition, the contractor may not pay the MBE solely for the use of its name in the bid or proposal. Proposers may be prosecuted if they fail to comply with the law. PGCPS is required under the law to report the violation.

2.9. Insurance

The Developer will be required to obtain and maintain all Required Insurance in accordance with the Project Agreement. Proposers must obtain coverage from insurance providers that comply with the requirements set forth in the Project Agreement. Proposers may use multiple insurance providers to provide the various types of insurance identified in the Project Agreement; however, Proposers must use one single insurance provider for each type of insurance.

The Required Insurance must be in place on or before the Effective Date, except as provided in the Project Agreement.

2.10. Independent Vendor

The Developer will be furnishing its goods and/or services as an independent vendor, and nothing herein shall create any association, partnership or joint venture between the parties hereto or any employer-employee relationship.

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3. RFP PROCESS

3.1. RFP Schedule

The following table summarizes the anticipated RFP Schedule for the Project:

Activity	Date
One-on-One Meetings	July 30-31, 2020
One-on-One Meetings	August 11-12, 2020
Deadline for Submission of Final Questions	August 12, 2020
Issue Final Revised RFP and Project Agreement (including all Exhibits)	August 19, 2020
Benchmark Interest Rate Submission Deadline	September 4, 2020 (by 2 p.m. EDT)
Deadline for Submission of Technical and Financial Proposals	September 14, 2020 (by 2 p.m. EDT)
Proposer Design Presentations	September 21, 2020
Notice of Intent to Award	No later than October 9, 2020

PGCPS reserves the right to modify or amend this timeline as it deems, in its sole discretion, convenient or necessary.

To the extent one of the above dates does not fall on a Business Day (i.e. PGCPS administrative offices are closed unexpectedly due to snow), the deadline shall automatically be extended until the next Business Day.

3.2. RFP Compliance

Proposers must comply, and must ensure that each Major Participant complies, with this RFP throughout the RFP Process. Failure by a Proposer or a Major Participant to comply with any of the terms of this RFP may result in:

- (a) disqualification of such Proposer, such Major Participant, or both such parties from the RFP Process; and
- (b) a draw by PGCPS on such Proposer’s Proposal Security (as defined below), but only under the circumstances described in Section 4.6.3 (*Forfeiture of Proposal Security*).

3.3. Communication Protocols

3.3.1. PGCPS Representative

- (a) Proposers are prohibited from contact related to this procurement with any PGCPS employee, or any of its representatives and advisors, other than designated personnel from the date this RFP is issued until the Commercial Close Date. Violation of this provision may be grounds for immediate disqualification. Until further notice, all inquiries and comments concerning this procurement must be addressed to the following designated PGCPS Representative for the purposes of this RFP Process:

Ms. De’Nerika Johnson
Construction Procurement Supervisor
acf.proposals@pgcps.org

- (b) PGCPS reserves the right to designate another representative during the RFP Process, in which case PGCPS will notify Proposers of the contact information for the new PGCPS Representative.

3.3.2. Proposer Representative

- (a) Each Proposer shall designate one individual to be its authorized representative for the RFP Process (the “**Proposer Representative**”). Unless the Proposer notifies PGCPS otherwise in writing, the individual identified as the “*Respondent Representative*” by the Proposer in its SOQ will be its Proposer Representative.
- (b) If a Proposer wishes to replace its Proposer Representative at any time during the RFP Process, the Proposer shall notify the PGCPS Representative of the name, address, telephone number, and email address of the new Proposer Representative, who must be legally authorized to represent and bind the Proposer for purposes of this procurement.
- (c) Each Proposer is responsible for ensuring that the name and contact information for its Proposer Representative is accurate and updated at all times during the RFP Process. Failure to do so may result in such Proposer failing to receive important communications from PGCPS. PGCPS is not responsible for any such failure.

3.3.3. Rules of Conduct

(a) No Improper Influence

Proposers are expected to conduct themselves with professional integrity and shall refrain from all activities aimed at influencing decisions related to the Project, the RFP, or the RFP Process. Any substantiated allegation that a Proposer or any employee, member, agent, consultant, advisor, representative, promoter, or advocate of the Proposer or any of its team members has engaged in prohibited communications or attempted to unduly influence the selection process may be cause for PGCPS to disqualify the Proposer, or to disqualify the Proposer, its team members, and/or any employee, member, agent, consultant, advisor, representative, promoter, or advocate of such Proposer or team member, from participating with the Proposer, in each case, in the absolute discretion of PGCPS.

(b) Additional Rules of Conduct

From and after the date of issuance of this RFP and ending on the earliest of (x) the execution and delivery of the Project Agreement, (y) rejection of all Proposals by PGCPS, or (z) cancellation of the RFP:

- (i) Communication with Other Proposers. No Proposer, nor any of its team members, may communicate with another Proposer or its team members through their employees, agents, or representatives with regard to the RFP or either team’s Proposal; provided that (A) subcontractors, financiers, or underwriters that are shared between two or more Proposer teams may communicate with their respective team members so long as those Proposers establish a protocol to ensure that such subcontractors, financiers, and underwriters (as applicable) will not act as a conduit of information between the teams, and (B) this prohibition does not apply to public discussions regarding the RFP at PGCPS-sponsored informational meetings (if any) that are attended by more than one Proposer.

- (ii) Proposer Representatives. Each Proposer Representative shall be responsible for contacts with PGCPS on behalf of such Proposer and, except at One-on-One Meetings, interviews, and/or other authorized group discussions with PGCPS, each Proposer may only communicate with PGCPS regarding the RFP or the Project through its Proposer Representative.
- (iii) Ex Parte Communications. No Proposer or representative of a Proposer through their employees, agents, consultants, advisors, or other representatives shall have any *ex parte* communications regarding the RFP or the Project with PGCPS or any PGCPS staff, advisors, contractors, or consultants involved with the RFP or the Project, except for communications expressly permitted by the RFP or approved in advance by the PGCPS Representative, in such person's absolute discretion. The foregoing restriction does not prohibit or restrict communications with regard to matters unrelated to the RFP or the Project, or participation in public meetings of PGCPS or any public or Proposer workshop related to the RFP.
- (iv) PGCPS Representative. Unless specifically authorized elsewhere in this RFP, the PGCPS Representative shall be PGCPS' sole point of contact and source of information for Proposers throughout the RFP Process.
- (v) Stakeholders. Communication by or on behalf of any Proposer with any entity listed below (the "*Stakeholders*"), including any of the Stakeholder's employees, agents, consultants, advisors, or other representatives, regarding the RFP or the Project is prohibited, except for communication expressly permitted by the RFP or approved in advance by the PGCPS Representative, in PGCPS' absolute discretion:
 - (a) Prince George's County officials, representatives, and employees;
 - (b) PGCPS officials, representatives, and employees;
 - (c) Prince George's County Board of Education members and staff; and
 - (d) environmental, regulatory, and permitting agencies.

It is the intent of PGCPS that PGCPS will provide any necessary coordination during the RFP Process with Stakeholders so that, among other things, the RFP Process may be implemented in a fair, competitive, and transparent manner and with uniform information. Information requests concerning Stakeholders should be sent to the PGCPS Representative, who, in PGCPS' discretion, may arrange for general or separate meetings between one or more of such Stakeholders and the Proposers, or facilitate delivery of responses to such questions by a Stakeholder.

- (vi) Any communications in breach of the foregoing clauses (i) – (v) may result in disqualification from the RFP Process, in the absolute discretion of PGCPS.
- (vii) PGCPS will not be responsible for any oral exchange or any other information or exchange that occurs outside of the official process specified in this Section 3.3 (*Communications Protocols*).
- (viii) For the purposes of this Section 3.3.3 (*Rules of Conduct*), "contact" and "communication" includes face-to-face, telephone, email, text messaging, social

media, other electronic means or formal written communication, either directly by a Proposer or indirectly by an employee, member, agent, consultant, advisor, representative, promoter, or advocate of a Proposer.

(d) **Conduit Issuers**

If any Proposer wishes to propose financing that incorporates tax-exempt financing or similar arrangements and to communicate with any Conduit Issuer regarding its participation in such financing, then such Proposer may communicate regarding such matters with the Conduit Issuer at any time without prior notice to PGCPS; provided, that upon Successful Proposer Selection, no Proposer other than the Successful Proposer shall engage in such communications.

3.4. Clarification and Amendment of RFP Documents

3.4.1. Examination and Clarification of the RFP

Each Proposer shall be solely responsible for:

- (a) examining, with appropriate care and diligence, the RFP (including the Project Agreement, the Technical Requirements, and all Addenda); and
- (b) requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or omission contained in the RFP, or of any provision that the Proposer fails to understand.

Failure of a Proposer to make such review and to request such clarification shall be at its sole risk, and no relief for error or omission will be provided by PGCPS.

3.4.2. Submission of Requests for Clarification and Amendment

- (a) Proposers shall submit requests for clarification and amendment in accordance with this Section 3.4.2.
- (b) PGCPS will only consider comments and questions regarding the RFP and Project Agreement, including requests for clarification and requests to correct errors, if transmitted to the PGCPS Representative by the Proposer Representative in the prescribed format. No telephone or oral requests will be considered.
- (c) Such requests for clarification and amendment may be submitted at any time prior to the applicable dates specified in Section 3.1. (*RFP Schedule*) or such later date as may be specified in any Addendum, and shall:
 - (i) be submitted as follows:
 - (A) After July 28, 2020, as red-line markups and comments in the Project Agreement and RFP only;
 - (B) Prior to July 28, 2020 in writing as either red-line markups or in Excel format using Form "CR" (*Clarification Request Form*) (for Category 1 and 2 items only with respect to the Project Agreement) and shall:
 - be sequentially numbered, as set forth in Form CR;

- identify the relevant document (e.g., the RFP, Project Agreement, Technical Requirements);
 - identify the relevant Section number, page number, and, if applicable, line number or, if it is a general question or comment, indicate so;
- (ii) not disclose nor contain proprietary or confidential information, except if the question itself is deemed confidential by the Proposer in accordance with Section 3.4.3(c) below; and
- (iii) indicate whether the red-line markup is a Category 1, 2, 3, or 4 question (as described below).
- (d) **“Category 1”** means a potential “go/no-go” issue that, if not resolved in an acceptable fashion, may preclude the Proposer from submitting a Proposal. **“Category 2”** means a major issue that, if not resolved in an acceptable fashion, will significantly affect value for money or, taken together with the entirety of other issues, may preclude the Proposer from submitting a Proposal. **“Category 3”** means an issue that may affect value for money, or another material issue, but is not at the level of a Category 1 and Category 2 issue. **“Category 4”** means an issue that is minor in nature, a clarification, a comment concerning a conflict between documents or within a document, etc.
- (e) Proposer may submit Clarification Requests and redline mark-ups throughout the Procurement process but is strongly encouraged to consolidate comments and questions in order to limit the number of Clarification Requests sent to PGCPS during each opportunity allotted for clarification during the RFP Process.

3.4.3. PGCPS Responses

- (a) PGCPS will attempt to address all written requests, providing written responses and/or addenda. Each interpretation or correction that PGCPS may decide to offer will be shared with all Proposers.
- (b) PGCPS will not disclose which Proposer submitted the redlines for clarification and amendment to the RFP and Project Agreement when sharing responses or discussing issues of common concern. For the avoidance of doubt, any responses to questions are provided for informational purposes only and will not amend or be considered part of the RFP, except to the extent they are specifically incorporated in the RFP as an Addenda.
- (c) PGCPS may provide non-binding written responses individually to those written questions identified by a Proposer or deemed by PGCPS as containing confidential or proprietary information (except as identified in the last sentence of this paragraph). If a Proposer believes a question contains confidential or proprietary information (including that the question itself is confidential), it may mark such question as “confidential”. PGCPS reserves the right to disagree with the confidentiality of information in the interest of maintaining a fair process or complying with Applicable Law. Under such circumstances, PGCPS will inform the Proposer and may allow the

Proposer, within a time period set by PGCPS, to withdraw the question, rephrase the question, or have the question answered non-confidentially. If a Proposer fails to respond to PGCPS within the timeframe identified by PGCPS, such failure shall be deemed to allow PGCPS to answer the question non-confidentially.

- (d) If PGCPS elects to issue responses to redlines and comments to the RFP and Project Agreement, PGCPS may rephrase or consolidate questions as it deems appropriate. PGCPS may also create and answer questions independent of the Proposers.
- (e) **Addenda**
 - (i) PGCPS may, by issuing an Addendum, modify conditions or requirements of the RFP (including the Project Agreement) at any time after its formal issuance.
 - (ii) Addenda will be distributed simultaneously via email to all Proposer Representatives.
- (f) PGCPS is not bound by, and the Proposer shall not rely on, any oral communication or representation regarding the RFP documents, or any written communication except to the extent that it is contained in the RFP or in an Addendum to the RFP and is not superseded by a later Addendum to the RFP.
- (g) PGCPS reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each Proposer to discuss any Addenda or clarifications.

3.5. Disclosed Information and Proposer Due Diligence

3.5.1. RFP Kick-Off Meeting & Site Visit

PGCPS held a kick-off meeting with all Proposers on the dates set forth in Section 3.1 (RFP Schedule) to provide a general overview of the RFP Process, as well as to discuss the Sites and Technical Requirements.

The meeting provided:

- (i) Brief overview of the RFP Process requirements and procedures;
- (ii) Available Information & Site Inspection Protocols;
- (iii) Technical overview of the ACF Package 1 School specifications and Technical Requirements;
- (iv) Descriptions of the Sites; and
- (v) Guided tour of the six Sites and two potential additional sites.

3.5.2. Investigations of Sites

PGCPS will provide the opportunity for each Proposer to visit each Site up to four times between 8:00 a.m. and 4:00 p.m. on a Saturday or Sunday for up to four hours at a time. Proposers must provide at least five (5) Business Days advance written notice to the PGCPS Representative of any proposed Site inspections. Such notice shall include the nature of the inspection to be performed and the preferred hours of access to each Site. The PGCPS Representative will advise the Proposer Representative as to whether the requested time is available and, to the extent it is not, will coordinate with the Proposer Representative to confirm another mutually acceptable time.

The Proposers may conduct any non-destructive investigations. Proposers may only visit the Sites after obtaining written authorization from PGCPS and will be required to enter into an indemnification agreement with PGCPS as a condition of such authorization. The indemnification agreement will provide an indemnification of PGCPS from any and all loss or expense resulting from the negligence or intentional misconduct of the Proposer or any of its officers, directors, employees, agents, representatives, or subcontractors in connection with its activities at the Sites.

3.5.3. Site Borings

Although PGCPS has included within the Data Room recent site borings for each of the Sites, additional borings at the Sites will be allowed during the RFP Process. All borings will be made at the Proposer's sole risk and expense. Borings can be taken Saturday and Sunday between 8:00 a.m. and 4:00 p.m. when scheduled with the PGCPS Representative at least five (5) Business Days in advance in accordance with Section 3.5.2. All borings must be filled and sealed with temporary asphalt if in paved areas. All boring data and engineering reports must be shared with the PGCPS Representative within five (5) Business Days of the Proposer receiving such data or reports.

3.5.4. Disclosed Information

- (a) Studies and investigations undertaken by PGCPS in connection with the Project are contained in the Disclosed Information. Additionally, for reference purposes only, a Glenridge Middle School Community Presentation, a William Wirt Middle School Feasibility Study, and a Center for Visual and Performing Arts (CPVA) at Suitland High School: Options Analysis – Final Report, are also included in the Data Room. Disclosed Information will be provided to Proposers in an electronic Data Room. Additional Disclosed Information may be added to the Data Room throughout the RFP Process. Although PGCPS will endeavor to notify Proposers when documents are added to the Data Room, each Proposer will be solely responsible for monitoring the Data Room for new Disclosed Information.
- (b) Except as expressly stated in the Project Agreement:
 - (i) the Disclosed Information will not form a part of the Project Agreement or any other agreement between PGCPS and the Developer;
 - (ii) PGCPS shall not be responsible or liable in any respect for any causes of action, suits, judgments, claims, expenses, damages, or losses whatsoever suffered by any Proposer by reason of:
 - (A) any use, in connection with participation in this procurement, of information, opinions, or recommendations contained in the Disclosed Information; or
 - (B) any action or forbearance in reliance on the Disclosed Information.
- (c) Except as otherwise set forth in the Project Agreement, Proposers shall use or not use the Disclosed Information at their sole risk and remain solely responsible and liable for:
 - (i) all investigations and analyses relating to the Project, including those relating to any geotechnical and structural conditions with respect to the Project;

- (ii) the preparation of their Proposals; and
 - (iii) any design and construction solutions, means, and methods that they select, in each case, without regard to anything contained in the Disclosed Information.
- (d) Except as otherwise set forth in the Project Agreement, PGCPS does not represent or warrant that the information, opinions, and recommendations contained in the Disclosed Information are complete, accurate, or suitable for any purpose, or that such information, opinions, and recommendations are in conformity with the requirements of the RFP or Applicable Law. Proposers shall have no right to compensation, time extension, or other claim in connection with participation in this procurement based on any incompleteness or inaccuracy in the Disclosed Information, except as otherwise expressly provided in the Project Agreement.

3.5.5. Proposer Due Diligence and Investigation

- (a) Proposers must satisfy themselves, by personal investigation and other lawful means they deem necessary, as to the conditions affecting the delivery of the scope of the Project and the cost thereof. Proposers are solely responsible for conducting their own independent research and due diligence for the preparation of Proposals. Information derived from any part of this RFP or from PGCPS or its advisors, does not relieve the Proposer, Successful Proposer, or any eventual Developer from any risk associated with providing the Project Services and meeting the requirements of this RFP and the Project Agreement, except as otherwise expressly provided in the Project Agreement.
- (b) Proposers are responsible for obtaining professional advice from their own advisors and experts. This includes legal advice, together with any other professional advice a Proposer deems to be appropriate or necessary. Such advice shall be at the sole risk and expense of the Proposer.

3.6. MBE/CBB Networking Session

To facilitate meeting the MBE and CBB subcontracting requirements set forth in Section 2.8 of this RFP, PGCPS held a session with Proposers and local contractors, suppliers, and businesses to provide an opportunity for Proposers to enhance their knowledge, understanding, and awareness of MBE and CBB capabilities and offerings and to build relationships with local contractors, suppliers, and businesses, and for MBE and CBB that might be interested in working with, or providing products and services to, the Developer to meet Proposer teams

The MBE/CBB Networking Session was a forum for MBE and CBB to interact with each of the shortlisted Proposer teams and to promote their companies, services, and experience. The session was designed to help Proposers become more familiar with MBE and CBB candidates for subcontracts. MBE and CBB were invited to register with PGCPS in advance of the session and meet with representatives of the shortlisted Proposers individually for brief introductory meetings (approximately 5 minutes). Participants were encouraged to provide Proposers with business cards and a one-page overview of their business. Proposers may follow-up independently with businesses of interest.

3.7. One-on-One Meetings

3.7.1. Purpose

PGCPS will invite each Proposer to participate in periodic meetings with PGCPS and its advisors. Each meeting will be proprietary and confidential, in that only one Proposer will meet with PGCPS at a time.

The purpose of the One-on-One meetings is to provide a process that will assist the Proposers to develop optimal solutions for the Project, while minimizing the risk that a Proposer's solution is unresponsive to the RFP requirements. Specifically, PGCPS anticipates that the One-on-One meetings will:

- (i) Permit Proposers to provide PGCPS with comments and feedback on material issues (such as affordability) or provisions of the draft Project Agreement;
- (ii) Permit Proposers to discuss with PGCPS potential solutions and approaches that the Proposer may be considering for various aspects of its Proposal, such as design concepts, Community Investment Program, financing structures, MBE/CBB approach, etc.; and
- (iii) Provide an opportunity for Proposers and PGCPS to discuss issues such as innovation in the Project.

The One-on-One Meetings, in combination with any resulting amendments to the RFP and/or draft Project Agreement, are expected to allow Proposers to submit Proposals that are fully compliant and eliminate the need for ex post negotiations of the Project Agreement with the Successful Proposer.

3.7.2. Individual Meeting Materials

In advance of each One-on-One Meeting, each Proposer will provide the PGCPS Representative, via email, with the following:

- (i) A proposed meeting agenda;
- (ii) A list of attendees (including the identification of any specialized advisors or representatives of PGCPS that the Proposer deems important to be present); and
- (iii) A list of prioritized issues the Proposer would like to discuss, and any materials relevant to such issues.

Proposers will submit such materials in accordance with Section 3.3 (*Communications Protocols*) of this RFP. PGCPS may provide Proposers with comments on the agenda and list of any prioritized issues PGCPS would like to discuss. Matters discussed in a One-on-One Meeting shall be kept as proprietary and confidential.

One-on-One Meetings are offered to allow Proposers to receive input during the RFP Process. To the extent a Proposer does not wish to receive such input, Proposers may elect not to participate in any round of One-on-One Meetings.

3.7.3. Attendees

At each One-on-One Meeting, a Proposer is expected to bring Key Personnel designated in the RFQ, as the Proposer considers reasonably necessary, for effective communications with PGCPS and to fulfill the objectives of the One-on-One Meeting. PGCPS may, in its discretion, limit the number of participants at any Meeting.

3.7.4. General Rules

All One-on-One Meetings are subject to the following rules:

- (i) One-on-One Meetings are intended to provide Proposers with a better understanding of the Project and Project-related documents or communications provided by PGCPS;
- (ii) PGCPS, except as provided in this RFP, will not discuss with Proposers any information submitted as part of this procurement other than its own;
- (iii) Proposers shall not seek to obtain commitments from PGCPS in One-on-One Meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer;
- (iv) no aspect of any One-on-One Meeting is intended to provide any Proposer with access to information that is not similarly available to other Proposers. Accordingly, material information about the Project or procurement that PGCPS reveals or discusses in response to questions raised in a One-on-One Meeting will, except as provided in this RFP, be revealed to other Proposers;
- (v) the discussions or any statements made by either party in a One-on-One Meeting shall not be binding on such entity;
- (vi) Subject to RFP Section 3.11 (*Confidentiality and Public Disclosures*), PGCPS reserves the right to disclose to all Proposers any issues raised by Proposers during the One-on-One Meetings, except to the extent that PGCPS determines, in its sole discretion, such disclosure would reveal confidential or proprietary information;
- (vii) no part of the evaluation of Proposals will be based on the conduct or discussions that occur during One-on-One Meetings; and
- (viii) Each Proposer, by submitting its Proposal, acknowledges that the opportunity to participate in One-on-One Meetings was afforded to all Proposers and to the full extent permitted by law, waives any right to object to the One-on-One Meeting process.

3.7.5. PGCPS Responses are Non-Binding

To facilitate free and open discussion at the One-on-One Meetings, Proposers should note that any comments provided by or on behalf of PGCPS during any One-on-One Meeting, including in respect of any particular matter raised by a Proposer or which is included in any documents or information provided by a Proposer prior to or during the One-on-One Meeting, and any positive or negative views, encouragement, or endorsements expressed by or on behalf of PGCPS during the One-on-One Meeting to anything said or provided by Proposers, will not in any way bind PGCPS and will not be deemed or considered to be an indication of a preference by PGCPS even if adopted by the Proposer. Proposers may not rely upon anything said or indicated at a One-on-One Meeting except as set forth in an Addendum to the RFP.

3.7.6. Additional One-on-One Meetings

PGCPS anticipates holding a minimum of two (2) One-on-One Meetings with each Proposer prior to the Proposal Due Date. If PGCPS considers it desirable or necessary to schedule additional One-on-One Meetings, PGCPS may, in its sole discretion, amend the anticipated procurement schedule to include additional One-on-One Meetings.

3.8. Interim Submittals

Proposers are required to submit the following prior to the Proposal Submission Deadline in accordance with the schedule set forth in Section 3.1 of this RFP:

3.8.1. Interim Technical Proposal

Each Proposer was required to submit an Interim Technical Proposal on the date indicated in Section 3.1. (*RFP Process*). The Interim Technical Submittal was required to be a concise document containing only essential elements. The purpose of the Interim Technical Submittal was to provide PGCPS with the information it requires to evaluate the concepts and principal features that the Proposer plans to propose for the Project so that PGCPS may advise the Proposer as to their acceptability, particularly those that seek to utilize innovative or unusual approaches.

Proposers were required to submit the following materials to PGCPS (“Interim Technical Submittal”):

- a) A transmittal letter indicating the individuals who will be the Proposer’s key technical and legal representative available to respond in a timely manner to written inquiries submitted by PGCPS related to the Interim Technical Submittal;
- b) A concise list of the top five cost-driving factors in the Draft Project Agreement, including the design and construction standards and facilities management standards;
- c) The Proposer’s opinion as to whether one or both of the additional schools identified in Section 2.4.2 (Potential Optional Schools) could be included within the Project scope without exceeding the Affordability Ceiling and what, if any, implications such inclusion would have in terms of schedule, risk and Services delivery;
- d) An initial technical submittal composed of:
 - (i) A narrative outlining the Proposer’s anticipated technical approach to addressing each Project element;
 - (ii) Any initial conceptual drawings or renderings;
 - (iii) initial Site plans for each School, if available; and
 - (iv) An overview of the approach to meeting or exceeding PGCPS design specifications and standards.
- e) A preliminary master schedule;
- f) A description of any design issues or concerns in the design and construction standards;
- g) Identification of key Project risks;
- h) A description of any technical cost-savings alternatives the Proposer wishes to highlight; and
- i) A brief narrative of the Services delivery approach.

The Proposer was required to submit the Interim Technical Submittal, by the deadlines listed in Section 3.1 of this RFP, to the PGCPS Representative by email and 10 paper copies and a flash drive mailed to the Proposal Submission Location.

The email and package were required to be clearly marked with the following information: (a) name of Proposer and (b) “*Interim Technical Submittal for RFP No. DCP19-024A*”. Interim Technical Submittals will not be opened publicly or contemplated as part of the evaluation of proposals.

3.8.2. Interim Financial Submittal

The Interim Financial Submittal was required to include the following materials:

- (a) A description of the financing structures and competitive processes that the Proposer is considering, including a description of, (i) each source of financing (including equity, any construction or standby facilities, any guarantees subordinated debt, bank debt and capital markets debt), (ii) the indicative process and timeline for securing the financing commitments

- and achieving Financial Close, including identifying any independent financial advisor(s) the Proposer intends to engage to assist in conducting such competitive process, and (iii) the allocation of responsibilities for executing this process among Proposer Major Participants and advisors;
- (b) Information about the debt instruments and the corresponding Benchmark Interest Rates that the Proposer intends to use, as specified in Section 2.5.6.c. of this RFP. Proposers should identify the instruments, rather than the actual values;
 - (c) Information about the proposed Financial Model Auditor, as required by Section 3.13 of this RFP and Section 2.4.7 of Schedule C-1; and
 - (d) An initial draft version of the Financial Model as specified in Section 2.5 of Schedule C-1, but such Financial Model shall not contain any commercially sensitive information. Such initial draft version of the Financial Model will be deemed to be confidential and handled in accordance with Section 3.11 of this RFP.

The Proposer was required to submit the Interim Financial Submittal electronically by email to the PGCPS Representative by the deadline listed in Section 3.1 (*Procurement Schedule*) of this RFP. The email shall indicate in the subject line: (a) name of Proposer and (b) “*Interim Financial Submittal for RFP No. DCP19-024A*”. Interim Financial Submittals shall not be opened publicly.

3.8.3. Benchmark Interest Rate and Credit Spread Submittal

As set forth in Section 2.5.6.c. of this RFP, Proposers are required to submit their requested Benchmark Interest Rates and indicative credit spreads. Benchmark Interest Rates will be priced as of 10:00 a.m. Eastern time on such date. The Proposer shall submit its Benchmark Interest Rates and indicative credit spreads electronically by email to the PGCPS Representative by the deadline listed in Section 3.1 (*Procurement Schedule*) of this RFP. The email shall indicate in the subject line: (a) name of Proposer and (b) “Benchmark Interest Rates and Credit Spreads for RFP No. DCP19-24A”. Benchmark Interest Rate submittals shall not be opened publicly. PGCPS will make best efforts to approve Benchmark Interest Rate submittals and the Indicative Credit Spread within two (2) days of the Proposer submission.

3.9. Changes in Proposer’s Organization and Key Personnel

3.9.1 Changes in Proposer’s Organization

- (a) Subject to clause (b) below, Proposers may add, delete, or substitute team members and reorganize their teams during the RFP Process, unless the change would result in a Conflict of Interest.
- (b) Notwithstanding the foregoing, Proposers must not do any of the following without PGCPS’ prior written consent:
 - (i) delete, substitute, or change the identity of any Major Participant or any other team member identified in its SOQ, or change the role or scope of work of such Major Participant or team member; or
 - (ii) otherwise reorganize its team to the extent that such reorganization would render the organizational charts and descriptions provided in their SOQ inaccurate or incomplete,

(each an “**Organizational Change**”).

- (c) If a Proposer wishes to make any Organizational Change, a Proposer must submit to PGCPS a written request for the change as soon as possible but in no event later than thirty (30) days prior to the Proposal Submission Deadline. Such request must include a description of the proposed change and any relevant documentation related to the change, including updated versions of information submitted in the Proposer’s SOQ.
- (d) While PGCPS reserves the right to withhold its consent to any Organizational Change under clause (b) in its absolute discretion, PGCPS expects that it will base its decision as to whether to accept a proposed Organizational Change on whether the proposed Organizational Change would:
 - (i) result in a Proposer team with lower levels of experience, financial strength, and quality compared to those demonstrated in the Proposer’s SOQ;
 - (ii) result in any Conflict of Interest; or
 - (iii) cause the Proposer to be in violation of another provision of the RFP.

3.9.2. **Changes in Key Personnel identified in a SOQ**

If a Proposer wishes to change any of the Key Personnel identified in its SOQ during the RFP Process, the Proposer must submit to PGCPS a written notice of the change as soon as possible. Such notice must include the reason for the proposed change, a resume for the new Key Personnel (to the same level of detail as the resume submitted with the SOQ for the relevant position), and such other information about the change and the new Key Personnel as PGCPS may reasonably require.

3.9.3. **Key Personnel Nominated in a Proposal**

- (a) As part of its Proposal, each Proposer is required to nominate individuals as Key Personnel in accordance with Schedule B-1 (*Technical Proposal Instructions*).
- (b) Prior to the Commercial Close Date, a Proposer must not change any of the Key Personnel nominated in its Proposal, except in accordance with this Section 3.9.3.
- (c) If a Proposer wishes to change any of the Key Personnel identified in its Proposal prior to the Commercial Close Date, the Proposer must submit to PGCPS a written request for PGCPS to approve such change as soon as possible. The Proposer shall provide PGCPS with such information as PGCPS may require with respect to any proposed change, including the reasons for the change, the identity and qualifications (including a resume) of any new individual that is proposed to be a Key Personnel and evidence demonstrating that the changed team is of similar or higher standard. PGCPS is under no obligation to approve such requests and may approve or disapprove such a request in its absolute discretion. PGCPS will only consider such requests based on circumstances beyond the Proposer’s control.

- (d) Following the Commercial Close Date, any proposed changes to Key Personnel will be governed by the Project Agreement.

3.10. Improper Conduct

3.10.1. Conflicts of Interest, Lobbying, and Ethics Review Panel

- (a) In accordance with 15-811 through 15-815 of the State Government Article of the Annotated Code of Maryland, the Board of Education of Prince George’s County has promulgated Ethics Policies which cover conflict of interest, financial disclosure, and lobbying. All bidders are expected to comply with any and all Board Ethics Policies that may apply to them individually or as a business entity.
- (b) All bidders should review carefully the conflict of interest policies. Specific attention should be accorded to the Board Ethics Policies (Board Policy 0107) prohibiting Prince George’s County Public Schools employees from benefiting from business with the school system.
- (c) All bidders are placed on notice that all questions/interpretations concerning the Board Ethics Policies may be submitted to the Ethics Review Panel in accordance with Board Policy 0107.

3.10.2 Non-Collusion

Each Proposer shall submit, together with its Financial Proposal Letter, a Non-Collusion Affidavit in the form attached as Form T-10. Neither the Proposer, nor any of its team members, may undertake any of the prohibited activities identified in the Non-Collusion Affidavit.

3.10.3 Definition of Conflicts of Interest

For purposes of this RFP, “**Conflict of Interest**” means:

- (a) any situation or circumstance where a Proposer or any of its Major Participants:
 - (i) has other commitments, relationships, financial interests, or involvement in ongoing litigation that:
 - (A) could or could be seen to exercise an improper influence over the objective, unbiased, and impartial exercise of PGCPS’ independent judgment; or
 - (B) could be seen to compromise, impair, or be incompatible with the effective performance of its obligations under the Project Agreement;
 - (ii) is under contract with PGCPS or any Stakeholder to prepare procurement documents for the Project; or
 - (iii) has knowledge of, or access to, confidential information (other than confidential information disclosed by PGCPS in the normal course of the RFP) of strategic or material relevance to the RFP or to the Project that is not available to other Proposers and that could or could be seen to give the Proposer an unfair competitive advantage (provided, however, this is not intended to exclude any Proposers or team members who have worked with

PGCPS in the past or currently on projects outside the scope of the Project);
and

- (b) a “conflict of interest” defined under Code of Maryland Regulations (COMAR) §21.05.08.08.

3.10.4 Prohibition on Conflicts of Interest

Each Proposer is prohibited from:

- (a) directly or indirectly receiving any advice relating to the Project or the RFP from any Person with a Conflict of Interest; or
- (b) including as a Major Participant, or contractor, subcontractor, or consultant to the Proposer or any Major Participant,

any Person with a Conflict of Interest, including:

- (i) Jones Lang Lasalle Americas, Inc. (“JLL”);
- (ii) Kutak Rock LLP;
- (iii) SXM Strategies, LLC;
- (iv) Public Pathways;
- (v) ECS Limited;
- (vi) CU Title;
- (vii) Brailsford & Dunlavy; and
- (viii) any other Person that, to the best of Proposer’s knowledge and belief, is engaged by PGCPS, the County, or any of the above listed entities, in connection with the Project or the RFP.

3.10.5 Existence of Conflicts of Interest

- (a) If a Proposer discovers any perceived, potential, or actual Conflict of Interest, the Proposer must promptly disclose the same to PGCPS in a written statement delivered by the Proposer Representative to the PGCPS Representative, including:
 - (i) the names and contact information of the Persons to which the perceived, potential, or actual Conflict of Interest relates;
 - (ii) a description of the perceived, potential, or actual Conflict of Interest; and
 - (iii) a description of the steps taken or proposed to be taken to mitigate the perceived, potential, or actual Conflict of Interest.
- (b) If a Conflict of Interest that the Proposer knew, or should have known about, but failed to disclose is determined to exist during the RFP Process, PGCPS may, in its discretion, disqualify such Proposer.
- (c) PGCPS may grant exceptions to the policy set forth in Section 3.10.4 (*Prohibition on Conflicts of Interest*), upon written request from a Proposer, if it is determined that the relevant party’s involvement is in the best interest of the public and does not

constitute an unfair advantage. Proposers seeking such exception are advised to submit a written request as soon as possible because PGCPS will not extend or be responsible for any failure to respond to any such request prior to, the Proposal Submission Deadline, as applicable.

- (d) PGCPS guidelines in this RFP are intended to augment applicable federal, State, and local law and rules. All Applicable Laws will also apply to Proposers and may preclude certain firms and their entities from participating on a Proposer team. Proposers should disclose all relevant facts concerning any past, present, or currently planned interests which may present an organizational conflict of interest, and must state how their interests, or those of their chief executives, directors, key project personnel, or any proposed consultant, contractor, or subcontractor may result, or could be viewed as, an organizational conflict of interest.

3.10.6. Participation on More Than One Proposer Team

Major Participants of a Proposer shall not, directly or indirectly, participate in any capacity on more than one Proposer team. This prohibition includes the participation on different teams by a Major Participant of any Proposer through related corporate entities, such as an entity that directly or indirectly controls another entity, or two entities that are under common control. If any Major Participant fails to comply with this prohibition, all Proposer teams on which it is participating may be disqualified from submitting a Proposal.

3.10.7. Non-Exclusive Relationships with Monoline Insurers, Lenders, and Conduit Issuers

- (a) The market for monoline insurers, bank loan financing, and Conduit Issuers is small enough that, to establish a fair RFP Process and avoid certain Proposers obtaining a distinct and unfair advantage:
 - (i) Proposers may not enter into any exclusivity arrangements with any monoline insurer or any bank or other financial institution that provides debt financing in the form of a loan or related guarantees;
 - (ii) any monoline insurer, bank, or other financial institution may provide insurance, guarantees, credit support, financing, or other financial products to one or more Proposers;
 - (iii) Proposers may enter into exclusivity arrangements with one bond underwriter but, if a Proposer wishes to engage additional bond underwriters, such additional bond underwriters must be engaged on a non-exclusive basis; and
 - (iv) Proposers may not enter into any exclusivity arrangements with any Conduit Issuer, and any Conduit Issuer may accept applications from one or more Proposers.
- (b) PGCPS reserves the right, but has no obligation, to engage in bilateral discussions with monoline insurers, potential providers of bank loan financing, or Conduit Issuers to verify their availability to all Proposers.

3.11. Confidentiality and Public Disclosures

3.11.1. Statement of Confidentiality

It is understood and agreed that all information pertinent to this RFP may contain trade secrets, which are confidential and proprietary. Proposers agree not to disclose or knowingly use any confidential or proprietary information of PGCPS and/or third-party participants. The confidentiality provisions set forth herein shall apply during the RFP Process and the Exclusive Negotiating Period.

Proposers acknowledge and agree to hold all Confidential Information in the strictest confidence as a fiduciary and will not make any press release or public announcement, or voluntarily sell, transfer, publish, disclose, display, or otherwise make available to any third persons such Confidential Information or any portion thereof without the express written consent of PGCPS. Proposer and its employees, agents, volunteers, and contractors shall maintain the confidentiality of all medical, psychological, and student records in compliance with federal and state laws. Additionally, if applicable, Proposer shall procure from the parent or guardian of each student receiving services hereunder a written consent in favor of Proposer and PGCPS for the mutual disclosure of such records by and among the Proposer, PGCPS and PGCPS' employees, agents, volunteers, and contractors.

For purposes of this Section, "Confidential Information" shall include any information that is identified in writing as being confidential which is not already publicly known, such as student and employment records and any other information identified by PGCPS during the RFP Process as Confidential Information.

3.11.2. Disclosures Pursuant to the Maryland Public Information Act Request

All Proposals received in response to this RFP will become property of PGCPS and will not be returned. Proposers should be aware that Proposals submitted in response to the RFP are subject to the Maryland Public Information Act (Education Article, Maryland Annotated Code, §10-611, et seq.). In accordance with the Act, certain information is subject to public disclosure. Please be advised that should a Proposer deem any portion of its proposal as confidential or proprietary, it must be conspicuously indicated on those portions so deemed. However, and in accordance with the Act, you are hereby notified that every portion may still be subject to disclosure under the Act.

All information submitted by Proposers that they consider confidential or a proprietary trade secret and not releasable to third parties, and their employees, agents, consultants, and representatives must be clearly and conspicuously so marked. To this end, the Proposer must do the following:

- (a) Clearly mark all proprietary or trade secret information as such in its Proposal at the time each such Proposal is submitted and include a cover sheet stating, "DOCUMENT CONTAINS CONFIDENTIAL PROPRIETARY OR TRADE SECRET INFORMATION" and identifying each section and page which has been so marked.
- (b) Include a statement with its Proposal justifying the Proposer's determination that certain records are proprietary or trade secret information for each record so defined;
- (c) Submit with the Proposal one electronic copy, on a flash drive, of the full Proposal that has all the proprietary or trade secret information redacted from the Proposal and label such copy of the Proposal: Proposal Public Copy; and
- (d) Defend any action seeking release of the records it believes to be proprietary or trade secret information and indemnify, defend, and hold harmless PGCPS and its agents and employees from any judgments awarded against PGCPS and its agents and employees in favor of the

party requesting the records, including any and all costs connected with that defense. This indemnification survives PGCPS' cancellation or termination of this procurement or award and subsequent execution of a Project Agreement. In submitting a Proposal, the Proposer agrees that this indemnification survives as long as the confidential business information is in possession of PGCPS.

PGCPS may disclose submissions received in response to this RFP to both governmental and non-governmental evaluators. Each non-governmental evaluator will sign and provide Nondisclosure Agreements to PGCPS.

3.11.3. Exclusive Negotiating Period

The confidentiality provisions of this Section 3.11 (*Confidentiality and Public Disclosure*) shall also apply during the Exclusive Negotiating Period.

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3.12. Reimbursement

3.12.1. Reimbursement Agreement

On April 23, 2020, PGCPS entered into Proposal Preparation Reimbursement Agreements (each, a “Reimbursement Agreement”) with each of the Proposers identifying certain opportunities for the payment of certain Reimbursements to the Proposers.

3.12.2. Reimbursement General Conditions

- (a) Payment of any Reimbursement is expressly conditioned upon such Proposer:
- (i) providing to PGCPS an executed Proposal Preparation Reimbursement Agreement, which may be provided at any time prior to or concurrently with such Proposer’s submission of its Interim Technical and Financial Submittals, and
 - (ii) being fully compliant with the conditions under the Reimbursement Agreement for payment of the Reimbursement.
- (b) A Proposer is not eligible for a Reimbursement if the Proposer:
- (i) fails to submit a timely Proposal that is responsive to the RFP as defined in Section 4.2 (*Requirements to Submit a Responsive Proposal*);
 - (ii) withdraws its Proposal;
 - (iii) is the Successful Proposer and either (i) executes a Project Agreement with PGCPS or (ii) fails to fulfill the conditions precedent required to execute a Project Agreement with PGCPS, except as explicitly set forth in the Project Agreement;
 - (iv) files a protest or any other claim or cause of action against PGCPS or the County arising out of the procurement of the Project; or
 - (v) fails to satisfy any of the other conditions set forth in the Reimbursement Agreement.

3.13. Financial Model Auditor

Each Proposer provided PGCPS with information about the proposed auditor and PGCPS has approved these submissions.

Proposers will pay for the services provided by the Financial Model Auditor.

The Financial Model Auditor's opinion as to the Financial Model delivered to the Developer shall also be addressed to PGCPS, or a reliance letter addressed to PGCPS should be provided. The contract for audit services may limit the Financial Model Auditor's liability to PGCPS for any failure of the Financial Model Auditor's opinions to identify any errors in the Financial Model beyond five years from completion of services and in an amount of no less than \$2,000,000; provided that such caps shall be effective only if the Financial Model Auditor maintains professional liability insurance in the amount and for the duration of the cap.

The Financial Model Auditor’s opinion will be required prior to Financial Close as set forth in the Exclusive Negotiating Agreement.

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4. RFP CONTENT AND SUBMISSION REQUIREMENTS

4.1. General Submission Requirements

Proposers will submit a Proposal in accordance with the instructions provided in this Section of the RFP. All Proposals will be complete, with all requested information, data, and attachments. To facilitate review of Proposals, Proposers are urged to be thorough but brief and, where practically possible, use tables and diagrams as opposed to text. Failure of the Proposer to provide all requested information in the requested format may result in a determination by PGCPS, in its sole discretion, that the Proposal is non-responsive to the requirements of this RFP.

4.1.1 Proposal Due Date

Each Proposer shall submit its Technical Proposals and Financial Proposals on or before the Proposal Submission Deadline set forth in Section 3.1 of this RFP (RFP Schedule).

4.1.2 Signatures Required

The Technical and Financial Transmittal Letters shall be signed by the Proposer Representative and shall be accompanied by evidence of signatory authorization as specified in Form T-1 (*Technical Proposal Transmittal Letter*) and Form F-1 (*Financial Proposal Transmittal Letter*), respectively.

4.1.3 Language and Currency

- (a) Proposals shall be written in the English language.
- (b) Any information quantified in currency shall be provided in US dollars. If financial statements are converted from a foreign currency into US dollars, the conversion method(s) must be explained.

4.1.4 Inclusion of Proposal in Project Agreement

Portions of the Successful Proposer's Proposal will be attached as Exhibits and incorporated into the Project Agreement and will be binding obligations of the Developer under the Project Agreement. Such information may include:

- (a) the Technical Proposal (with such exceptions and modifications as are determined by PGCPS to be necessary to ensure that the Technical Proposal is not in conflict with the Technical Requirements);
- (b) the Financial Proposal;
- (c) the Construction Schedules; and
- (d) such other portions of the Successful Proposer's Proposal deemed by PGCPS to be relevant to the obligations of the Developer for the Project or identified in the Project Agreement as carrying over from the Successful Proposer's Proposal.

Unless expressly incorporated into the Project Agreement, no information included in a Proposal shall be binding on PGCPS.

4.2 Requirements to Submit a Responsive Proposal

- (a) Tentative or contingent commitments will not be considered in the evaluation of a Proposal (unless such commitments are clarified to the satisfaction of PGCPS at its request or PGCPS waives any related requirement pursuant to Section 7 of this RFP (*PGCPS Rights and Disclaimers*)). For example, items modified by phrases such as “we may” or “we are considering” will not be considered in the evaluation process since they do not indicate a firm commitment, unless clarified or waived. The Proposal may not include any reservations, qualifications, conditions, assumptions, or exceptions to or deviations from the requirements of the RFP, unless approved by PGCPS in writing. If the Proposal does not fully comply with the instructions and requirements contained in this RFP, including the Schedules and Forms, or if a Proposal contains a substantive change to any portion of this RFP, including the Schedules and Forms, it may be deemed non-responsive in PGCPS’ absolute discretion.
- (b) If a Proposal is deemed non-responsive, PGCPS may disqualify the Proposal from further consideration, in PGCPS’ absolute discretion. Such disqualification could result in the forfeiture of any Reimbursement under Section 3.12 of this RFP. Each Proposer, by submittal of its Proposal, shall be deemed to have agreed to the foregoing and to all other requirements of the RFP Process.
- (c) Each Proposal must be submitted in the format specified by PGCPS in this RFP.
- (d) Each Proposer may submit only one Proposal. Multiple or alternate Proposals may not be submitted.
- (e) In PGCPS’ absolute discretion, a Proposal may be considered non-responsive and may be disqualified from the RFP Process for any of the following reasons:
 - (i) the Proposal is submitted in a format other than as specified in this RFP;
 - (ii) any part of the Proposal is missing from the Proposal package or otherwise does not meet the requirements of this Section 4.2 (*Requirements to Submit a Responsive Proposal*);
 - (iii) the Proposer is unable to meet legally required professional licensing certifications and/or contractor licensing requirements;
 - (iv) PGCPS determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite, or ambiguous as to its meaning, including illegible text, omissions, erasures, alterations, or items not required by the RFP or unauthorized additions;
 - (v) a Proposal includes (x) any conditions or provisions reserving a Proposer’s right to accept or reject an award if it is selected as Successful Proposer or (y) any conditions to entering into the Project Agreement;
 - (vi) any required information is not included in the Proposal; or

- (vii) any other reason that the Proposal is non-responsive to any other instructions, requirements, terms, or conditions of the RFP, as determined by PGCPS.

4.3. Content, Format, and Organization

The Technical Proposal will include only the information requested in Schedule B-1 (Technical Proposal Submittal Requirements) and the Financial Proposal shall include only the information requested in Schedule C-1 (Financial Proposal Submittal Requirements) of this RFP.

4.3.1. Proposal Content

- (a) In the RFP, the term “**Proposal**” means a Proposer’s response, in its entirety, to the RFP, including the following:
 - (i) such Proposer’s Technical Proposal in response to the requirements set forth in Schedule B-1 (*Technical Proposal Instructions*), including all reports, drawings, plans, and other documents as described in that Schedule (collectively, the “**Technical Proposal**”); and
 - (ii) such Proposer’s Financial Proposal in response to the requirements set forth in Schedule C-1 (*Financial Proposal Instructions*), including all other financial information as described in that Schedule (collectively, the “**Financial Proposal**”).
- (b) Each Technical and Financial Proposal shall include each of the applicable items listed and a copy of the checklists provided in Schedule A (*Summary and Checklist of Proposal Contents*). Each Proposal component shall be clearly titled and identified. All blank spaces in Forms attached to this RFP must be filled in as appropriate. No substantive change shall be made to any Form attached to this RFP. Proposals must be bound with all pages sequentially numbered.
- (c) Each Proposal shall contain concise written material and drawings, enabling a clear understanding and evaluation of the capabilities of the Proposer and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness of each portion of a Proposal are essential.

4.3.2. Proposal Format

- (a) Proposals must be submitted electronically via email in accordance with the written instructions that will be separately provided to Proposers. Proposers must also submit electronic proposals on USB drives as further specified in this Section 4.3. PGCPS reserves the right to request hard copies after the Proposal Due Date.
- (b) Proposals must be prepared so that it may be printed on 8 ½” by 11” sized white paper and bound. Printable 11” by 17” pages are allowed for schematics, organizational charts, and other drawings or schedules, but not for narrative text. The font size must be no smaller than 11-point font, except for tables, graphics and

figures, which may be prepared using 9-point font as long as it is still clearly legible. Graphics shall not consist of text only. Printed lines may be single-spaced.

- (c) Proposers are encouraged to reduce the repetition of identical information within several sections of the Proposal by making appropriate and specific cross-references to other sections of the Proposal; however, no cross-references will be permitted between the Technical Proposal and the Financial Proposal.
- (d) Each electronic copy shall be provided on a USB drive, and each electronic folder of the Proposal shall be labeled to indicate its contents and shall include subfolders as appropriate to facilitate PGCPS' review of its contents. Confidential information shall be submitted with the Proposal in accordance with Section 3.11 (*Confidentiality and Public Disclosure*) and may be submitted in separately labeled folders or subfolders for each member of the Proposer. Whenever a Proposal contains confidential information, a sheet should be inserted in the appropriate section with a statement directing PGCPS to the single folder, subfolder, or file to locate the information.

For the avoidance of doubt, submitting information as CONFIDENTIAL does not relieve Proposers of any requirement to provide information in an electronic format. The original Technical Proposal and Financial Proposal shall be clearly identified as "ORIGINAL." Each copy of the Proposal shall be sequentially numbered, labeled, and bound, and labeled as a "COPY." More detailed submittal requirements regarding the format and organization for each of the Technical Proposal and Financial Proposal are set forth in Schedule B-1 (*Technical Proposal Instructions*) and Schedule C-1 (*Financial Proposal Instructions*), respectively.

- (e) Any electronic copy of a Proposal (or portion of a Proposal) shall be in searchable Adobe (.pdf) format on USB drive, provided that completed Forms in a Proposal may be submitted in either searchable Adobe (.pdf) or Word format, and provided, further, that scanned signed letters and Forms may be submitted in non-searchable Adobe (.pdf) format.

4.3.3. Technical Proposal

- (a) Each Proposer shall deliver to PGCPS one original and six identical USB drives containing an electronic version of its Technical Proposal with a clear folder and file structure that follows logical outline and content of the proposal. The electronic copy shall also include, as a separate file, all drawings in searchable PDF; and
- (b) Electronic copies of the Technical Proposal shall be packaged in a single, sealed envelope labeled with (i) name of the Proposer, (ii) "Proposal for RFP No. DC P19-24A (PGCPS ACF Package 1 DBFM)", and (iii) "Technical Proposal".
- (c) The USB drive comprising the original electronic copy of the Technical Proposal shall be packaged in one sub envelope clearly labeled with (i) name of the Proposer, (ii) "Proposal for RFP No. DCP19-024A (PGCPS ACF Package 1 DBFM)", and (iii) "Original Technical Proposal".

- (d) The sub envelope that includes the required electronic copy duplicates of the Technical Proposal shall be sealed and labeled with (i) name of the Proposer, (ii) *“Proposal for RFP No. DCP19-24A (PGCPS ACF Package 1 DBFM)”*, (iii) *“Technical Proposal - COPY”*, and (iv) the copy number.

4.3.4 Financial Proposal

- (a) Each Proposer shall deliver to PGCPS one original and six identical USB drives each containing an electronic version of its Financial Proposal; and
- (b) All of the USB drives comprising the Financial Proposal, together with the electronic copies, shall be packaged in a single, sealed envelope labeled with (i) name of the Proposer, (ii) *“Proposal for RFP No. DCP19-24A (PGCPS ACF Package 1 DBFM)”*, and (iii) *“Financial Proposal”*.
- (c) The USB drive comprising the original electronic copy of the Financial Proposal, together with the electronic copy, shall be packaged in one sealed sub envelope clearly labeled with (i) name of the Proposer, (ii) *“Proposal for RFP No. DCP19-24A (PGCPS ACF Package 1 DBFM)”*, and (iii) *“Original Financial Proposal”*.
- (d) The sub envelope that includes the required electronic copy duplicates of the Financial Proposal shall be sealed and labeled with (i) name of the Proposer, (ii) *“Proposal for RFP No. DCP 19-24A (PGCPS ACF Package 1 DBFM)”*, (iii) *“Financial Proposal - COPY”*, and (iv) the copy number.

4.3.5 Conflict or Inconsistency in Copies of Proposals

If there is any conflict or inconsistency between the content of the original electronic copy of a Proposal (or a portion of a Proposal) and a copy of such Proposal, the original electronic copy shall prevail over the copy, and PGCPS will evaluate such Proposal (or portion of such Proposal) based on the original electronic copy content.

4.4. Proposal Delivery – Due Dates and Location

- (a) The completed Technical and Financial Proposals shall be emailed in accordance with the written instructions provided by PGCPS and delivered in sealed envelopes in accordance with the requirements of this RFP on or before **2 p.m. Eastern** on the date set forth in Section 3.1 as the Technical and Financial Proposal Submission Date (the ***“Proposal Submission Deadline”***). The submittals will not be considered complete until all electronic submittals are received.
- (b) Sealed Proposals may either be delivered by hand or sent to the PGCPS Representative through U.S. mail or available commercial courier services to the following address:

**Department of Capital Programs Procurement Office
13300 Old Marlboro Pike, Trailer 6
Upper Marlboro, MD 20772**

Each Proposer will be responsible for obtaining a written receipt appropriate to the means of delivery from the PGCPS Department of Capital Programs Procurement

Office at the time of delivery of its Proposal. It is the Proposer's sole responsibility to ensure delivery of its Proposal at the time and place specified herein, and PGCPS will have no liability or responsibility therefore.

- (c) Proposals or unsolicited modification requests received after the time for submittal of Proposals will be returned to the Proposer without consideration or evaluation.

4.5. Modifications, Withdrawals and Late Submittals

4.5.1 Modifications to a Proposal

- (a) The Proposer may modify its Technical Proposal prior to the Technical Proposal Submission Deadline, as applicable. The Proposer may modify its Financial Proposal prior to the Financial Proposal Submission Deadline, as applicable
- (b) Any modification shall conform in all respects to the requirements for submission of a Proposal. Modifications shall be clearly marked as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the original Proposal and all previous modifications, if any, submitted by such Proposer. If multiple modifications are submitted, they shall be sequentially numbered so PGCPS can accurately identify the final Proposal.
- (c) Any modification must contain complete Proposal Sections, complete pages, or complete Forms as described in Schedule B-1 (*Technical Proposal Instructions*) and Schedule C-1 (*Financial Proposal Instructions*), as applicable. Line item changes will not be accepted.

4.5.2 Withdrawal of Proposals

- (a) A Proposer may withdraw its Proposal at any time prior to the Proposal Submission Deadline, as applicable, by means of a written request signed by its Proposer Representative. Such written request shall be delivered to the PGCPS Representative.
- (b) A withdrawal of a Proposal will not prejudice the right of a Proposer to file a new Proposal; provided that the new Proposal is received before the Proposal Submission Deadline.
- (c) No Proposal may be withdrawn on or after the Proposal Submission Deadline.

4.5.3 Late Proposals

Proposals, modifications, and withdrawal requests received after the relevant Proposal Submission Deadline will be rejected without consideration or evaluation by PGCPS.

4.6 Proposal Security and Financial Close Security

4.6.1 Proposal Security

- (a) As security for its commitment to enter into the Project Agreement in accordance with its Proposal commitments, the Successful Proposer shall submit to PGCPS cash,

in escrow, and/or one or more standby letter(s) of credit, proposal bonds, or demand guarantees (in each case, the “**Proposal Security**”). The Proposal Security must be provided by the Successful Proposer within five (5) days after receiving a Notice of Award. To the extent that the Successful Proposer fails to do so, PGCPS may revoke its selection of the Successful Proposer, and may take any other action described in Section 6.1.5 (*Withdrawal of Successful Proposer Status*) and Section 7.1 (*PGCPS Rights*).

- (b) The Successful Proposer shall provide Proposal Security in an aggregate amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000). The Successful Proposer may submit more than one letter of credit or proposal bond in the form of Form T-6 (Form of Bond Security) or Form T-5 (Form of Letter of Credit), respectively, as its Proposal Security; provided that the amount of all such Proposal Security will equal \$1,500,000 in the aggregate. To the extent Successful Proposer elects to submit all or a portion of the Financial Close Security in the form of cash, such cash must be held by an independent, third-party agent satisfactory to both PGCPS and Successful Proposer pursuant to an escrow agreement containing substantially similar terms as set forth in Form T-6 (Form of Bond Security) and Form T-5 (Form of Letter of Credit) and executed by the applicable parties within five (5) days after receiving a Notice of Award; to the extent that such escrow agreement is not executed within five (5) days after receiving a Notice of Award, PGCPS may revoke its selection of the Successful Proposer, and may take any other action described in Section 6.1.5 (*Withdrawal of Successful Proposer Status*) and Section 7.1 (*PGCPS Rights*).

4.6.2 Financial Close Security

- (a) As security for its commitment to achieve Financial Close, the Successful Proposer will be required to replace its Proposal Security with cash, in escrow, and/or one or more standby letter(s) of credit, proposal bonds, or demand guarantees in accordance with Section 5.1.4 of the Exclusive Negotiating Agreement and substantially in the form of Exhibit A to the Exclusive Negotiating Agreement.
- (b) The Financial Close Security must:
 - (i) be issued by an Eligible Security Issuer (in the event cash is not provided);
 - (ii) designate PGCPS as the beneficiary; and
 - (iii) be in an aggregate amount equal to Ten Million Dollars (\$10,000,000).
 - (iv) The rights and obligations of PGCPS to draw upon or return the Financial Close Security are set forth in the Project Agreement.

4.6.3 Proposal Validity Period

- (a) A Proposal submitted in response to this RFP is binding upon the Proposer, with the exception of the debt components of the Financing Plan (Parts 2.6.1, 2.6.2, 2.6.4, 2.6.5), and is considered irrevocable for a minimum of 180 days following the

Proposal Submission Date or the closing date for receipt of a best and final offer, if applicable (the “**Proposal Validity Period**”).

- (b) Any Proposer may elect, in its absolute discretion, to extend the validity of its Proposal beyond the Proposal Validity Period.
- (c) Any Proposer that agrees to extend the validity of its Proposal beyond the Proposal Validity Period will, as a condition to PGCPS’ acceptance of such extension, provide an amended or replacement Proposal Security covering the extended Proposal Validity Period.

4.7. Proposer's Costs

Except as otherwise provided in Section 3.12 (*Reimbursement*) of this RFP, the cost of preparing a Proposal, and any and all other costs incurred by a Proposer at any time during the RFP Process, shall be borne solely by such Proposer.

4.8. Proposal Opening

Proposals are not opened publicly, but in the presence of at least two PGCPS representatives. Once the Proposals are opened, PGCPS will prepare a document that summarizes the Proposals received. This document will be available for inspection no later than 20 days after opening and prior to the date a Notice of Award letter is issued.

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5. EVALUATION PROCESS

5.1. Evaluation Process and Criteria

In order to ensure a fair, uniform, and transparent basis of award, upon PGCPS' receipt of the Proposals, PGCPS will proceed to review the Proposals pursuant to the evaluation procedures and criteria established in this RFP.

5.2. Basis of Award

The selection of the most advantageous Proposal will be based on a best value determination, determined in accordance with the evaluation procedures and weighted criteria stated in this Section 5 of the RFP.

5.3. Selection Committee and Approvals

PGCPS will establish a Selection Committee comprised of qualified experts and professionals with experience in diverse Project elements which will be responsible for evaluating the Proposals and making a recommendation as to the Successful Proposer. Proposals may be reviewed by PGCPS and County officials, their duly appointed advisors, and other experts as deemed technically necessary and appropriate by PGCPS. Approval of award to the Successful Proposer and Execution of the Project Agreement are subject to certain approvals, as required under Applicable Law and regulations, which includes approval by the Board of Education, and compliance with all Applicable Laws.

5.4. Evaluation Procedure

The evaluation process shall contemplate a dual-phase process whereby before making its best value determination, PGCPS will first evaluate Proposals to determine whether they are responsive based on an evaluation of threshold evaluation factors described in Section 5.4.1 of this RFP. Following the responsiveness review, all responsive Proposals will be evaluated in the manner described in Section 5.4.2. of this RFP, and PGCPS will assign an overall ranking to each Proposal based on which Proposal delivers the best value to PGCPS. PGCPS will not select any Proposer that PGCPS determines has submitted a non-responsive Proposal.

5.4.1. Phase 1: Proposal Responsiveness Review

PGCPS shall conduct a preliminary review of the Technical and Financial Proposals to assess responsiveness and to identify any aspects of the Proposals that requires clarification. PGCPS may, in its sole discretion, request clarification of some or all of each Proposal in accordance with Section 5.6 (*Clarifications and Additional Information*) of this RFP.

The review will include, among other elements, a confirmation that the Technical and Financial Proposals have complied with all terms and conditions of this RFP, including, without limitation, all applicable submittal requirements. This responsiveness review shall further take into consideration, without limitation, any material misrepresentations, any material adverse changes that may have affected the Proposer's financial condition and capabilities since the submittal of its SOQ, and the impact of any unapproved Organizational Changes.

Any Proposal that PGCPS determines is incomplete in any material respect may be deemed nonresponsive and rejected in its entirety. Proposals deemed responsive will be evaluated in accordance with this RFP.

5.4.2. Phase 2: Evaluation Categories and Weighting

Following the Proposal responsiveness review described above, responsive Proposals will be evaluated by the Selection Committee in accordance with the evaluation criteria set forth in this RFP. Technical Proposals will be evaluated and scored prior to Financial Proposals.

The Proposal evaluation categories and their relative weighting are set forth in the following table:

Criterion	Maximum Points
TECHNICAL PROPOSAL	300
<i>Organization & Project Management</i>	40
<i>MBE/CBB and Local Community Benefits Program</i>	35
<i>Schedule</i>	20
<i>Design Approach</i>	77
<i>Construction Approach</i>	58
<i>Services Approach</i>	70
FINANCIAL PROPOSAL	300
<i>Cost Score</i>	200
<i>Financing Plan Score</i>	100
Total	600

5.5. Proposal Point Scoring

5.5.1. Technical Proposal Scoring

The Technical Proposal evaluation criteria consist of six major criteria with associated subcriteria that will be evaluated and scored by the Selection Committee using a points system. The evaluation criteria are detailed in Schedules B-2 and C-2 of this RFP. The maximum number of points assigned to each of the major Technical Proposal criteria is indicated in Section 5.4.2 of this RFP. The Selection Committee intends to award points for each criterion in a manner that will result in the difference in technical points awarded to the Technical Proposals under each criterion being representative of the Selection Committee’s assessment of the difference in value to PGCPS of the Technical Proposals with respect to that criterion. The Selection Committee reserves the right, in its sole discretion, to determine the points awarded for each criterion based on its evaluation of the Technical Proposal information considered for each subcriterion. The Selection Committee may elect to award tenths of a point and/or to use an adjectival rating system to assign points.

5.5.2. Financial Proposal Scoring

PGCPS will evaluate the Financial Proposals submitted in response to the requirements set forth in Schedule C-1. The evaluation will be based on: (i) the Design-Build Costs, Pre-Development Costs and the Services Costs set forth in Form F-2 (the “Cost Score”) and (ii) the Selection Committee’s evaluation of the Financing Plan in accordance with Schedule C-2 of this RFP (the “Financing Plan Score”).

In order to determine the Cost Score, PGCPS will add the Design-Build Cost and the Pre-Development Costs in Form F-2 to the net present value of the Services Costs in Form F-2, which will be discounted at an annual rate of 5.0% (the "Total Costs").

The combined amount will be scored on a relative basis as follows:

$$\text{Cost Score} = 200 \times (\text{Cost}_{\text{Best}} / \text{Cost})$$

Whereby,

Cost Score is the Cost Score for the proposal under consideration;

Cost_{Best} is the lowest proposed Total Costs offered by any Proposer; and

Cost is the Total Costs in the proposal under consideration.

The Cost Score will be rounded to two decimal places.

The total Financial Proposal score is the sum of the Cost Score and the Financing Plan Score.

5.5.3. Total Score and Selection of the Successful Proposer

After points have been assigned to both the Technical Proposal and the Financial Proposal, the Selection Committee will add the Technical Proposal point score and the Financial Proposal point score for each Proposal. The Proposer submitting the Proposal that receives the highest total number of points will be deemed to provide the best value to PGCPS and will be the Successful Proposer recommended for award.

In the event of a tie, PGCPS shall extend to those tying Proposers a request for Best and Final Offer Financial Proposal for the purpose of determining the Successful Proposer.

5.6. Clarifications and Additional Information

- (a) To facilitate the examination and evaluation of Proposals, PGCPS may, at any time during the Proposal evaluation period, issue one or more requests for clarification to one or more Proposers, seeking additional information or clarification from a Proposer and may request a Proposer to verify or certify certain aspects of its Proposal. Proposers shall respond to any such request by such time as is specified by PGCPS in such request. The scope, length, and topics to be addressed in requests for clarification shall be prescribed by, and subject to the absolute discretion of, PGCPS. Upon receipt of any requested additional information or clarification, the applicable Proposal or Proposals may be re-evaluated by PGCPS to consider such additional information or clarification.
- (b) Any additional information or clarification submitted by a Proposer pursuant to this Section 5.6 (*Clarifications and Additional Information*) shall become a part of the Proposer's Proposal.

5.7. Waiver of Non-Conformities

PGCPS, in its absolute discretion, may waive mistakes, clerical errors and minor irregularities, omissions, nonconformities, or discrepancies unrelated to the material content of a Proposal and

may offer a Proposer the opportunity to clarify its Proposal or request revisions to all Proposals, in each case, in accordance with this Section 5.7. The provisions of this Section are not intended to, and shall not, limit in any manner any of the rights reserved by PGCPS under Section 7 (Reserved Rights) of this RFP.

5.6. No Obligation to Award

This RFP does not commit or bind PGCPS to award or enter into a Project Agreement with any Proposer. This RFP is for the convenience of PGCPS.

5.7. Notice of Intent to Award and Notice of Award

After the evaluation of Proposals is duly completed and a Successful Proposer selected for recommendation to the Board of Education, PGCPS shall notify all Proposers of the result by issuing a "Notice of Intent to Award". Following approval of award to the Successful Proposer by the Board of Education, PGCPS shall notify all Proposers of the final result by issuing an "Notice of Award". The Notice of Award shall likewise be posted on <https://www1.pgcps.org/Purchasing/> and [eMaryland Marketplace](#).

5.8. Protests and Appeals

The Director of Purchasing and Supply Services shall attempt to resolve informally all protest of the bid award recommendation included in the Notice of Intent to Award. Proposers are encouraged to present their concerns in writing promptly to the PGCPS Representative and/or Purchasing Supervisor for consideration and resolution. Open dialogue is helpful for all parties, and disputes are often only a misunderstanding of the evaluation and recommendation process.

- (a) An interested party (any Proposer) may protest the Notice of Intent to Award to the Director of Purchasing and Supply Services.
- (b) The protest shall be in writing addressed to the Purchasing Supervisor with a copy to the Director and shall include the following:
 - (i) The name address and telephone number(s) of the protester;
 - (ii) Identification of the solicitation;
 - (iii) Statement of reasons for the protest;
 - (iv) Supporting documentation to substantiate the claim; and
 - (v) The remedy sought.
- (c) The protest must be filed with the Purchasing Office within ten (10) calendar days of the Notice of Intent to Award.
- (d) A Proposer who does not file a timely protest is deemed to have waived any objection.
- (e) The Director of Purchasing shall inform the Chief Operating Officer (COO) upon receipt of any protest.
- (f) The Director of Purchasing shall confer with the General Counsel prior to issuance of a decision regarding any protest under this RFP process.
- (g) The Director of Purchasing shall issue a decision in writing. Any determination by the Director of Purchasing may be appealed to the COO within seven (7) calendar days of

issuance of the decision by the Director of Purchasing. The decision of the COO shall be final.

- (h) The Board of Education shall not hold a vote to approve the Successful Offeror until after the eleventh day following issuance of the Notice of Intent to Award or, in the event of a protest, until final resolution of any protest(s) to the Notice of Intent to Award unless PGCPS makes a written determination that proceeding without delay is necessary to protect the public interest.
- (i) There shall be no right to protest or appeal the Notice of Award.

6. POST-AWARD REQUIREMENTS AND CLOSING

6.1. Formalization and Execution of the Project Agreement

6.1.1. Exclusive Negotiating Agreement and Commercial Close Deadline

Following the Notice of Intent to Award, the Successful Proposer will receive from PGCPS an execution version of the Exclusive Negotiating Agreement in the form of Proposal Form T-15, with the bracketed items completed by PGCPS. Within two (2) Business Days of receipt from PGCPS, the Successful Proposer shall return a signed version of the Exclusive Negotiating Agreement to PGCPS. In the event that the Successful Proposer fails to return to PGCPS a signed Exclusive Negotiating Agreement within two (2) Business Days of receipt of request from PGCPS, PGCPS may revoke its selection of the Successful Proposer, and may take any other action described in Section 6.1.5 (*Withdrawal of Successful Proposer Status*) and Section 7.1 (*PGCPS Rights*). PGCPS will countersign the Exclusive Negotiating Agreement executed by the Successful Proposer upon the Board of Education's approval of the Successful Proposer and receipt of the Proposal Security.

Within sixty (60) calendar days after the execution of the Exclusive Negotiating Agreement, or such longer time as the Successful Proposer and PGCPS may agree in accordance with the Exclusive Negotiating Agreement, the Successful Proposer, acting through its incorporated SPE, shall execute the Project Agreement with PGCPS ("**Commercial Close Deadline**").

6.1.2. Project Agreement

In accordance with the Exclusive Negotiating Agreement, PGCPS and the Successful Proposer may, in each party's sole discretion, agree to changes to the Final Agreement Draft prior to achieving Commercial Close. The terms and exhibits highlighted in yellow in the Final Agreement Draft are considered by PGCPS to be non-negotiable, except for conforming or minor changes as desirable to the parties or necessary to maintain the consistency of the intended provisions unto themselves and such that the non-negotiable provisions align commercially and legally with the changes to the negotiable provisions and of the Agreement as a whole, in the reasonable judgment of the parties. In addition, during the Exclusive Negotiating Period, PGCPS and Successful Proposer shall in good faith revise the Final Agreement Draft to incorporate minor changes, additions, and modifications (a) necessary to create a complete, consistent, and legally binding contract; (b) reasonably necessary to accommodate the Successful Proposer's corporate and financing structure in accordance with the Proposal; and (c) required to complete the Agreement and exhibits based on information provided in the Proposal.

6.1.3. Successful Proposer Conditions Precedent to Agreement Execution

The conditions precedent to Agreement execution are set forth in the Exclusive Negotiating Agreement

6.1.4. Disposition of Proposal Security and Reimbursement

The Exclusive Negotiating Agreement identifies the circumstances in which PGCPS must return and retain the Proposal Security and the circumstances in which the Successful Proposer remains eligible for reimbursement under the Reimbursement Agreement.

6.1.5. **Withdrawal of Successful Proposer Status**

Pursuant to Section 7.1 (*PGCPS Rights*), should PGCPS revoke the status of a Proposer as the Successful Proposer, PGCPS reserves the right, and shall be entitled, to:

- (a) reject all Proposals and terminate the RFP Process;
- (b) issue a Request for Proposal revision to all Proposers; or
- (c) proceed with the Proposal that had passed all steps of the evaluation process described in Section 5 (*Proposal Evaluation Process*) and achieved the next highest Total Proposal Score ("**Next Ranking Proposer**") to finalize (or attempt to finalize) a Project Agreement with that Proposer in accordance with Section 6.1 (*Formalization and Execution of the Project Agreement*).

In such event, PGCPS shall notify the Next Ranking Proposer of its election by written notice (a "**Substitute Selection Notice**"). The Next Ranking Proposer shall, from and after the date of receipt of the Substitute Selection Notice, assume the status of the Successful Proposer hereunder and shall meet the requirements set forth herein for the Successful Proposer.

In the event that PGCPS delivers a Substitute Selection Notice to the Next Ranking Proposer, the Next Ranking Proposer shall be required to extend its bid validity end date to a date not earlier than ninety (90) calendar days after its receipt of the Substitute Selection Notice.

6.2. **Transition Period and Effective Date Conditions**

- (a) Upon execution of the Project Agreement, the Successful Proposer shall be designated the "Developer".
- (b) In accordance with the Project Agreement, within a period not to exceed thirty (30) days following the Commercial Close Date, or such other time period as agreed to by PGCPS and the Developer in accordance with the Project Agreement, the Developer and PGCPS shall be required to complete certain activities and satisfy certain Conditions Precedent prior to the Agreement entering into full force and effect on the Effective Date.
- (c) Article 6 of the Project Agreement identifies the PGCPS Conditions Precedent, Developer Conditions Precedent, and Mutual Conditions Precedent and the rights of the parties with respect to each such event.
- (d) Pursuant to Section 7.1 of this RFP, should the Effective Date fail to occur in accordance with Article 6 of the Project Agreement, PGCPS, at its sole discretion, reserves the right, and shall be entitled, to proceed to finalize (or attempt to finalize) a Project Agreement with the Next Ranking Proposer, following the same procedures set forth in Section 6.1.5. above.

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7. PGCPS' RIGHTS, DISCLAIMERS, AND REQUIREMENTS

7.1. PGCPS' Rights

PGCPS reserves, without limitation, and may exercise at its discretion, the rights set forth below. These rights are in addition to and will not limit any of the specific rights or conditions provided in the RFP. By responding to this RFP, Proposers acknowledge and consent to PGCPS' reservation of the following rights in effect before execution of the Project Agreement:

- (a) The right to modify or terminate the procurement process, including the right to decide not to award a Project Agreement as a result of this procurement, by written notice to Proposers for any reason whatsoever;
- (b) The right to modify and make changes to the anticipated procurement schedule upon reasonable notice to Proposers;
- (c) The right, for any reason, not to execute a Reimbursement Agreement, Exclusive Negotiating Agreement, or Project Agreement as a result of this procurement process;
- (d) The right to waive any defect, technicality, or any other error or irregularity in a Proposal or with respect to the procurement process;
- (e) The right to reject any Proposal that is not responsive to the requirements of this RFP, or to disqualify any Proposer deemed to be unqualified during any stage of the procurement process, and to terminate the Proposer's Reimbursement Agreement in the event a Proposer is deemed to be unqualified;
- (f) The right, at any time, to determine that any or all Proposers will not be qualified for further consideration upon notice to the Proposers;
- (g) The right to require Proposers to provide representatives at places and times requested by PGCPS to meet with PGCPS and answer questions and supplement or otherwise clarify matters relating to this procurement for PGCPS;
- (h) The right to disqualify any Proposer that undergoes an Organizational Change without prior written approval from PGCPS;
- (i) The right to exclude from consideration any Proposer whose Proposal contains a material misrepresentation;
- (j) The right at any time prior to the Proposal Submission Deadline to revise or eliminate one or more of the terms and services described in the draft Project Agreement, or to include services not currently contemplated therein;
- (k) The right, without prior notice and at any time prior to the Proposal Submission Deadline, to supplement, amend, or otherwise modify this RFP including the draft Project Agreement, Technical Requirements, issue Addenda, or otherwise request additional information;
- (l) The right through the procurement process to conduct investigations with respect to the qualifications and experience of each Proposer, or any Proposer Team member included in a Proposal, including the right to contact any references identified by the Proposer and to request additional evidence to support any such information;

- (m) The right to take any action affecting the RFP Process, the Project Agreement, the Reimbursement Agreement, the Exclusive Negotiating Agreement, or the Project that PGCPS determines to be in PGCPS' best interests, including the right to cancel this RFP in whole or in part with or without substitution of another RFP if such cancellation is deemed to be in the best interest of PGCPS;
- (n) The right to interview one or more of the Proposers, in PGCPS' sole discretion, in order to obtain clarification of information provided by the Proposer;
- (o) The right to request one or more best-and-final offers from two or more Proposers determined by PGCPS to have a reasonable chance of being selected as the Successful Proposer;
- (p) The right to approve or disapprove the use of particular subcontractors, substitutions, or changes in Proposals;
- (q) The right to modify, via addendum, with reasonable notice prior to the Proposal Submission Deadline, the factors PGCPS will consider in evaluating and scoring Proposals and otherwise revise or expand its evaluation methodology;
- (r) The right to refuse to receive or open a Proposal, once submitted, or reject a Proposal if such refusal or rejection is based upon, but not limited to, the following:
 - (i) Failure on the part of the Proposer or member of the Proposer's team to pay, satisfactorily settle or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing contracts with PGCPS;
 - (ii) Default on the part of the Proposer or a member of the Proposer's team under previous contracts with PGCPS;
 - (iii) Unsatisfactory performance by the Proposer or a member of the Proposer team under previous contracts with PGCPS;
 - (iv) Issuance of a notice of debarment or suspension to the Proposer or member of the Proposer's team;
 - (v) Existence of an organizational Conflict of Interest or evidence of collusion between a prospective Proposer (or a member of the Proposer's team) and other Proposers (or a member of the Proposer's team) in preparation of a SOQ, proposal or bid for any PGCPS contract;
 - (vi) Any material adverse change in the condition of the Proposer (or a member of the Proposer's team) since the submission of the SOQ that would reasonably impact the Proposer's ability to deliver the Project Services contemplated in this RFP and the Project Agreement.

7.2. PGCPS Disclaimers

In issuing this RFP and undertaking the procurement process contemplated hereby, PGCPS specifically disclaims the following:

- (a) Any obligation to award or execute an Exclusive Negotiating Agreement or Project Agreement pursuant to this RFP; and

- (b) Any obligation to reimburse a Proposer who does not sign a Reimbursement Agreement or is otherwise disqualified or deemed non-responsive for any costs such Proposer incurs under this RFP Process.

Information supplied by PGCPS is for the convenience of the Proposers and is the best available information to the knowledge and belief of PGCPS. Unless otherwise stipulated in the Project Agreement, PGCPS does not warrant that all the information provided in the Data Room is accurate or complete, and sole reliance upon the data is at the Proposer's risk.

In no event shall PGCPS be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the Project Agreement has been authorized and executed by PGCPS and, then, only to the extent set forth in the Project Agreement, provided that the disclaimer in this Section 7.2 shall not apply to the obligations of PGCPS to the Proposers during the RFP Process, which are expressly set forth in the RFP.

Neither PGCPS, nor any of its consultants, directors, officers, or employees, shall be charged personally with any liability by a Proposer or another Person or held liable to a Proposer or another Person under any provision of the RFP or any statement made in the RFP, or because of the submission or attempted submission of a Proposal or other response, or otherwise. Each Proposer by submitting a Proposal in response to the RFP expressly waives any right it may have to bring a claim for any such liability.

In submitting a Proposal in response to the RFP, each Proposer is specifically acknowledging and agreeing to the disclaimers set forth in this Section 7.2.

7.3. [General Records Clause](#)

The Developer's contracts, files, accounts, records, and other documents related to the Project Agreement shall be open to examination and/or audit by PGCPS and made available by the Developer to PGCPS and/or its designated agents at any time upon reasonable prior notice, during performance under the Project Agreement and for those periods set forth in the Project Agreement.

7.4. [Compliance with Laws](#)

Proposers shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations applicable to the Project Services to be rendered under the Project Agreement. Proposer violations of any of these laws, statutes, ordinances, rules or regulations constitutes a breach of this RFP, and PGCPS may disqualify the Proposer from this RFP. Developer violations of any of these laws, statutes, ordinances, rules or regulations will constitute a breach of the Project Agreement, and PGCPS may terminate the Project Agreement in accordance with its terms for this breach.

7.5. [Eligibility to Work in the United States](#)

The Developer will be required to comply in all respect with federal, State (including Maryland Motor Vehicle laws) and local regulations, including laws regarding eligibility to work in the United States.

7.6. Governing Law

This RFP and the Project Agreement shall be governed by the laws of Maryland. Any disputes, legal cases, or other controversies shall be pursued in Maryland Courts consistent with and subject to Maryland State Law. Additionally, if applicable, all materials, supplies, equipment, or services supplied as a result of the Project Agreement shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act Standards. The Developer's financing documents, however, may be governed by the laws of New York.

The Developer shall comply with all Applicable Laws relating to the employment of aliens; such failure shall constitute a material breach of the Project Agreement. It is a mandatory requirement of the Project Agreement that employees of the Developer and the Developer's subcontractors are screened through the Federal Government's E-Verify system, found at www.dhs.gov/E-Verify. This is a "no fee" service.

7.7. EPA Compliance

Materials, supplies, equipment, or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

7.8. State of Maryland Certificate of Good Standing

Prior to the Commercial Close Date, Proposers shall submit a State of Maryland Certificate of Good Standing or other State of Maryland issued documentation verifying the Proposer is in Good Standing with the Department of Assessment and Taxation of Maryland and/or registered to do business in the State of Maryland. Certificates of Status may be obtained online at <http://www.dat.state.md.us>.

This requirement applies to both Domestic and Foreign (out of state) Proposers. Foreign entities should contact the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21201, to determine and apply for the appropriate documentation.

7.9. Protection of Property

The Project Agreement will require that the Developer use reasonable care to avoid damaging existing buildings, equipment, and property at the Sites and all material furnished by PGCPS. If the Developer's failure to use reasonable care causes damage to any property, the Developer must replace or repair the damage at no expense to PGCPS as directed by PGCPS. If the Developer fails or refuses to make such repair or replacement, the Developer will be liable for the cost, which may be deducted from payments due to the Developer.

7.10. Protection of Information

7.10.1. Personally Identifiable Information (PII)

- (a) Personally Identifiable Information includes any information that can be associated with or traced to any individual, including an individual's name, address, telephone number, e-mail address, credit card information, social security number, or other similar specific factual information, regardless of the media on which such information is stored (e.g., on paper or electronically) and includes such information that is generated, collected, stored or obtained as part of the Project Agreement, including transactional and other data pertaining to users.

- (b) The parties will comply with all applicable privacy and other laws and regulations relating to protection, collection, use, and distribution of Personally Identifiable Information. In no event may PII be sold or transferred to third parties, or otherwise provide third parties with access thereto. If there is a suspected or actual breach of security involving Personally Identifiable Information, the parties will notify each other within twenty-four (24) hours of a management-level employee becoming aware of such occurrence.

7.10.2. Educational/Medical/Psychological Records

The Proposer acknowledges its responsibility to ensure compliance with the confidentiality provisions of the Family Educational Records Privacy Act (34 CFR §99); The Health Insurance Portability and Accountability Act of 1996 (HIPAA) 45 CFR Part 160 and Part 164, Subparts A and E, and Code of Maryland Regulations §13A.08, with respect to school records provided by PGCPS, if applicable.

Any confidential information provided by PGCPS to the Proposer, including all copies thereof, must be used by the Proposer only as provided for by this RFP or the Project Agreement and only for the purposes described. Such information shall not be disseminated or disclosed to any third party not a party to the Project Agreement without the expressed written consent of PGCPS and can only be done in accordance with applicable privacy laws. The Proposer agrees to return to PGCPS all such information within fifteen (15) days of the expiration or termination of the RFP Process or the Project Agreement, as applicable, or with the express consent of PGCPS. The Proposer may destroy such information within fifteen (15) days of termination or expiration of the RFP Process or the Project Agreement, as applicable, certifying to PGCPS in writing that the information has been destroyed.

7.10.3. Protection of Student Records

The Proposer and its affiliates or subcontractors, at their expense, have a duty to and shall protect from disclosure any and all student records which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in conformance with current industry standards.

The Proposer or its affiliates or subcontractors shall implement and maintain a comprehensive data – security program for the protection of student records whether the records are stored electronically and/or in hard copy form. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of student records, and information of a similar character, as set forth in all applicable federal and state law and written policy of PGCPS or the Maryland State Board of Education (“**MSBE**”) concerning the confidentiality of student records. Such data-security program shall include, but not be limited to, the following:

1. A security policy for employees related to the storage, access, and transportation of data containing student records;
2. Reasonable restrictions on access to records containing student record information, including access to any locked storage where such records are kept;
3. A process for reviewing policies and security measures at least annually;
4. Creating secure access controls to student records, including but not limited to passwords; and
5. Encryption of student records that are stored on laptops, portable devices, or being transmitted electronically. The Proposer and its subcontractors or affiliates shall notify the PGCPS

Representative as soon as is practicable, but no later than twenty-four (24) hours, after they become aware of or suspect that any student records which the Proposer or subcontractors or affiliates possess or control have been subject to a student records breach.

The Proposer shall incorporate the requirements of this Section in all subcontracts requiring each of its affiliates to safeguard student records in the same manner as provided for in this Section. Nothing in this Section shall supersede in any manner the Proposer or its affiliate's obligations pursuant to HIPAA, FERPA, or the provisions of this RFP or the Project Agreement concerning the obligations of the Proposer as a service provider to PGCPS.

7.10.4. Public Statements

Proposers shall not use or reference the Name or Emblem of The Board Of Education of Prince George's County in issuing any press releases or otherwise making any public statement with respect to this RFP or the Project Agreement (unless such press release or statement is required by Applicable Law or the requirements of any listing agreement with any applicable stock exchange) without the prior written consent of PGCPS, which consent will not be unreasonably withheld. The unauthorized use of the name or emblem of PGCPS is prohibited by the United States Criminal Code - Section 706.

7.11. Criminal Background Checks and Restrictions on Employee Assignments

7.11.1. Criminal Background Checks

- (a) It is the responsibility of the Developer to make certain that its employees, contractors, subcontractors, agents, volunteers, outsourced temporary staff, consultants and any instructors meet the background check and training requirements specified below.
- (b) The Project Agreement will require that the Developer provide to the designated PGCPS representative a list of all current employees and an immediate update of changes in personnel, employees, contractors, subcontractors, agents, volunteers, outsourced temporary staff, and any instructors. All correspondence should include the following information as applicable:
 - (i) title of the Project
 - (ii) Site
 - (iii) solicitation number
 - (iv) contract number; and
 - (v) PGCPS representative/project manager
- (c) An executed Project Agreement will not be issued by PGCPS until proof has been provided that the background check and training requirements below have been completed.

7.11.2. Employees Having Direct Contact with and/or Uncontrolled Access to Students

- (a) The Project Agreement will require that any and all current and future employees of the Developer who have direct contact with students must have a fingerprinting criminal background check conducted by the Maryland Criminal Justice Information System (CJIS) and the FBI, a Child Protective Services clearance conducted by the Prince George's County Department of Social Services, and complete the SafeSchools training module – Prince George's County Child Abuse: Mandatory Reporting and any other required training as appropriate.

- (b) The Project Agreement will require that all background checks must be completed 15 Business Days prior to beginning work in and around PGCPS property or engaging in any authorized activities involving PGCPS students. The background checks must be completed by the Fingerprinting Office in the Sasscer Administrative Building or by the PGCPS satellite fingerprinting offices located in Prince George’s County. No person may begin working in PGCPS until 15 days after completing the background clearance process (fingerprint and CPS) and required online training through SafeSchools.
- (c) The Project Agreement will provide that prior to initiating any work at a Site, current and future employees, contractors, subcontractors, agents, volunteers, outsourced temporary staff, consultants, and instructors of the Developer must sign in and sign out via the Raptor Visitor Management System, which requires a copy of their government issued identification.
- (d) Pursuant to Md. Education Code Ann. §6-113.2 (Code), a contractor of PGCPS who provides services to a school or the students of a school shall meet the requirements set forth for screening its employees assigned to work at a school site to determine whether such employees have a history of child sexual abuse and/or sexual misconduct. The Project Agreement will require that the Developer shall be solely responsible for completing the screening set forth in the Code, shall maintain records of employee screenings, and shall make such records available to PGCPS upon request.

7.11.3. Restrictions on Employee Assignments

The Project Agreement will provide that the Developer will be prohibited from assigning the following persons from working at a Site:

- (a) Registered sex offenders (Maryland Code, Criminal Procedure Article Section 11-722);
- (b) Individuals convicted of a crime involving third- or fourth degree sexual offence under sections 3-307 or 3-308 of the Criminal Law Article; child sexual abuse under Section 3-602 of the Criminal Law Article; a crime of violence as defined in Section 14-101 of the Criminal law Article; or comparable offenses in another state. (Annotated Code of Maryland, Education Article Section 6-113); and
- (c) Individuals identified as an alleged abuse or neglecter following completion of a Child Protective Services investigation with a finding of “indicated” child abuse or neglect.

7.12. Governing Law and Venue

The RFP shall be construed in accordance with, and interpreted under, the laws of the State of Maryland. Any lawsuits arising out of such RFP shall be filed in the Circuit Court for Prince George’s County, Maryland.

SCHEDULES & PROPOSAL FORMS

Schedule A	Summary and Checklist of Proposal Contents
Schedule A-1	Technical Proposal Checklist
Schedule A-2	Financial Proposal Checklist
Schedule B	Technical Proposal
Schedule B-1	Technical Proposal Instructions
Schedule B-2	Technical Proposal Evaluation Criteria
Schedule C	Financial Proposal
Schedule C-1	Financial Proposal Instructions
Schedule C-2	Financial Proposal Evaluation Criteria
Schedule D	Standardized Forms
Certifications	

Schedule A: Summary and Checklist of Proposal Contents

Technical Proposal Checklist			
Proposers should follow the order of the Technical Proposal Checklist in their submissions. A referenced copy of this document should be submitted with the Technical Proposal. See Schedule B-1 (Technical Proposal Instructions) for additional information regarding the components of the Technical Proposal.			
Proposal Components	Relevant Form (if any)	RFP Reference	Proposal Reference
Part 1.1. Administrative Requirements			
1.1.1. Technical Proposal Submission Letter	Proposal Form T-1	§1.1.1 of Schedule B-1	
1.1.2. Technical Proposal Executive Summary		§1.1.2 of Schedule B-1	
1.1.3. Administrative Submittals	Proposal Forms (various)	§1.1.3 of Schedule B-1	
Part 1.2: Organization & Project Management			
1.2.1. Confirmation of SOQ		§1.2.1 of Schedule B-1	
1.2.2. Proposer Management and Organization		§1.2.2 of Schedule B-1	
1.2.3. Approach to Coordination & Outreach		§1.2.3 of Schedule B-1	
Part 1.2(a): Local Community Impact			
1.2.4. MBE Contracting Plan		§1.2.4 of Schedule B-1	
1.2.5. Local Contracting Plan		§1.2.5 of Schedule B-1	
1.2.6. Community Investment Program		§1.2.6 of Schedule B-1	
Part 1.3: Schedule			
1.3.1. Project Schedule	Proposal Form T-7	§1.3.1 of Schedule B-1	
Part 1.4. Design			
1.4.1. Design Approach and Considerations		§1.4.1 of Schedule B-1	
1.4.2. Design Statement		§1.4.2 of Schedule B-1	
1.4.3. Project Designs		§1.4.3 of Schedule B-1	
1.4.4. Site Development Plans		§1.4.4 of Schedule B-1	
1.4.5. Site Grading and Servicing		§1.4.5 of Schedule B-1	
1.4.6. Site Circulation and Parking		§1.4.6 of Schedule B-1	
1.4.7. FF&E		§1.4.7 of Schedule B-1	
1.4.8. Key Personnel – Design		§1.4.8 of Schedule B-1	
Part 1.5. Construction & Commissioning			
1.5.1. Construction Approach		§1.5.1 of Schedule B-1	
1.5.2. Design-Build Integration		§1.5.2 of Schedule B-1	
1.5.3. Design-Build Quality Management Plan		§1.5.3 of Schedule B-1	
1.5.4. Safety Management Plan		§1.5.4 of Schedule B-1	
1.5.5. Sustainability / LEED		§1.5.5 of Schedule B-1	
1.5.6. Commissioning		§1.5.6 of Schedule B-1	
1.5.7. Communications		§1.5.7 of Schedule B-1	
1.5.8. Key Personnel		§1.5.8 of Schedule B-1	
1.5.9. Staging Plan		§1.5.9 of Schedule B-1	
Part 1.6: Services Plan			
1.6.1. Overview		§1.6.1 of Schedule B-1	
1.6.2. Approach		§1.6.2 of Schedule B-1	
1.6.3. Organization		§1.6.3 of Schedule B-1	
1.6.4. Start-up Plan		§1.6.4 of Schedule B-1	
1.6.5. Services		§1.6.5 of Schedule B-1	
1.6.6. Handback		§1.6.6 of Schedule B-1	
1.6.7. Help Desk		§1.6.7 of Schedule B-1	
1.6.8. Life Cycle Plan		§1.6.8 of Schedule B-1	
1.6.9. Training		§1.6.9 of Schedule B-1	
Part 1.6: Services Plan (cont.)			

1.6.10. Key Personnel

§1.6.10 of Schedule B-1

Financial Proposal Checklist

Proposers should follow the order of the Financial Proposal Checklist in their submissions. A referenced copy of this document should be submitted with the Financial Proposal. See Schedule C-1 (Financial Proposal Instructions) for additional information regarding the components of the Financial Proposal.

Proposal Components	Relevant Form (if any)	RFP Reference	Proposal Reference
Part 2.1: Executive Summary and Administrative Submissions			
2.1.1. Financial Proposal Submission Letter	Proposal Form F-1	§2.1.1 of Schedule C-1	
2.1.2. Financial Proposal Executive Summary		§2.1.2 of Schedule C-1	
<i>Part 2.2: (eliminated)</i>			
Part 2.3. Confirmation of Financial Capacity			
2.3.1 Financial Capacity Information	n/a	§2.3.1 of Schedule C-1	
Part 2.4. Price Proposal			
2.4.1. Cost Proposal	Form F-2	§2.4.1 of Schedule C-1	
2.4.2. Key Financial Model Information	Form F-3, F-4, F-5, F-6	§2.4.2 of Schedule C-1	
Part 2.5: Financial Model			
2.5. Financial Model	No form provided	§2.5. of Schedule C-1	
Part 2.6: Financing Plan			
2.6.1. Financing Plan Narrative		§2.6.1 of Schedule C-1	
2.6.2. Term Sheets		§2.6.2 of Schedule C-1	
2.6.3. Equity Support Letters		§2.6.3 of Schedule C-1	
2.6.4. Lenders		§2.6.4 of Schedule C-1	
2.6.5. Refinancing		§2.6.6 of Schedule C-1	

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Schedule B: Technical Proposal

SCHEDULE B-1: TECHNICAL PROPOSAL INSTRUCTIONS

1. GENERAL INSTRUCTIONS

The required contents and organization of the Technical Proposal are presented in this Schedule B-1 and summarized in the Technical Proposal Checklist provided in Schedule A (*Summary and Checklist of Proposal Contents*). Each Proposer is required to submit all the information set out in this Exhibit B-1 in the organization and format specified herein and in the order set forth in Exhibit A (*Summary and Checklist of Proposal Contents*). A copy of the Technical Proposal Checklist shall be included in the front of each Technical Proposal. The Proposer shall not amend the order or change the contents of the Technical Proposal Checklist except to provide the required cross-references to its Proposal. Failure to provide the requested information on the forms and in the form specified, or to provide all of the information requested, may result in PGCPS deeming a Proposal non-responsive.

All deviations from the Technical Requirements must be addressed in accordance with Item 1.4.3 of this Schedule B-1. For clarity, PGCPS approves deviations from the Education Specifications that are allowed by Section 4.14 (Modifications to Educational Specifications) of the Final Agreement Draft (“**Section 4.14 Permitted Deviations**”). All other deviations from the Technical Requirements (“**Unauthorized Deviations**”) are only permitted for purposes of Proposal design submissions, and not for Project implementation, and only to the extent bidders fully comply with the requirements stated in Item 1.4.3 of this Schedule B-1.

1.1 Format

Pursuant to Section 4.3 of this RFP, Proposals are to be submitted in via email and as electronic copies on USB drives.

Technical Proposals are to be presented in a separate sealed envelope.

Text shall be in English in a standard, minimum of 11-point font, single-spaced. Pages shall be printable on 8.5-x11-inch white paper, with dividers for each section/subsection. Text used on graphics and figures and in tables may be a minimum of 9-point font. Graphics shall not consist of text only. Each printable side of a sheet counts as a page. Lines may be single spaced.

Drawings, organization charts and schedules shall, and Exhibits to text may, be submitted so they are printable on 11x17-inch white paper. The Proposer’s Conceptual Design Drawings shall be presented in US Customary units and shall be at a scale to clearly identify the Work.

The Proposer shall number each page in each Part consecutively (e.g., 1-1, 1-2; 2-1, 2-2).

1.2. Number of Copies and Copy Identification

Proposers must provide one original and six (6) USB drives of the Technical Proposal in accordance with Section 4.3.3. of this RFP. Each USB drive is to be clearly marked with the “*Copy Number X of Y*” and with the Project Name and Proposer’s Name. PGCPS reserves the right to request hard copies after the Proposal Due Date.

1.3. Proposal Forms

All Forms named in this Schedule are provided as Proposal Forms, unless otherwise noted. All blank spaces in the Proposal Form must be filled in, as appropriate. Proposers may not make substantive changes to the Proposal Forms. Substantive changes to Proposal Forms may result in PGCPS deeming a Proposal non-responsive.

Evidence of signature authority shall be provided for all individuals signing Proposal Forms. Only original copies of Proposal Forms require notarization.

2. TECHNICAL PROPOSAL CONTENT

Section No.	Title	Submission Requirements	Page Limit
1.1.	Administrative Requirements		
1.1.1	Technical Proposal Submission Letter (Proposal Form T-1)	Submit a fully executed and notarized Proposal Form A-1 (Technical Proposal Submission Letter). The Technical Proposal Submission Letter and all attachments thereto shall be signed by the duly designated Proposer Representative who is empowered to sign it and to commit the Proposer to the obligations contained in the Proposal. The Technical Proposal Submission Letter shall include the following attachments: Attachment 1 – Certificates of authorization Attachment 2 – Statement justifying records marked as proprietary or trade secret (if applicable)	n/a
1.1.2.	Technical Proposal Executive Summary	Proposers shall submit an Executive Summary of their Technical Proposal which shall not exceed ten (10) pages. The Executive Summary shall NOT contain any information relating to pricing, but will at a minimum, provide an overview of key Technical Proposal elements, including the following: (i) Proposer organization & approach to project management (including approach to meeting MBE/CBB requirements); (ii) Proposer approach to collaboration with PGCPS and other stakeholders during and after the Exclusive Negotiating Period; (iii) Proposed technical approach and solutions for the Project, including: (a) A summary of Project Schedule and key delivery milestones; (b) A summary of how the Proposer will utilize the Exclusive Negotiating Period to the benefit of the Project; (c) A description of design concepts and how they benefit PGCPS (including consideration of aesthetics, life cycle durability and PGCPS Project objectives); (d) A summary of the approach to design and construction activities (including collaboration and outreach), as well as to addressing key constructability issues associated with the Project; (e) A summary of the Proposer’s approach to life-cycle maintenance; (f) A summary of the Proposer’s proposed Community Investment Plan; and (g) A brief overview of the Proposer’s baseline business plan and risk management strategy.	10 pages
1.1.3	Administrative Submittals	Proposer shall submit the following required administrative submittals, as well as any disclosures and submittals set out in Schedule D: Standardized Proposal Forms	n/a

		<ul style="list-style-type: none"> (i) <i>Professional Licensing</i>: Certification that the designs will be performed under the supervision of a Professional Engineer licensed in the State of Maryland and proof of such license(s). (ii) <i>Contractor Licensing</i>: Certification that the construction will be performed under the supervision of a Contractor licensed in the State of Maryland and proof of such license(s); and (iii) <i>Registrations</i>: Proposers are required to provide evidence that each Major Participant and major subcontractor is registered to do business, and is in good standing, in the State of Maryland. 	
1.2.	Organization and Project Management		
1.2.1	Confirmation of SOQ	<ul style="list-style-type: none"> (i) Each Proposer shall confirm that all information provided in the Proposers SOQ remains true and accurate, or, in any such information is no longer true or accurate, then provide updated information that is true and accurate. (ii) Each Proposer shall confirm that, other than Organizational Changes duly approved by PGCPS, there have been no changes to information provided in its RFQ Response regarding <ul style="list-style-type: none"> (a) Major Participants; or (b) Key Personnel identified in the Proposer Team. 	n/a
1.2.2.	Proposer Organization & Management	<ul style="list-style-type: none"> (i) Each Proposer shall identify and describe the legal structure of the Proposer (or that the Proposer will adopt as the Developer), including the proposed full legal name of the Proposer, or as applicable, each legal entity which comprises the Proposer. (ii) Each Proposer shall provide a narrative description of the legal structure of the Proposer and the existing or anticipated contractual relationship between Proposer Team Members. (iii) Each Proposer shall provide details identifying each Equity Provider and degree of equity participation. If the Proposer does not have an equity structure, provide details of the ownership structure and details of Financing Member. (iv) <i>Governance</i>: Each Proposer shall describe the relationships and reporting arrangement among the Proposer team members at critical stages of the Project (i.e., start-up, design, construction, maintenance, handback), identifying the following: <ul style="list-style-type: none"> (a) Responsibilities of each Key Individual (b) Reporting relationships between the Proponent Team members (c) Nature of any subcontracting arrangements to be entered into between the Project team members and a brief description of how the contractors, subcontractors and supply chain will be integrated; and (d) The nature of any subcontracting arrangements and details of the risk allocation between the parties. (v) <i>Organizational Charts</i>: Each Proposer shall provide organizational charts reflecting the following: <ul style="list-style-type: none"> (a) An overall organizational chart identifying the roles of each member of the Proposer Team, and, if any such entity is a 	5 pages (excluding charts)

		<p>joint venture, the percentage ownership of each such joint venture entity.</p> <p>(b) An organizational chart showing the relationship between any member of the Proposer team.</p> <p>(c) A corporate organizational chart that reflects all direct and indirect owners of the entity that would serve as the Developer, and the percentage ownership held by each such direct and indirect owner of its directly held entities up to the level of each Financing Member. Such figure should also reflect general partners and any investment manager/advisors of any investment funds reflected in the charts.</p> <p>(d) Organizational chart indicating and listing the members of the board of directors, the senior officers and key management personnel of the Developer.</p> <p>(e) Organizational chart which, at a minimum, identifies all Key Personnel. Resumes for Key Personnel must be provided and should be no longer than 2 pages each.</p> <p>All organizational charts should clearly identify roles, responsibilities and reporting relationships.</p>	
1.2.3	Coordination and Outreach	<p>Each Proposer shall provide a program coordination and outreach plan governing the period of time after the Effective Date.</p> <p><u>Program Community Coordination and Outreach Plan</u></p> <p>The Program Community Coordination and Outreach Plan should describe the management structures of the Developer and the roles of Major Participants and subcontractors in interacting with PGCPS and other stakeholders during the Design-Build Period and the Services Period to deliver Project Services. The plan should set forth activities for each diverse stage of the Project, specifically focused on school-based, district-wide, external stakeholder engagement and outreach. The plan should describe the approach to collaborating with PGCPS, community stakeholders and other additional parties to keep parties informed and updated (including, but not limited to newsletters, blog posts, community meetings, stakeholder engagement and outreach, educator town halls, and any other additional outreach efforts, as needed) on the Program.</p>	4 pages
1.2.a	MBE/CBB Subcontracting and Local Community Benefits		
1.2.4	MBE Subcontracting Plan	<p>Each Proposer shall detail its MBE subcontracting plan, evidencing how it intends to meet the MBE subcontracting requirements set forth in Section 2.8 of this RFP and the Project Agreement across all phases of the Project. The MBE Subcontracting Plan should include, at a minimum, the following:</p> <p>(i) General approach to MBE contracting, the plan should indicate its plan to maximize the participation of MBE's located and/or based in Prince George's County</p> <p>(ii) A breakdown of how Proposer will meet minimum contracting requirements (at least thirty percent (30%) of the Total Contract Value) by representing (A) the percentage of total design and construction expenditures that Proposer estimates will be paid</p>	6 pages

		<p>to MBEs during the Design-Build Period and (B) the percentage of total Services expenditures Proposer estimates will be paid to MBEs during the Services Period.</p> <ul style="list-style-type: none"> (iii) Specific methods, outreach and plans for achieving minimum contracting requirements, including a description of the outreach activities during the Exclusive Negotiating Period and after the Effective Date. (iv) Proposed MBE subcontracting verifications systems (v) Identification of MBE subcontractors included in the Proposer team who will count toward meeting minimum contracting requirements and their anticipated allocation between Design-Build Work and Services. (vi) Identification of MBE Financing Members, if any. (vii) Brief description of a monitoring and enforcement framework that will facilitate oversight, accountability and transparency in reporting during the Term. 	
1.2.5	Local Contracting Plan	<p>Each Proposer shall detail its plan to utilize and subcontract work to companies located or based in Prince George's County, evidencing how it intends to meet with the CBB subcontracting requirements set forth in Section 2.8 of this RFP and the Project Agreement across all phases of the Project. The MBE/CBB Subcontracting Plan should include, at a minimum, the following:</p> <ul style="list-style-type: none"> (i) General approach to CBB contracting (ii) A breakdown of how Proposer will meet minimum contracting requirements (a minimum of twenty percent (20%) of MBE contracts being directed towards CBBs) by representing (A) the percentage of total design and construction expenditures that Proposer estimates will be paid to CBBs during the Design-Build Period and (B) the percentage of total Services expenditures Proposer estimates will be paid to CBBs during the Services Period. (iii) Specific methods, outreach and plans for achieving minimum contracting requirements (iv) Proposed CBB subcontracting verifications systems (v) Identification of CBB subcontractors included in the Proposer team who will count toward meeting minimum contracting requirements and their anticipated allocations between Design-Build Work and Services. (vi) Identification of CBB Financing Members, if any. 	5 pages
1.2.6	Community Investment Program	<p>Each Proposer shall detail its commitment to leveraging the Project in order to expand opportunities and improve the quality of life for people who live and work in Prince Georges County. The Proposal shall detail the Proposer's Community Investment Program, specifying any proposed investments in community services and amenities and/or local community benefit programs (including, but not limited to, mentor-protégé programs, apprenticeship programs, scholarships, workforce development, etc.). The Proposal should detail the general approach to the Community Investment Programs, as well as specify investment amounts, timing, types and locations of proposed programs.</p>	5 pages

1.3.	Schedule		
1.3.1.	Project Schedule	<p>Each Proposer shall provide its Baseline Project Schedule which includes at a minimum, the following information, as well as a Project Schedule brief explaining how the Project Services will be implemented to achieve the milestone dates and describing the key milestones and decisions on how each align and work together:</p> <ul style="list-style-type: none"> (i) Critical path covering major phases of the Project (from Notice of Award through the Project Readiness Date); (ii) Key dates related to the Design Management plan, including <ul style="list-style-type: none"> (a) Key milestone dates (b) Design development (c) Design reviews (iii) Provision of mock-ups; (iv) Major construction stages and key milestones; (v) Detailed Construction Schedules for each School; (vi) Commissioning; and (vii) Scheduled School Occupancy Readiness Dates for each School. <p>Proposers shall be required to submit their Scheduled School Occupancy Readiness Dates for each School on Proposal Form T-7</p>	No more than 10 pages excluding charts
1.4.	Design Approach and Considerations		30 pages (excluding drawings, renderings and resumes)
1.4.1.	Design Approach & Considerations	<p>Describe and provide details of the Proposer’s management plan for the Design, including:</p> <ul style="list-style-type: none"> (i) The design methodology and general approach; (ii) How consideration of Services will be integrated into the design; (iii) Security and IT integration; (iv) Approach to quality assurance; and (v) How constructability considerations will be included in the design process. <p>Describe and provide details of how the Proposer will accommodate changes during the detailed design development process that will take place post-Effective Date.</p>	
1.4.2.	Design Statement	Each Proposer should state the principles and goals of its proposed designs and how, specifically, each design achieves these and meets or exceeds the Technical Requirements set forth in the Agreement.	
1.4.3.	Project Designs	<p>For each School, provide written and graphical summaries to demonstrate the Proposer’s understanding of the School design specifications, as described in the Technical Requirements.</p> <p>Each Proposer shall include a narrative of the design and aesthetics approach to each School, detailing key elements, such as design criteria,</p>	

		<p>materials, architecture, signage, safety and security, Site layout, and similar. The narrative may also be supplemented with rendering and façade design descriptions of shape and layout, materials, apertures, etc. The intention of the design narrative is to provide adequate detail for evaluation of the design concepts. Where information requested has not been developed, Developer shall indicate their commitment to incorporate any responses into their final design. The design narrative shall address the following:</p> <ul style="list-style-type: none"> (i) a general description of the conceptual design of each School, describing the engineering and design philosophy and detailing how the design addresses each of the design evaluation factors set forth in Part 1.4 of Schedule B-2; (ii) a design statement setting out the Proposer’s approach to the design of the Project according to the Technical Requirements, including descriptions of technical standards and specifications that will be used or are proposed for the proposed design that specifically address the following design elements <ul style="list-style-type: none"> a. Provide a LEED checklist indicating how you intend to achieve LEED Silver; b. Structural Systems <ul style="list-style-type: none"> i. Design basis IBC/ASCE risk category ii. Planned material for vertical, floor and roof framing, and lateral systems iii. Design loading for floors and roofs c. Exterior Cladding <ul style="list-style-type: none"> i. Planned material for exterior walls, including fenestration and doors ii. Overall typical wall assembly and thickness iii. Planned performance of the systems including: <ul style="list-style-type: none"> 1. Nominal R value of opaque cladding 2. Nominal R value, SHG, VLT for glazing systems iv. Planned snow/free-thaw mitigation approach, with particular attention to wall base v. Expected design life of major components vi. Description of any applied cladding elements (canopies, overhangs, soffits, etc.) d. Roofing <ul style="list-style-type: none"> i. Planned materials for roofing systems, including any skylight, roof penetrations, curbs, etc. ii. Nominal R value of roofing system iii. Equipment access concepts and roof access safety approach iv. Planned snow/freeze-thaw mitigation approach v. Expected design life of roofing system and major components e. Interior Construction <ul style="list-style-type: none"> i. Planned material for interior partitions. List all planned systems by location. Partition types are not required, just main material selections ii. Planned materials and assembly for interior doors, frames and hardware. Indicate
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		<p>performance class for main room types (medium duty, heavy duty, etc.; KD or welded frame, etc.)</p> <ul style="list-style-type: none"> iii. Planned materials and assemblies for interior glazing, including approach to fire rating, where appropriate, safety/glazing protection etc) f. Stair Construction <ul style="list-style-type: none"> i. Planned stair construction/materials/finishes g. Interior Finishes <ul style="list-style-type: none"> i. Planned floor, wall and ceiling finishes by major program areas ii. Expected appearance retention for finishes, including local damage repair capacity iii. Expected impact resilience h. Elevators <ul style="list-style-type: none"> i. Planned elevator type, speed, door width and load capacity i. Plumbing Systems <ul style="list-style-type: none"> i. Planned materials (including, type, gauge, performance rating, etc., as appropriate) for fixtures, piping, etc. ii. Planned approach to provision of hot water at faucets iii. Water efficiency strategies j. HVAC Systems <ul style="list-style-type: none"> i. Planned HVAC System <ol style="list-style-type: none"> 1. Primary energy systems (heating and cooling) 2. Energy distribution 3. Ventilation Distribution 4. Overall zoning strategies, including number of zones per major space type ii. Anticipated mechanical NC levels iii. Anticipated system redundancy/outage down times iv. Demand ventilation strategies v. Overall HVA energy efficiency strategies k. Electrical Systems <ul style="list-style-type: none"> i. Planned material for electrical components, including switchgear, conductors, raceways, etc. ii. Planned lighting systems (LED, Fluorescent HID), including Lighting Power Density for major program areas iii. Planned extent of lighting controls, including dimming, color, presets, etc., by major program areas <p>(iii) any nonstandard or unique design features that will reduce the need for maintenance, make inspection or maintenance procedures more efficient, safer or less costly, both during the Term and after Handback;</p> <p>(iv) any nonstandard or unique design features that will reduce operating costs for PGCPS, both during the Term and after Handback; and</p>
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		<p>(v) approach to ensuring that the design features are aesthetically pleasing, consistent throughout the Project and reflect local community, sustainability and accessibility.</p> <p>Proposers must provide design concepts developed at a minimum 15% design level for each School and include the following Conceptual Design Drawings and Renderings in Part 7, Appendix A, as a searchable PDF printable on 11x17-inch white paper:</p> <ul style="list-style-type: none"> (vi) Structural system concept for each School; (vii) Site Development Plans; (viii) Renderings; (ix) Elevations; (x) Room Data Schedule; (xi) Circulation Plans; (xii) Spatial Design; (xiii) Massing Diagrams; and (xiv) Other drawings as required to clearly present and describe the concepts proposed. <p>Proposer's Conceptual Drawings shall include sufficient detail to clearly present and describe the design concepts as proposed (footing layouts, support pier dimensions, foundation types, standard details, mechanical, electrical and plumbing, other features, etc.).</p> <p>Large format rendering, up to 30" x 42", of the exterior and interior (Perspectives) of each School shall also be included, including the following:</p> <ul style="list-style-type: none"> (xv) Exterior renderings <ul style="list-style-type: none"> a. The entire front façade b. The main entrance of the School c. The side elevation of the School (xvi) Interior rendering for each School illustrating at a minimum: <ul style="list-style-type: none"> a. A typical classroom <p>In the event that multiple Schools are proposed to share a similar design, Proposers may elect to provide, in accordance with the aforementioned submission requirements, a single design for a School that is reflective of a design for other Schools. If a common design is submitted for multiple Schools, Proposers <i>must also provide design concepts developed at a 5% design level for each of the other Schools that will use such design and include the following Conceptual Design Drawings and Renderings in Part 7, Appendix A, as a searchable PDF printable on 11x17-inch white paper:</i></p> <ul style="list-style-type: none"> <i>b. Structural system concept for each School;</i> <i>c. Site Development Plans;</i> <i>d. Floor Plans (single line);</i> <i>e. Renderings;</i> <i>f. Massing Diagrams; and</i> <i>g. Other drawings as required to clearly present and describe the concepts proposed.</i>
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		<p><i>Proposer's Conceptual Drawings shall include sufficient detail to clearly present and describe the design concepts as proposed.</i></p> <p><i>Large format rendering, up to 30" x 42", of the exterior (Perspectives) of each School shall also be included, including Exterior renderings-Massing Studies of:</i></p> <ul style="list-style-type: none"> a. The entire front façade b. The main entrance of the School <p>To the extent that any of Proposer's Conceptual Drawings incorporate deviations from the Technical Requirements, Proposer shall (i) provide a narrative identifying such deviations, (ii) confirm for each such deviation whether it is a Section 4.14 Permitted Deviation or an Unauthorized Deviation that Proposer will rectify in future designs to comply with the Technical Requirements, and, (iii) with respect to any Unauthorized Deviations that will be rectified in future designs, provide confirmation that any costs associated with such rectification are reflected within the cost estimates provided in the Financial Proposal.</p>
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1.4.4.	Site Development Plans	The Site plan (1:500) including adjacent roads, walks and property uses, and the location of all buildings (including full build-out), roadways, parking lots, drop-offs, retaining walls, sports fields, walkways, pathway connections, tree planting, shrub beds, extent of irrigation, including connection location, asphalt play areas, future playground areas, sports and athletic fields, extent of fencing, site furniture, flag poles, future site signage, firefighting access and any other elements.	
1.4.5.	Site Grading and Servicing	Provide drawings and details illustrating the Proposer's plan for underground services and site grading, including: <ul style="list-style-type: none"> (i) Sanitary (ii) Water (iii) Storm water management (iv) Site grading 	
1.4.6.	Site Circulation and Parking	Describe and provide details of the proposed circulation, drop-off and parking plan for each school, including: <ul style="list-style-type: none"> (i) Proposer's temporary parking solution during construction (if required) (ii) Proposer's permanent parking solution (including confirmation of the total number of on-site parking and drop off spaces) (iii) Site circulation, access and turn around (iv) Bus loading and unloading (v) Emergency vehicle access 	

1.4.7.	FF&E	Provide an overview, description and renderings of any proposed Furniture, Fixtures and Equipment to be provided in the Schools. The Proposal should indicate the Proposer's approach to selecting FF&E and how these decisions influence and are incorporated in Design processes. Proposal should also include information regarding FF&E procurement schedule, highlighting those items that are on the critical path for the Project Schedule.	
1.4.8.	Key Personnel - Design	Proposer should identify and provide resumes for the executive in charge of the design process, as well as for (i) the individual responsible for community outreach during design development; (ii) the lead architect; and (iii) the lead engineer. Resumes should be limited to 2 pages per person.	
1.5.	Construction Approach		
1.5.1	Construction Approach	Describe and provide details of the Proposer's general approach and management plan for construction services including: <ul style="list-style-type: none"> (i) Overall construction methodology and general approach; (ii) Construction constraints, risks and mitigation strategies; (iii) Process for managing change orders; and (iv) Approach to quality assurance and safety. 	3 pages
1.5.2.	Design-Build Integration	Describe the Proposer's proposed process to complete the design stages, including: <ul style="list-style-type: none"> (i) Describe how the design stage interfaces with the fast track construction schedule and show how PGCPS and the Developer will be involved in design reviews following the Effective Date. (ii) Proposed process to ensure effective design-consultation throughout the design process; and (iii) Design quality assurances. 	2 pages
1.5.3	Design-Build Quality Management Plan	In addition to providing the Design-Build Quality Management Plan, Proposers should provide a brief summary of the Design-Build Quality Management Plan that includes the Proposer's approach to quality and a summary of the key elements with respect to quality management, including:	3 pages (for summary)

		<ul style="list-style-type: none"> (i) Proposer’s construction quality management approach and quality processes and procedures; (ii) The proposed organization systems, including methods to be used to establish lines of communication and documentation within the Proposer’s team, and between the Proposer’s team and PGCPS to ensure quality; (iii) The roles and responsibilities of Key Personnel responsible for quality during the Design and Construction phase of the Project; and (iv) A description of the tools and processes proposed to be used by the Developer to manage the work, including monitoring and reporting design and construction progress, status of issues and schedule for resolution, estimated time to complete tasks. 	
1.5.4	Safety Management Plan	<ul style="list-style-type: none"> (i) The Safety Plan should describe Developer’s policies, plans, training programs, work site controls, and incident response plans to ensure the health and safety of personnel involved in the Project and the general public affected by the Project during construction activities. In particular, Proposers must address plans for ensuring the safety of staff and students at Walker Mill and Kenmoor given they will remain onsite during construction. (ii) The Safety Plan must address procedures for immediately notifying PGCPS of all incidents arising out of or in connection with the works and services whether on, or adjacent to, the Project. (iii) The Safety Plan shall include processes, protocols, and management procedures, including lines of accountability and interface with PGCPS. 	3 pages
1.5.5.	Sustainability / LEED	Provide a plan describing how the Proposer intends to achieve environmental sustainability requirements relative to the Project. Proposer must include a checklist that outlines which LEED credits will be pursued in order to meet the minimum number of credits for LEED Silver	3 pages

		Certification. This LEED Checklist must identify where the information can be found in the Technical Proposal, as well as indicate the Proposer Team member responsible for achievement of the relevant LEED credit.	
1.5.6.	Commissioning	Describe and provide details of the Proposer’s process for managing commissioning in accordance with the requirements in Exhibit R “Commissioning” of the Project Agreement, including a table of contents or description of the major elements of the Commissioning Plan requirements set forth in the Project Agreement. Proposer should also detail its proposed approach to the training of PGCPS staff regarding the operations and maintenance of the Schools in light of the PGCPS Retained Responsibilities.	5 pages (excluding the table of contents)
1.5.7	Communications	Approach to addressing public information and communications management, including a description of the Proposer’s plan to establish and maintain a positive relationship with internal stakeholders, Project Planning Committees, PGCPS officials, residents, businesses, institutions, organizations, the general public and others inconvenienced or affected by the construction of the Project.	4 pages
1.5.8	Key Personnel - Construction	Proposer should identify and provide resumes for the executive in charge of construction process, as well as for (i) the individual responsible for community outreach during construction; (ii) the lead construction manager; (iii) the quality assurance professional and (iv) the lead safety manager.	2 pages per resume
1.5.9	Staging Plan	Approach to storing equipment, implementing barriers and signage for live construction areas and coordinating travel and access for contractors at active learning sites.	
1.6	Services		
1.6.1	Overview	Each Proposer is to provide a written narrative for its approach to delivering Services, including the utilization of major subcontractors, that clearly describes the processes for planning for, managing, implementing and performing the requirements and obligations set out in Exhibit W (Services Requirements) of the Project Agreement.	3 pages

1.6.2.	Approach	<p>Describe the Developer’s proposed organization, including details regarding:</p> <ul style="list-style-type: none"> (i) Provide a description of the proposed Services Period Performance Monitoring Program, Performance Monitoring Reports and Quality Management System including provisions for PGCPs access to information along with a description of how the Proposer will manage performance of the Services Provider and/or subcontractors and create an environment responsive to the needs of school users; (ii) Describe how Services will interface and be coordinated with the PGCPs Retained Responsibilities in every area and how the interface and coordination approach minimizes the potential for additional costs to PGCPs resulting from PGCPs retained risks and services.; (iii) Describe how the Services will be coordinated and delivered across multiple Schools simultaneously; and (iv) Describe the involvement of Services Provider’s staff in the development of design, the execution of construction and Commissioning. Provide examples of how the life cycle and facilities management considerations have influenced the proposed design. 	3 pages
1.6.3	Organization	<p>Describe the Proposer’s proposed organization including details regarding:</p> <ul style="list-style-type: none"> (i) The organization structure proposed to meet the requirements of Exhibit W (Services Requirements) including an organization chart that identifies the key names (to the extent available) and positions that will be responsible for management and delivery of Services. Include a brief description of each position’s responsibilities. (ii) The proposed response approach (i.e., on-site staffing or remote response) (iii) The proposed approach to relationship management and interaction with PGCPs Persons; (iv) Recruitment training and retention approach for employees, including a description of the Proposer’s human 	3 pages

		<p>resource practices and policies and how security clearance requirements will be managed;</p> <p>(v) How the Services will be addressed outside of regular business hours.</p>	
1.6.4.	Start-up Plan	<p>Provide a preliminary draft Start-up Plan that complies with all the requirements set forth in Exhibit W of the Project Agreement, including preliminary drafts of the following:</p> <ul style="list-style-type: none"> (i) Annual Service Plan for the first 12 months of the Services Period that complies with all the requirements of Exhibit W of the Project Agreement. (ii) The Five-Year Maintenance Plan that complies with Exhibit W of the Project Agreement; (iii) The Environmental Management Plan that complies with all the requirements set forth in Exhibit W of the Project Agreement; (iv) a description of all elements of the Performance Monitoring Program and how such program will be implemented at the earliest School Occupancy Readiness Date; and (v) a preliminary Services Quality Management Plan that indicates how Developer will establish and implement the QMS and monitor and measure its Services activities commencing on the first School Occupancy Readiness Date 	n/a
1.6.5.	Services	<p>Describe and provide details of the Services that will be provided, including:</p> <ul style="list-style-type: none"> (i) Provide a description of how scheduled and unscheduled maintenance in the Schools will be managed to minimize disruption to PGCPS Persons and ensure that the performance requirements of all Maintained Elements will be met at all times; (ii) A description of the computerized maintenance management systems (“CMMS”) to be employed and how Scheduled Maintenance work will be planned, scheduled and monitored (iii) A description of how the Proposer will collect and report data to PGCPS; (iv) Provide an example of a preventive maintenance schedule and an individual job plan; (v) Developer’s approach to the management of demand maintenance, 	5 pages

		<p>including emergencies and how response times and rectification periods will be met;</p> <p>(vi) energy management and administration of all utility services as part of a fully integrated and coordinated facilities management solution;</p> <p>(vii) the Proposer’s approach to ensure continual optimization of the performance and efficiency of energy consuming building systems to achieve the energy utilization targets in Exhibit W of the Project Agreement; and</p> <p>(viii) the Proposer’s approach to delivery of the roads, grounds, and landscape maintenance services of improved areas.</p>	
1.6.6.	Handback	Describe the approach and strategies to be implemented throughout the Term to ensure the meeting of the Handback requirements set forth Article 25 of the Project Agreement and the remaining useful life requirements described in Exhibit Y of the Project Agreement.	2 pages
1.6.7.	Help Desk	<p>Describe and provide details of the Help Desk Services, as described in Exhibit W of the Project Agreement that will be provided, including:</p> <p>(ix) The proposed approach to deliver the Help Desk Services on a 24/7 basis, including back-up provisions</p> <p>(x) The hardware and software technology to be utilized and how it is integrated to the CMMS (if different than the CMMS);</p> <p>(xi) The proposed business processes and security features related to maintenance of electronic logs, records and response and rectification times and how the business processes are integrated with CMMS;</p> <p>(xii) How the Developer will track and monitor Response Times and Rectification of all Unavailability Events</p> <p>(xiii) How the Help Desk will interface with the delivery of PGCPS Retained Responsibilities.</p>	2 pages
1.6.8.	Life-Cycle Plan	<p>For each School, provide a preliminary draft Life-Cycle Plan including:</p> <p>(i) Describe and provide details of the approach and methodology to lifecycle building management, including a</p>	5 pages (excluding spreadsheets)

		<p>description of decision-making processes, business case analyses and technology tools;</p> <p>(ii) Describe the overall approach to optimization of design and construction quality, facility management services and life-cycle strategies;</p> <p>(iii) In Form F-5, provide a proposed annual Life Cycle projection for the assumed Term and provide details of the capital expenditures associated with the lifecycle / capital replacement plan;</p> <p>(iv) Describe and provide details of the approach to the development of the Life Cycle Plan required in Exhibit W (Services Requirements). Clearly identify the assumed asset life, strategy and replacement schedule for all types of plant and equipment for which the Developer is responsible. Proposers are responsible to determine the specific components and elements required to support their proposed approach, methodology and cost structure for life cycle replacement and refurbishment; and</p> <p>(v) Describe and provide details of how the Services Provider has influenced the proposed design for the School and in particular, how total Life Cycle costs have been optimized.</p>	
1.6.9	Training	Proposer should detail its proposed approach to initial and ongoing training of PGCPS staff regarding the maintenance of the Schools in accordance with the PGCPS Retained Responsibilities.	2 pages
1.6.10	Key Personnel	Proposer should identify and provide resumes (maximum 2 pages each) for the executive in charge of the Services, as well as for the key individuals identified in 1.6.3 (i) above.	6 pages

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SCHEDULE B-2: TECHNICAL PROPOSAL EVALUATION CRITERIA

1. GENERAL APPROACH

Following the Proposal responsiveness review described in Section 5.4.1. of this RFP, Proposals will be evaluated by the Selection Committee in accordance with the evaluation criteria set forth in Section 3 of Schedule B-2 of this RFP. PGCPS may, at its sole discretion, perform other due diligence investigations with respect to any information submitted in a Proposal.

2. EVALUATION PROCESS AND WEIGHTINGS

In accordance with the weighting set forth in Section 5.5. of this RFP, for each Proposal being evaluated, the PGCPS Selection Committee will evaluate and assign score to each evaluation criterion.

As set forth in Section 5.5.1 of the RFP, Technical Proposal evaluation consists of seven major criteria categories, with associated subcriteria.

Technical Evaluation Content	Weighting
Part 1.2. – Organization & Project Management	40
Part 1.2a. – MBE/CBB and Local Community Benefits	35
Part 1.3. – Project Schedule	20
Part 1.4. – Design Approach & Commissioning	77
Part 1.5. – Construction Approach	58
Part 1.6. – Services Approach	70
Total	300

The scoring considerations for each evaluation category are detailed in the following section.

3. TECHNICAL PROPOSAL EVALUATION CRITERIA

Part 1.2. Organization & Project Management

The Selection Committee will assign up to 40 points to the Proposer’s Organization and Project Management structure based on the Selection Committee’s judgement as to the merit, practicality, quality, strength and value of the Proposer’s submittal in Part 1.2. of the Proposal, including the Selection Committee’s assessment of the extent to which the proposed Organization and Project Management Approach:

- (i) demonstrates a clear understanding of PGCPS Project goals and key Project challenges and effectively ensure the achievement of PGCPS Project goals and objectives;
- (ii) identifies clear lines of responsibility, ownership and control, demonstrating clearly how the Developer will function organizationally and how it will coordinate and partner effectively with PGCPS;
- (iii) minimizes PGCPS risk, through risk mitigation, effective partnering, staffing, and a high level of coordination between the design, construction and facilities management elements;
- (iv) demonstrates an organization that is fully integrated throughout the Project delivery team and demonstrates how contractors, subcontractors and the supply chain will be integrated to effectively and successfully deliver on Project requirements;

- (v) provides a clear and reliable framework and plan for working with and coordinating Project Services with PGCPS and undertaking community outreach and engagement with other key stakeholders, such as School communities, neighborhoods, principals and others during diverse stages of the Project (the Design-Build Period and the Services Period); and
- (vi) includes highly qualified management Key Personnel that are sufficiently dedicated and available to the Project at the appropriate times.

Part 1.2(a): MBE/CBB and Local Community Benefits

The Selection Committee will assign up to 35 points to the Proposer’s MBE/CBB and Local Community Benefits program structure based on the Selection Committee’s judgement as to the merit, practicality, quality, strength and value of the Proposer’s submittal in Part 1.2(a) of the Proposal, including the Selection Committee’s assessment of the extent to which the Proposal:

- (i) provides a high probability that the Developer will meet its MBE/CBB subcontracting minimum requirements throughout all phases of the Project and sets out a monitoring and enforcement framework that will facilitate oversight, accountability and transparency in reporting; and
- (ii) demonstrates a firm commitment to expanding opportunities for people who live and work in Prince George’s County via its proposed Community Investment Program which evidences committed support and/or defined investments in community services and/or local community benefit programs over the Term of the Agreement.

Part 1.3. Project Schedule

The Selection Committee will assign up to 20 points to the Proposer’s Project Schedule. A total of 3.33 points will be allocated for each School that has a Scheduled School Occupancy Readiness Date on July 15, 2023, assuming that PGCPS agrees that the construction schedule and associated contingencies for each is reasonable.

A total of 1.67 points will be allocated for each of the following schools that have a Scheduled School Occupancy Readiness Date on December 30, 2023, assuming that PGCPS agrees that the construction schedule and associated contingencies for each is reasonable:

- Kenmoor Middle School
- Walker Mill Middle School

Part 1.4. Design

The Selection Committee will assign up to 77 points to the Proposer’s design approach based on the Selection Committee’s judgment as to the merit, practicality, quality, strength and value of the Proposer’s design approach submittal in Section 1.4. and taking into account the design requirements and objectives set forth in the Technical Requirements, including the Selection Committee’s assessment of the extent to which the design approach:

- (i) clearly explains the design philosophy, approach and concept, as well as benefits to PGCPS and PGCPS Persons;
- (ii) meets or exceeds Technical Requirements and provides for efficiently functioning Schools

- (iii) provide commitments in the design narratives to building materials and systems that deliver a high-quality and durable school that will provide high performance over the life cycle of the school;
- (iv) demonstrates Project reliability and durability beyond the minimum Technical Requirements;
- (v) reflects an integrated design process involving input from construction, maintenance and life-cycle asset management personnel and teams;
- (vi) allows for evolution in educational delivery with adaptability to accommodate new learning models and configurations;
- (vii) incorporates a quality Site Development Plan that contributes to the wellbeing of the students (including vehicular and pedestrian circulation, clear lines of sight to surround areas inside and outside the Schools)
- (viii) provides daylighting and views aimed to improve the overall attitude, satisfaction and well-being of PGCPS Persons, as well as enhance educational performance, reduce unfavorable conditions, and lower energy costs for each School;
- (ix) convey a distinct identity for each school within the overall interior and exterior design;
- (x) reflects innovation and incorporates solutions to address key considerations, such as durability and cleanability, through the use of damage-resistant materials and surfaces that are easy to maintain by PGCPS staff;
- (xi) describes how the Proposer's designs and design approach will facilitate routine and long-term operations and maintenance of the Schools and contribute to long-lasting school environments (i.e., extending the life cycle of the building to 50+ years);
- (xii) Recognizes and supports sustainability, including sustainability as a learning tool, by incorporating sustainable design strategies that are easily apparent to students, staff and visitors and that can be incorporated into teaching (i.e., using school as a 3-D textbook illustrating sustainable design strategies); and
- (xiii) includes highly qualified Key Personnel during the Design phase that are sufficiently dedicated and available to the Project at the appropriate times.

Part 1.5. Construction

The Selection Committee will assign up to 58 points to the Proposer's construction approach based on the Selection Committee's judgment as to the merit, practicality, quality, strength and value of the Proposer's construction approach submittal in Section 1.5. and taking into account the requirements and objectives set forth in the Technical Requirements, including the Selection Committee's assessment of the extent to which the construction approach:

- (i) demonstrates a clear understanding of Project constructability and risk factors and presents a logical and coherent plan for addressing and mitigating such risks (including consideration of how to address construction and risk issues when building in close proximity to open schools);
- (ii) provides a clear framework for integrated design finalization and fast-track construction and demonstrates a high likelihood of successfully meeting the Project Schedule;
- (iii) Demonstrates a strong commitment to quality assurance and quality management by providing plans and approaches for addressing integrated quality management during all

phases of the Design-Build Work, includes routine metrics and procedures to mitigate and correct variances from expectations, and shows understanding of the importance of quality management systems for successful delivery of the Project in accordance with Technical Requirements;

- (iv) Demonstrates a strong commitment to construction safety by describing policies, plans, training programs, work site controls, and incident response plans to ensure the health and safety of personnel involved in the Project and the general public affected by the Project during construction activities, as well as procedures, processes and protocols for interfacing with PGCPS on safety issues and incidents;
- (v) describes and provides a clear and comprehensive approach for managing the Commissioning process, including a table of contents or description of the major elements of the Commissioning Plan (i.e., roles and responsibilities, commissioning process, final plan, meetings, reporting, punchlists, tests and verification, O&M manuals, schedule, etc.). Emphasis should also be placed on the training of PGCPS staff for purposes of PGCPS responsibilities relating to the operations and maintenance of the Schools;
- (vi) includes highly qualified Key Personnel during the construction phase that are sufficiently dedicated and available to the Project at the appropriate times.

Part 1.6. Services

The Selection Committee will assign up to 70 points to the Proposer's Services approach based on the Selection Committee's judgment as to the merit, practicality, quality, strength and value of the Proposer's Services approach submittal in Section 1.6. and taking into account the requirements and objectives set forth in the Technical Requirements, including the Selection Committee's assessment of the extent to which the Services approach:

- (i) demonstrates that the integration of operations and maintenance considerations into the design of the Project will benefit PGCPS by optimizing operations and minimizing long-term operating and maintenance costs for PGCPS during the Term and after Handback;
- (ii) Assures that the Developer will be able to meet the Handback Requirements set forth in the Project Agreement;
- (iii) Provides draft Start-Up Plan and approaches that are clear, practical and enforceable, and provide a high probability of success, including a Services Quality Management Plan and Service Plan that reasonably demonstrate the capacity of the Developer to meet the required performance metrics;
- (iv) Demonstrates an organizational structure and staffing plan that is reliable and consistent with required response times and performance metrics;
 - (i) Sets out a clear and reliable framework for how Services will interface and be coordinated with PGCPS Retained Responsibilities in every area;
 - (v) Demonstrates Services will be effectively coordinated and delivered across multiple Schools simultaneously while ensuring compliance with prescribed response times and other performance metrics;
- (vi) Shows a commitment to achieving maximum customer satisfaction by providing a description of how scheduled and unscheduled maintenance in the Schools will be managed to minimize

- disruption to PGCPS Persons and ensure that the performance requirements of all Maintained Elements will be met at all times;
- (vii) Demonstrates how computerized maintenance management systems (“**CMMS**”) will be employed and how Scheduled Maintenance work will be planned, scheduled and monitored;
 - (viii) Provides for efficient data collection and meaningful reporting; and
 - (ix) Minimizes the potential for additional costs to PGCPS resulting for PGCPS retained risks and services.
 - (x) Includes highly qualified Key Personnel during the Services phase that are sufficiently dedicated and available to the Project at the appropriate times.

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Schedule C: Financial Proposal

SCHEDULE C-1: FINANCIAL PROPOSAL INSTRUCTIONS

1. GENERAL INSTRUCTIONS

The required contents and organization of the Financial Proposal are presented in this Schedule C-1 (*Financial Proposal Instructions*) and summarized in the Financial Proposal Checklist provided in Schedule A (*Summary and Checklist of Proposal Contents*). Each Proposer is required to submit all the information specified in this Schedule C-1 and in the order set forth in Exhibit A (*Summary and Checklist of Proposal Contents*).

2. REQUIRED CONTENTS, FORMAT AND ORGANIZATION OF THE FINANCIAL PROPOSAL

In general, the Proposer must demonstrate that its Financial Proposal is well developed, reasonable and viable, evidencing sufficient support for the Project from Equity Members and/or Financing Members.

The Financial Proposal shall be organized in the order listed below and shall be clearly indexed and marked. The Proposer shall submit the Financial Proposal in accordance with the formatting requirements of Section 4.3.4 of this RFP. The Proposer shall not amend the order or change the contents of the Financial Proposal Checklist except to provide the required cross-reference to its Financial Proposal.

All financial information provided in the Financial Proposal shall be United States Dollars.

If there are any differences between the sum of individual line amounts and the totals, the individual line amounts shall prevail.

3. BASELINE ASSUMPTIONS FOR THE FINANCIAL PROPOSAL

The financial assumptions to be used as the basis for the Financial Proposal are as follows:

Services Period: Proposers must elect the term for the Services Period and shall make such election on Form F-2. The Services Period will begin on the first School Occupancy Readiness Date. Proposers must elect on Form F-2 the scheduled end date for the Services Period, which such end date may be either June 30, 2053 (eligible for selection only if all Scheduled School Occupancy Readiness Dates are July 15, 2023), June 30, 2054, June 30, 2055, June 30, 2056, June 30, 2057 or June 30, 2058 (eligible for selection only if all Scheduled School Occupancy Readiness Dates are July 15, 2024). All requirements regarding the Services, including the Handback Requirements, remain the same irrespective of the term selected.

Inflation: For forward projections, the Proposer must apply an inflation index of 2.25% to the SC, in accordance with Section 2.6.2 of this RFP.

Discount Rate: For purposes of any net present cost calculation, the Proposer should use a nominal annual rate of 5% as the Discount Rate.

Capital Structure: Proposers shall propose a capital structure based on their Indicative Financing Plan.

Equity IRR: The Proposer must propose a guaranteed maximum pre-tax equity IRR.

Benchmark Interest Rate: Proposers shall use the Benchmark Interest Rate approved by PGCPS.

Indicative Credit Spread: Proposers shall use the Indicative Credit Spread approved by PGCPS.

Other Financing Assumptions: Proposers shall use in their Financial Model their best estimate of all financing fees and costs (including but not limited to issuance costs, commitment fees, capitalized interest, reserve funding, contingent liabilities) related to their Indicative Financing Plan based on the level of financial due diligence done to date.

Capital Charge Escalation: Proposers can bid up to 1.5% in annual Capital Charge escalation, and the Proposer must use the percentage bid in Form F-3.

Service Charge: The Service Charge cannot exceed 40% of the Availability Payment in the first Contract Year that an Availability Payment is made. The Proposer must use the percentage bid in Form F-3.

Taxes: All price proposals will include all applicable taxes.

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4. **FINANCIAL PROPOSAL SUBMISSION REQUIREMENTS**

Section No.	Title	Submission Requirements	Page Limit
2.1.	Administrative Requirements		
2.1.1	Financial Proposal Submission Letter (proposal Form F-1)	Submit a fully executed and notarized Proposal Form F-1 (Financial Proposal Submission Letter). The Financial Proposal Submission Letter and all attachments thereto shall be signed by the duly designated Proposer Representative who is empowered to sign it and to commit the Proposer to the obligations contained in the Proposal. The Financial Proposal Submission Letter shall include the following attachments: Attachment 1 – Certificates of authorization Attachment 2 – Statement justifying records marked as proprietary or trade secret (if applicable)	n/a
2.1.2	Financial Proposal Executive Summary	Each Proposer shall submit an overview of its Financial Proposal (not to exceed 5 pages), detailing, at a minimum, the following: <ul style="list-style-type: none"> • Overall structure of the Indicative Financing Plan; • Identification of equity sources and indicative debt financing sources; • Benefits to PGCPS of the proposed financing approach; • Key pricing elements (Indicative Availability Payment for the first Contract Year that an Availability Payment is made and the first Contract Year following Project Readiness, total assumed debt and equity financing, etc.); and • Description of the reasonableness and robustness of the proposed Financing Plan and approach. 	5 pages
2.2	Eliminated		
2.3	Confirmation of Financial Capacity		
2.3.1	Financial Capacity Information	<i>(i) Updated Financial Statements for Major Participants</i> (a) <i>Each Proposal shall include audited financial statements for Proposer, and all Major Participants, in each case for the most recently ended fiscal year for which such audited financial statements are available. Financial statements must be audited by a certified public accountant or equivalent for foreign entities. If audited financial statements are not available for any entity, provide unaudited financial statements for such entity, certified as true, correct and complete by its Chief Financial Officer or equivalent for that entity.</i>	n/a

		<p>(b) <i>Each Proposal shall also include</i> interim unaudited statements for the above entities are to be provided for the period since the most recent completed fiscal year.</p> <p>(c) Proposers may provide financial statements via a secure link that is accessible by the PGCPS Representative and the Selection Committee.</p> <p><i>(ii) Credit Ratings</i></p> <p>Proposer shall provide details of any credit rating(s) for each of the Proposer and Major Participants, including details of any updates since the RFQ stage (and if none, then confirmation of such).</p> <p><i>(iii) Material Changes in Financial Condition</i></p> <p>Each Proposer and Major Participant must provide a letter from the Chief Financial Officer, treasurer, principal accounting officer, controller or other similar financial officer either:</p> <p>(a) Providing information on any material changes in financial condition since submission of the SOQs and those that are pending; or</p> <p>(b) Certifying that no such material changes have occurred.</p> <p>Additionally, Proposers shall provide updated information following the Proposal Submission Deadline about such entities as such information becomes public until the Financial Close occurs under the Agreement.</p> <p>The following list identifies certain items that PGCPS would consider a material change in financial condition. This list is intended to be indicative only. At the discretion of PGCPS, any failure to disclose a prior or pending material change may disqualify a Proposer from further participation in the procurement process. In instances where a material change has occurred or is anticipated, the affected entity shall provide a statement describing each material change in detail, the likelihood that the developments will continue during the period of performance of the Project development, and the projected full extent of the changes likely to be experienced in the periods ahead. Estimates of the impact on revenues, expenses and the change in equity shall be provided separately for each material change as certified by the Chief Financial Officer, treasurer, principal accounting officer, controller or other similar financial officer. The affected entity shall also provide a discussion of measures that would be undertaken to insulate the Project from any recent material adverse changes and those currently in progress or reasonably anticipated in the future. If financial statements indicate that expenses and losses exceed</p>	
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		<p>income in the fiscal periods between submission of the SOQ and most recent completed fiscal periods (even if there has not been a material change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.</p> <p>List of Representative Material Changes:</p> <ol style="list-style-type: none"> 1) An event of default or bankruptcy involving the affected entity, or the parent corporation of the affected entity or any Controlled Subsidiary or Affiliate; 2) A change in tangible net worth of 10% of shareholder equity; 3) A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition that in any way involves the affected entity or parent corporation of the affected entity; 4) A change in credit rating for the affected entity or parent corporation of the affected entity; 5) Inability to meet material conditions of loan or debt covenants by the affected entity or parent corporation of the affected entity that has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties; 6) In the current and three most recent completed fiscal years, the affected entity or the parent corporation of the affected entity either: <ol style="list-style-type: none"> (a) Incurs a net operating loss; (b) Sustains charges exceeding 5% of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; (c) Implements a restructuring/reduction in labor force exceeding 200 positions or involves the disposition of assets exceeding 10% of the then shareholder equity; or (d) Other events known to the affected entity that represent a material adverse change in financial condition over the past three years or may be pending for the next reporting period (e.g., pending litigation). 	
2.4	Cost Proposal		
2.4.1	Cost Proposal	<p>Proposer shall complete and submit Proposal Form F-2 setting out its Cost Proposal in the prescribed format.</p> <p>These costs represent unconditional maximum costs that do not include financing costs.</p>	n/a

		Additional instructions are provided in Form F-2.	
2.4.2	Other Financial Information	Proposers should complete all tables in Forms F-3, F-4, F-5 and F-6.	

2.5	Financial Model		
	<p>The Proposer’s Financial Model, which generates an indicative Availability Payment stream based on the Proposer’s Indicative Financing Plan, shall be provided for review by PGCPS in the format specified in this section 2.5 of Schedule C-1. PGCPS will use the output of the Successful Proposer’s Financial Model to determine the maximum Availability Payment that the Board of Education will approve prior to the start of the Exclusive Negotiating Period. The Financial model must, at a minimum, meet the requirements set out below and must allow the viewer access to all internal formulas, data and assumptions together with a full print out of all model sheets. The Financial Model will be updated during the Exclusive Negotiating Period and will then become the Initial Base Case Financial Model upon the Commercial Close Date under the Project Agreement.</p>		
2.5.1	<p>General and Structural Requirements</p>	<p>The Financial Model shall be submitted in an electronic file constructed in an Excel format and shall not require the use of external modules. Proposers are encouraged to make the Financial Model as user-friendly as possible. The Financial Model shall satisfy each of the following:</p> <ul style="list-style-type: none"> (a) If the Financial Model MS Excel file is password protected, the password shall be provided. No part of the Financial Model (cell, column, row, sheet, macro or otherwise) shall be separately hidden, locked or protected with a password. The Financial Model shall be formatted to facilitate printing through a print option macro; (b) Provide financial projections (cost and revenue projections) on a monthly basis prior to the Scheduled School Occupancy Readiness Date and on a semi-annual basis (for each period ending December 31 and June 30) from the Project Occupancy Readiness Date until the end of the Term; (c) Proposers must avoid the use of circular references in calculations. When used, those shall be fully detailed and explained in the Assumptions and Instructions Book described in Section 2.4.5 (<i>Financial Model Instructions Book</i>) of this Exhibit C-1. For all macros, all programming code shall be made visible (i.e., not password protected), well-structured and fully documented. (d) Other than an optional title/disclaimer and/or instructions worksheet, the Financial Model shall use only the following three types of worksheets: <ul style="list-style-type: none"> (i) Input worksheets, which shall include data and assumptions to be hard coded but not calculations; (ii) Calculation worksheets, which shall consist of the individual calculations that support each line of all outputs and reports, with no input cells hard coded in calculation sheets; and (iii) Output worksheets, which shall be used to display and generate model outputs, with no input cells hard coded in output sheets and no calculations, 	

		<p>except for simple formulae such as sums and check totals, performed here.</p> <p>(d) Worksheet names shall be descriptive.</p> <p>(e) A separate color-coding scheme (e.g., blue font on yellow fill color) shall be consistently used for input cells and or cells that reference other worksheets. Other color coding can also be used but should be fully explained in the model’s instruction worksheet (if used) and/or the model Assumptions and Instruction book.</p> <p>(f) For calculation or output worksheets using time periods, the following requirements apply:</p> <p>(i) A given column shall be used for the same period in each of its occurrence (e.g., Year 1 or Month 1 for column G).</p> <p>(ii) A row shall generally contain only one formula, copied across all columns. Cells in which a different formula is used (e.g., the first column) should be clearly indicated (e.g., by color or label).</p> <p>(iii) Values obtained from input worksheets should be clearly indicated (e.g., by color or label).</p> <p>(g) The information in the Financial Model and the Financing Plan must be displayed on the basis of months or years corresponding to the Agreement (i.e., Contract Year One, Contract Year Two), as opposed to calendar years or other.</p> <p>(h) <i>Interest Rates and Credit Spread Inputs</i>: The Financial Model shall be able to separately accommodate interest rates and credit spread/ credit margin inputs for each Project Debt facility, if applicable. The Financial Model must be able to be solved with multiple term structures.</p>	
2.5.2	Schedules	<p>The Financial Model must include and provide:</p> <p>(i) Assumption schedules</p> <p>(a) Accounting and federal, state and local tax assumptions pertaining to the Developer;</p> <p>(b) Design and construction work expenditures and other capital expenditures, including development and pursuit costs (including details of the anticipated construction “Scurve” on a monthly basis);</p> <p>(c) Insurance costs, based on the Proposer’s best estimate of the maximum insurance costs during the Design-Build Period and the Services Period.</p> <p>(d) Anticipated expenditures during the Services Period on a nominal basis, broken down between lifecycle and O&M costs, with O&M costs showing a sufficient level of detail to describe labor, equipment, materials, admin/overhead, developer compensation etc.;</p> <p>(e) Anticipated costs associated with the Community Investment Program;</p>	

		<ul style="list-style-type: none"> (f) All indicative financial metrics for debt and associated instruments, including Base Interest Rates and assumptions for applicable maturities within each debt structure; (g) Funding source(s) and deposits into and drawdown of reserve accounts, if any; and (h) Scenario control sheet. <p>(ii) Outputs</p> <ul style="list-style-type: none"> (a) A schedule of Availability Payments by PGCPS that sets out the expected date of Availability Payments and the amount to be paid by PGCPS, in both real and nominal terms; (b) The proposed funding structure, with funding schedules that specify the expected debt repayment dates and amount of debt service, in nominal terms only, to be repaid; (c) Projected income statements; (d) Projected balance sheet; (e) Cash flow projections; (f) Cash flow waterfall in order of seniority (which should be consistent with and reflective of any funding term sheet); (g) Supporting Schedules. 	
2.5.3.	Build Out Cost Breakdown	<p>The Financial Model must include a breakdown of estimated costs by School and for the total Project. In general, the cost breakdown should assist PGCPS in understanding the Proposer’s cost basis for its price proposal. This cost breakdown should include, at a minimum:</p> <ul style="list-style-type: none"> (i) breakdown of development costs (ii) breakdown of design and construction costs, (iii) breakdown of facilities management costs (iv) breakdown of life cycle and handback costs, (v) project administrative costs and (vi) any other operating or capital costs. 	
2.5.4.	Outputs	<p>The Financial Model should produce the following outputs:</p> <ul style="list-style-type: none"> (i) Project internal rate of return (IRR) before financing and tax, in nominal terms; (ii) Return on equity and sub-debt, in nominal terms, and a blended equity return that incorporates all sub-senior debt finance; (iii) Gearing ratio at the time of Financial Close and at the time of receipt of the final Milestone Payment, as defined as total committed shareholders’ funds divided by total debt plus committed shareholders’ funds (in the event of a no-equity structure, please provide the ratio of sub-debt held by a Financing Member divided by total debt); (iv) Drawdown schedules, including dates and amounts for all sources of finance on a semi-annual basis; 	

		<ul style="list-style-type: none"> (v) Weighted average cost of capital at the Financial Close Date; (vi) Annual debt service coverage ratio for each year of the Term, with minimum and average ratios; (vii) Any other ratios that are considered relevant to the proposed financial structure, financial covenants or financing agreements; (viii) The precise timing of any equity injections and details of the phasing, as appropriate; (ix) NPV of the Availability Payments, assuming no deductions for unavailability or performance shortfalls, discounted at the rate indicated herein. (x) Summary of financial statements, in nominal terms only, for each year of the Project Term, in accordance with Generally Accepted Accounting Principles (GAAP); (xi) Revenues and costs on a semi-annual basis; (xii) Breakdown of Developer’s revenues and costs; (xiii) Revenue and capital flows. 	
2.5.5.	Financial Model Instructions Book	<ul style="list-style-type: none"> (i) The Proposer must provide a detailed and comprehensive Proposal Financial Model specification booklet providing instructions for using the Proposal Financial Model. The Instructions book must, at a minimum contain the following; <ul style="list-style-type: none"> (a) The logical layout and structure of the Financial Model, including the names of all worksheets and a description of the color coding and/or labeling scheme(s); (b) Sufficient information and instruction regarding the operation of the Financial Model so PGCPS will be able to read, use and modify the data contained in the Financial Model and to allow PGCPS to conduct sensitivity analysis; and (c) A detailed description of the function and intended use of all macros (and each macro must be logically structured and well documented, i.e., PGCPS encourages the use of liberal comments within the programming code). (ii) As part of the Financial Model Instructions Book, the Proposer must provide full details of the model inputs which identifies and includes: <ul style="list-style-type: none"> (a) For each source of finance, assumptions regarding the drawdown timetable, grace period, repayment schedule, debt maturity profile, costs of finance (including margins and fees and all success fees), and any variations to margins or fees over the life of the loans; 	

		<ul style="list-style-type: none"> (b) Capital and operating cost schedules (c) Macro-economic assumptions, including interest and inflation rates; (d) Taxation assumptions (e) Assumptions made in relation to applicable sales tax liabilities and recoverability; (f) Accounting policies, including depreciation by asset type and working capital requirements (g) All other assumptions that have been necessary in order to construct the Financial Model; and (h) The inputs data should be consistent with, and reconcile to, the Proposal Financial Model. 	
2.5.6	Sensitivity Analyses	<p>As part of the review and evaluation of Financial Proposals, Proposers must provide the sensitivities listed below. PGCPS reserves the right to request or require additional sensitivities:</p> <ul style="list-style-type: none"> (i) Interest rates: <ul style="list-style-type: none"> (a) A 0.5% reduction in the benchmark rates; (b) A 0.25% increase in the benchmark rate; (c) A 0.5% increase in the benchmark rate; (d) A 1% increase in the benchmark rate; and (e) A 1.5% increase in the benchmark rate. 	
2.6	Financing Plan		
	<p>The Proposal must provide an Indicative Financing Plan. While fully committed financing is not required, Proposers must provide this information as an indication of the structure that will be pursued during the Exclusive Negotiating Period and must use the associated assumptions in the Financial Model in order to provide PGCPS with an indicative Availability Payment should the Proposer become the Successful Proposer.</p>		
2.6.1	Financial Plan Narrative	<p>The Financial Plan Narrative must describe the Indicative Financing Plan and include the following information:</p> <ul style="list-style-type: none"> (i) Details of each planned source of financing and the proposed capital structure, including equity, quasi-equity, any construction or standby facilities, subordinated debt, permanent debt (identifying whether taxable or tax-exempt), variation facilities and internally generated funds (separated into interest earned on deposits, reserve accounts and third-party income). The financing plan must include a minimum of 5% of equity, quasi-equity, or subordinated debt at the time of Project Occupancy Readiness; (ii) High level financing terms (Benchmark Interest Rate and Indicative Credit Spread for debt facilities, debt tenor, presumed credit rating) (iii) The committed Equity IRR; 	

		<ul style="list-style-type: none"> (iv) Identification and credit status of each equity investor and the amount to be provided by each investor, including expected yields or returns; (v) If any equity or quasi-equity finance is to be raised from external sources, identify proposed sources and describe their current level of commitment to provide funding; (vi) Detailed plan for achieving Financial Close, including the process and detailed timeline of activities to arrange the financing after the Notice of Award. Such timeline must include dates for the following milestones: <ul style="list-style-type: none"> • Submission of Final Availability Payment Proposal • Commercial Close • Financial Close (vii) Description of how the Financing Plan will benefit PGCPS, particularly as it relates to achieving competitive pricing and minimizing the market risk being borne by PGCPS prior to Financial Close. 	
2.6.2	Term Sheets	<p>The Proposer must provide indicative term sheets, if available, for potential financing providers, including:</p> <ul style="list-style-type: none"> (i) The identity of the arranger, underwriter or lenders, as applicable; (ii) Type of financing facility; (iii) Purpose of facility; (iv) Availability period; (v) Amount of financing proposed; (vi) The drawdown schedule; (vii) Details of grace periods, including duration and contingency; (viii) Repayment or redemption schedules, maturity dates and prepayment terms (including make-whole clauses); (ix) Details of the performance security package to be provided by each of the Project contractors, including details of letters of credit or other security, bonding or guarantee requirements and costs (from either the parent or third parties); (x) Arrangement, underwriting, commitment, agency and all other fees; (xi) Interest rates (whether fixed or floating) specifying base rate, credit spreads and all margins and including any ratchet mechanism; (xii) Requirements for reserve accounts; (xiii) Any proposed hedging arrangements in respect of interest rates; 	

		<ul style="list-style-type: none"> (xiv) Events of default and other similar arrangements; (xv) Step-in arrangements consistent with the Project Agreement; (xvi) Conditions precedent; (xvii) Due diligence requirements; (xviii) Any other restrictions, requirements or conditions that may materially impact the Proposer’s ability to secure financing or drawdown on committed financing after Financial Close; (xix) If available, an indicative rating from one or more Rating Services; (xx) A configuration letter from the Proposer’s Financial Advisor stating that the Financing Plan is achievable, reasonable and robust; (xxi) Details of any working capital requirements and details of how those requirements will be met; (xxii) Details of any standby facilities provided to satisfy the requirements of the Project Agreement’ (xxiii) To the extent that other forms of finance, other than debt and equity, are to be used, the Proposer is to provide appropriate details equivalent to those requested above for equity and debt finance. 	
2.6.3	Equity Support Letters	<p>The Proposer must provide confirmation from each of its equity providers (or in the case of a tax-exempt structure, the financing member that commits to holding subordinated Project debt pursuant):</p> <ul style="list-style-type: none"> (i) That the equity provider or subordinated debt provider, as the case may be, has reviewed and approved the Proposal, including the Financing Plan set forth in Schedule C-1; (ii) That the equity provider or subordinated debt provider, as the case may be, is fully committed to providing the funding described in the Financing Plan, or such other amount as required to reach Financial Close, subject to final lender commitments and final negotiation of the Project Agreement. (iii) If guarantees are to be provided as part of the financing package, written confirmation by each shareholder’s parent company, stating that its commitment to provide a parent guarantee in relation to the availability of equity / quasi-equity for the Project, and that it has adequate funds available; (iv) That the equity provider or subordinated debt provider, as the case may be, is committed to providing the funding at (or less than) the Equity IRR proposed in Form F-3; and 	

		(v) That the equity provider or subordinated debt provider, as the case may be, will make the funds available as described in the Financing Plan.	
2.6.4	Lenders	<p>Proposers must provide the following:</p> <ul style="list-style-type: none"> (i) Description of the debt facilities proposed by the Proposer, including the nature of the current level of commitment and expectations with regard to rated or non-rated debt. (ii) Identity of the proposed underwriter or placement agent if available. (iii) Identity of proposed lender(s), to the extent available. (iv) Letters of support (or commitment, if available) from lenders. (v) Description of the lender due diligence completed to the Proposal Due Date and the due diligence activities that remain to be completed prior to Financial Close. 	
2.6.5.	Refinancing	<p>The proposer must describe any plans for refinancing, if any. If a Proposer plans to refinance debt, the Proposer must provide full details, including assumptions with respect to:</p> <ul style="list-style-type: none"> (i) The structure and timing of refinancing; (ii) Interest rates; (iii) Margins; (iv) Timing of repayments; (v) Reserve accounts; and (vi) Coverage ratios. 	

[intentionally left blank]

SCHEDULE C-2: FINANCIAL PROPOSAL EVALUATION CRITERIA

1. GENERAL APPROACH

Following the Proposal responsiveness review described in Section 5.4.1. of this RFP, Proposals will be evaluated by the Selection Committee in accordance with the evaluation criteria set forth in Section 3 of Schedule C-2 of this RFP. PGCPS may, at its sole discretion, perform other due diligence investigations with respect to any information submitted in a Proposal.

2. EVALUATION PROCESS AND WEIGHTINGS

In accordance with the weighting set forth in Section 5.5. of this RFP, for each Proposal being evaluated, the PGCPS Selection Committee will evaluate and assign a score to each evaluation criterion.

As set forth in Section 5.5.1 of the RFP, Financial Proposal evaluation consists of two major criteria categories, with associated subcriteria.

Financial Evaluation Content	Weighting
Part 2.4. – Cost Proposal	200
Part 2.6 – Financing Plan	100
Total	300

The scoring considerations for each evaluation category are detailed in the following section.

3. FINANCIAL PROPOSAL EVALUATION CRITERIA

Part 2.4. Cost Proposal

The Selection Committee will assign up to 200 points to the Proposer’s Cost Proposal in accordance with the process described in Section 5.5.2.

Part 2.6. Financing Plan

The Selection Committee will assign up to 100 points to the Proposer’s Financing Plan based on the Selection Committee’s judgment as to the merit, practicality, quality, strength and value of the Proposer’s Financing Plan submittal, including the Selection Committee’s assessment of:

- (i) The Selection Committee’s assessment of the reasonableness of the assumptions used in the Financial Plan Narrative, as substantiated through the information provided in 2.6.2, 2.6.3 and 2.6.4 of the Financing Plan, with a focus on the following assumptions:
 - The timeline to get to Financial Close;
 - The committed Equity IRR; and
 - The credit spread pricing and related substantiation.
- (ii) PGCPS’ assessment of the benefits of the Indicative Financing Plan as articulated by the Proposer, including but not limited to the following:
 - The competitiveness of the indicative pricing;
 - The process to be utilized to obtain competitive financing terms;

- The level of support or commitment evidenced by lenders through letters of support and level of due diligence completed;
 - The ability of the Indicative Financing Plan to mitigate PGCPS' retained financial market risk, including but not limited to: (i) the ability to lock in a credit spread, (ii) the timing of such credit spread lock, and (iii) the ability to reach Financial Close quickly in order to reduce the length of time that PGCPS will be exposed to interest rate risk.
- (iii) The Indicative Financing Plan's ability to generate an Availability Payment that meets PGCPS's affordability goals.

Schedule D: Standardized Proposal Forms

All forms named in this Schedule are provided as Proposal Forms, unless otherwise noted. All blank spaces in the Proposal Forms must be filled in, as appropriate. Proposers may make non-substantive changes to the forms (e.g. expanding the forms to properly include all required information or adding additional signature blocks to accommodate signatures from multiple Proposer Team members). No substantive changes shall be made to the Proposal Forms.

1. General Forms

Proposal Form CR – Requests for Clarification and Amendment

2. Technical Proposal Forms:

Proposal Form T-1:	Technical Proposal Transmittal Letter
Proposal Form T-2:	Proposer Team Member List
Proposal Form T-3:	Relationship Disclosure Form
Proposal Form T-4:	Statement of Ownership
Proposal Form T-5:	Form of Letter of Credit
Proposal Form T-6:	Form of Bond Security
Proposal Form T-7:	Scheduled School Occupancy Readiness Dates
Proposal Form T-8:	[RESERVED]
Proposal Form T-9:	[RESERVED]
Proposal Form T-10:	Non-Collusion Certificate
Proposal Form T-11:	Anti-Bribery Affidavit
Proposal Form T-12:	MBE Forms
Proposal Form T-13:	[RESERVED]
Proposal Form T-14:	Debarment Affidavit
Proposal Form T-15:	Form of Exclusive Negotiating Agreement

2. Financial Proposal Forms

Proposal Form F-1:	Financial Proposal Transmittal Letter
Proposal Form F-2:	Cost Proposal
Proposal Form F-3:	Detailed Financial Model Information
Proposal Form F-4:	Capital Cost Breakdown
Proposal Form F-5:	Lifecycle Cost Breakdown
Proposal Form F-6:	O&M Cost Breakdown

Proposal Form T-1
PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS
ACF PACKAGE 1 DBFM

Technical Proposal Transmittal Letter

[to be typed on Proposer's Letterhead]

Date: _____ 2020

Re: Technical Proposal for the PGCPs ACF Package 1 DBFM (RFP NO. DCP19-24A)

_____ (the "Proposer") hereby submits its Technical Proposal in response to the Request for Proposals No. DCP19-24A (the "RFP") for the Prince George's County Public Schools Alternative Construction Financing Package 1 DBFM, issued by Prince George's County Public Schools ("PGCPs") on November 20, 2019, as amended.

As the duly authorized representative of the Proposer, I hereby certify, represent, and warrant, on behalf of the Proposer Team as follows in connection with the Technical Proposal:

1. The Proposer acknowledges receipt of the RFP and the following Addenda:

	Date Issued
_____	November 20, 2019
_____	January 29, 2020
_____	June 19, 2020
_____	July 29, 2020
_____	August 5, 2020
_____	August 19, 2020

2. The submittal of this Technical Proposal has been duly authorized by, and in all respects is binding upon, the Proposer. Attachment 1 to this transmittal letter is a Certificate of Authorization which evidences my authority to submit the Technical Proposal and bind the Proposer.
3. All firms currently included as part of the Proposer Team are identified in Proposal Form T-2 of this Technical Proposal.
4. In accordance with Section 4.6.5. of the RFP, the Proposal Validity Period is for a minimum of 180 days.
5. The Proposer acknowledges and accepts, without reservation, that the terms and conditions of the Project Agreement are non-negotiable, except as permitted in Section 6.1.2 of the RFP.

6. All information and statements contained in the Technical Proposal are current, correct and complete and are made with the full knowledge that PGCPs will rely on such information and statements in selecting the Selected Proposer and executing the Project Agreement.
7. No member of the Proposer Team is currently suspended or debarred from doing business with any government entity.
8. The Proposer has reviewed all of the engagements and potential engagements of the members of the Proposer Team and no potential exists for any conflict of interest or unfair advantage.
9. Proposer Team members have not engaged in any practices that may result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration in connection with the submittal of this Proposal.
10. The Proposer, or an applicable Proposer Team Member, has all current and valid licenses, registrations and certificates required by applicable law to submit this Technical Proposal and for provision of the services described in the RFP, Proposal and Agreement.
11. The following individual will serve as the interface between PGCPs and the Proposer for all communications related to this Proposal and the Project Agreement:

Name: _____
Title: _____
Address: _____
Phones: _____
Email: _____

12. The Proposer certifies that:
 - a. its Technical Proposal is submitted without reservation, qualification, assumptions, deviations or conditions;
 - b. it has submitted a Technical Proposal consisting of all documents and information required by Exhibit B (Technical Proposal) of the RFP, including all Technical Proposal Forms required to be submitted by the RFP;
 - c. it has carefully examined and is fully familiar with all of the provisions of the RFP, has reviewed (i) all materials provided in the Data Room, (ii) the Addenda and (iii) PGCPs' written responses to questions, and is satisfied that the RFP provides sufficient detail regarding the obligations to be performed by the Developer and does not contain internal inconsistencies, errors or omissions;
 - d. it has carefully examined all documents constituting the RFP and the addenda thereto and, being familiar with the work and the conditions affecting the work contemplated by the RFP and such addenda, offers to furnish all labor, materials, supplies, equipment, facilities and services which are necessary, proper or incidental to carry out such work as required by and in strict accordance with the RFP, the Project Agreement and the Technical Proposal, all for the prices set forth in the Proposal;

- e. it has carefully checked all the words, figures and statements in the Technical Proposal; and
 - f. it has notified PGCPs of any deficiencies in or omissions from the RFP or other documents provided by PGCPs and of any unusual site conditions observed.
13. The Proposer represents that all statements made, and information provided in the SOQ previously delivered by it to PGCPs (as amended, resubmitted or updated by the enclosed Technical Proposal) are true, correct and accurate in all material respects as of the date of this Technical Proposal Letter, except as otherwise specified in the enclosed Technical Proposal.
14. The Proposer understands that all costs and expenses incurred by it in preparing the Proposal and participating in the RFP Process will be borne solely by the Proposer, except any reimbursement that may be paid in accordance with the RFP.
15. The Proposer agrees that:
- a. PGCPs will not be responsible for any errors, omissions, inaccuracies or incomplete statements in the Proposal;
 - b. PGCPs' acceptance of the Proposal does not constitute any statement or determination as to its completeness, responsiveness or compliance with the requirements of the RFP, including the Project Agreement; and
 - c. in the event a substantive difference is identified at any time prior to or following Execution Date, between the Proposer's Proposal and any provision in the Project Agreement (including the Technical Requirements), the provisions of the Project Agreement will prevail, and the Proposer will not be entitled to alter its Proposal, as applicable.
16. The Proposal will be governed by and construed in all respects according to the law of the State of Maryland.

Name of Proposer

Name of Designated Signatory

Signature

Title

ACKNOWLEDGEMENT BY NOTARY PUBLIC

(Notary Public)

State of _____

County of _____

On this ____ day of _____, 2020, before me appeared _____ personally known to me to be the person described in and who executed this Technical Proposal Transmittal Letter and acknowledged that (he/she) signed the same freely and voluntarily for the uses and purposes therein described.

In witness thereof, I have hereunto set my hand and affixed by official seal the day and year last written above.

(SEAL)

Notary Public in and for the state of _____

Printed name

Residing at _____

My Commission expires _____

Attachment 1

CERTIFICATE OF AUTHORIZATION*

I, _____, a resident of _____ in the State of _____, DO HEREBY CERTIFY that I am the Clerk/Secretary of _____, a corporation duly organized and existing under and by virtue of the laws of _____; that I have custody of the records of the corporation; and that as of the date of this certification, _____ holds the title of _____ in the corporation, and is authorized to execute and deliver in the name and on behalf of the corporation the Proposal submitted by the corporation in response to Request for Proposals No. DCP19-24A for the Prince George's Public Schools ACF Package 1 DBFM issued on November 20, 2019, as amended; and all documents, letters, certificates and other instruments which have been executed by such officer on behalf of the corporation in connection therewith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the corporation this ____ day of ____ 2020.

(Affix Seal Here)

Clerk/Secretary

**Note: Separate certifications shall be submitted if more than one corporate officer has executed documents as part of the Proposal. Proposers shall make appropriate conforming modifications to this Certificate in the event that the signatory's address is outside of the United States.*

PROPOSAL FORM T-2
PROPOSER TEAM MEMBER LIST

Name of Proposer Team: _____

[Provide the names and roles of firms included as part of the Proposer Team, including all Major Participants, as well as key advisors and subcontractors identified as part of the Proposer Team. If one entity is expected to serve in more than one role, please provide the name of the entity for each role for with the entity is expected to serve.]

[insert proposer name] _____		
Name of Firm or Legal Entity	Role ¹	
	Financing Member ²	Major Participants
	Equity Member	
	Guarantor	
	Design-Builder	
	Design-Builder Member	
	Services Provider	
	Services Provider Member	
	<i>[please add or eliminate rows as appropriate]</i>	
	Financial Advisor	Other Team Members
	Major Subcontractor	
	Legal Advisor	
	Other	
	Other	
	<i>[please add or eliminate rows as appropriate]</i>	

¹ Please refer to section 1.5 of the RFP for a definition of Major Participants.

² If a Financing Member is an investment fund, please also include the fund’s general partner(s) on this list.

**SUPPLEMENT TO PROPOSAL FORM T-2
NEW PROPOSER TEAM MEMBERS**

[Provide the information requested on this form for each new member of the Proposer Team who was not listed under the SOQ. Provide any changes to information on members of the Proposer Team listed in the SOQ. Attach additional pages, if necessary.]

[Name of Proposer] _____

GENERAL INFORMATION	
Member Name:	
Role:	
RELEVANT PROJECT EXPERIENCE	
Project 1:	
Location:	
Brief Overview of Project and Relevance to PGCPs ACF Package 1 DBFM	
Current Status of Project:	
Member Dates of Involvement:	From _____ through _____
Brief Description of Member Roles and Responsibilities	
Contact Person	
Title	
Phone	
Email:	
Project 2:	
Location:	
Brief Overview of Project and Relevance to PGCPs ACF Package 1 DBFM	
Current Status of Project:	
Member Dates of Involvement:	From _____ through _____
Brief Description of Member Roles and Responsibilities	
Contact Person	
Title	
Phone	
Email:	

PROPOSAL FORM T-3
RELATIONSHIP DISCLOSURE FORM

[This form must be completed by each Proposer Team Member and signed by a duly authorized representative of such Team Member]

Date: _____ 2020

Re: Relationship Disclosure for PGCPs ACF Package 1 DBFM (RFP NO. DCP19-24A)

On behalf of _____ [name of Team Member], I hereby confirm that we have reviewed and acknowledge the provisions set forth in Section 3.10 of RFP No. DCP19-24A, as amended, and are disclosing herein all relationships that my representative has with:

- (a) Any member of the entities identified in Section 3.1.4 of the RFP or their current employees, shareholders, directors or officers; or
- (b) Employees (both current and former) of the PGCPs.

The following provides details of the nature of our firm’s relationship with the listed Person/Party:

Name of Party/Person	Details of the Nature of the Team Member’s relationship with the listed Person/Party

Name of Team Member

Name of Designated Signatory

Signature

Title

PROPOSAL FORM T-4
STATEMENT OF OWNERSHIP

The Developer is (or shall be so constituted upon award):

- Limited Liability Company (LLC) Limited Liability Partnership (LLP) Corporation
 Joint Venture Other (specify): _____

I hereby certify that:

No individual person or entity owns (or shall own upon its legal establishment) a 10% or greater interest in the Developer.

OR

The names and addresses of all the direct persons and entities who own a 10% or greater interest in the Developer are as follows:

NAME ³	ADDRESS
_____	_____
_____	_____
_____	_____
_____	_____

- Check here if additional sheets are attached.
 Check here to certify that no person or entity, except for those already listed above or on any attached sheets, owns a 10% or greater interest in the Proposer.

Name of Proposer

Name of Designated Signatory

Signature

Title

³ With respect to a direct entity that owns a 10 percent or greater interest of the Developer, report only the name and address of all persons or entities that own 25% or more of the entity.

PROPOSAL FORM T-5
FORM OF LETTER OF CREDIT

[Issuing Financial Institution's Letterhead with Name and Address]

IRREVOCABLE LETTER OF CREDIT

Date

Prince George's County Public Schools
Department of Capital Programs
13300 Old Marlboro Pike, Trailer 6
Upper Marlboro, MD 20772
Attn: Ms. De'Nerika Johnson, Construction Procurement Supervisor

Re: [Proposal Security Letter of Credit] (RFP No. DCP19-24A)

Ladies and Gentlemen,

At the request and for the account of _____ (the "Proposer"), we hereby establish in your favor, our irrevocable Letter of Credit No. [_____] (the "Letter of Credit") in the amount of U.S. \$[_____] ([_____] million dollars),⁴ (as such amount may be reduced as stated herein, the "Stated Amount"), effective immediately and expiring at the close of business (Eastern time) on [_____, 20__] (the "Stated Termination Date").⁵ All drawing under this Letter of Credit shall be paid with our own funds.

We hereby irrevocably authorize you to draw on us, in an aggregate amount not to exceed the Stated Amount and in accordance with the terms and conditions set forth herein, in one or more drawings in substantially the form of Annex A attached hereto, completed and signed by one purporting to be your duly authorized representative (any such certificate being your "Drawing Certificate"), an aggregate amount not exceeding the Stated Amount, representing amounts payable under by Proposer under Prince

⁴ Note to Proposers: All letters of credit must be in an aggregate amount equal to \$1,500,000 for the Proposal Security. Individual letters of credit may be edited to reflect their actual credit coverage.

⁵ Note to Proposers: The Stated Termination Date for the Proposal Security must be at least 180 days after the Notice of Award to Successful Proposer.

George’s County Public Schools Request for Proposals No. DCP19-24A, as amended (the “RFP”) and the Exclusive Negotiating Agreement with the Board of Education of Prince George’s County and Proposer (the “ENA”).

Each Drawing Certificate drawn under this Letter of Credit must be dated as of the date of presentation on a Business Day and bear on its face the clause “Drawn under [*insert name of Bank*] Irrevocable Letter of Credit No [____]”. As used herein, the term “Business Day” means any day, other than a Saturday or Sunday or other day on which we at our designated office are authorized or required by law or executive order to close.

Funds under this Letter of Credit shall be available to you against receipt by us of your Drawing Certificate. Presentation of any such Drawing Certificate by one purporting to be your duly authorized representative shall be made via mail or courier delivery to our office located at:

[Bank Name and Address]

Attention: Letter of Credit Department

Telephone: _____

Email: _____

Facsimile: _____

Demand for payment hereunder may also be made by facsimile transmission of the Drawing Certificate, at the facsimile number state above, to [_____], Attention: Letter of Credit Department, provided that no presentation by facsimile shall be complete until confirmed by telephone call to [INSERT PHONE NUMBER}, however, the issuing bank’s receipt of such telephone notice shall not be a condition to payment. If presentation is made by facsimile transmission, original documents are not required, and the facsimile transmission will constitute the operative Drawing Certificate. You must contact us at the number shown above or by email to confirm receipt of the transmission.

A Drawing Certificate strictly conforming to the terms and conditions hereof presented as permitted hereunder by 11:00 a.m. (Eastern time), on a Business Day, will be honored by our payment to you of the amount specified in such Drawing Certificate, in immediately available funds, not later than 3:00 p.m. Eastern time) on the second Business Day thereafter or such later Business Day as you may specify. A Drawing Certificate strictly conforming to the terms and conditions hereof presented as permitted hereunder after 11:00 a.m. (Eastern time), on a Business Day, will be honored by our payment to you of the amount specified in such Drawing Certificate, in immediately available funds, not later than 1:00 p.m.

(Eastern time), on the third Business Day thereafter or on such later Business Day as you may specify. If requested by you, payment under this Letter of Credit may be made by wire transfer of Federal Reserve Bank funds to your account in a bank on the Federal Reserve wire system or by deposit of immediately available funds into an account that you maintain with us.

Upon honoring a Drawing Certificate presented by you hereunder, the Stated Amount shall be automatically and permanently decreased by the amount stated in such Drawing Certificate.

Only you may make a drawing under this Letter of Credit. Upon any payment to you of the amount demanded hereunder, we shall be fully discharged of our obligation under this Letter of Credit with respect to such demand for payment, and we shall not thereafter be obligated to make further payments under this Letter of Credit with respect to that payment to you.

Except as set forth in the next paragraph and the certificate referred to herein, this Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the RFP and ENA); and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement, except as set forth in the next paragraph and for the certificate referred to herein.

To the extent not inconsistent with the express terms hereof, this Letter of Credit is governed by and is to be construed in accordance with the International Standby Practices 1998, International Chamber of Commerce Publication 590 ("ISP98"), as interpreted by the laws of the State of New York. As to matters not governed by ISP98, this Letter of Credit is governed by and construed in accordance with the law of the State of New York, including without limitation Article 5 of the Uniform Commercial Code as in effect on the date hereof in the State of New York.

Sincerely,

Name of Bank

Signature

Name of Signatory

Title *(authorized officer)*

ANNEX A TO LETTER OF CREDIT
DRAWING CERTIFICATE (PROPOSAL SECURITY)

Drawn under [Insert Name of Bank] Irrevocable Letter of Credit No. []

[Name of Bank]

[Bank Address]

The undersigned, a duly authorized representative of Prince George’s County Public Schools (the “Beneficiary”), hereby certifies to [Name of Bank] (the “Bank”), with reference to the above-referenced Irrevocable Letter of Credit (the “Letter of Credit”; terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Beneficiary, as follows:

This drawing is due to Beneficiary’s termination of the Exclusive Negotiating Agreement with the Board of Education of Prince George’s County and [] (the “Proposer”) (the “ENA”) in accordance with Section 2.6.3 of the ENA. By presentment of this Drawing Certificate the Beneficiary hereby makes demand for payment under the Letter of Credit in the amount of [] United States Dollars (US\$[]) and such amount represents an amount owed to the Beneficiary with respect to an obligation of the Proposer under the RFP and does not exceed the Stated Amount.

Payment of the amount described hereby shall be made by wire transfer to the following account:

SEND TO:	
CREDIT TO:	
PLEASE NOTIFY:	

The undersigned is a duly authorized representative of Prince George’s County Public Schools and authorized to bind Prince George’s County Public Schools.

IN WITNESS WHEREOF, the Beneficiary has caused this certificate to be executed and delivered by its representative as of this _____ day of _____, 20__.

BOARD OF EDUCATION OF PRINCE GEORGE’S COUNTY

Signature

Printed name

Title *(authorized officer)*

PROPOSAL FORM T-6

[Issuing Financial Institution's Letterhead with Name and Address]

FORM OF BOND SECURITY

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS, that the _____, as Principal and _____, as Surety or as Co-Sureties, each a corporation duly organized under the laws of the State indicated on the attached page, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of Maryland, are jointly and severally held and firmly bound unto the Prince George's County Public Schools ("PGCPS"), in the sum of \$[_____] ([_____] million dollars)⁶ (the "Bonded Sum"), the payment of which we each bind ourselves, and our heirs, executors, administrators, representatives, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal is herewith submitting its Proposal to design, build, finance, and maintain the Prince George's County Public Schools Alternative Construction Financing Package 1 Schools Project, which Proposal and Project Agreement is incorporated herein by this reference and has been submitted pursuant to PGCPS' Request for Proposals No. DCP19-24A, as amended (the "RFP") and the Exclusive Negotiating Agreement with the Board of Education of Prince George's County and Proposer (the "ENA").

NOW, THEREFORE, the condition of this bond is such that, upon PGCPS' termination of the ENA in accordance with Section 2.6.3 of the ENA, the Principal and the Surety or Co-Sureties agree to pay to PGCPS the full Bonded Sum herein above set forth, as liquidated damages and not as a penalty, within ten days after such failure.

The following terms and conditions shall apply with respect to this bond:

1. If suit is brought on this bond by PGCPS and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by PGCPS in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.
2. Any extension(s) of the time for award of the Agreement that Principal may grant in accordance with the Agreement or otherwise, shall be subject to the reasonable approval of Surety or Co-Sureties.
3. Correspondence or claims relating to this bond should be sent to Surety at the following address:

⁶ Note to Proposers: All bonds must be in an aggregate amount equal to \$1,500,000 for the Proposal Security. Individual bond may be edited to reflect their actual bond coverage.

SIGNED and SEALED this _____ day of _____, 202[]

Principal

By: _____

Co-Surety

By: _____

Attorney in Fact

By: _____

Co-Surety

By: _____

Attorney in Fact

By: _____

Co-Surety

By: _____

Attorney in Fact

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

CO-SURETIES

SURETY NAME

SURETY ADDRESS

INCORPORATED IN

PROPOSAL FORM T-7
SCHEDULED SCHOOL OCCUPANCY READINESS DATES

Proposer: _____

The proposed Scheduled School Occupancy Readiness Dates for each School are detailed below:

School	Square Footage	Scheduled School Occupancy Readiness Date
Adelphi Area Middle School		
Drew-Freeman Middle School		
Hyattsville Middle School		
Kenmoor Middle School		
Southern Area K-8 School		
Walker Mill Middle School		

[Note to Proposers: School Occupancy Readiness Dates must abide by the requirements outlined in Section 2.3 of the RFP.]

PROPOSAL FORM T-8

[RESERVED]

PROPOSAL FORM T-9

[RESERVED]

PROPOSAL FORM T-10
NON-COLLUSION CERTIFICATE

I DO HEREBY CERTIFY that I am the _____ and the duly authorized representative of _____ whose address is _____ in the State of _____, and THAT NEITHER I nor, to the best of my knowledge, information, and belief, the above firm nor any of its other representatives I here represent:

- (a) Have agreed, conspired, connived or colluded to produce a deceptive show of competition in the compilation of the RFP or offer being submitted herewith; or
- (b) Have in any manner, directly or indirectly, entered into any agreement, participated in any collusion to fix the RFP price or price proposal of the bidder or offeror herein or any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the Contract for which the within RFP or offer is submitted.

In making this affidavit, I represent that I have personal knowledge of the matters and facts herein stated.

(SIGNATURE)

(DATE)

(PRINTED OR TYPED NAME)

Subscribed and sworn before me this _____ day of _____, 20____.

x _____ Notary Public

My commission expires: _____

PROPOSAL FORM T-11
ANTI-BRIBERY AFFIDAVIT

_____, being first duly sworn deposes and says that he is an officer in the organization known as _____ and the party making a certain proposal or RFP dated, _____ 2020, to the Board of Education of Prince George's County:

I further confirm that: Neither I, nor to the best of my knowledge, information, and belief, the above business (as in defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies (as is defined in Section 16-101(f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of bribery, attempted bribery, or conspiracy to bribe in violation of Maryland Law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court or administrative body, sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

Signature of:

x _____
Authorized Proposer Representative

Subscribed and sworn before me this _____ day of _____, 2020.

x _____ Notary Public

My commission expires: _____

PROPOSAL FORM T-13

[RESERVED]

PROPOSAL FORM T-14
DEBARMENT AFFIDAVIT

_____, being first duly sworn deposes and says that he is an officer in the _____ and the party making a certain proposal or RFP dated, _____ 2020, to the Board of Education of Prince George's County:

I further affirm that: Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension):

I further affirm that:

- 1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
- 2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

Signature of:

x _____
Authorized Proposer Representative

Subscribed and sworn before me this _____ day of _____, 2020.

x _____ Notary Public

My commission expires: _____

PROPOSAL FORM T-15

EXCLUSIVE NEGOTIATING AGREEMENT

THIS EXCLUSIVE NEGOTIATING AGREEMENT (“**ENA**”) is entered into as of the Execution Date by and between the Board of Education of Prince George’s County (the “**Board**” or “**PGCPS**”), and [_____], a [limited liability company] organized and existing under the laws of the State of [_____] (“**Successful Proposer**”).

RECITALS

WHEREAS, Section 126 of Division II, Title 4, Subtitle 1 of the Education Article of the Annotated Code of Maryland permits county boards of education, with the approval of the county governing body, to utilize certain “alternative financing methods” in order to “finance or to speed delivery of, transfer risks of, or otherwise enhance the delivery of public school construction”; and

WHEREAS, under subsection (a)(2) of Section 126 of Division II, Title 4, Subtitle 1 of the Education Article of the Annotated Code of Maryland, such “alternative financing methods” include “public-private partnership agreements, in which a county board contracts with a county revenue authority or a private entity for the acquisition, design, construction, improvement, renovation, expansion, equipping, or financing of a public school, and may include provisions for cooperative use of the school or an adjacent property and generation of revenue to offset the cost of construction or use of the school” and “design-construct-operate-maintain-finance arrangements that permit a county board to contract with a county revenue authority or a private entity for the design, construction, operation, and maintenance of a public school under terms agreed to by the parties”; and

WHEREAS, the approved 20-year *Educational Facilities Master Plan* (as amended in FY 2019) establishes the Blueprint for PGCPS to ensure adequate educational facilities are provided to meet the needs of PGCPS’ 134,000 students and nearly 22,000 full- and part-time employees, adopting the use of alternative construction financing to deliver school facilities in the timeliest and most cost-effective manner possible, while guaranteeing life cycle asset performance; and

WHEREAS, to advance consideration of alternative construction financing options, in May 2018, the County Council approved Resolution No. CR-33-2018 establishing a P3 Alternative Financing School Infrastructure Work Group (“**Work Group**”) for the purpose of supporting, encouraging, and establishing a work group to explore a Public-Private Partnership Alternative Financing School Infrastructure Program for public school construction and replacement projects in the County; and

WHEREAS, the Work Group is comprised of representatives from the County Executive’s office, the County Council, and PGCPS; and

WHEREAS, PGCPS, with the support of the Work Group, issued Request for Qualifications No. DCP19-24, Public-Private Partnership for the Design, Construction, Financing, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1 on May 30, 2019 (as amended, the “**RFQ**”); and

WHEREAS, on August 28, 2019, Successful Proposer, as one of the shortlisted proposers selected by PGCPs as a result of its statement of qualifications submitted under the RFQ, was invited to submit a bid under the terms of Request for Proposals No. DCP19-24A, Public-Private Partnership for the Design, Construction, Financing, and Maintenance of Prince George's County Public Schools Alternative Construction Financing Package 1 (as amended, the "**RFP**"); and

WHEREAS, on September 19, 2019, the Board passed a resolution accepting PGCPs' Chief Executive Officer's recommendation to procure six middle and/or K-8 schools as Alternative Construction Financing Package 1; and

WHEREAS, on September 14, 2020, Successful Proposer submitted a proposal in response to the RFP (the "**Proposal**"); and

WHEREAS, on October __, 2020, Successful Proposer was selected by PGCPs to enter into this ENA and, if applicable pursuant to this ENA, the Agreement; and

WHEREAS, the Final Agreement Draft was included as an attachment to the RFP; and

WHEREAS, PGCPs and Successful Proposer desire to negotiate with each other on an exclusive basis to finalize the final terms and conditions of the Agreement in accordance with the processes and procedures set forth in this ENA.

NOW, THEREFORE, for and in consideration of the mutual covenants, representations, warranties, and agreements contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

ARTICLE 1 DEFINITIONS

Unless otherwise specified or the context otherwise requires, for the purposes of this ENA, the following terms have the meanings set forth below. To the extent any term is not defined herein, it shall have the meaning assigned to such term in the RFP or Final Agreement Draft, as applicable.

"Agreement" means the *Project Agreement for the Design, Build, Finance, and Maintenance of Prince George's County Public Schools Alternative Construction Financing Package 1* that will be entered into by and between PGCPs and Developer.

"Availability Payment" means a fee to be paid by PGCPs to Developer as compensation for Developer's performance of the Design-Build Work and Services, as set forth in the Agreement.

"Board" has the meaning set forth in the Preamble.

"Commercial Close Date" means the date the Agreement is executed by PGCPs and Developer.

"Cure Notice" has the meaning set forth in Section 3.2 (PGCPs Right to Draw on the Proposal Security).

"Design Fee" means a payment equal to the lesser of (i) costs incurred by Successful Proposer to advance the design of Schools during the Exclusive Negotiating Period to the extent that the Proposal includes at least one Group A School, and (ii) One Million Dollars (\$1,000,000.00).

"Developer" means the developer identified in the Preamble of the Agreement.

"ENA" means this Exclusive Negotiating Agreement.

"Execution Date" means the date this ENA is signed by PGPCS as set forth on the signature page to this ENA.

"Exclusive Negotiating Period" means the period described in Section 2.1 (Term).

"Exclusive Negotiating Period Work Product" means all intellectual property and work product prepared by or on behalf of Successful Proposer during the Exclusive Negotiating Period and in connection with the Final Availability Payment Proposal (including all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, USB drives or other data storage devices as well as delivered via electronic data rooms and cloud storage access (such as DropBox or WebEx), designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications, and other graphic and visual aids generated by or on behalf of Developer) for the purpose of advancing design or preparing the Final Availability Payment Proposal. However, the term Exclusive Negotiating Period Work Product shall specifically exclude (a) the data (including calculations, formulas, unit and material prices, and other cost and fee information) assembled by Successful Proposer and delivered to PGPCS as part of the Final Availability Payment Proposal, which data explains the basis of Successful Proposer's cost estimates for development, design, construction, and maintenance of the Project and provides all applicable cost assumptions; (b) any financial model, or analysis derived substantially from any financial model, financing term sheets, or commitment letters provided by Successful Proposer to PGPCS; and (c) patented or unpatented rights in previously existing proprietary information or technology, all of which have been marked as confidential and proprietary by Successful Proposer.

"Expiration Date" has the meaning set forth in Section 2.1 (Term).

"Final Agreement Draft" means the draft of the Agreement attached to the RFP issued on August 19, 2020.

"Final Availability Payment Proposal" means the final Availability Payment Proposal submitted by Successful Proposer in accordance with Article 4 (Pricing Discussions and Final Availability Payment Proposal).

"Financial Close" means the first date that funding is available to Developer under the Financing Documents.

"Financial Model" means Successful Proposer's financial model provided in the Proposal, as updated during the Exclusive Negotiating Period through delivery of the Final Availability Payment Proposal.

"Financial Model Audit" has the meaning set forth in Section 4.3.1 (Revised Financial Model).

"Financial Close Security" has the meaning set forth in Section 5.1.4 (Financial Close Security).

"Maximum Availability Payment" means a final Availability Payment that is no greater than [___]% in excess of the indicative Availability Payment provided by Successful Proposer in its Proposal, or such greater amount as the Board shall approve.

"Maximum Costs" means those costs set forth in Form F-2 of the Proposal.

"PGPCS" has the meaning set forth in the Preamble.

"Proposal" has the meaning set forth in the Recitals.

"Proposal Security" has the meaning set forth in Section 3.1 (Provision of Proposal Security).

"RFP" has the meaning set forth in the Recitals.

"RFQ" has the meaning set forth in the Recitals.

"State" means the state of Maryland.

"Successful Proposer" has the meaning set forth in the Preamble.

“**Work Group**” has the meaning set forth in the Recitals.

ARTICLE 2

EXCLUSIVE NEGOTIATING PERIOD

2.1 Term. The Exclusive Negotiating Period shall commence on the Execution Date and shall terminate at 11:59 p.m. Eastern Time on the date that is sixty (60) days (or to the extent that the sixtieth (60th) day is not a Business Day, on the next Business Day following the sixtieth (60th) day) after the Execution Date (the “**Expiration Date**”); provided, however, that the parties may agree in writing to extend such date or may terminate this ENA prior to such date in accordance with Section 2.7 (Termination).

2.2 Schedule. No later than five (5) days following the Execution Date, Successful Proposer shall submit to PGCPs for its acceptance, acting reasonably, a checklist and timeline identifying all documents, submissions, and other actions (including actions of the parties and any required action of a third party) then reasonably anticipated by Successful Proposer to be completed during the Exclusive Negotiating Period. To the extent Successful Proposer contemplates a simultaneous Commercial Close Date and Effective Date, such schedule shall also include all documents, submissions, and other actions contemplated in the Final Agreement Draft to be completed during the Transition Period reasonably anticipated by Successful Proposer to be completed during the Exclusive Negotiating Period. The parties shall use all reasonable efforts to deliver, respond to, and comment on documents, including draft documents, in accordance with the agreed upon schedule.

2.3 Exclusive Right. Successful Proposer has the exclusive right to negotiate the Agreement with PGCPs, and PGCPs has the obligation to negotiate the Agreement solely with Successful Proposer during the Exclusive Negotiating Period.

2.4 Negotiation of Agreement. During the first thirty (30) days of the Exclusive Negotiating Period, and subject to the terms and conditions of this ENA, PGCPs and Successful Proposer, acknowledging that time is of the essence, agree to negotiate and finalize the Agreement diligently and in good faith; it being agreed, however, that such good faith negotiations are not a guarantee that PGCPs and Successful Proposer will reach agreement on the terms and conditions of the Agreement.

2.5 Negotiation Parameters. In accordance with this ENA and as permitted by this Section 2.5 (Negotiation Parameters), PGCPs and Successful Proposer may, in each party’s sole discretion, agree to changes to the Final Agreement Draft. Successful Proposer acknowledges that the terms and exhibits highlighted in yellow in the Final Agreement Draft are considered by PGCPs to be non-negotiable, except for conforming or minor changes as desirable to the parties or necessary to maintain the consistency of the intended provisions unto themselves and such that the non-negotiable provisions align commercially and legally with the changes to the negotiable provisions and of the Agreement as a whole, in the reasonable judgment of the parties. In addition, PGCPs and Successful Proposer shall in good faith revise the Final Agreement Draft to incorporate minor changes, additions, and modifications (a) necessary to create a complete, consistent, and legally binding contract; (b) reasonably necessary to accommodate Successful Proposer’s corporate and financing structure in accordance with the Proposal; and (c) required to complete the Agreement and exhibits based on information provided in the Proposal.

2.6 Community Engagement During the Exclusive Negotiating Period. At PGCPs' reasonable request, Successful Proposer shall participate in limited community and stakeholder meetings during the Exclusive Negotiating Period.

2.7 Termination. The ENA may be terminated as follows:

2.7.1 Agreement Execution. This ENA shall automatically terminate upon the execution and delivery of the Agreement by both parties.

2.7.2 Expiration Date. This ENA shall automatically terminate on the Expiration Date (as such date may have been extended in writing by the parties).

2.7.3 Termination by PGCPs for Successful Proposer's Failure to Comply with ENA Terms. PGCPs may terminate this ENA by providing a written termination notice to Successful Proposer ten (10) days after PGCPs provides a Cure Notice in accordance with Section 3.2 (PGCPs Right to Draw on the Proposal Security) to the extent PGCPs, in its sole discretion reasonably applied, believes the circumstances described in the notice have not been resolved and provides reasonable detail on the basis for such belief.

2.7.4 PGCPs Right to Terminate for Convenience. PGCPs may terminate this ENA by written notice to Successful Proposer at any time.

2.7.5 Mutual Termination. The parties, by mutual written agreement, may terminate this ENA at any time.

2.8 Reimbursements.

2.8.1 Stipend. If this ENA is terminated as provided in Section 2.7.2 (Expiration Date), Section 2.7.4 (PGCPs Right to Terminate for Convenience), or Section 2.7.5 (Mutual Termination), Successful Proposer will remain eligible for a stipend to the extent set forth in the Reimbursement Agreement.

2.8.2 Design Fee. If (i) this ENA is terminated as provided in Section 2.7.2 (Expiration Date), Section 2.7.4 (PGCPs Right to Terminate for Convenience), or Section 2.7.5 (Mutual Termination), and (ii) the Proposal included at least one Group A School, within ninety (90) days after receipt from Successful Proposer of documentation of costs incurred, PGCPs shall pay Successful Proposer the Design Fee. In exchange for payment of the Design Fee, Successful Proposer grants PGCPs an irrevocable, non-exclusive, fully paid up, and royalty-free right and license to use, reproduce, and modify all Exclusive Negotiating Period Work Product. Developer acknowledges that the Design Fee contains sufficient consideration for PGCPs' use of the Exclusive Negotiating Period Work Product.

ARTICLE 3 PROPOSAL SECURITY

3.1 Provision of Proposal Security. As security for its commitment to enter into the Agreement in accordance with its Proposal commitments, in accordance with the RFP requirements, within five (5) days of Notice of Award, Successful Proposer submitted to PGCPs cash, in escrow,

and/or one or more standby letter(s) of credit, proposal bonds, or demand guarantees in the amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the “**Proposal Security**”).

3.2 PGCPS Right to Draw on the Proposal Security. Successful Proposer understands and agrees that PGCPS will be entitled to draw on its Proposal Security in its entirety only in the event this ENA is terminated in accordance with Section 2.7.3 (Termination by PGCPS for Successful Proposer’s Failure to Comply with ENA Terms) due to the occurrence of one or more of the following circumstances: (a) Successful Proposer in writing withdraws, repudiates, or otherwise states that it will not meet one or more commitments made in its Proposal (except as otherwise permitted or excused pursuant to the RFP or as agreed to by PGCPS through cost and scope refinements in accordance with this ENA), including, but not limited to, that it cannot perform under the Agreement without exceeding the Maximum Costs; or (b) Successful Proposer assigns this ENA in violation of Section 7.2 (Assignment). To the extent PGCPS believes that one or more of the circumstances described in items (a) or (b) of this Section 3.2 (PGCPS Right to Draw on the Proposal Security) has occurred, PGCPS shall provide written notice (each, a “**Cure Notice**”) to Successful Proposer describing with specificity the facts and circumstances at issue.

3.2.1 For clarity, but without limiting PGCPS’ rights under Section 3.2 (PGCPS Right to Draw on the Proposal Security) and Section 2.7.3 (Termination by PGCPS for Successful Proposer’s Failure to Comply with ENA Terms), Successful Proposer’s request to modify any provision of the Agreement (whether such portion is highlighted or unhighlighted in the Final Agreement Draft) does not, in and of itself, mean that Successful Proposer has repudiated its Proposal commitments or failed to comply with the terms of this ENA.

3.2.2 For clarity, unless termination of the ENA occurs in accordance with Section 2.7.3 (Termination by PGCPS for Successful Proposer’s Failure to Comply with ENA Terms), the failure to execute the Agreement by the end of the Exclusive Negotiating Period will not entitle PGCPS to draw on the Proposal Security.

3.3 PGCPS’ Return of the Proposal Security. Subject to Section 3.2 (PGCPS Right to Draw on the Proposal Security), following the occurrence of any of the below events, PGCPS will, as applicable, return or authorize the return of the Proposal Security within five (5) Business Days (except as provided in Section 3.3(a)):

- (a) Successful Proposer has replaced the Proposal Security with the Financial Close Security, in which case the Proposal Security shall be returned simultaneously with the posting of the Financial Close Security;
- (b) this ENA is terminated as provided in Section 2.7.1 (Agreement Execution);
- (c) this ENA is terminated as provided in Section 2.7.2 (Expiration Date);
- (d) this ENA is terminated as provided in Section 2.7.4 (PGCPS Right to Terminate for Convenience); or
- (e) this ENA is terminated as provided in Section 2.7.5 (Mutual Termination).

ARTICLE 4
PRICING DISCUSSIONS AND FINAL AVAILABILITY PAYMENT PROPOSAL

4.1 Pricing Discussions. During the first thirty (30) days of the Exclusive Negotiating Period, at least three (3) times prior to Successful Proposer's submission of the Final Availability Payment Proposal to PGCPs, Successful Proposer shall meet with PGCPs to review its estimates of the Maximum Costs, which the parties acknowledge will be focused on scope refinement using, among other methods, real time cost estimating focused on programing, site, mechanical, electrical, and plumbing (MEP) systems and PGCPs design input, as well as other techniques suggested by Successful Proposer and mutually agreed between the parties. Successful Proposer shall provide supporting documentation on an open-book basis, and PGCPs shall be entitled to reasonable access to the details of Successful Proposer's process for developing its Maximum Costs, including any revised cost estimates. Successful Proposer shall also provide information and documentation supporting the progress of its arrangement of financing, including the status of the process and timeline set forth in Successful Proposer's Financial Plan. In the event that any inconsistencies or inaccuracies in the information are discovered, PGCPs shall promptly notify Successful Proposer, who shall make appropriate adjustments to the Maximum Costs and the resulting Availability Payment.

4.2 Development of Final Availability Payment Proposal. In no event shall the Final Availability Payment Proposal reflect higher prices for the components of the Maximum Costs than the Maximum Costs. The Final Availability Payment Proposal shall be supported by "open book" cost estimates and shall include assumptions based on fully committed financing and pricing, except that if the financing includes a public bond issuance the credit spread is not required to be committed. The cost estimates for the Design-Build Work shall be represented using Form F-4 attached to the RFP but with detail contained in ASTM Unifomat Level 2. Services Charge cost estimates shall be represented using Forms F-5 and F-6 attached to the RFP. Other Maximum Costs estimates shall be represented using Form F-3 Table D attached to the RFP.

4.3 Submission of the Final Availability Payment Proposal. Within fifty-five (55) days after the Execution Date, Successful Proposer shall submit a Final Availability Payment Proposal to PGCPs which reflects a refinement in the Maximum Costs, financing terms and assumptions based on fully committed financing (with the exception of credit spreads on publicly issued bonds), and Successful Proposer's reasonable, good faith estimate of Project costs based on discussions with PGCPs during the Exclusive Negotiating Period. The Final Availability Payment Proposal shall include the following:

4.3.1 Revised Financial Model. Successful Proposer shall deliver to PGCPs: (i) an updated unrestricted electronic version of the Financial Model, which version incorporates any amendments made between the Proposal and the Final Availability Payment Proposal, including the Benchmark Interest Rate as approved by PGCPs no more than fourteen (14) days prior to the date that the Final Availability Payment Proposal is submitted to PGCPs, (ii) a committed Credit Spread (with the exception of credit spreads on publicly issued bonds), and (iii) the books and documents setting forth all assumptions, calculations, and methodology used in the preparation of the Financial Model and any other documentation necessary or reasonably requested by PGCPs to operate the Financial Model; and (b) a preliminary independent audit of the Financial Model (the "**Financial Model Audit**") to be conducted by the Financial Model Auditor. Copies of audit reports and opinions shall be addressed to PGCPs, and PGCPs will be expressly identified therein as an entity entitled to rely upon such audit, subject to the Financial Model Auditor's contractual caps on liability. The opinion from the Financial Model Auditor shall state that the Financial Model is suitable for use in connection with the Financial Close. This opinion, on which PGCPs will be co-addressee and

expressly entitled to rely, may also result from an independent review of the Financial Model required by Successful Proposer's lenders. The opinion is to be provided at Successful Proposer's sole cost and expense.

4.3.2 Updated Financial Proposal Forms. Successful Proposer shall deliver to PGCPs updated versions of Forms F-2, F-3, F-4, F-5, and F-6 set forth in the RFP.

4.3.3 Lender(s) Commitment Letter(s). With respect to any debt financing, Successful Proposer shall provide a commitment letter from each Lender, which will be issued in final form and dated as of the Commercial Close Date. The letter(s) of commitment shall include the following:

- (a) Commitment by the Lender(s) for no less than one hundred percent (100%) of the amount of the proposed debt financing proceeds, as applicable. In the event that Successful Proposer has more than one Lender, the commitment by the Lenders, in the aggregate, must equal not less than one hundred percent (100%) of the amount of the proposed debt financing proceeds, as applicable. Such commitments must include fixed credit spreads (with the exception of publicly issued bonds) and pricing commitments for a period of not less than ninety (90) days after the Final Availability Payment Proposal unless a shorter period is approved in writing by PGCPs;
- (b) Confirmation from the Lender(s) that final due diligence has been completed in all material respects (i.e., legal, insurance, and technical due diligence) and is acceptable, subject to reasonable approval rights for any changes that occur to the documents or the procurement through the date of Commercial Close;
- (c) Confirmation from the Lender(s) that the Agreement is acceptable;
- (d) Confirmation from the Lender(s) that final credit approval has been received, subject only to completion of final credit documents and satisfaction of customary conditions precedent, and there being no material adverse changes or Market Disruption Events;
- (e) Due diligence reports from all technical advisors performing due diligence for Successful Proposer in the final form delivered to its Lender(s) (e.g., the reports provided in connection with obtaining the commitments and support letters);
- (f) A detailed term sheet providing credit-approved terms and conditions, including: (i) interest rates specifying the base rate and applicable margins; (ii) amounts, in U.S. dollars, of the facilities provided; (iii) customary conditions precedent to financial close; (iv) required documentation; (v) principal covenants (affirmative and negative); (vi) financing security (including guarantees); (vii) events of default; (viii) structural features; (ix) cover ratios; (x) reserve accounts and the requirements with respect to such accounts; (xi) redemption/prepayment features; (xii) drawdown schedule; (xiii) capital repayment grace period; (xiv) repayment schedule and final maturity date; (xv) flow of funds; (xvi) representations and warranties; (xvii) any proposed hedging arrangements in relation to interest rate risk; (xviii) arrangement and other fees, as applicable; and (xix) any other material terms and conditions relevant to the debt financing, as applicable;
- (g) A description of the fees payable to the Lender(s) and, if applicable, private placement agent; and

(h) Any other material information that would be relevant to a debt financing, as applicable.

4.3.4 Equity Commitment Documents. For each equity or quasi-equity source, Successful Proposer shall provide final equity commitment letters reflecting the final amounts to be invested. The following information must be included:

(a) The identity of any Equity Members; in cases in which the equity is contributed by a fund, Successful Proposer shall provide: (i) the date the fund was established; (ii) the total amount raised in the investment fund; (iii) the total amount of undrawn and uncommitted funds available to be invested in the Project; (iv) confirmation that the Project is an eligible investment of the fund; (v) confirmation that the amount to be contributed does not exceed the maximum investment permitted by the fund bylaws, based on the amount raised in the investment fund as of the date of the Final Availability Payment Proposal; (vi) the identity of the fund managers and a description of the general characteristics of the fund investors; and (vii) the percentage of participation;

(b) The amount of funds the Equity Member is to commit and the timing of such subscription;

(c) The terms and conditions of the subscription, including the extent to which funds are committed and the length of time funds will remain in the project vehicle;

(d) If the total amount of equity finance (including quasi equity) is expected to change during the life of the Project, the terms and conditions of any further planned equity subscription, including the expected timing and amount, and whether this will be provided by the existing Equity Members or by third party investors; and

(e) Certified copies of the board minutes or other written evidence of approval of the contents of the Final Availability Payment Proposal by each Equity Member, together with appropriate evidence of the authorization of the person/body giving the approval. Sufficient documentation must be provided that provides appropriate assurance that private equity will be in place, including letters from the Equity Members evidencing their commitment to provide equity funding.

ARTICLE 5

CONDITIONS TO COMMERCIAL CLOSE

5.1 Conditions to Commercial Close. The following conditions must be satisfied prior to achieving Commercial Close:

5.1.1 The parties, each in their sole discretion, agree to a final version of the Agreement.

5.1.2 The Final Availability Payment Proposal is within the Maximum Availability Payment approved by the Board.

5.1.3 Successful Proposer shall have provided to PGCPs evidence reasonably acceptable to PGCPs that (i) the entity proposed to be Developer under the Agreement is duly incorporated as a legal entity that has as its sole purpose the fulfillment of the obligations set forth in the Agreement and is qualified to do business in Maryland, in the County, and with PGCPs; and (ii)

the controlling interest in the special purpose entity reflects the shareholder structure stipulated in the Proposal.

5.1.4 Successful Proposer shall have delivered to PGCPs cash, in escrow, and/or one or more standby letter(s) of credit, financial close bond, or demand guarantees in an aggregate amount equal to Ten Million Dollars (\$10,000,000.00) (the “**Financial Close Security**”), substantially in the form set forth in Exhibit A (Form of Financial Close Security), designating PGCPs as the beneficiary; provided, however, that this condition will be waived to the extent that Financial Close occurs simultaneously with Commercial Close. The conditions for drawing and returning the Financial Close Security will be set forth in the Agreement. To the extent Successful Proposer elects to submit all or a portion of the Financial Close Security in the form of cash, such cash must be held by an independent, third-party agent satisfactory to both PGCPs and Successful Proposer pursuant to an escrow agreement containing substantially similar terms as set forth in Exhibit A (Form of Financial Close Security). To the extent cash is not provided, the Financial Close Security must be issued by an Eligible Security Issuer.

5.2 Commercial Close. As soon as the conditions set forth in Section 5.1 (Conditions to Commercial Close) are satisfied, the parties shall execute the Agreement.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Successful Proposer Representations and Warranties. Successful Proposer represents and warrants that the following statements are true:

6.1.1 Execution, Delivery, and Performance. Successful Proposer (a) has all requisite right, power, and authority to execute and deliver this ENA and to perform its obligations under this ENA, and (b) has taken all necessary action to authorize the execution, delivery, and performance of this ENA by Successful Proposer. This ENA has been duly executed and delivered by Successful Proposer, and constitutes the legal, valid, and binding obligation of Successful Proposer, enforceable against it in accordance with its terms. The Person signing this ENA on behalf of Successful Proposer is authorized to do so.

6.1.2 No Violation. The execution, delivery, and performance by Successful Proposer of this ENA and the transactions contemplated hereby and the performance by Successful Proposer of its obligations hereunder will not violate any of the terms, conditions, or provisions of (a) any judgment, order, injunction, decree, regulation, or ruling of any court or other Law to which Successful Proposer is subject, or (b) any agreement or contract to which Successful Proposer is a party or to which it is subject.

6.1.3 No Conflict of Interest. Successful Proposer has no interest that would constitute a Conflict of Interest under applicable State and federal laws and regulations and the terms of the RFP, which restrict employees and former employees from contracting with PGCPs.

6.1.4 No Litigation. No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened against Successful Proposer that relates to its business or financial condition.

6.1.5 No Consents. No consent or authorization of, or filing with, any Person, which has not been obtained, is required in connection with the execution, delivery, and performance of this ENA by Successful Proposer.

6.2 PGCPS Representations and Warranties. PGCPS represents and warrants that the following statements are true:

6.2.1 Execution, Delivery, and Performance. PGCPS (a) has all requisite right, power, and authority to execute and deliver this ENA and to perform its obligations under this ENA, and (b) has taken all necessary action to authorize the execution, delivery, and performance of this ENA by PGCPS. This ENA has been duly executed and delivered by PGCPS, and constitutes the legal, valid, and binding obligation of PGCPS, enforceable against it in accordance with its terms. The Person signing this ENA on behalf of PGCPS is authorized to do so.

6.2.2 No Violation. The execution, delivery, and performance by PGCPS of this ENA and the transactions contemplated hereby and the performance by PGCPS of its obligations hereunder will not violate any of the terms, conditions, or provisions of (a) any judgment, order, injunction, decree, regulation, or ruling of any court or other Law to which PGCPS is subject, or (b) any agreement or contract to which PGCPS is a party or to which it is subject.

6.2.3 No Litigation. There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or, to PGCPS' knowledge, threatened in writing against PGCPS involving the Project or that, if decided adversely to PGCPS, would impair PGCPS' ability to perform its obligations under this ENA.

6.2.4 No Consents. No consent or authorization of, or filing with, any Person, which has not been obtained, is required in connection with the execution, delivery, and performance of this ENA by PGCPS.

6.3 Representations and Warranties to Remain True. During the Exclusive Negotiating Period, neither party will take any action, or omit to perform any act, that results in a representation and warranty becoming untrue in any material respect. Each party will promptly notify the other party if any representation or warranty becomes untrue. From time to time, Successful Proposer will provide PGCPS, upon PGCPS' request, with proof of the continuing accuracy of these representations and warranties.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Confidentiality. The parties acknowledge that the confidentiality provisions in Section 3.11 of the RFP govern the Exclusive Negotiating Period.

7.2 Assignment. This ENA may not be assigned by Successful Proposer without the prior express written consent of PGCPS, except for the assignment by Successful Proposer to a special purpose project company owned by the sponsors that will become the Developer which assignment shall not require any consent, but for which written notice will be provided to PGCPS within one (1) Business Day of such assignment. Absent PGCPS' written approval of any such assignment, any attempted assignment of Successful Proposer's rights under this ENA shall be

considered a material violation by Successful Proposer of the terms of this ENA and, at PGCPs' option, shall result in the termination of this ENA.

7.3 Amendments. This ENA may be amended or modified only by a written instrument executed by PGCPs and Successful Proposer.

7.4 Severability. Each provision of this ENA shall be valid and enforceable to the fullest extent permitted by law. If any provision of this ENA is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this ENA. If any such provision of this ENA is held to be invalid, unenforceable, or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability, or illegality and to restore this ENA as nearly as possible to its original intent and effect.

7.5 Non-Waiver. No waiver made by either party with respect to the performance, or manner or time of performance, or any obligation of the other party or any condition to its own obligation under this ENA will be considered a waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

7.6 Governing Law and Venue. This ENA is governed by and shall be construed in accordance with, and interpreted under, the laws of the State. Any disputes, legal cases, or other controversies arising out of this ENA shall be filed in the Circuit Court for Prince George's County, Maryland, and subject to Maryland State Law. Additionally, if applicable, all materials, supplies, equipment, or services supplied as a result of this ENA shall comply with the applicable United States and Maryland Occupational Safety and Health Act Standards.

7.7 Counterparts and Delivery by Electronic Mail. This ENA (i) may be executed in any number of counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument, and (ii) may not be amended or modified except in a writing signed by PGCPs and Successful Proposer. Execution and delivery of this ENA by facsimile or e-mail .pdf shall be sufficient for all purposes and shall be binding on any Person who so executes.

7.8 Notices. Any and all notices, demands, consents, requests, and responses thereto permitted or required to be given under this ENA shall be in writing, signed by or on behalf of the party giving the same, and shall be deemed to have been properly given or served and shall be effective upon being personally delivered or by electronic communication (including email (and PDF or similar documentary attachment) and Internet or intranet websites) pursuant to procedures approved in writing by PGCPs and Successful Proposer from time to time, or within three (3) Business Days upon being deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, to the recipient at the address of such recipient set forth below or at such other address as such recipient may designate by notice specifically designated as a notice of a change of address and given in accordance herewith; provided, however, that notice of change of address shall not be effective until the date of receipt hereof. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, demand, or request shall be addressed as follows:

PGCPS: Chief Executive Officer
Prince George's County Public Schools
14201 School Lane
Upper Marlboro, MD 20772

With a copy to: Public-Private Partnership (P3) Program Office
Prince George's County Public Schools
Louis Wilson Sr. Facilities Administration Building
13300 Old Marlboro Pike
Upper Marlboro, MD 20772

With a copy to: Office of General Counsel
Prince George's County Public Schools
14201 School Lane
Upper Marlboro, MD 20772

Successful Proposer: [insert]

With a copy to: [insert]

7.9 Entire Agreement. This ENA (including the Exhibits, or to the extent necessary to inform provisions of this ENA, the RFP and the Final Agreement Draft) contains all the representations and the entire agreement between the parties with respect to the subject matter of this ENA. Any prior correspondence, memoranda, agreements, warranties, or representations relating to such subject matter are superseded in total by this ENA. Except as permitted by the applicable laws of the State of Maryland, no prior drafts of this ENA or changes from those drafts to the executed version of this ENA shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person and no court or other body shall consider those drafts in interpreting this ENA.

7.10 Survival. The provisions of Section 2.8 (Reimbursement), Section 3.2 (PGCPS Right to Draw on the Proposal Security), and Section 3.3 (PGCPS' Return of the Proposal Security) shall survive the termination of this ENA.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, PGCPs and Successful Proposer have executed this ENA as of the dates set forth below.

BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY

By: _____

Name: _____

Title: _____

Date: _____

[SUCCESSFUL PROPOSER]

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
FORM OF FINANCIAL CLOSE SECURITY

FORM OF LETTER OF CREDIT

[Issuing Financial Institution's Letterhead with Name and Address]

IRREVOCABLE LETTER OF CREDIT

Date

Prince George's County Public Schools

Department of Capital Programs

13300 Old Marlboro Pike, Trailer 6

Upper Marlboro, MD 20772

Attn: Ms. De'Nerika Johnson, Construction Procurement Supervisor

Re: [Financial Close Security Letter of Credit] (RFP No. DCP19-24A)

Ladies and Gentlemen,

At the request and for the account of _____ (the "Proposer"), we hereby establish in your favor, our irrevocable Letter of Credit No. [_____] (the "Letter of Credit") in the amount of U.S. \$[_____] ([_____] million dollars),⁷ (as such amount may be reduced as stated herein, the "Stated Amount"), effective immediately and expiring at the close of business (Eastern time) on [_____, 20__] (the "Stated Termination Date").⁸ All drawing under this Letter of Credit shall be paid with our own funds.

We hereby irrevocably authorize you to draw on us, in an aggregate amount not to exceed the Stated Amount and in accordance with the terms and conditions set forth herein, in one or more drawings in substantially the form of Annex A attached hereto, completed and signed by one purporting to be your duly authorized representative (any such certificate being your "Drawing Certificate"), an aggregate amount not exceeding the Stated Amount, representing amounts payable by Proposer under the *Project Agreement for the Design, Build, Finance, and Maintenance of Prince George's County Public Schools*

⁷ Note: All letters of credit must be in an aggregate amount equal to \$10,000,000 for the Financial Close Security. Individual letters of credit may be edited to reflect their actual credit coverage.

⁸ Note: The Stated Termination Date for the Financial Close Security must be at least 90 days after the date that the Final Availability Payment Proposal is submitted to PGCPs.

Alternative Construction Financing Package 1 entered into by and between PGCPs and Proposer (the "Agreement").

Each Drawing Certificate drawn under this Letter of Credit must be dated as of the date of presentation on a Business Day and bear on its face the clause "Drawn under [*insert name of Bank*] Irrevocable Letter of Credit No [____]". As used herein, the term "Business Day" means any day, other than a Saturday or Sunday or other day on which we at our designated office are authorized or required by law or executive order to close.

Funds under this Letter of Credit shall be available to you against receipt by us of your Drawing Certificate. Presentation of any such Drawing Certificate by one purporting to be your duly authorized representative shall be made via mail or courier delivery to our office located at:

[Bank Name and Address]

Attention: Letter of Credit Department

Telephone: _____

Email: _____

Facsimile: _____

Demand for payment hereunder may also be made by facsimile transmission of the Drawing Certificate, at the facsimile number stated above, to [____], Attention: Letter of Credit Department, provided that no presentation by facsimile shall be complete until confirmed by telephone call to [INSERT PHONE NUMBER] however, the issuing bank's receipt of such telephone notice shall not be a condition to payment. If presentation is made by facsimile transmission, original documents are not required, and the facsimile transmission will constitute the operative Drawing Certificate. You must contact us at the number shown above or by email to confirm receipt of the transmission.

A Drawing Certificate strictly conforming to the terms and conditions hereof presented as permitted hereunder by 11:00 a.m. (Eastern time), on a Business Day, will be honored by our payment to you of the amount specified in such Drawing Certificate, in immediately available funds, not later than 3:00 p.m. Eastern time) on the third Business Day thereafter or such later Business Day as you may specify. A Drawing Certificate strictly conforming to the terms and conditions hereof presented as permitted hereunder after 11:00 a.m. (Eastern time), on a Business Day, will be honored by our payment to you of the amount specified in such Drawing Certificate, in immediately available funds, not later than 1:00 p.m.

(Eastern time), on the fourth Business Day thereafter or on such later Business Day as you may specify. If requested by you, payment under this Letter of Credit may be made by wire transfer of Federal Reserve Bank funds to your account in a bank on the Federal Reserve wire system or by deposit of immediately available funds into an account that you maintain with us.

Upon honoring a Drawing Certificate presented by you hereunder, the Stated Amount shall be automatically and permanently decreased by the amount stated in such Drawing Certificate.

Only you may make a drawing under this Letter of Credit. Upon any payment to you of the amount demanded hereunder, we shall be fully discharged of our obligation under this Letter of Credit with respect to such demand for payment, and we shall not thereafter be obligated to make further payments under this Letter of Credit with respect to that payment to you.

Except as set forth in the next paragraph and the certificate referred to herein, this Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Agreement); and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement, except as set forth in the next paragraph and for the certificate referred to herein.

To the extent not inconsistent with the express terms hereof, this Letter of Credit is governed by and is to be construed in accordance with the International Standby Practices 1998, International Chamber of Commerce Publication 590 ("ISP98"), as interpreted by the laws of the State of New York. As to matters not governed by ISP98, this Letter of Credit is governed by and construed in accordance with the law of the State of New York, including without limitation Article 5 of the Uniform Commercial Code as in effect on the date hereof in the State of New York.

Sincerely,

Name of Bank

Signature

Name of Signatory

Title *(authorized officer)*

ANNEX A TO LETTER OF CREDIT

DRAWING CERTIFICATE (FINANCIAL CLOSE SECURITY)

Drawn under [Insert Name of Bank] Irrevocable Letter of Credit No. []

[Name of Bank]

[Bank Address]

The undersigned, a duly authorized representative of Prince George’s County Public Schools (the “Beneficiary”), hereby certifies to [Name of Bank] (the “Bank”), with reference to the above-referenced Irrevocable Letter of Credit (the “Letter of Credit”; terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Beneficiary, as follows:

This drawing is due to Beneficiary’s termination of the *Project Agreement for the Design, Build, Finance, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1* by and between PGCPs and [] (the “Proposer”) (the “Agreement”) in accordance with the terms of Article 6 thereof. By presentment of this Drawing Certificate the Beneficiary hereby makes demand for payment under the Letter of Credit in the amount of [] United States Dollars (US\$[]) and such amount represents an amount owed to the Beneficiary with respect to an obligation of the Proposer under the Agreement and does not exceed the Stated Amount.

Payment of the amount described hereby shall be made by wire transfer to the following account:

SEND TO:	
CREDIT TO:	
PLEASE NOTIFY:	

The undersigned is a duly authorized representative of Prince George’s County Public Schools and authorized to bind Prince George’s County Public Schools.

IN WITNESS WHEREOF, the Beneficiary has caused this certificate to be executed and delivered by its representative as of this _____ day of _____, 20__.

BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY

Signature

Printed name

Title *(authorized officer)*

[Issuing Financial Institution's Letterhead with Name and Address]

FORM OF BOND SECURITY

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS, that the _____, as Principal and _____, as Surety or as Co-Sureties, each a corporation duly organized under the laws of the State indicated on the attached page, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of Maryland, are jointly and severally held and firmly bound unto the Prince George's County Public Schools ("PGCPS"), in the sum of \$[_____] ([_____] million dollars)⁹ (the "Bonded Sum"), the payment of which we each bind ourselves, and our heirs, executors, administrators, representatives, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal and PGCPS entered into that certain *Project Agreement for the Design, Build, Finance, and Maintenance of Prince George's County Public Schools Alternative Construction Financing Package 1* (the "Agreement").

NOW, THEREFORE, the condition of this bond is such that, upon PGCPS' termination of the Agreement in accordance with Article 6 of the Agreement, the Principal and the Surety or Co-Sureties agree to pay to PGCPS the full Bonded Sum herein above set forth, as liquidated damages and not as a penalty, within ten days after such failure.

The following terms and conditions shall apply with respect to this bond:

1. If suit is brought on this bond by PGCPS and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by PGCPS in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.
2. Any extension(s) of the time for award of the Agreement that Principal may grant in accordance with the Agreement or otherwise, shall be subject to the reasonable approval of Surety or Co-Sureties.
3. Correspondence or claims relating to this bond should be sent to Surety at the following address:

⁹ Note to Proposers: All bonds must be in an aggregate amount equal to \$10,000,000 for the Financial Close Security. Individual bond may be edited to reflect their actual bond coverage.

SIGNED and SEALED this _____ day of _____, 202[]

Principal

By: _____

Co-Surety

By: _____
Attorney in Fact

By: _____

Co-Surety

By: _____
Attorney in Fact

By: _____

Co-Surety

By: _____
Attorney in Fact

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

CO-SURETIES

SURETY NAME

SURETY ADDRESS

INCORPORATED IN

Proposal Form F-1
PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS
ACF PACKAGE 1 DBFM

Financial Proposal Transmittal Letter

[to be typed on Proposer's Letterhead]

Date: _____ 2020

Re: Financial Proposal for the PGCPs ACF Package 1 DBFM (RFP NO. DCP19-24A)

_____ (the "Proposer") hereby submits its Financial Proposal in response to the Request for Proposals No. DCP19-24A (the "RFP") for the Prince George's County Public Schools Alternative Construction Financing Package 1 DBFM, issued by Prince George's County Public Schools ("PGCPS") on November 20, 2019, as amended.

As the duly authorized representative of the Proposer, I hereby certify, represent, and warrant, on behalf of the Proposer Team as follows in connection with the Financial Proposal:

1. The Proposer acknowledges receipt of the RFP and the following Addenda:

	Date Issued
_____	November 20, 2019
_____	January 29, 2020
_____	June 19, 2020
_____	July 29, 2020
_____	August 5, 2020
_____	August 19, 2020

2. The submittal of this Financial Proposal has been duly authorized by, and with the exception of the debt components of the Financing Plan (Parts 2.6.1, 2.6.2, 2.6.4, 2.6.5), is in all respects is binding upon, the Proposer. Attachment 1 to this transmittal letter is a Certificate of Authorization which evidences my authority to submit the Financial Proposal and bind the Proposer.
3. All firms currently included as part of the Proposer Team are identified in Proposal Form T-2 of the Technical Proposal.
4. In accordance with Section 4.6.5. of the RFP, the Proposal Validity Period is for a minimum of 180 days.

5. The Proposer acknowledges and accepts, without reservation, that the terms and conditions of the Project Agreement are non-negotiable, except as permitted in Section 6.1.2 of the RFP.
6. All information and statements contained in the Financial Proposal are current, correct and complete and are made with the full knowledge that PGCPs will rely on such information and statements in selecting the Selected Proposer and executing the Project Agreement.
7. No member of the Proposer Team is currently suspended or debarred from doing business with any government entity.
8. The Proposer has reviewed all of the engagements and potential engagements of the members of the Proposer Team and no potential exists for any conflict of interest or unfair advantage.
9. Proposer Team members have not engaged in any practices that may result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration in connection with the submittal of this Proposal.
10. The Proposer, or an applicable Proposer Team Member, has all current and valid licenses, registrations and certificates required by applicable law to submit this Financial Proposal and for provision of the services described in the RFP, Proposal and Agreement.
11. The following individual will serve as the interface between PGCPs and the Proposer for all communications related to this Proposal and the Project Agreement:

Name: _____
Title: _____
Address: _____
Phones: _____
Email: _____

12. The Proposer certifies that:
 - a. its Financial Proposal is submitted without reservation, qualification, assumptions, deviations or conditions, with the exception of the debt components of the Financing Plan (Parts 2.6.1, 2.6.2, 2.6.4, 2.6.5), which are not committed;
 - b. the cost elements set forth in the Financial Model are:
 - i. consistent with the Technical Proposal;
 - ii. form the basis for its financing plan; and
 - iii. serve as a firm and unconditional maximum price proposal, with the exception of interest rates and terms on debt financing.

- c. it has submitted a Financial Proposal consisting of all documents and information required by Schedule C (Financial Proposal) of the RFP, including all Financial Proposal Forms required to be submitted by the RFP;
 - d. it has carefully examined and is fully familiar with all of the provisions of the RFP, has reviewed (i) all materials provided in the Data Room, (ii) the Addenda and (iii) PGPCS' written responses to questions, and is satisfied that the RFP provides sufficient detail regarding the obligations to be performed by the Developer and does not contain internal inconsistencies, errors or omissions;
 - e. it has carefully examined all documents constituting the RFP and the addenda thereto and, being familiar with the work and the conditions affecting the work contemplated by the RFP and such addenda, offers to furnish all labor, materials, supplies, equipment, facilities and services which are necessary, proper or incidental to carry out such work as required by and in strict accordance with the RFP, the Project Agreement and the Financial Proposal, all for an amount not the exceed the prices set forth in the Proposal;
 - f. it has carefully checked all the words, figures and statements in the Financial Proposal for consistency; and
 - g. it has notified PGPCS of any deficiencies in or omissions from the RFP or other documents provided by PGPCS.
13. The Proposer represents that all statements made and information provided in the SOQ previously delivered by it to PGPCS (as amended, resubmitted or updated by the enclosed Financial Proposal) are true, correct and accurate in all material respects as of the date of this Financial Proposal Transmittal Letter, except as otherwise specified in our Proposal.
14. The Proposer understands that all costs and expenses incurred by it in preparing the Proposal and participating in the RFP Process will be borne solely by the Proposer, except any reimbursement that may be paid in accordance with the RFP or the Project Agreement.
15. The Proposer agrees that:
- a. PGPCS will not be responsible for any errors, omissions, inaccuracies or incomplete statements in the Proposal;
 - b. PGPCS' acceptance of the Proposal does not constitute any statement or determination as to its completeness, responsiveness or compliance with the requirements of the RFP, including the Project Agreement; and
 - c. in the event a substantive difference is identified at any time prior to or following Execution Date, between the Proposer's Proposal and any provision in the Project Agreement (including the Technical Requirements), the provisions of the Project Agreement will prevail, and the Proposer will not be entitled to alter its Proposal, as applicable.

16. The Proposal will be governed by and construed in all respects according to the law of the State of Maryland.

Name of Proposer

Name of Designated Signatory

Signature

Title

ACKNOWLEDGEMENT BY NOTARY PUBLIC

(Notary Public)

State of _____

County of _____

On this ____ day of _____, 2020, before me appeared _____ personally known to me to be the person described in and who executed this Financial Proposal Transmittal Letter and acknowledged that (he/she) signed the same freely and voluntarily for the uses and purposes therein described.

In witness thereof, I have hereunto set my hand and affixed by official seal the day and year last written above.

(SEAL)

Notary Public in and for the state of _____

Printed name

Residing at _____

My Commission expires _____

Attachment 1

CERTIFICATE OF AUTHORIZATION*

I, _____, a resident of _____ in the State of _____, DO HEREBY CERTIFY that I am the Clerk/Secretary of _____, a corporation duly organized and existing under and by virtue of the laws of _____; that I have custody of the records of the corporation ; and that as of the date of this certification, _____ holds the title of _____ in the corporation, and is authorized to execute and deliver in the name and on behalf of the corporation the Proposal submitted by the corporation in response to Request for Proposals No. DCP19-24A for the Prince George's Public Schools ACF Package 1 DBFM issued on November 20, 2019, as amended; and all documents, letters, certificates and other instruments which have been executed by such officer on behalf of the corporation in connection therewith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the corporation this ____ day of ____ 2020.

(Affix Seal Here)

Clerk/Secretary

**Note: Separate certifications shall be submitted if more than one corporate officer has executed documents as part of the Proposal. Proposers shall make appropriate conforming modifications to this Certificate in the event that the signatory's address is outside of the United States.*

PROPOSAL FORM F-2
(SEPARATE EXCEL FILE)



Cost Proposal

1) Design-Build Cost⁽¹⁾

Enter Amount from Form F-4

2) Pre-Development Costs

Enter Total Cost Amount from Form F-3 Table D

3) Services Period End Date⁽²⁾:

(select one)

Period	Lifecycle Costs ⁽³⁾ (A)	Operations and Maintenance Costs ⁽⁴⁾ (B)	Services Costs (A + B)
July 1, 2023 to June 30, 2024			
July 1, 2024 to June 30, 2025			
July 1, 2025 to June 30, 2026			
July 1, 2026 to June 30, 2027			
July 1, 2027 to June 30, 2028			
July 1, 2028 to June 30, 2029			
July 1, 2029 to June 30, 2030			
July 1, 2030 to June 30, 2031			
July 1, 2031 to June 30, 2032			
July 1, 2032 to June 30, 2033			
July 1, 2033 to June 30, 2034			
July 1, 2034 to June 30, 2035			
July 1, 2035 to June 30, 2036			
July 1, 2036 to June 30, 2037			
July 1, 2037 to June 30, 2038			
July 1, 2038 to June 30, 2039			
July 1, 2039 to June 30, 2040			
July 1, 2040 to June 30, 2041			
July 1, 2041 to June 30, 2042			
July 1, 2042 to June 30, 2043			
July 1, 2043 to June 30, 2044			
July 1, 2044 to June 30, 2045			
July 1, 2045 to June 30, 2046			
July 1, 2046 to June 30, 2047			
July 1, 2047 to June 30, 2048			
July 1, 2048 to June 30, 2049			
July 1, 2049 to June 30, 2050			
July 1, 2050 to June 30, 2051			
July 1, 2051 to June 30, 2052			
July 1, 2052 to June 30, 2053			
July 1, 2053 to June 30, 2054 ⁽⁵⁾			
July 1, 2054 to June 30, 2055 ⁽⁵⁾			
July 1, 2055 to June 30, 2056 ⁽⁵⁾			
July 1, 2056 to June 30, 2057 ⁽⁵⁾			
July 1, 2057 to June 30, 2058 ⁽⁵⁾			

⁽¹⁾Enter total Design-Build Cost (\$Nominal) notated as DBC in Form F-4

⁽²⁾Proposer may propose a Services Period End Date of June 30, 2053 only if their proposed Project Readiness Date is July 15, 2023. Proposer may propose a Services Period End Date of June 30, 2058 only if they achieve their first School Occupancy Readiness Date on July 15, 2024.

⁽³⁾ Enter figures from "Total Nominal \$" Column in Form F-5

⁽⁴⁾Figures to be entered in year of expenditure dollars using a 2.25% inflation rate from the \$2020 figure in Form F-6.

⁽⁵⁾Enter "0" if the corresponding contract year commencement date is after the proposed Services Period End Date.

FORM F-3: DETAILED FINANCIAL MODEL INFORMATION

A. Key Financial Model Information

Total Contract Value ¹	
Assumed Amount and % of Debt Financing in Indicative Financing Plan	
Assumed Amount and % of Equity/Sub Debt in Indicative Financing Plan	
Committed Pre-tax Equity IRR ²	
Assumed Weighted Average Cost of Capital (WACC)	
Service Charge as % of Total Availability Payment in the first Contract Year that an Availability Payment is made (no greater than 40%)	
Capital Charge Annual Escalation (no greater than 1.5%)	
Indicative Availability Payment for the First Contract Year following Project Occupancy Readiness	

Notes:

1. Equal to the sum of the following, each in nominal dollars: (a) Developer’s total design and construction expenditures during the Design-Build Period, and (b) Developer’s total Services expenditures during the Services Period, excluding financing, financing costs, interest on financing, and related fees.
2. Must be equal to Pre-tax Equity IRR in Initial Base Case Financial Model.

B. Base Interest Rate and Credit Spread Information

Please provide the following financing assumptions used in the Financial Model

1. Proposed Debt Facility	2. Benchmark identification / description	3. Benchmark Rate at Sept 2 (A%)	4. Indicative Credit Spread* (B%)	5. Credit Spread Lock Premium**	6. Total Interest Rate (A% + B%)	7. Approx. Av. Life of Financing Instruments
[name - facility #1]						
[name - facility #2]						
[etc.]						

* If the debt financing solution is anything other than a publicly issued bond, the Indicative Credit Spread must assume a 90-day credit spread lock.

**If applicable, indicate the estimated number of basis points within the Indicative Credit Spread (B%) that are attributable to a credit spread lock premium. If the Indicative Credit Spread is for publicly issued bonds and therefore does not include a credit spread lock, enter “N/A”.

C. Interest Rate Sensitivity

	Base Case Interest Rate in Financial Model (# 6. in table B above)	Base Case + 25 basis points	Base Case + 50 basis points	Base Case + 100 basis points	Base Case + 150 basis points
Availability Payment in the first Contract Year After Project Readiness					

D. Proposal Development Costs to be Recovered at Financial Close

Please provide all proposal development / procurement costs that will be financed by the Developer at Financial Close. These are costs incurred up to Financial Close but not costs incurred during the Design-Build Period.

Cost Item (\$2020)	Total
Developer - Financial Advisor	
Developer - Development Fee / Overhead Recovery	
Developer - Legal Advisor	
Developer - SPV Set-up Costs	
Developer - Tax & Accounting Advisor	
Developer - Insurance Advisor	
Developer - Model Audit Costs	
Finance - Legal Costs	
Finance - Technical Advisor	
Finance - Insurance Advisor	
Finance - Credit Rating Costs	
Stipend Payments	
Other (add lines as needed)*	
Total Costs	

*Must include all other costs not otherwise listed that will be incurred by the Developer prior to Financial Close, including but not limited to Community Engagement.

E. Summary of Developer Compensation

In addition to disclosing the returns on the Proposer’s capital contribution by way of a committed Equity IRR and an equity compensation line in the Financial Model, Proposer shall fully disclose all other forms of compensation that they will directly receive for their own benefit. This includes, at a minimum:

	Total (Nominal \$)	Notes on Developer Compensation
All fees or other compensation to the Developer for services provided prior to Financial Close that will be recovered at Financial Close		
All fees or other compensation to the Developer for services related to Financing		
All fees or other compensation to the Developer for services provided during construction period		
All fees or other compensation to the Developer for services related to Start up and Commissioning		
All fees or other compensation to the Developer for services provided during the Services Period		
Other Developer fees or compensation not contained in the above*		
Total		

* Please provide detail regarding any other Developer fees or compensation.

Form F-4: Capital Cost Breakdown

		Total Cost (\$Nominal)	Cost/GSF
	Total Hard Costs		
	• Substructure		
	• Shell		
	• Interiors		
	• Services		
	• Special Construction & Demolition		
	• Building Sitework		
	• Contingency		
	Total FF&E		
	• Equipment		
	• Furnishings		
	Other Costs		
	• Permitting		
	• Design Fees		
	• Testing/Commissioning		
	• Independent Engineer		
	• Engineering Fees		
	• Insurance – Construction Phase		
	• SPV/Developer Costs During Design-Build Period		
	• All Other Costs*		
(DBC)	Total Design-Build Costs (\$Nominal) **		
	Total Design-Build Costs (\$2020)		

* Must include all other costs not otherwise listed in this table that will be incurred during the Design-Build Period, including but not limited to Community Engagement, peer reviews, utility connections/fees, non-construction administrative costs, general conditions. For clarity, financing related costs should not be included in this form (issuance costs, financing fees, capitalized interest, DSCR or other lender required reserves).

**Total must clearly tie to Financial Model

Form F-5 Lifecycle Cost Breakdown¹

Period	Substructure	Shell	Interiors	Services	Special Construction & Demolition	Building Sitework	FF&E	Other	Total (\$2020)	Total (Nominal \$) ²
July 1, 2023 to June 30, 2024										
July 1, 2024 to June 30, 2025										
July 1, 2025 to June 30, 2026										
July 1, 2026 to June 30, 2027										
July 1, 2027 to June 30, 2028										
July 1, 2028 to June 30, 2029										
July 1, 2029 to June 30, 2030										
July 1, 2030 to June 30, 2031										
July 1, 2031 to June 30, 2032										
July 1, 2032 to June 30, 2033										
July 1, 2033 to June 30, 2034										
July 1, 2034 to June 30, 2035										
July 1, 2035 to June 30, 2036										
July 1, 2036 to June 30, 2037										
July 1, 2037 to June 30, 2038										
July 1, 2038 to June 30, 2039										
July 1, 2039 to June 30, 2040										
July 1, 2040 to June 30, 2041										
July 1, 2041 to June 30, 2042										
July 1, 2042 to June 30, 2043										
July 1, 2043 to June 30, 2044										
July 1, 2044 to June 30, 2045										

Period	Substructure	Shell	Interiors	Services	Special Construction & Demolition	Building Sitework	FF&E	Other	Total (\$2020)	Total (Nominal \$) ²
July 1, 2045 to June 30, 2046										
July 1, 2046 to June 30, 2047										
July 1, 2047 to June 30, 2048										
July 1, 2048 to June 30, 2049										
July 1, 2049 to June 30, 2050										
July 1, 2050 to June 30, 2051										
July 1, 2051 to June 30, 2052										
July 1, 2052 to June 30, 2053										
July 1, 2053 to June 30, 2054 ⁽³⁾										
July 1, 2054 to June 30, 2055 ⁽³⁾										
July 1, 2055 to June 30, 2056 ⁽³⁾										
July 1, 2056 to June 30, 2057 ⁽³⁾										
Total										

1 Figures should be in \$2020, except for the "Total Nominal \$" Column.

2 Nominal figures should tie to figures in the Financial Model.

3 Enter "0" if the corresponding Contract Year commencement date is after the proposed Services Period End Date.

Form F-6: O&M Cost Breakdown

Annual Cost Estimate for O&M Services	Total Cost (\$2020)	\$/GSF
Interior Integrated Pest Management		
Repair / Maintenance		
Customer Service Center		
Administrative		
Taxes		
Insurance		
Developer O&M Compensation		
Other O&M Costs*		
Annual Operations & Maintenance Cost (\$2020)		
Annual Operations & Maintenance Cost (\$YOE for first Contract Year After Project Readiness**)		

* Please provide detail/add lines regarding any Other O&M Costs.

** Must tie to the Financial Model for the first Contract Year after Project Readiness.

Form of Exclusive Negotiating Agreement

EXCLUSIVE NEGOTIATING AGREEMENT

THIS EXCLUSIVE NEGOTIATING AGREEMENT (“**ENA**”) is entered into as of the Execution Date by and between the Board of Education of Prince George’s County (the “**Board**” or “**PGCPS**”), and [_____], a [limited liability company] organized and existing under the laws of the State of [_____] (“**Successful Proposer**”).

RECITALS

WHEREAS, Section 126 of Division II, Title 4, Subtitle 1 of the Education Article of the Annotated Code of Maryland permits county boards of education, with the approval of the county governing body, to utilize certain “alternative financing methods” in order to “finance or to speed delivery of, transfer risks of, or otherwise enhance the delivery of public school construction”; and

WHEREAS, under subsection (a)(2) of Section 126 of Division II, Title 4, Subtitle 1 of the Education Article of the Annotated Code of Maryland, such “alternative financing methods” include “public-private partnership agreements, in which a county board contracts with a county revenue authority or a private entity for the acquisition, design, construction, improvement, renovation, expansion, equipping, or financing of a public school, and may include provisions for cooperative use of the school or an adjacent property and generation of revenue to offset the cost of construction or use of the school” and “design-construct-operate-maintain-finance arrangements that permit a county board to contract with a county revenue authority or a private entity for the design, construction, operation, and maintenance of a public school under terms agreed to by the parties”; and

WHEREAS, the approved 20-year *Educational Facilities Master Plan* (as amended in FY 2019) establishes the Blueprint for PGCPS to ensure adequate educational facilities are provided to meet the needs of PGCPS’ 134,000 students and nearly 22,000 full- and part-time employees, adopting the use of alternative construction financing to deliver school facilities in the timeliest and most cost-effective manner possible, while guaranteeing life cycle asset performance; and

WHEREAS, to advance consideration of alternative construction financing options, in May 2018, the County Council approved Resolution No. CR-33-2018 establishing a P3 Alternative Financing School Infrastructure Work Group (“**Work Group**”) for the purpose of supporting, encouraging, and establishing a work group to explore a Public-Private Partnership Alternative Financing School Infrastructure Program for public school construction and replacement projects in the County; and

WHEREAS, the Work Group is comprised of representatives from the County Executive’s office, the County Council, and PGCPS; and

WHEREAS, PGCPS, with the support of the Work Group, issued Request for Qualifications No. DCP19-24, Public-Private Partnership for the Design, Construction, Financing, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1 on May 30, 2019 (as amended, the “**RFQ**”); and

WHEREAS, on August 28, 2019, Successful Proposer, as one of the shortlisted proposers selected by PGCPS as a result of its statement of qualifications submitted under the RFQ, was

invited to submit a bid under the terms of Request for Proposals No. DCP19-24A, Public-Private Partnership for the Design, Construction, Financing, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1 (as amended, the “**RFP**”); and

WHEREAS, on September 19, 2019, the Board passed a resolution accepting PGCPS’ Chief Executive Officer’s recommendation to procure six middle and/or K-8 schools as Alternative Construction Financing Package 1; and

WHEREAS, on September 14, 2020, Successful Proposer submitted a proposal in response to the RFP (the “**Proposal**”); and

WHEREAS, on October ___, 2020, Successful Proposer was selected by PGCPS to enter into this ENA and, if applicable pursuant to this ENA, the Agreement; and

WHEREAS, the Final Agreement Draft was included as an attachment to the RFP; and

WHEREAS, PGCPS and Successful Proposer desire to negotiate with each other on an exclusive basis to finalize the final terms and conditions of the Agreement in accordance with the processes and procedures set forth in this ENA.

NOW, THEREFORE, for and in consideration of the mutual covenants, representations, warranties, and agreements contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

ARTICLE 1 DEFINITIONS

Unless otherwise specified or the context otherwise requires, for the purposes of this ENA, the following terms have the meanings set forth below. To the extent any term is not defined herein, it shall have the meaning assigned to such term in the RFP or Final Agreement Draft, as applicable.

“**Agreement**” means the *Project Agreement for the Design, Build, Finance, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1* that will be entered into by and between PGCPS and Developer.

“**Availability Payment**” means a fee to be paid by PGCPS to Developer as compensation for Developer’s performance of the Design-Build Work and Services, as set forth in the Agreement.

“**Board**” has the meaning set forth in the Preamble.

“**Commercial Close Date**” means the date the Agreement is executed by PGCPS and Developer.

“**Cure Notice**” has the meaning set forth in Section 3.2 (PGCPS Right to Draw on the Proposal Security).

“**Design Fee**” means a payment equal to the lesser of (i) costs incurred by Successful Proposer to advance the design of Schools during the Exclusive Negotiating Period to the extent that the Proposal includes at least one Group A School, and (ii) One Million Dollars (\$1,000,000.00).

“**Developer**” means the developer identified in the Preamble of the Agreement.

“**ENA**” means this Exclusive Negotiating Agreement.

“**Execution Date**” means the date this ENA is signed by PGCPs as set forth on the signature page to this ENA.

“**Exclusive Negotiating Period**” means the period described in Section 2.1 (Term).

“**Exclusive Negotiating Period Work Product**” means all intellectual property and work product prepared by or on behalf of Successful Proposer during the Exclusive Negotiating Period and in connection with the Final Availability Payment Proposal (including all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, USB drives or other data storage devices as well as delivered via electronic data rooms and cloud storage access (such as DropBox or WebEx), designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications, and other graphic and visual aids generated by or on behalf of Developer) for the purpose of advancing design or preparing the Final Availability Payment Proposal. However, the term Exclusive Negotiating Period Work Product shall specifically exclude (a) the data (including calculations, formulas, unit and material prices, and other cost and fee information) assembled by Successful Proposer and delivered to PGCPs as part of the Final Availability Payment Proposal, which data explains the basis of Successful Proposer’s cost estimates for development, design, construction, and maintenance of the Project and provides all applicable cost assumptions; (b) any financial model, or analysis derived substantially from any financial model, financing term sheets, or commitment letters provided by Successful Proposer to PGCPs; and (c) patented or unpatented rights in previously existing proprietary information or technology, all of which have been marked as confidential and proprietary by Successful Proposer.

“**Expiration Date**” has the meaning set forth in Section 2.1 (Term).

“**Final Agreement Draft**” means the draft of the Agreement attached to the RFP issued on August 19, 2020.

“**Final Availability Payment Proposal**” means the final Availability Payment Proposal submitted by Successful Proposer in accordance with Article 4 (Pricing Discussions and Final Availability Payment Proposal).

“**Financial Close**” means the first date that funding is available to Developer under the Financing Documents.

“**Financial Model**” means Successful Proposer’s financial model provided in the Proposal, as updated during the Exclusive Negotiating Period through delivery of the Final Availability Payment Proposal.

“**Financial Model Audit**” has the meaning set forth in Section 4.3.1 (Revised Financial Model).

“**Financial Close Security**” has the meaning set forth in Section 5.1.4 (Financial Close Security).

“**Maximum Availability Payment**” means a final Availability Payment that is no greater than [___]% in excess of the indicative Availability Payment provided by Successful Proposer in its Proposal, or such greater amount as the Board shall approve.

“**Maximum Costs**” means those costs set forth in Form F-2 of the Proposal.

“**PGCPS**” has the meaning set forth in the Preamble.

“**Proposal**” has the meaning set forth in the Recitals.

“**Proposal Security**” has the meaning set forth in Section 3.1 (Provision of Proposal Security).

“**RFP**” has the meaning set forth in the Recitals.

“**RFQ**” has the meaning set forth in the Recitals.

“**State**” means the state of Maryland.

“**Successful Proposer**” has the meaning set forth in the Preamble.

“**Work Group**” has the meaning set forth in the Recitals.

ARTICLE 2 EXCLUSIVE NEGOTIATING PERIOD

2.1 Term. The Exclusive Negotiating Period shall commence on the Execution Date and shall terminate at 11:59 p.m. Eastern Time on the date that is sixty (60) days (or to the extent that the sixtieth (60th) day is not a Business Day, on the next Business Day following the sixtieth (60th) day) after the Execution Date (the “**Expiration Date**”); provided, however, that the parties may agree in writing to extend such date or may terminate this ENA prior to such date in accordance with Section 2.7 (Termination).

2.2 Schedule. No later than five (5) days following the Execution Date, Successful Proposer shall submit to PGCPS for its acceptance, acting reasonably, a checklist and timeline identifying all documents, submissions, and other actions (including actions of the parties and any required action of a third party) then reasonably anticipated by Successful Proposer to be completed during the Exclusive Negotiating Period. To the extent Successful Proposer contemplates a simultaneous Commercial Close Date and Effective Date, such schedule shall also include all documents, submissions, and other actions contemplated in the Final Agreement Draft to be completed during the Transition Period reasonably anticipated by Successful Proposer to be completed during the Exclusive Negotiating Period. The parties shall use all reasonable efforts to

deliver, respond to, and comment on documents, including draft documents, in accordance with the agreed upon schedule.

2.3 Exclusive Right. Successful Proposer has the exclusive right to negotiate the Agreement with PGCPs, and PGCPs has the obligation to negotiate the Agreement solely with Successful Proposer during the Exclusive Negotiating Period.

2.4 Negotiation of Agreement. During the first thirty (30) days of the Exclusive Negotiating Period, and subject to the terms and conditions of this ENA, PGCPs and Successful Proposer, acknowledging that time is of the essence, agree to negotiate and finalize the Agreement diligently and in good faith; it being agreed, however, that such good faith negotiations are not a guarantee that PGCPs and Successful Proposer will reach agreement on the terms and conditions of the Agreement.

2.5 Negotiation Parameters. In accordance with this ENA and as permitted by this Section 2.5 (Negotiation Parameters), PGCPs and Successful Proposer may, in each party's sole discretion, agree to changes to the Final Agreement Draft. Successful Proposer acknowledges that the terms and exhibits highlighted in yellow in the Final Agreement Draft are considered by PGCPs to be non-negotiable, except for conforming or minor changes as desirable to the parties or necessary to maintain the consistency of the intended provisions unto themselves and such that the non-negotiable provisions align commercially and legally with the changes to the negotiable provisions and of the Agreement as a whole, in the reasonable judgment of the parties. In addition, PGCPs and Successful Proposer shall in good faith revise the Final Agreement Draft to incorporate minor changes, additions, and modifications (a) necessary to create a complete, consistent, and legally binding contract; (b) reasonably necessary to accommodate Successful Proposer's corporate and financing structure in accordance with the Proposal; and (c) required to complete the Agreement and exhibits based on information provided in the Proposal.

2.6 Community Engagement During the Exclusive Negotiating Period. At PGCPs' reasonable request, Successful Proposer shall participate in limited community and stakeholder meetings during the Exclusive Negotiating Period.

2.7 Termination. The ENA may be terminated as follows:

2.7.1 Agreement Execution. This ENA shall automatically terminate upon the execution and delivery of the Agreement by both parties.

2.7.2 Expiration Date. This ENA shall automatically terminate on the Expiration Date (as such date may have been extended in writing by the parties).

2.7.3 Termination by PGCPs for Successful Proposer's Failure to Comply with ENA Terms. PGCPs may terminate this ENA by providing a written termination notice to Successful Proposer ten (10) days after PGCPs provides a Cure Notice in accordance with Section 3.2 (PGCPs Right to Draw on the Proposal Security) to the extent PGCPs, in its sole discretion reasonably applied, believes the circumstances described in the notice have not been resolved and provides reasonable detail on the basis for such belief.

2.7.4 PGCPs Right to Terminate for Convenience. PGCPs may terminate this ENA by written notice to Successful Proposer at any time.

2.7.5 Mutual Termination. The parties, by mutual written agreement, may terminate this ENA at any time.

2.8 Reimbursements.

2.8.1 Stipend. If this ENA is terminated as provided in Section 2.7.2 (Expiration Date), Section 2.7.4 (PGCPs Right to Terminate for Convenience), or Section 2.7.5 (Mutual Termination), Successful Proposer will remain eligible for a stipend to the extent set forth in the Reimbursement Agreement.

2.8.2 Design Fee. If (i) this ENA is terminated as provided in Section 2.7.2 (Expiration Date), Section 2.7.4 (PGCPs Right to Terminate for Convenience), or Section 2.7.5 (Mutual Termination), and (ii) the Proposal included at least one Group A School, within ninety (90) days after receipt from Successful Proposer of documentation of costs incurred, PGCPs shall pay Successful Proposer the Design Fee. In exchange for payment of the Design Fee, Successful Proposer grants PGCPs an irrevocable, non-exclusive, fully paid up, and royalty-free right and license to use, reproduce, and modify all Exclusive Negotiating Period Work Product. Developer acknowledges that the Design Fee contains sufficient consideration for PGCPs' use of the Exclusive Negotiating Period Work Product.

ARTICLE 3 PROPOSAL SECURITY

3.1 Provision of Proposal Security. As security for its commitment to enter into the Agreement in accordance with its Proposal commitments, in accordance with the RFP requirements, within five (5) days of Notice of Award, Successful Proposer submitted to PGCPs cash, in escrow, and/or one or more standby letter(s) of credit, proposal bonds, or demand guarantees in the amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the "Proposal Security").

3.2 PGCPs Right to Draw on the Proposal Security. Successful Proposer understands and agrees that PGCPs will be entitled to draw on its Proposal Security in its entirety only in the event this ENA is terminated in accordance with Section 2.7.3 (Termination by PGCPs for Successful Proposer's Failure to Comply with ENA Terms) due to the occurrence of one or more of the following circumstances: (a) Successful Proposer in writing withdraws, repudiates, or otherwise states that it will not meet one or more commitments made in its Proposal (except as otherwise permitted or excused pursuant to the RFP or as agreed to by PGCPs through cost and scope refinements in accordance with this ENA), including, but not limited to, that it cannot perform under the Agreement without exceeding the Maximum Costs; or (b) Successful Proposer assigns this ENA in violation of Section 7.2 (Assignment). To the extent PGCPs believes that one or more of the circumstances described in items (a) or (b) of this Section 3.2 (PGCPs Right to Draw on the Proposal Security) has occurred, PGCPs shall provide written notice (each, a "Cure Notice") to Successful Proposer describing with specificity the facts and circumstances at issue.

3.2.1 For clarity, but without limiting PGCPs' rights under Section 3.2 (PGCPs Right to Draw on the Proposal Security) and Section 2.7.3 (Termination by PGCPs for Successful Proposer's Failure to Comply with ENA Terms), Successful Proposer's request to modify any provision of the Agreement (whether such portion is highlighted or unhighlighted in the Final Agreement Draft) does not, in and of itself, mean that Successful Proposer has repudiated its Proposal commitments or failed to comply with the terms of this ENA.

3.2.2 For clarity, unless termination of the ENA occurs in accordance with Section 2.7.3 (Termination by PGCPs for Successful Proposer's Failure to Comply with ENA Terms), the failure to execute the Agreement by the end of the Exclusive Negotiating Period will not entitle PGCPs to draw on the Proposal Security.

3.3 PGCPs' Return of the Proposal Security. Subject to Section 3.2 (PGCPs Right to Draw on the Proposal Security), following the occurrence of any of the below events, PGCPs will, as applicable, return or authorize the return of the Proposal Security within five (5) Business Days (except as provided in Section 3.3(a)):

- (a) Successful Proposer has replaced the Proposal Security with the Financial Close Security, in which case the Proposal Security shall be returned simultaneously with the posting of the Financial Close Security;
- (b) this ENA is terminated as provided in Section 2.7.1 (Agreement Execution);
- (c) this ENA is terminated as provided in Section 2.7.2 (Expiration Date);
- (d) this ENA is terminated as provided in Section 2.7.4 (PGCPs Right to Terminate for Convenience); or
- (e) this ENA is terminated as provided in Section 2.7.5 (Mutual Termination).

ARTICLE 4

PRICING DISCUSSIONS AND FINAL AVAILABILITY PAYMENT PROPOSAL

4.1 Pricing Discussions. During the first thirty (30) days of the Exclusive Negotiating Period, at least three (3) times prior to Successful Proposer's submission of the Final Availability Payment Proposal to PGCPs, Successful Proposer shall meet with PGCPs to review its estimates of the Maximum Costs, which the parties acknowledge will be focused on scope refinement using, among other methods, real time cost estimating focused on programing, site, mechanical, electrical, and plumbing (MEP) systems and PGCPs design input, as well as other techniques suggested by Successful Proposer and mutually agreed between the parties. Successful Proposer shall provide supporting documentation on an open-book basis, and PGCPs shall be entitled to reasonable access to the details of Successful Proposer's process for developing its Maximum Costs, including any revised cost estimates. Successful Proposer shall also provide information and documentation supporting the progress of its arrangement of financing, including the status of the process and timeline set forth in Successful Proposer's Financial Plan. In the event that any inconsistencies or inaccuracies in the information are discovered, PGCPs shall promptly notify Successful Proposer, who shall make appropriate adjustments to the Maximum Costs and the resulting Availability Payment.

4.2 Development of Final Availability Payment Proposal. In no event shall the Final Availability Payment Proposal reflect higher prices for the components of the Maximum Costs than the Maximum Costs. The Final Availability Payment Proposal shall be supported by “open book” cost estimates and shall include assumptions based on fully committed financing and pricing, except that if the financing includes a public bond issuance the credit spread is not required to be committed. The cost estimates for the Design-Build Work shall be represented using Form F-4 attached to the RFP but with detail contained in ASTM Unifomat Level 2. Services Charge cost estimates shall be represented using Forms F-5 and F-6 attached to the RFP. Other Maximum Costs estimates shall be represented using Form F-3 Table D attached to the RFP.

4.3 Submission of the Final Availability Payment Proposal. Within fifty-five (55) days after the Execution Date, Successful Proposer shall submit a Final Availability Payment Proposal to PGCPs which reflects a refinement in the Maximum Costs, financing terms and assumptions based on fully committed financing (with the exception of credit spreads on publicly issued bonds), and Successful Proposer’s reasonable, good faith estimate of Project costs based on discussions with PGCPs during the Exclusive Negotiating Period. The Final Availability Payment Proposal shall include the following:

4.3.1 Revised Financial Model. Successful Proposer shall deliver to PGCPs: (i) an updated unrestricted electronic version of the Financial Model, which version incorporates any amendments made between the Proposal and the Final Availability Payment Proposal, including the Benchmark Interest Rate as approved by PGCPs no more than fourteen (14) days prior to the date that the Final Availability Payment Proposal is submitted to PGCPs, (ii) a committed Credit Spread (with the exception of credit spreads on publicly issued bonds), and (iii) the books and documents setting forth all assumptions, calculations, and methodology used in the preparation of the Financial Model and any other documentation necessary or reasonably requested by PGCPs to operate the Financial Model; and (b) a preliminary independent audit of the Financial Model (the “**Financial Model Audit**”) to be conducted by the Financial Model Auditor. Copies of audit reports and opinions shall be addressed to PGCPs, and PGCPs will be expressly identified therein as an entity entitled to rely upon such audit, subject to the Financial Model Auditor’s contractual caps on liability. The opinion from the Financial Model Auditor shall state that the Financial Model is suitable for use in connection with the Financial Close. This opinion, on which PGCPs will be co-addressee and expressly entitled to rely, may also result from an independent review of the Financial Model required by Successful Proposer’s lenders. The opinion is to be provided at Successful Proposer’s sole cost and expense.

4.3.2 Updated Financial Proposal Forms. Successful Proposer shall deliver to PGCPs updated versions of Forms F-2, F-3, F-4, F-5, and F-6 set forth in the RFP.

4.3.3 Lender(s) Commitment Letter(s). With respect to any debt financing, Successful Proposer shall provide a commitment letter from each Lender, which will be issued in final form and dated as of the Commercial Close Date. The letter(s) of commitment shall include the following:

- (a) Commitment by the Lender(s) for no less than one hundred percent (100%) of the amount of the proposed debt financing proceeds, as applicable. In the event that Successful Proposer has more than one Lender, the commitment by the

Lenders, in the aggregate, must equal not less than one hundred percent (100%) of the amount of the proposed debt financing proceeds, as applicable. Such commitments must include fixed credit spreads (with the exception of publicly issued bonds) and pricing commitments for a period of not less than ninety (90) days after the Final Availability Payment Proposal unless a shorter period is approved in writing by PGCPS;

(b) Confirmation from the Lender(s) that final due diligence has been completed in all material respects (i.e., legal, insurance, and technical due diligence) and is acceptable, subject to reasonable approval rights for any changes that occur to the documents or the procurement through the date of Commercial Close;

(c) Confirmation from the Lender(s) that the Agreement is acceptable;

(d) Confirmation from the Lender(s) that final credit approval has been received, subject only to completion of final credit documents and satisfaction of customary conditions precedent, and there being no material adverse changes or Market Disruption Events;

(e) Due diligence reports from all technical advisors performing due diligence for Successful Proposer in the final form delivered to its Lender(s) (e.g., the reports provided in connection with obtaining the commitments and support letters);

(f) A detailed term sheet providing credit-approved terms and conditions, including: (i) interest rates specifying the base rate and applicable margins; (ii) amounts, in U.S. dollars, of the facilities provided; (iii) customary conditions precedent to financial close; (iv) required documentation; (v) principal covenants (affirmative and negative); (vi) financing security (including guarantees); (vii) events of default; (viii) structural features; (ix) cover ratios; (x) reserve accounts and the requirements with respect to such accounts; (xi) redemption/prepayment features; (xii) drawdown schedule; (xiii) capital repayment grace period; (xiv) repayment schedule and final maturity date; (xv) flow of funds; (xvi) representations and warranties; (xvii) any proposed hedging arrangements in relation to interest rate risk; (xviii) arrangement and other fees, as applicable; and (xix) any other material terms and conditions relevant to the debt financing, as applicable;

(g) A description of the fees payable to the Lender(s) and, if applicable, private placement agent; and

(h) Any other material information that would be relevant to a debt financing, as applicable.

4.3.4 Equity Commitment Documents. For each equity or quasi-equity source, Successful Proposer shall provide final equity commitment letters reflecting the final amounts to be invested. The following information must be included:

- (a) The identity of any Equity Members; in cases in which the equity is contributed by a fund, Successful Proposer shall provide: (i) the date the fund was established; (ii) the total amount raised in the investment fund; (iii) the total amount of undrawn and uncommitted funds available to be invested in the Project; (iv) confirmation that the Project is an eligible investment of the fund; (v) confirmation that the amount to be contributed does not exceed the maximum investment permitted by the fund bylaws, based on the amount raised in the investment fund as of the date of the Final Availability Payment Proposal; (vi) the identity of the fund managers and a description of the general characteristics of the fund investors; and (vii) the percentage of participation;
- (b) The amount of funds the Equity Member is to commit and the timing of such subscription;
- (c) The terms and conditions of the subscription, including the extent to which funds are committed and the length of time funds will remain in the project vehicle;
- (d) If the total amount of equity finance (including quasi equity) is expected to change during the life of the Project, the terms and conditions of any further planned equity subscription, including the expected timing and amount, and whether this will be provided by the existing Equity Members or by third party investors; and
- (e) Certified copies of the board minutes or other written evidence of approval of the contents of the Final Availability Payment Proposal by each Equity Member, together with appropriate evidence of the authorization of the person/body giving the approval. Sufficient documentation must be provided that provides appropriate assurance that private equity will be in place, including letters from the Equity Members evidencing their commitment to provide equity funding.

ARTICLE 5 CONDITIONS TO COMMERCIAL CLOSE

5.1 Conditions to Commercial Close. The following conditions must be satisfied prior to achieving Commercial Close:

5.1.1 The parties, each in their sole discretion, agree to a final version of the Agreement.

5.1.2 The Final Availability Payment Proposal is within the Maximum Availability Payment approved by the Board.

5.1.3 Successful Proposer shall have provided to PGCPs evidence reasonably acceptable to PGCPs that (i) the entity proposed to be Developer under the Agreement is duly incorporated as a legal entity that has as its sole purpose the fulfillment of the obligations set forth in the Agreement and is qualified to do business in Maryland, in the County, and with PGCPs; and (ii) the controlling interest in the special purpose entity reflects the shareholder structure stipulated in the Proposal.

5.1.4 Successful Proposer shall have delivered to PGCPs cash, in escrow, and/or one or more standby letter(s) of credit, financial close bond, or demand guarantees in an aggregate amount equal to Ten Million Dollars (\$10,000,000.00) (the “**Financial Close Security**”), substantially in the form set forth in Exhibit A (Form of Financial Close Security), designating PGCPs as the beneficiary; provided, however, that this condition will be waived to the extent that Financial Close occurs simultaneously with Commercial Close. The conditions for drawing and returning the Financial Close Security will be set forth in the Agreement. To the extent Successful Proposer elects to submit all or a portion of the Financial Close Security in the form of cash, such cash must be held by an independent, third-party agent satisfactory to both PGCPs and Successful Proposer pursuant to an escrow agreement containing substantially similar terms as set forth in Exhibit A (Form of Financial Close Security). To the extent cash is not provided, the Financial Close Security must be issued by an Eligible Security Issuer.

5.2 Commercial Close. As soon as the conditions set forth in Section 5.1 (Conditions to Commercial Close) are satisfied, the parties shall execute the Agreement.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Successful Proposer Representations and Warranties. Successful Proposer represents and warrants that the following statements are true:

6.1.1 Execution, Delivery, and Performance. Successful Proposer (a) has all requisite right, power, and authority to execute and deliver this ENA and to perform its obligations under this ENA, and (b) has taken all necessary action to authorize the execution, delivery, and performance of this ENA by Successful Proposer. This ENA has been duly executed and delivered by Successful Proposer, and constitutes the legal, valid, and binding obligation of Successful Proposer, enforceable against it in accordance with its terms. The Person signing this ENA on behalf of Successful Proposer is authorized to do so.

6.1.2 No Violation. The execution, delivery, and performance by Successful Proposer of this ENA and the transactions contemplated hereby and the performance by Successful Proposer of its obligations hereunder will not violate any of the terms, conditions, or provisions of (a) any judgment, order, injunction, decree, regulation, or ruling of any court or other Law to which Successful Proposer is subject, or (b) any agreement or contract to which Successful Proposer is a party or to which it is subject.

6.1.3 No Conflict of Interest. Successful Proposer has no interest that would constitute a Conflict of Interest under applicable State and federal laws and regulations and the terms of the RFP, which restrict employees and former employees from contracting with PGCPs.

6.1.4 No Litigation. No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened against Successful Proposer that relates to its business or financial condition.

6.1.5 No Consents. No consent or authorization of, or filing with, any Person, which has not been obtained, is required in connection with the execution, delivery, and performance of this ENA by Successful Proposer.

6.2 PGCPS Representations and Warranties. PGCPS represents and warrants that the following statements are true:

6.2.1 Execution, Delivery, and Performance. PGCPS (a) has all requisite right, power, and authority to execute and deliver this ENA and to perform its obligations under this ENA, and (b) has taken all necessary action to authorize the execution, delivery, and performance of this ENA by PGCPS. This ENA has been duly executed and delivered by PGCPS, and constitutes the legal, valid, and binding obligation of PGCPS, enforceable against it in accordance with its terms. The Person signing this ENA on behalf of PGCPS is authorized to do so.

6.2.2 No Violation. The execution, delivery, and performance by PGCPS of this ENA and the transactions contemplated hereby and the performance by PGCPS of its obligations hereunder will not violate any of the terms, conditions, or provisions of (a) any judgment, order, injunction, decree, regulation, or ruling of any court or other Law to which PGCPS is subject, or (b) any agreement or contract to which PGCPS is a party or to which it is subject.

6.2.3 No Litigation. There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or, to PGCPS' knowledge, threatened in writing against PGCPS involving the Project or that, if decided adversely to PGCPS, would impair PGCPS' ability to perform its obligations under this ENA.

6.2.4 No Consents. No consent or authorization of, or filing with, any Person, which has not been obtained, is required in connection with the execution, delivery, and performance of this ENA by PGCPS.

6.3 Representations and Warranties to Remain True. During the Exclusive Negotiating Period, neither party will take any action, or omit to perform any act, that results in a representation and warranty becoming untrue in any material respect. Each party will promptly notify the other party if any representation or warranty becomes untrue. From time to time, Successful Proposer will provide PGCPS, upon PGCPS' request, with proof of the continuing accuracy of these representations and warranties.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Confidentiality. The parties acknowledge that the confidentiality provisions in Section 3.11 of the RFP govern the Exclusive Negotiating Period.

7.2 Assignment. This ENA may not be assigned by Successful Proposer without the prior express written consent of PGCPS, except for the assignment by Successful Proposer to a special purpose project company owned by the sponsors that will become the Developer which assignment shall not require any consent, but for which written notice will be provided to PGCPS within one (1) Business Day of such assignment. Absent PGCPS' written approval of any such assignment, any attempted assignment of Successful Proposer's rights under this ENA shall be considered a material violation by Successful Proposer of the terms of this ENA and, at PGCPS' option, shall result in the termination of this ENA.

7.3 Amendments. This ENA may be amended or modified only by a written instrument executed by PGPCS and Successful Proposer.

7.4 Severability. Each provision of this ENA shall be valid and enforceable to the fullest extent permitted by law. If any provision of this ENA is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this ENA. If any such provision of this ENA is held to be invalid, unenforceable, or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability, or illegality and to restore this ENA as nearly as possible to its original intent and effect.

7.5 Non-Waiver. No waiver made by either party with respect to the performance, or manner or time of performance, or any obligation of the other party or any condition to its own obligation under this ENA will be considered a waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

7.6 Governing Law and Venue. This ENA is governed by and shall be construed in accordance with, and interpreted under, the laws of the State. Any disputes, legal cases, or other controversies arising out of this ENA shall be filed in the Circuit Court for Prince George's County, Maryland, and subject to Maryland State Law. Additionally, if applicable, all materials, supplies, equipment, or services supplied as a result of this ENA shall comply with the applicable United States and Maryland Occupational Safety and Health Act Standards.

7.7 Counterparts and Delivery by Electronic Mail. This ENA (i) may be executed in any number of counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument, and (ii) may not be amended or modified except in a writing signed by PGPCS and Successful Proposer. Execution and delivery of this ENA by facsimile or e-mail .pdf shall be sufficient for all purposes and shall be binding on any Person who so executes.

7.8 Notices. Any and all notices, demands, consents, requests, and responses thereto permitted or required to be given under this ENA shall be in writing, signed by or on behalf of the party giving the same, and shall be deemed to have been properly given or served and shall be effective upon being personally delivered or by electronic communication (including email (and PDF or similar documentary attachment) and Internet or intranet websites) pursuant to procedures approved in writing by PGPCS and Successful Proposer from time to time, or within three (3) Business Days upon being deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, to the recipient at the address of such recipient set forth below or at such other address as such recipient may designate by notice specifically designated as a notice of a change of address and given in accordance herewith; provided, however, that notice of change of address shall not be effective until the date of receipt hereof. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, demand, or request shall be addressed as follows:

PGCPS: Chief Executive Officer
Prince George's County Public Schools
14201 School Lane
Upper Marlboro, MD 20772

With a copy to: Public-Private Partnership (P3) Program Office
Prince George's County Public Schools
Louis Wilson Sr. Facilities Administration Building
13300 Old Marlboro Pike
Upper Marlboro, MD 20772

With a copy to: Office of General Counsel
Prince George's County Public Schools
14201 School Lane
Upper Marlboro, MD 20772

Successful Proposer: [insert]

With a copy to: [insert]

7.9 Entire Agreement. This ENA (including the Exhibits, or to the extent necessary to inform provisions of this ENA, the RFP and the Final Agreement Draft) contains all the representations and the entire agreement between the parties with respect to the subject matter of this ENA. Any prior correspondence, memoranda, agreements, warranties, or representations relating to such subject matter are superseded in total by this ENA. Except as permitted by the applicable laws of the State of Maryland, no prior drafts of this ENA or changes from those drafts to the executed version of this ENA shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person and no court or other body shall consider those drafts in interpreting this ENA.

7.10 Survival. The provisions of Section 2.8 (Reimbursement), Section 3.2 (PGCPS Right to Draw on the Proposal Security), and Section 3.3 (PGCPS' Return of the Proposal Security) shall survive the termination of this ENA.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, PGCPS and Successful Proposer have executed this ENA as of the dates set forth below.

BOARD OF EDUCATION OF PRINCE GEORGE’S COUNTY

By: _____

Name: _____

Title: _____

Date: _____

[SUCCESSFUL PROPOSER]

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
FORM OF FINANCIAL CLOSE SECURITY

FORM OF LETTER OF CREDIT

[Issuing Financial Institution’s Letterhead with Name and Address]

IRREVOCABLE LETTER OF CREDIT

Date

Prince George’s County Public Schools
Department of Capital Programs
13300 Old Marlboro Pike, Trailer 6
Upper Marlboro, MD 20772
Attn: Ms. De’Nerika Johnson, Construction Procurement Supervisor

Re: [Financial Close Security Letter of Credit] (RFP No. DCP19-24A)

Ladies and Gentlemen,

At the request and for the account of _____ (the “Proposer”), we hereby establish in your favor, our irrevocable Letter of Credit No. [_____] (the “Letter of Credit”) in the amount of U.S. \$[_____] ([_____] million dollars),¹ (as such amount may be reduced as stated herein, the “Stated Amount”), effective immediately and expiring at the close of business (Eastern time) on [_____, 20__] (the “Stated Termination Date”).² All drawing under this Letter of Credit shall be paid with our own funds.

We hereby irrevocably authorize you to draw on us, in an aggregate amount not to exceed the Stated Amount and in accordance with the terms and conditions set forth herein, in one or more drawings in substantially the form of Annex A attached hereto, completed and signed by one purporting to be your duly authorized representative (any such certificate being your “Drawing Certificate”), an aggregate amount not exceeding the Stated Amount, representing amounts payable by Proposer under the *Project Agreement for the Design, Build, Finance, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1* entered into by and between PGCPSS and Proposer (the “Agreement”).

Each Drawing Certificate drawn under this Letter of Credit must be dated as of the date of presentation on a Business Day and bear on its face the clause “Drawn under [*insert name of Bank*] Irrevocable Letter of Credit No [_____]”. As used herein, the term “Business Day” means any day, other than a Saturday or Sunday or other day on which we at our designated office are authorized or required by law or executive order to close.

¹ Note: All letters of credit must be in an aggregate amount equal to \$10,000,000 for the Financial Close Security. Individual letters of credit may be edited to reflect their actual credit coverage.

² Note: The Stated Termination Date for the Financial Close Security must be at least 90 days after the date that the Final Availability Payment Proposal is submitted to PGCPSS.

Funds under this Letter of Credit shall be available to you against receipt by us of your Drawing Certificate. Presentation of any such Drawing Certificate by one purporting to be your duly authorized representative shall be made via mail or courier delivery to our office located at:

[Bank Name and Address]

Attention: Letter of Credit Department

Telephone: _____

Email: _____

Facsimile: _____

Demand for payment hereunder may also be made by facsimile transmission of the Drawing Certificate, at the facsimile number stated above, to [_____], Attention: Letter of Credit Department, provided that no presentation by facsimile shall be complete until confirmed by telephone call to [INSERT PHONE NUMBER] however, the issuing bank's receipt of such telephone notice shall not be a condition to payment. If presentation is made by facsimile transmission, original documents are not required, and the facsimile transmission will constitute the operative Drawing Certificate. You must contact us at the number shown above or by email to confirm receipt of the transmission.

A Drawing Certificate strictly conforming to the terms and conditions hereof presented as permitted hereunder by 11:00 a.m. (Eastern time), on a Business Day, will be honored by our payment to you of the amount specified in such Drawing Certificate, in immediately available funds, not later than 3:00 p.m. Eastern time) on the third Business Day thereafter or such later Business Day as you may specify. A Drawing Certificate strictly conforming to the terms and conditions hereof presented as permitted hereunder after 11:00 a.m. (Eastern time), on a Business Day, will be honored by our payment to you of the amount specified in such Drawing Certificate, in immediately available funds, not later than 1:00 p.m. (Eastern time), on the fourth Business Day thereafter or on such later Business Day as you may specify. If requested by you, payment under this Letter of Credit may be made by wire transfer of Federal Reserve Bank funds to your account in a bank on the Federal Reserve wire system or by deposit of immediately available funds into an account that you maintain with us.

Upon honoring a Drawing Certificate presented by you hereunder, the Stated Amount shall be automatically and permanently decreased by the amount stated in such Drawing Certificate.

Only you may make a drawing under this Letter of Credit. Upon any payment to you of the amount demanded hereunder, we shall be fully discharged of our obligation under this Letter of Credit with respect to such demand for payment, and we shall not thereafter be obligated to make further payments under this Letter of Credit with respect to that payment to you.

Except as set forth in the next paragraph and the certificate referred to herein, this Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Agreement); and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement, except as set forth in the next paragraph and for the certificate referred to herein.

To the extent not inconsistent with the express terms hereof, this Letter of Credit is governed by and is to be construed in accordance with the International Standby Practices 1998, International Chamber of Commerce Publication 590 (“ISP98”), as interpreted by the laws of the State of New York. As to matters not governed by ISP98, this Letter of Credit is governed by and construed in accordance with the law of the State of New York, including without limitation Article 5 of the Uniform Commercial Code as in effect on the date hereof in the State of New York.

Sincerely,

Name of Bank

Signature

Name of Signatory

Title (*authorized officer*)

ANNEX A TO LETTER OF CREDIT

DRAWING CERTIFICATE (FINANCIAL CLOSE SECURITY)

Drawn under [Insert Name of Bank] Irrevocable Letter of Credit No. [__]

[Name of Bank]
[Bank Address]

The undersigned, a duly authorized representative of Prince George’s County Public Schools (the “Beneficiary”), hereby certifies to [Name of Bank] (the “Bank”), with reference to the above-referenced Irrevocable Letter of Credit (the “Letter of Credit”; terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Beneficiary, as follows:

This drawing is due to Beneficiary’s termination of the *Project Agreement for the Design, Build, Finance, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1* by and between PGCPs and [_____] (the “Proposer”) (the “Agreement”) in accordance with the terms of Article 6 thereof. By presentment of this Drawing Certificate the Beneficiary hereby makes demand for payment under the Letter of Credit in the amount of [_____] United States Dollars (US\${____}) and such amount represents an amount owed to the Beneficiary with respect to an obligation of the Proposer under the Agreement and does not exceed the Stated Amount.

Payment of the amount described hereby shall be made by wire transfer to the following account:

SEND TO:	
CREDIT TO:	
PLEASE NOTIFY:	

The undersigned is a duly authorized representative of Prince George’s County Public Schools and authorized to bind Prince George’s County Public Schools.

IN WITNESS WHEREOF, the Beneficiary has caused this certificate to be executed and delivered by its representative as of this _____ day of _____, 20__.

**BOARD OF EDUCATION OF PRINCE
GEORGE’S COUNTY**

Signature

Printed name

Title (*authorized officer*)

[Issuing Financial Institution's Letterhead with Name and Address]

FORM OF BOND SECURITY

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS, that the _____, as Principal and _____, as Surety or as Co-Sureties, each a corporation duly organized under the laws of the State indicated on the attached page, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of Maryland, are jointly and severally held and firmly bound unto the Prince George's County Public Schools ("PGCPS"), in the sum of \$[_____] ([_____] million dollars)³ (the "Bonded Sum"), the payment of which we each bind ourselves, and our heirs, executors, administrators, representatives, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal and PGCPS entered into that certain *Project Agreement for the Design, Build, Finance, and Maintenance of Prince George's County Public Schools Alternative Construction Financing Package 1* (the "Agreement").

NOW, THEREFORE, the condition of this bond is such that, upon PGCPS' termination of the Agreement in accordance with Article 6 of the Agreement, the Principal and the Surety or Co-Sureties agree to pay to PGCPS the full Bonded Sum herein above set forth, as liquidated damages and not as a penalty, within ten days after such failure.

The following terms and conditions shall apply with respect to this bond:

1. If suit is brought on this bond by PGCPS and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by PGCPS in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.
2. Any extension(s) of the time for award of the Agreement that Principal may grant in accordance with the Agreement or otherwise, shall be subject to the reasonable approval of Surety or Co-Sureties.
3. Correspondence or claims relating to this bond should be sent to Surety at the following address:

³ Note to Proposers: All bonds must be in an aggregate amount equal to \$10,000,000 for the Financial Close Security. Individual bond may be edited to reflect their actual bond coverage.

SIGNED and SEALED this _____ day of _____, 202[]

Principal

By: _____

Co-Surety

By: _____

Attorney in Fact

By: _____

Co-Surety

By: _____

Attorney in Fact

By: _____

Co-Surety

By: _____

Attorney in Fact

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

CO-SURETIES

SURETY NAME

SURETY ADDRESS

INCORPORATED IN

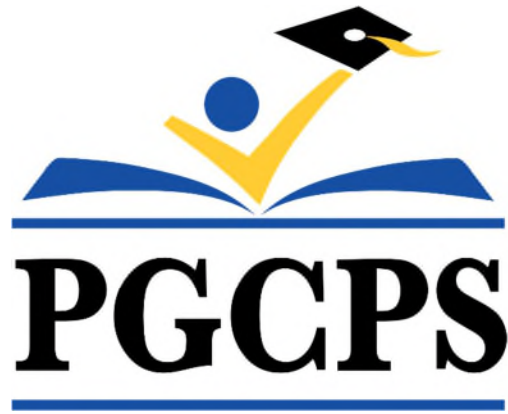
August 19, 2020 Draft
Project Agreement for the Design, Build,
Finance, and Maintenance of
Prince George’s County Public Schools
Alternative Construction Financing Package 1
By and Between
The Board of Education of Prince George’s
County and [Developer]

As part of the procurement process, Prince George’s County Public Schools (“PGCPS”) negotiated the attached draft of the Project Agreement for the Design, Build, Finance, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1 (the “Agreement”) simultaneously with all Proposers. The attached draft of the Agreement was provided to the Proposers on August 19, 2020 (the “Final Agreement Draft”) in advance of their submission of final Proposals pursuant to RFP No. DCP19-24A (the “RFP”).

The RFP contemplates an exclusive negotiating period with the Successful Proposer during which the Agreement will be finalized. More specifically, Section 6.1.2 of the RFP states:

6.1.2. Project Agreement

In accordance with the Exclusive Negotiating Agreement, PGCPS and the Successful Proposer may, in each party’s sole discretion, agree to changes to the Final Agreement Draft prior to achieving Commercial Close. The terms and exhibits highlighted in yellow in the Final Agreement Draft are considered by PGCPS to be non-negotiable, except for conforming or minor changes as desirable to the parties or necessary to maintain the consistency of the intended provisions unto themselves and such that the non-negotiable provisions align commercially and legally with the changes to the negotiable provisions and of the Agreement as a whole, in the reasonable judgment of the parties. In addition, during the Exclusive Negotiating Period, PGCPS and Successful Proposer shall in good faith revise the Final Agreement Draft to incorporate minor changes, additions, and modifications (a) necessary to create a complete, consistent, and legally binding contract; (b) reasonably necessary to accommodate the Successful Proposer’s corporate and financing structure in accordance with the Proposal; and (c) required to complete the Agreement and exhibits based on information provided in the Proposal.



**PROJECT AGREEMENT
FOR THE
DESIGN, BUILD, FINANCE, AND
MAINTENANCE OF
PRINCE GEORGE'S COUNTY PUBLIC
SCHOOLS ALTERNATIVE
CONSTRUCTION FINANCING PACKAGE 1
BY AND BETWEEN
THE BOARD OF EDUCATION OF PRINCE
GEORGE'S COUNTY
AND
[DEVELOPER]**

August 19, 2020



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Required Insurance Exhibit CC

DRAFT

**PROJECT AGREEMENT FOR THE
DESIGN, BUILD, FINANCE, AND MAINTENANCE OF
PRINCE GEORGE’S COUNTY PUBLIC SCHOOLS
ALTERNATIVE CONSTRUCTION FINANCING PACKAGE 1
BY AND BETWEEN
THE BOARD OF EDUCATION OF PRINCE GEORGE’S COUNTY
AND
[DEVELOPER]**

THIS PROJECT AGREEMENT FOR THE DESIGN, BUILD, FINANCE, AND MAINTENANCE OF PRINCE GEORGE’S COUNTY PUBLIC SCHOOLS ALTERNATIVE CONSTRUCTION FINANCING PACKAGE 1 (this “**Agreement**”) is made as of the [_____] day of [_____], 2020 (the “**Commercial Close Date**”) by and between the Board of Education of Prince George’s County (the “**Board**” or “**PGCPS**”), and [_____], a [limited liability company] organized and existing under the laws of the State of [_____] (“**Developer**”).

RECITALS

WHEREAS, Section 126 of Division II, Title 4, Subtitle 1 of the Education Article of the Annotated Code of Maryland permits county boards of education, with the approval of the county governing body, to utilize certain “alternative financing methods” in order to “finance or to speed delivery of, transfer risks of, or otherwise enhance the delivery of public school construction”; and

WHEREAS, under subsection (a)(2) of Section 126 of Division II, Title 4, Subtitle 1 of the Education Article of the Annotated Code of Maryland, such “alternative financing methods” include “public-private partnership agreements, in which a county board contracts with a county revenue authority or a private entity for the acquisition, design, construction, improvement, renovation, expansion, equipping, or financing of a public school, and may include provisions for cooperative use of the school or an adjacent property and generation of revenue to offset the cost of construction or use of the school” and “design-construct-operate-maintain-finance arrangements that permit a county board to contract with a county revenue authority or a private entity for the design, construction, operation, and maintenance of a public school under terms agreed to by the parties”; and

WHEREAS, the approved 20-year *Educational Facilities Master Plan* (as amended in FY 2019) establishes the Blueprint for PGCPS to ensure adequate educational facilities are provided to meet the needs of PGCPS’ 134,000 students and nearly 22,000 full- and part-time employees, adopting the use of alternative construction financing to deliver school facilities in the timeliest and most cost-effective manner possible, while guaranteeing life cycle asset performance; and

WHEREAS, to advance consideration of alternative construction financing options, in May 2018, the County Council approved Resolution No. CR-33-2018 establishing a P3 Alternative Financing School Infrastructure Work Group (“**Work Group**”) for the purpose of supporting, encouraging, and establishing a work group to explore a Public-Private Partnership Alternative

Financing School Infrastructure Program for public school construction and replacement projects in the County; and

WHEREAS, the Work Group is comprised of representatives from the County Executive’s office, the County Council, and PGCPS; and

WHEREAS, PGCPS, with the support of the Work Group, issued Request for Qualifications No. DCP19-24, Public-Private Partnership for the Design, Construction, Financing, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1 on May 30, 2019 (as amended, the “**RFQ**”); and

WHEREAS, on August 28, 2019, Developer, as one of the shortlisted proposers selected by PGCPS as a result of its statement of qualifications submitted under the RFQ, was invited to submit a bid under the terms of the Request for Proposals No. DCP19-24A, Public-Private Partnership for the Design, Construction, Financing, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1 (as amended, the “**RFP**”); and

WHEREAS, on September 19, 2019, the Board passed a resolution accepting PGCPS’ Chief Executive Officer’s recommendation to procure six middle and/or K-8 schools as Alternative Construction Financing Package 1; and

WHEREAS, PGCPS, with the support of the Work Group, issued the RFP on November 20, 2019; and

WHEREAS, on [_____], 2020, the Chair of the Board, the Chief Executive Officer of PGCPS, the County Executive, and the Chair of the County Council executed the *Memorandum of Understanding by and between Prince George’s County, Maryland and Prince George’s County Public Schools with respect to the Public-Private Partnership for the Design, Construction, Financing, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1* (as amended, supplemented, or replaced from time to time in accordance therewith, the “**MOU**”); and

WHEREAS, on [_____], 2020, the County Council adopted Resolution No. [_____] evidencing its support of the MOU and the Project; and

WHEREAS, on [_____], 2020, Developer submitted a proposal in response to the RFP (the “**Proposal**”); and

WHEREAS, on [_____], 2020, Developer was selected by PGCPS to enter into this Agreement; and

WHEREAS, on [_____], 2020, PGCPS confirmed Developer’s fulfillment of the conditions precedent to the execution of this Agreement specified in the RFP; and

WHEREAS, on [_____], 2020, the Board approved the terms and conditions of this Agreement and authorized PGCPS to execute this Agreement; and

WHEREAS, PGCPS desires that Developer design, build, finance, and maintain the Schools in accordance with the specifications and requirements of this Agreement, and Developer agrees to design, build, finance, and maintain the Schools in accordance with the specifications and requirements of this Agreement; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the roles, responsibilities, and rights of the Parties with respect to the Project.

NOW, THEREFORE, for and in consideration of the mutual covenants, representations, warranties, and agreements contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

ARTICLE 1 DEFINITIONS

Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement, the following terms have the following meanings:

“Accessibility Condition” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Actual Response Time” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Actual Site Availability Date” has the meaning set forth in Section 5.3.3 (Actual Site Availability Dates).

“Adelphi Area Middle School” means the School to be constructed on the Site described in Exhibit A-1 (Legal Description of Adelphi Area Middle School Land).

“Ad Hoc School Use” means any unscheduled use of a School for Educational Activities or Educational Support Activities.

“Affiliate” means in relation to any Person: (a) any other Person having Control of that Person; (b) any other Person over whom that Person has Control; or (c) any Person over whom any other Person referred to in (a) above also has Control, where **“Control”** of a Person by another Person means that other Person (whether alone or with others, and whether directly or indirectly at any tier): (i) holds the majority of voting rights in the controlled Person; (ii) has the right to appoint the majority of the board of directors (or equivalent) of that controlled Person; and/or (iii) exercises control over that controlled Person’s affairs. In the case of an Equity Member, if the Equity Member is an investment fund, **“Affiliate”** includes such Equity Member’s general partner and any other investment fund in which (a) its general partner is an equity investor as a general partner; or (b) the investment manager of the Equity Member serves as the investment manager.

“Agreement” means this *Project Agreement for the Design, Build, Finance, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing*

Package 1 entered into by and between PGCPS and Developer, as may be amended in accordance with the terms hereof.

“Annual Service Plan” has the meaning set forth in Section 4.2 (Annual Service Plans) of Exhibit W (Services Requirements).

“Anticipated School Occupancy Readiness Notice” means a written notice provided by Developer to PGCPS and the Independent Engineer in accordance with Section 4.1.8 of Exhibit J (Form of Independent Engineer Agreement) setting forth the date on which Developer anticipates the relevant School will be in a condition necessary to satisfy the School Occupancy Readiness Conditions.

“Applicable Law” means (a) any federal, State, or local law, statute, code, or regulation; (b) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, permit requirement, or other order of any Governmental Authority having appropriate jurisdiction; and (c) any Governmental Approval, in each case having the force of law and applicable from time to time to the Project or any element thereof; provided that to the extent that State funds are not used by PGCPS to make any payment it is obligated to make under this Agreement, Section 2-203(f) and Title 5, Subtitle 3 of the Education Article of the Maryland Annotated Code and the regulations governing the Public School Construction Program shall be excluded from this definition.

“Appointed Representative” means a representative of the Financing Party identified in a Step-In Notice, which may be the Collateral Agent or a third party, including any other Financing Party.

“Approved Document” has the meaning set forth in Section 27.14.2 (Approved Documents).

“Assigned PGCPS Hazardous Materials” has the meaning set forth in Section 4.9.1.2 (Assigned PGCPS Hazardous Materials).

“Athletic Fields” has the meaning set forth in the Educational Specifications.

“Availability Condition” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Availability Payment” means the fee to be paid by PGCPS to Developer, which together with any applicable Relief Payments or Delay Payments, compensate Developer for Developer’s performance of the Design-Build Work and Services, as set forth and calculated in accordance with Section 14.4 (Availability Payments) and Exhibit X-1 (Payment Calculations).

“Availability Payment Credit Cap” has the meaning set forth in Section 14.4.3.1 (Limit on Monthly Services Charge Adjustments).

“**Base Case Equity IRR**” means the Initial Base Case Equity IRR, as updated at Financial Close pursuant to Section 6.4.1.4 (Capital Charge Update Protocol).

“**Base Case Financial Model**” means the Initial Base Case Financial Model, as updated at Financial Close in accordance with Section 6.4.1.4 (Capital Charge Update Protocol) and accepted by PGCPS according to Section 13.2 (Financial Model Updates), which is attached in electronic format as Exhibit U (Financial Model and Related Information).

“**Base FF&E**” means the items identified as Base FF&E in the Educational Specifications.

“**Bedding-In Period**” has the meaning set forth in Section 2.1 (Entitlement to Make Deductions) of Exhibit X-2 (Deductions).

“**Benchmark Interest Rate**” means the publicly-documented interest rates of each maturity included in the following indices: *[Note: to be updated based on Benchmark Interest Rates selected by Developer]*. The Benchmark Interest Rates do not include any additional credit spread, margin, or fee components.

“**Billing Period**” means the period of time from (and including) the first day to (and including) the last day of each calendar month following the earlier of (a) the date that a right to a Relief Payment or Delay Payment starts to accrue or (b) the first School Occupancy Readiness Date, except that (i) the first Billing Period shall be equal to the period of time from (and including) the date of the earlier event identified in (a) and (b) to (and including) the last day of the month in which such event occurs, and (ii) the last Billing Period shall end on the last day of the Term.

“**BMS**” or “**BMCS**” means the building management control system and controls which control the delivery of heat, ventilation, and humidity to each School necessary to maintain indoor air quality and thermal comfort, as described in Section 2.7 of Appendix W-1 (Facilities Maintenance) to Exhibit W (Services Requirements).

“**Board**” means the Board of Education of Prince George’s County, Maryland.

“**Bond**” means any taxable or tax-exempt bond.

“**Building Systems**” means the architectural, mechanical, electrical, and other systems in or servicing the Schools, which include, without limitation, the electrical system, heating and ventilation system, air conditioning, BMS, plumbing system, fire protection, fire alarm system, security system, master clock, and building elevators described in the Technical Requirements.

“**Business Days**” means Monday through Friday, inclusive, other than days on which the administrative offices of PGCPS are closed.

“Capital Charge” means the Capital Charge for all Schools resulting from the calculations in Section 6.4.1.4.3, which is equal to [\$_____]¹ as of Financial Close and shall be adjusted in accordance with Exhibit X-1 (Payment Calculations).

“Capital Expenditure” means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP.

“Capital Modification” means, on any Site, any material change to any part of the physical assets occurring after a School Occupancy Readiness Date, including the alteration, addition, demolition, or extension of the physical assets constituting the Project or the installation of new structures, equipment, systems, or technology.

“Carry Over” has the meaning set forth in Exhibit X-1 (Payment Calculations).

“Casualty Property” has the meaning set forth in Section 20.7.1 (Notice to PGCPs).

“Casualty Restoration” has the meaning set forth in Section 20.7.2 (Obligation to Restore).

“Change in Law Event” means the coming into effect after the Proposal Submittal Date of (a) any Applicable Law or any modification (including repeal) of any Applicable Law that existed on the Proposal Submittal Date, compliance with which, in accordance with the Contract Standards, materially expands the scope or materially interferes with, delays, or increases the cost of performing the Design-Build Work or the Services, or (b) any Discriminatory Change in Tax Law; provided, however, that the following are not considered Change in Law Events: (i) any law, statute, code, or regulation that has been enacted or adopted on or before the Proposal Submittal Date to take effect after the Proposal Submittal Date; (ii) the denial, delay in issuance of, or imposition of any term or condition in connection with any Governmental Approval required for the Design-Build Work or the Services; (iii) a change in the nature or severity of actions typically taken by a Governmental Authority to enforce compliance with Applicable Law in effect as of the Proposal Submittal Date; (iv) any increase in any fines or penalties provided for under Applicable Law in effect as of the Proposal Submittal Date; (v) any act, event, or circumstance that would otherwise constitute a Change in Law Event but that does not change the requirements imposed on Developer by the Contract Standards in effect as of the Proposal Submittal Date; or (vi) any change in Tax law, except for any Discriminatory Change in Tax Law. Developer shall promptly notify PGCPs of any Change in Law Event about which it becomes aware.

“Change of Control” means a Transfer within a Person resulting in such Person no longer being an Affiliate of the Person(s) that had Control over such Person immediately prior to such Transfer.

¹ To be inserted at Financial Close.

“Change Order” means a written order signed by PGCPs and Developer making a Design-Build Change. A Change Order shall be deemed to constitute an amendment to this Agreement.

“Cleaning Services” has the meaning set forth in Section 2.1 (PGCPs Retained Responsibilities) of Exhibit W (Services Requirements).

“Cleaning Standards” has the meaning set forth in Section 2.1 (PGCPs Retained Responsibilities) of Exhibit W (Services Requirements).

“Cleared Person” has the meaning set forth in Section 3.10 (Cleared Persons) of Exhibit W (Services Requirements).

“CMMS” means the computerized maintenance management system for the Schools.

“Collateral Agent” means the financial institution named as Collateral Agent in Article 26 (Notices), or such other financial institution listed or otherwise designated to act as trustee or agent on behalf of or at the direction of the Lenders or the Person or Persons so designated in the Financing Documents with respect to the Senior Debt from time to time outstanding, together with its permitted successors and assigns thereunder, as notified by Developer to PGCPs in writing to be serving in such capacity at any time.

“COMAR” means the Code of Maryland Regulations.

“Commercial Close Date” means the date this Agreement is executed by the Parties as identified in the Preamble.

“Commercially Useful Function” means when an MBE or CBB, as applicable, (a) is responsible for the execution of a distinct element of the work of the contract; (b) carries out its responsibilities by actually performing, managing, and supervising the work involved; and (c) furnishes supervision, labor, tools, equipment, materials, and supplies necessary to perform a distinct element of the contract work.

“Commissioning” means, for each School, the commissioning of the School conducted pursuant to Article 9 (Commissioning) and Exhibit R (Commissioning Requirements).

“Commissioning Fine Tuning Period” means, for each School, the period commencing on the first Business Day of the Services Period, at a time when the School can be operated under fully loaded occupancy cycles for four complete seasons after the School Occupancy Readiness Date (or such earlier time as PGCPs may reasonably agree), whereby Developer verifies through various testing that all key systems in the School, including heating, air conditioning, and ventilation, are functioning in accordance with the Contract Standards.

“Commissioning Plan” means, for each School, the commissioning plan for the School prepared pursuant to Exhibit R (Commissioning Requirements).

“Commissioning Tests” means the commissioning tests set forth in Exhibit R (Commissioning Requirements).

“Community Engagement and Outreach Plan” means the plan attached as Exhibit N (Community Engagement and Outreach Plan), as such plan may be amended with the written approval of PGCPs.

“Community Investment Program” means the Community Investment Program attached as Exhibit M (Community Investment Program), as such program may be amended with the written approval of PGCPs.

“Compensation Event” shall mean any of the following events or circumstances in connection with which Developer is claiming entitlement to payment or compensation from PGCPs in accordance with this Agreement:

(a) any Direct Losses incurred by Developer resulting from any elections or other State or County activities held at a School during the Pre-Occupancy Period in accordance with Section 10.7.2 (PGCPs Access Rights);

(b) any costs claimed by Developer resulting from any Capital Modification due to a Relief Event in accordance with Section 15.4 (Capital Modifications Required Due to Relief Events);

(c) any costs claimed by Developer resulting from any Capital Modification at PGCPs’ direction in accordance with Section 15.5 (Capital Modifications at PGCPs’ Direction);

(d) the amount of Developer’s Services Change Report preparation costs owed to Developer in accordance with Section 15.6.2 (Services Change Report);

(e) any amount payable by PGCPs on account of a Relief Event pursuant to Section 16.5 (Compensation Relief);

(f) any Direct Losses claimed by Developer resulting from Vandalism that are recoverable pursuant to Section 20.8.2 (Costs);

(g) any Direct Losses claimed by Developer related to CMMS migration or compatibility pursuant to subsection (b) of Section 6.2 (Functionality Requirements) of Exhibit W (Services Requirements); and

(h) any Direct Losses associated with providing the assistance described in subsection (c) of Section 2.12 (Roads, Grounds, and Landscape Maintenance) of Appendix W-1 (Facilities Maintenance) to Exhibit W (Services Requirements).

“Conceptual Design” means, individually or collectively, as applicable, those designs set forth in Exhibit A-5 (Conceptual Design for Adelphi Area Middle School), Exhibit B-5 (Conceptual Design for Drew-Freeman Middle School), Exhibit C-5 (Conceptual Design for

Hyattsville Middle School), Exhibit D-5 (Conceptual Design for Kenmoor Middle School), Exhibit E-5 (Conceptual Design for Southern Area K-8 School), and Exhibit F-5 (Conceptual Design for Walker Mill Middle School).

“Conditions Precedent” mean, collectively, the Developer Conditions Precedent and the PGCPs Conditions Precedent.

“Confidential Information” means (a) “personal information”, as defined in the Maryland Public Information Act, which is collected, acquired, or obtained by Developer or PGCPs in relation to or in the course of providing the Design-Build Work or the Services, and includes any information about an identifiable individual other than contact information, which is the name, position name or title, business telephone number, business address, business email or business fax number of the individual; and (b) information of a Party that constitutes a trade secret, or is otherwise business proprietary and financial information the Party has designated as confidential and which is supplied, or to which access is granted, to or on behalf of the other Party (whether before or after the Effective Date), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other Party and includes all analyses, compilations, studies, and other documents whether prepared by or on behalf of a Party which contain or otherwise reflect or are derived from such designated information, and all other information that can be treated as confidential pursuant to the Maryland Public Information Act.

“Construction Cost Index” means the twenty (20)-city average construction cost index, as published by Engineering News-Record, for which the base year is 1913, or if such publication ceases to be in existence, a comparable index selected by PGCPs and approved by Developer, acting reasonably.

“Construction Documents” means those documents created during Construction Document Development that describe the quality, configuration, size, and relationship of all components to be incorporated into the Project. Construction Documents shall consist of a complete set of drawings and specifications sufficient for all permitting requirements that are consistent with the Project program, the construction budget, and the Construction Schedule.

“Construction Schedule” means, individually or collectively, as applicable, the schedules set forth in Exhibit A-6 (Construction Schedule for Adelphi Area Middle School), Exhibit B-6 (Construction Schedule for Drew-Freeman Middle School), Exhibit C-6 (Construction Schedule for Hyattsville Middle School), Exhibit D-6 (Construction Schedule for Kenmoor Middle School), Exhibit E-6 (Construction Schedule for Southern Area K-8 School), and Exhibit F-6 (Construction Schedule for Walker Mill Middle School).

“Contingent Funding Liabilities” has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

“Contract Standards” means the standards, terms, conditions, methods, techniques, requirements, and practices imposed or required by: (a) Applicable Law; (b) the Technical Requirements; (c) the Plans; (d) Good Industry Practice; (e) applicable written equipment

manufacturers' specifications; (f) applicable Insurance Requirements; and (g) any other standard, term, condition, or requirement specifically provided in this Agreement to be observed by Developer.

“Contract Year” means each of: (a) the period from Effective Date to the next June 30th; (b) each subsequent period of twelve (12) calendar months commencing on July 1st; and (c) the period from July 1st immediately preceding the expiration or termination of this Agreement (for whatever reason) to and including the Termination Date. Any computation made on the basis of a Contract Year shall be adjusted on a pro-rata basis to take into account any Contract Year of less than 365 or 366 days, whichever is applicable.

“Contractor Termination Notice” has the meaning set forth in Section 12.2 (Replacement of Non-Performing Services Provider or Subcontractor) of Exhibit X-2 (Deductions).

.

“Controlling Tax-Exempt Member” means any members of Developer that contribute subordinated debt as part of Developer's tax-exempt financing of the Project.

“Cost Substantiation” has the meaning described in Section 14.14.2 (Costs Requiring Cost Substantiation).

“Cost Substantiation Certificate” has the meaning set forth in Section 14.14.2.2 (Cost Substantiation Certificate).

“County” means Prince George's County, Maryland.

“County Based Business” or **“CBB”** means a business that is (a) either located in the County or derives the majority of its revenue in the County, and (b) duly certified as a County Based Business in the County, as determined by the Prince George's County Office of Central Services.

“County Council” means the Council of Prince George's County, Maryland.

“County Executive” means the County Executive of Prince George's County, Maryland.

“Critical Event” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Cure Notice” has the meaning set forth in Section 12.7.6 (Right to Cure).

“Cure Period” has the meaning set forth in Section 12.7.6 (Right to Cure).

“Decoration” means any decoration authorized by PGCPS on the interior walls of a School by a PGCPS Person, including the hanging and attachment of items such as artwork, pictures, teaching aids, or seasonal decorations, and including the installation of fixtures such as display

boards, pencil sharpeners, soap and paper towel dispensers to the extent that such activities do not impact the integrity of the Maintained Elements, alter the design of the Schools, or affect the function of any Building System.

“Deductions” means those deductions from the otherwise applicable Availability Payment that PGCPS is permitted to take as offsets on account of specified instances of non-performance as described in Exhibit X-2 (Deductions).

“Deductions Credit” means any credit due to PGCPS in accordance with Exhibit X-2 (Deductions).

“Deferral of Compensation” has the meaning set forth in Section 14.14.4 (Deferral of Compensation).

“Delay Payment” means the payment to be made by PGCPS in accordance with Section 14.12 (Delay Payment), which shall be calculated as set forth in Exhibit X-1 (Payment Calculations).

“Delayed School” has the meaning set forth in Section 14.13 (Delay Payment).

“Demand Maintenance” means ad hoc and responsive unscheduled Facilities Maintenance.

“Demand Requisition” means any request for service, report of a Performance Failure, report of an Unavailability Event, or any other report or inquiry made to the Help Desk or to Developer regarding the Services, including reports generated electronically by the BMS, the CMMS, or other electronic monitoring systems operated by Developer in the Schools.

“Demolition Work” means the demolition of the schools existing on the Effective Date on the Adelphi Area Middle School Land, the Drew-Freeman Middle School Land, the Hyattsville Middle School Land, and the Walker Mill Middle School Land.

“Design Development” means the phase that defines and develops the important aspects of the Project. The exterior, interior layouts, room sizes, and materials are more fully designed to address specific space accommodations, equipment, and furnishings, building design, materials, and colors, and complete definitions of all systems serving the Project (HVAC, plumbing, electrical, etc.) are developed. All design decisions necessary for permitting are completed during this phase in order to prepare the Construction Documents.

“Design Development Documents” means those documents created during Design Development that define at various levels of completeness the topics included in the definition of Design Development and illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size, and appearance of the Project by means of plans, sections, and elevations, typical construction details, and equipment layouts and a specification book, which will specify the materials that have been selected and other technical information about the Project systems.

“Design-Build Agreement” means the design and construction agreement between Developer and Design-Builder, a certified copy of which has been delivered by Developer to PGCPs, as amended, supplemented, or replaced from time to time.

“Design-Build Agreement Price” means [\$_____],² the lump sum price payable by Developer to the Design-Builder under the Design-Build Agreement for the Design-Build Work as of the Commercial Close Date.

“Design-Build Change” means a change, including an addition, deletion, alteration, substitution, or modification to Developer’s Design-Build Work obligations under this Agreement made pursuant to Section 7.20 (Design-Build Changes Requested by PGCPs).

“Design-Build Monitor” has the meaning set forth in Section 7.17.3 (Developer Tests and Inspections; Design-Build Monitor).

“Design-Build Period” means the period commencing on the Effective Date and ending upon completion of all Design-Build Work.

“Design-Build Period MBE and CBB Participation” has the meaning set forth in Section 4.7.2 (MBE and CBB Subcontracting Plan).

“Design-Build Period Reserve Account” has the meaning set forth in Section 7.6.1 (Design-Build Period Reserve Amount).

“Design-Build Quality Management Plan” means Developer’s plan for quality assurance and quality control in implementing the Design-Build Work set forth in Exhibit Q (Design-Build Quality Management Plan), as such plan may be amended with the written approval of PGCPs.

“Design-Build Representative” means the representative appointed by Developer in accordance with Section 4.5 (Developer Representatives).

“Design-Build Security” has the meaning set forth in Section 6.7.10 (Performance Bond).

“Design-Build Work” means everything required to be furnished and done for and relating to the design, construction, and Commissioning of the Project by Developer pursuant to this Agreement during the Design-Build Period, including the Demolition Work and the Athletic Fields.

“Design-Build Work Plan” has the meaning set forth in Section 7.10 (Design-Build Work Plan).

² To be inserted from Developer’s Final Availability Payment Proposal provided in accordance with the Exclusive Negotiating Agreement.

“Design-Builder” means [_____] ³ or any assignee or replacement permitted under this Agreement.

“Designated School Users” has the meaning set forth in Section 1.2 (Liaison with the Project Management Unit) of Exhibit W (Services Requirements).

“Developer” has the meaning set forth in the Preamble to this Agreement.

“Developer Conditions Precedent” means those conditions precedent to the Effective Date that are for the benefit of Developer, as set forth in Section 6.6 (Conditions Precedent for the Benefit of Developer).

“Developer Default” has the meaning set forth in Section 19.1 (Default by Developer).

“Developer Default Notice” has the meaning set forth in Section 19.2 (Developer Default Notice and Cure Periods).

“Developer Fault” means (a) a breach by Developer of any of Developer’s material obligations under this Agreement; (b) a breach of any material representation or warranty made by Developer under this Agreement; (c) willful misconduct of any Developer Person; or (d) a grossly negligent act or omission of any Developer Person.

“Developer Hazardous Materials” has the meaning set forth in Section 4.9.1.4 (Developer Hazardous Materials).

“Developer Interest” means the interest of Developer in the Project created by this Agreement and the rights and obligations of Developer under this Agreement.

“Developer Person” means (a) Developer; (b) the Project Contractors; (c) Subcontractors; (d) any director, officer, employee, or agent of Developer, the Project Contractors, or Subcontractors in each case acting as such; and (e) any representative, advisor (including any legal and financial advisor), contractor, or subcontractor (of any tier) of Developer, the Project Contractors, or Subcontractors in connection with the Project.

“Direct Losses” means, in respect of an event or circumstance, without duplication, all damages, losses, liabilities, penalties, fines, assessments, claims (including by third parties), actions, costs (including increased Capital Expenditures), expenses (including the reasonable cost of legal or professional services), proceedings, demands, and charges, whether arising under statute, contract, or at common law, which result directly from such event or circumstance:

(a) net of avoidable costs to include all costs and expenditures which (i) are saved or avoided as a result of, or in responding to, the event or circumstance or its effects; or (ii) if Developer acted reasonably and in accordance with this Agreement (including Section 2.5

³ To be inserted from Developer’s Proposal.

(General Duty of Developer to Mitigate)) would have been saved or avoided as a result of, or in responding to, the event or circumstance or its effects;

(b) net of related Insurance Proceeds, Insurance Receivables, and/or any amounts which Developer would have recovered (in respect of such event or circumstance) if Developer had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement; and

(c) excluding any indirect losses to include any loss of revenue, loss of profits, loss of use, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity, or any exemplary, punitive, or special damages, or any consequential or indirect loss or damages of any nature claimed, suffered, or allegedly suffered by any Developer Person.

“Discriminatory Change in Tax Law” means the coming into effect after the Proposal Submittal Date of any Applicable Law or any modification (including repeal) of any Applicable Law that existed on the Proposal Submittal Date that results in the imposition of Taxes or a change in Taxes and which specifically applies to discriminate against (a) the Project or Developer with respect to the Project and not other projects or persons; (b) other similar projects delivered through public-private partnerships or performance-based infrastructure delivery methods, or another delivery method similar to them and not other projects; (c) persons that have contracted with PGPCS or other Governmental Authorities to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons; or (d) persons holding shares or other evidences of ownership in persons whose principal business is contracting with Governmental Authorities to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons.

“Dispute” has the meaning set forth in Section 24.1 (Informal Dispute Resolution).

“Disputes Manager” has the meaning set forth in the Independent Engineer Agreement.

“Distributions” means, without duplication or double counting, whether in cash or in kind, any:

(a) distribution to Unit Holders or other distribution in respect of Units;

(b) redemption or purchase of Units or reduction of limited liability company capital or the amount of a Unit Holder’s contribution stated in the articles of organization or any other reorganization or variation to limited liability company capital;

(c) payment in respect of Junior Debt (whether of fees, principal, interest including capitalized interest and interest on overdue interest, breakage costs, or otherwise and whether or not such items are included or excluded from the definition of Junior Debt;

(d) payment, loan, contractual arrangement, including any management agreement or payment in respect thereof or transfer of assets or rights, in each case to the extent made or entered

into after the Effective Date and not in the ordinary course of business and on commercially reasonable terms including to any current or former Unit Holder;

(e) conferral of any other benefit which is not conferred and received in the ordinary course of business and on commercially reasonable terms, including to any current or former Unit Holder, any current or former Affiliate of any current or former Unit Holder, or Developer;

(f) other payment to any current or former Unit Holder, any current or former Affiliate of any current or former Unit Holder or Developer howsoever arising and whether made pursuant to the terms of an agreement or otherwise or in respect of any class of Units or other securities of or interests in Developer if, in any such case, such payment would not have been made were it not for occurrence of any Refinancing or Change in Control; or

(g) the early release of any reserves or any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain, and where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated in a manner that is consistent with the calculation of the Base Case Equity IRR in the Financial Model.

“**DPIE**” means the Prince George’s County Department of Permitting, Inspections and Enforcement.

“**Drew-Freeman Middle School**” means the School to be constructed on the Site described in Exhibit B-1 (Legal Description of Drew-Freeman Middle School Land).

“**Educational Activities**” means all curriculum, teaching, career guidance, extra-curricular, remedial, training, practice, vocational, scholastic, and educational activities provided for the benefit of students to be undertaken at each School.

“**Educational Specifications**” means, collectively, those specifications set forth in Exhibit T-1 (Educational Specifications for Adelphi Area Middle School, Drew-Freeman Middle School, Kenmoor Middle School, and Walker Mill Middle School), Exhibit T-2 (Educational Specifications for Hyattsville Middle School), Exhibit T-3 (Educational Specifications for Southern Area K-8 School).

“**Educational Support Activities**” means all parent and administrative support functions carried out in support of the Educational Activities, including but not limited to, parent-teacher interviews, professional development activities of teaching staff, staff meetings, curriculum development activities, before and after school care activities, and other activities that support Educational Activities.

“**Effective Date**” means the date on which all Conditions Precedent have been fulfilled or waived in accordance with Article 6 (Responsibilities During the Transition Period; Conditions Precedent), as identified by the Parties in the Effective Date Certificate.

“Effective Date Certificate” means the certificate in the form of Exhibit H (Form of Effective Date Certificate) that will be executed by the Parties on the Effective Date.

“Effective Date Deadline” means the date that is thirty (30) days after the Commercial Close Date, as such date may be extended by a mutual written agreement of the Parties.

“Emergency Event” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Energy Management Plan” has the meaning set forth in Section 4.6 (Energy Management Plan) of Exhibit W (Services Requirements).

“Environmental Damages” means all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability or liability without fault), encumbrances, liens, costs, and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of any environmental condition, on or off a Site, whether or not yet discovered, including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories, and all other costs incurred in connection with investigation, remediation, and mitigation, including the preparation of any feasibility studies or reports and the performance of any remedial, abatement, containment, closure, restoration, or monitoring work.

“Environmental Law” means any Applicable Law relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollutant or contaminant (including any release to air, land, surface water, and groundwater), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any similar, implementing or successor law, and any amendment, rule, regulatory order, guidance, or directive issued thereunder.

“Environmental Management Plan” has the meaning set forth in Section 4.5 (Environmental Management Plan) of Exhibit W (Services Requirements).

“Equity Contribution” means any equity contribution in cash to Developer and any loan or advance to Developer by any Unit Holder or any Affiliate thereof required pursuant to a taxable Financing.

“Equity Distribution” means (a) any Equity Contribution that may have been returned or repaid, in whole or in part, to any Unit Holder or any Affiliate thereof; (b) any dividend or other distribution paid by Developer to any Unit Holder or any Affiliate thereof with respect to any Equity Contribution; (c) any amount paid by Developer to any Unit Holder or any Affiliate thereof as interest, fee, or premium with respect to any Equity Contribution; and (d) any other amount paid by Developer to any Unit Holder, any Affiliate thereof, or any other Person in which Developer may directly or indirectly own any class of capital stock or other equity interest, other than any amount so paid in respect of goods sold or services performed by such Unit Holder, Affiliate, or other Person to or for Developer in accordance with a contract or lease complying with the requirements of this Agreement.

“Equity IRR” means Developer’s Nominal blended equity internal rate of return calculated on an after-tax basis at the level of Developer in accordance with the Financial Model as shown in Cell [___] of the “Summary” tab, having regard to Distributions made and projected to be made.

“Equity Member” means any person that makes an Equity Contribution as part of Developer’s Financing of the Project.

“Escrow Account” means that account or, as applicable, subaccounts established in accordance with the Escrow Agreement.

“Escrow Agent” means the entity appointed to act as Escrow Agent under the Escrow Agreement.

“Escrow Agreement” means the agreement to be executed among PGCP, Developer, and Escrow Agent prior to the Effective Date in the form set forth in Exhibit I (Form of Escrow Agreement), as amended, supplemented, or replaced from time to time in accordance therewith.

“Event” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Exempt Refinancing” means:

(a) a change in taxation or change in accounting treatment pursuant to changes in Applicable Law or GAAP;

(b) any amendments, supplements, or consents to Financing Documents or the exercise by a Lender of rights, waivers, consents, and similar actions which do not provide a financial benefit to Developer;

(c) an amendment, variation, or supplement of an agreement approved in writing by PGCPS as part of any Capital Modification or Change Order;

(d) a sale of Junior Debt or Units in Developer by Unit Holders or, in the case of Junior Debt, Affiliates of Unit Holders, or securitization of the existing rights or interests attaching to Junior Debt or Units in Developer or its direct, 100% Unit Holder, if any;

(e) a Qualifying Bank Transaction;

(f) a conversion of Units into Junior Debt or of Junior Debt into Units, provided that the total principal amount of all Junior Debt outstanding immediately following the conversion plus amounts paid to Developer by way of subscription for Units outstanding immediately following the conversion does not exceed the total amounts paid to Developer by way of subscription for Units outstanding immediately prior to the conversion plus the total principal amount of all Junior Debt outstanding immediately prior to the conversion;

(g) a secondary transaction in the Bond market;

(h) a re-set of an interest rate (excluding margin) pursuant to the express terms of any Financing Documents;

(j) any Refinancing that is identified in the Base Case Financial Model or that is otherwise materially consistent with, or effectuates the intent of, the terms identified in the Base Case Financial Model; or

(k) any Refinancing that (i) occurs due to the failure or imminent failure of Developer to comply with any material financial obligation under any Financing Document; (ii) results in the cure of such failure or imminent failure; and (iii) does not result in an increase to in the Equity IRR beyond the original Equity IRR.

“Expected Site Availability Date” has the meaning set forth in Section 5.3.1 (Expected Site Availability Dates).

“Expiration Date” means June 30, [205__]⁴; provided, however, if the Scheduled School Occupancy Readiness Date for the last School to be completed is extended beyond July 15, 202[4]⁵, then the Expiration Date shall be extended such that the Expiration Date shall be the next June 30 following [thirty (30) – thirty-four (34)]⁶ years of Services.

⁴ Insert from Developer’s Proposal.

⁵ Insert last Scheduled School Occupancy Readiness Date in Developer’s Proposal.

⁶ Insert date to coincide with the number of years in the Services Period in Developer’s Proposal.

“**Extended Relief Event**” has the meaning set forth in Section 19.9 (Termination Due to Extended Relief Event).

“**Extraordinary Item(s)**” shall mean any of the following, which may be included in the Availability Payment as charges or credits in accordance with Section 14.4 (Availability Payments) and Exhibit X-1 (Payment Calculations):

(a) with respect to a Change in Law Event resulting in revenue gain for Developer, an amount agreed to by the Parties or decided in accordance with Article 24 (Resolution of Disputes) to compensate PGCPs for any decrease in the net cost of Developer of performing the Design-Build Work or Services as the result of such Change in Law Event;

(b) the amount agreed to in any Change Order entered into in accordance with Section 7.21.2 (Election to Accept Non-Conforming Design-Build Work);

(c) PGCPs’ share of any Refinancing Gain in accordance with Section 12.13.2 (PGCPs’ Share of Refinancing Gain);

(d) the amount of any credits, payments, or reimbursements owed to PGCPs in accordance with Section 14.8 (PGCPs Right of Set-Off);

(e) PGCPs’ share of any net savings related to Capital Modifications in accordance with Section 15.1.2 (Conditioned Approvals);

(f) PGCPs’ share of any cost savings related to a Services Change in accordance with Section 15.6.9 (Cost Savings);

(g) the amount of any credits due to PGCPs for an Unused School in accordance with Section 15.8 (Unused School);

(h) any amounts owed to PGCPs under Section 19.17.4.1 that PGCPs elects to claim as an Extraordinary Item;

(i) any credit due to PGCPs from an Insurance Unavailability Event in accordance with Section 20.5.2 (PGCPs Rights);

(j) where elected by PGCPs pursuant to Section 20.8.4 (Reporting), any amounts found to have been improperly withdrawn by Developer from the Services Period Reserve Account; and

(k) any compensation due to Developer that PGCPs elects to pay as an Extraordinary Item charge in accordance with Section 14.14 (Payment for Compensation Events and Other Additional Costs).

“**Facilities Maintenance**” has the meaning set forth in Section 11.1.1 (Delivery of Services).

“FERPA” has the meaning set forth in Section 22.7.3 (Protection of Student Records).

“Field Maintenance Person” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Final Availability Payment Proposal” means the Availability Payment proposal delivered by Developer to PGCPs after selection for exclusive negotiations and prior to the Commercial Close Date.

“Final Construction Documents” has the meaning set forth in Section 7.3.4 (Final Construction Documents).

“Financial Close” means the first date that funding is available to Developer under the Financing Documents.

“Financial Close Security” has the meaning set forth in Section 6.1 (Financial Close Security).

“Financial Model” means (a) for purposes of Developer’s representations as to the Financial Model as of the Commercial Close Date and prior to Financial Close, the Initial Base Case Financial Model; and (b) for all other purposes, including Developer’s representations as to the Financial Model as of Financial Close, the Base Case Financial Model, as updated and replaced from time to time in accordance with the terms of this Agreement.

“Financing” means the funding provided by a Financing Party to Developer pursuant to the Financing Documents, which may be in the form of taxable or tax-exempt debt obligations in accordance with Applicable Law.

“Financing Documents” means, collectively, agreements entered into on or prior to Financial Close by Developer and a Financing Party with respect to the financing of this Project, and any agreement representing the refinancing thereof, which agreement shall be reasonably satisfactory in form and substance to PGCPs.

“Financing Party” means, collectively, any Lenders, Equity Members, the Collateral Agent, and Controlling Tax-Exempt Members.

“Financing Plan” has the meaning set forth in Section 6.7.5 (Financing).

“Five Year Maintenance Plan” has the meaning set forth in Section 4.3 (Five Year Maintenance Plans) of Exhibit W (Services Requirements).

“Force Majeure Event” means any of the following events or circumstances occurring after the Commercial Close Date if and to the extent such event or circumstance materially interferes with or delays the Design-Build Work or Services, as applicable, except to the extent that such event or circumstance arises from or is contributed to, directly or indirectly, due to a Developer Fault:

(a) unusually severe and abnormal weather conditions at a Site (as compared with the five year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and locality of the Site), landslides, underground movement, earthquakes, tidal waves, tornadoes, hurricanes, floods, and lightning;

(b) fire, explosion, or pressure waves caused by aircraft or other aerial device traveling at supersonic speeds;

(c) epidemics, pandemics, quarantines, or orders, recommendations, health alerts, policies, rules, and regulations issued by a Governmental Authority relating thereto and labor shortages in connection therewith;

(d) civil disturbance (including armed violence and hostage taking), war, armed conflict, riot, insurrection, nuclear explosion, or nuclear, radioactive, chemical, or biological contamination, sabotage and related causes; and

(e) terrorism or threats thereof, including domestic terrorism, shootings or similar events, or the declaration of a state of emergency by any Governmental Authority.

“Functional Unit” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“GAAP” means generally accepted accounting principles in effect and consistently applied in the United States (including the accounting recommendations published in the Handbook of the American Institute of Certified Public Accountants).

“Good Industry Practice” means using standards, practices, methods, and procedures which, at the time they are employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, development, construction, operation, maintenance, repair, replacement, or management practices, as applicable to a good commercial standard, conforming to Applicable Law, for schools and other public or institutional buildings serving similar purposes to the Project in the State, and exercising the degree of skill and care, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a qualified, skilled, and experienced person engaged in a similar type of undertaking or managing work under the same or similar circumstances.

“Governmental Approvals” means all permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements, and approvals issued by a Governmental Authority of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any Person with respect to the Project.

“Governmental Authority” means any federal, State, regional, or local legislative, executive, judicial, or other governmental board, department, agency, authority, commission, administration, court, or other body, or any official thereof, having jurisdiction in any way over or

in respect of any aspect of the performance of this Agreement or the Project, including DPIE, but excluding PGCPs in its capacity as a counterparty to this Agreement.

“Governmental Delay” means a delay in performance by Developer directly caused by one or more of the following:

(a) with respect to any matter that requires the approval of PGCPs specifically under this Agreement, where Developer has provided PGCPs sufficient information to respond to such request for approval, PGCPs fails to complete its review within the response period contemplated in this Agreement or specify in reasonable detail the reason for PGCPs’ disapproval or rejection of such matter and the changes that would be required for approval;

(b) with respect to any matter that requires the review or consent of any Governmental Authority, including any Governmental Approval (other than permitting, which is addressed in subsection (c) below), where Developer has provided such Governmental Authority sufficient information to respond to such request for approval, such Governmental Authority not completing its review or issuing a decision on such Governmental Approval or consent within the customary response period for the matter in question, imposing conditions that are not customary for the matter in question or that would constitute a material change to the Design-Build Work Plan or the Construction Schedules, or acting outside of such Government Authority’s powers contained in Applicable Law;

(c) to the extent Developer complies with all submission requirements of the applicable Governmental Authority, timely submitted its application for the relevant permit, and has otherwise complied with its obligations set forth in Section 7.7.3 (Diligent Prosecution), and experience a delay of more than thirty (30) days beyond the date set forth in a Construction Schedule for the receipt of any permit (including permits for Utilities and those ancillary to or required for the issuance of the building permit for each School)

(d) a delay of more than thirty (30) days beyond the date set forth in a Construction Schedule for the receipt of any permit (including permits for Utilities and those ancillary to or required for the issuance of the building permit for each School), but only to the extent that (i) such delay in receipt directly causes a delay of a critical path matter in such Construction Schedule, and (ii) Developer timely submitted its application for the relevant permit, has complied (and is continuing to comply) with all submission requirements of the applicable Governmental Authority, and otherwise with its obligations set forth in Section 7.7.3 (Diligent Prosecution); and

(e) a Governmental Authority requires a material change to the Final Construction Documents which is inconsistent with the Technical Requirements.

“Gross Floor Area” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Group A School[s]” means [_____]⁷.

“Group B School[s]” means [_____]⁸.

“Group C School[s]” means [_____]⁹.

“Handback Certificate” has the meaning set forth in Section 25.7 (Final Condition Assessment).

“Handback Deficiency Notice” has the meaning set forth in Section 25.7 (Final Condition Assessment).

“Handback Inspector” has the meaning set forth in Section 25.2 (Handback Inspector).

“Handback Requirements” has the meaning set forth in Section 25.1 (Handback Requirements).

“Handback Retainage” has the meaning set forth in Section 25.4 (Determination of Handback Retainage).

“Handback Retainage Account” has the meaning set forth in Section 25.5 (Establishment and Use of the Handback Retainage Account).

“Handback Survey” has the meaning set forth in Section 25.3 (Handback Survey).

“Handback Work” has the meaning set forth in Section 25.3 (Handback Survey).

“Handback Work Plan” has the meaning set forth in Section 25.3 (Handback Survey).

“Hazardous Material” means (a) asbestos and any asbestos containing material; (b) any substance that is defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other Applicable Law as a “hazardous substance,” “hazardous material,” “hazardous waste,” “infectious waste,” “toxic substance,” or “toxic pollutant,” or “pollutant and contaminant,” or any other formulation intended to define, list, or classify substances by reason of deleterious properties, such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (c) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources; and (d) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear, or by-product material), medical waste, chlorofluorocarbon, lead or lead-

⁷ Insert any Schools Developer identified for delivery by July 15, 2023 in its Proposal.

⁸ Insert Kenmoor Middle School and/or Walker Mill Middle School if identified in Developer’s Proposal for delivery by December 30, 2023.

⁹ Insert any Schools Developer identified for delivery by July 15, 2024 in its Proposal.

based product, and any other substance identified by Applicable Law as a hazardous material the presence of which could be detrimental to the Sites or hazardous to health or the environment.

“Help Desk” means the contact point established by Developer in respect of the Help Desk Services for the notification of Demand Requisitions, the occurrence of Events, and other matters arising in relation to the provision of Services.

“Help Desk Services” has the meaning set forth in Section 11.1.1 (Delivery of Services).

“HIPAA” has the meaning set forth in Section 22.7.2 (Educational, Medical, and Psychological Records).

“Hyattsville Middle School” means the School to be constructed on the Site described in Exhibit C-1 (Legal Description of Hyattsville Middle School Land).

“Improvement(s)” shall mean any building (including footings and foundations) and other improvements, equipment, and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed, above or below grade, upon Land or within the air space above Land (whether temporary or permanent).

“Income Tax” means any Tax imposed on the income of a Person by any federal, State or local Governmental Authority.

“Independent Engineer” means (a) the consultant selected by the Parties during the Transition Period that (i) possesses skills in design review (including architectural review, structural peer review, and mechanical, electrical, and plumbing) for compliance with design requirements and technical specifications similar to the Technical Requirements, institutional building construction involving complex structural systems similar to the Schools, construction cost consulting, construction claims adjusting, and structural retrofit construction to act as the Independent Engineer; (ii) has a technical background and in-depth expertise with the Commissioning process related to recently constructed buildings of similar complexity, size and type to the Schools including verification techniques, functional performance testing, system equipment, and operation and maintenance knowledge; and (iii) brings a total building commissioning perspective to the Project and be knowledgeable in (and where applicable, federal, State, and local): (1) building fire codes; (2) water-based extinguishing systems; (3) detection systems; (4) LEED; (5) energy efficiency imperatives; and (6) other building requirements, which skills may be acquired through a joint venture, association or, with the approval of PGCPs and Developer, a subcontractor, or (b) any assignee or replacement permitted under this Agreement.

“Independent Engineer Agreement” means the agreement to be entered into between PGCPs, Developer, and the Independent Engineer in the form set forth in Exhibit J (Form of Independent Engineer Agreement), as amended, supplemented, or replaced from time to time in accordance therewith.

“Independent Inspector” has the meaning set forth in Section 1.3 (Joint Technical Review) of Exhibit W (Services Requirements).

“Index-Linked” means, with respect to any financial amount referred to in this Agreement that is expressed to be subject to indexation, such financial amount shall be adjusted by the following formula:

$$FA_m = FA_{base} \times \left(\frac{b_{y-1}}{a} \right)$$

FA_m means the financial amount in the applicable Contract Year

FA_{base} means the financial amount as of Financial Close

a means the value of the Inflation Index as of the May immediately preceding Financial Close (May 2020), or 265.733.

b_{y-1} means the value of the Inflation Index as of May immediately preceding the applicable Contract Year.

“Indicative Step-In Notice” has the meaning set forth in Section 12.7.4 (Indicative Notice).

“Indicative Step-In Notice Period” means the period commencing on the date of delivery of an Indicative Step-In Notice and ending on the earlier of: (a) the Step-In Date; (b) the date of delivery of a Withdrawal Notice; or (c) one hundred and eighty (180) days following the date of delivery of the Indicative Step-In Notice.

“Indicative Substitution Notice” has the meaning set forth in Section 12.7.4 (Indicative Notice).

“Inflation Index” means the All Items Consumer Price Index for All Urban Consumers (CPI-U) in the Washington-Baltimore, DC-MD-VA-WV Consolidated Metropolitan Statistical Area as published by the Bureau of Labor Statistics using a reference year of 1982-1984 that equals 100.0 or, if such index in its present form becomes unavailable, such similar index as may be agreed by the Parties, acting reasonably.

“Informational Questions” has the meaning set forth in Section 5.10 (PGCPS Satisfaction System) of Exhibit W (Services Requirements).

“Initial Base Case Equity IRR” means [___]%,¹⁰ being the Nominal post-Income Tax internal rate of return on equity investment over the full Term assuming no early termination or extension of this Agreement, projected for the Project under the Initial Base Case Financial Model.

¹⁰ Note: to be inserted from Initial Base Case Financial Model submitted by Developer.

“Initial Base Case Financial Model” means Developer’s financial model for the Project as of the Commercial Close Date, which is attached in electronic format as Exhibit U (Financial Model and Related Information).

“Inspection” has the meaning set forth in Section 2.3 (Inspection of PGCPs Retained Responsibilities) of Exhibit W (Services Requirements).

“Inspection Period” has the meaning set forth in Section 2.3 (Inspection of PGCPs Retained Responsibilities) of Exhibit W (Services Requirements).

“Inspection Report” has the meaning set forth in Section 2.3 (Inspection of PGCPs Retained Responsibilities) of Exhibit W (Services Requirements).

“Insurance Proceeds” means the amount of any insurance proceeds received by a Person in respect of a claim made under any policy of insurance required to be maintained by Developer under this Agreement.

“Insurance Receivables” means Insurance Proceeds which a Person is entitled to receive but which have not been received.

“Insurance Requirements” means any rule, regulation, code, or requirement issued by any insurer that has issued a policy of Required Insurance, as in effect during the Term, compliance with which is a condition to the effectiveness of such policy.

“Insurance Unavailability Event” has the meaning set forth in Section 20.5 (Insurance Unavailability Event).

“Intended Uses” means the uses for the Schools as described in the Technical Requirements.

“Joint Technical Review” has the meaning set forth in Section 1.3 (Joint Technical Review) of Exhibit W (Services Requirements).

“Junior Debt” means indebtedness owing by Developer to any of its Unit Holders or Affiliates of Unit Holders which ranks subordinate in all respects to the Senior Debt, excluding (a) all amounts not actually paid to Developer by cash advance, rights entitling Developer to a cash advance, or other consideration; (b) all fees, including commitment fees, standby fees or other fees, paid or to be paid by Developer, other than to any Unit Holder or any Affiliate of a Unit Holder; and (c) capitalized interest and interest on overdue interest.

“Kenmoor Middle School” means the School to be constructed on the Site described in Exhibit D-1 (Legal Description of Kenmoor Middle School Land).

“Key Personnel” has the meaning set forth in Section 4.4 (Key Personnel).

“Key Ratios” means *[to be inserted based on the Base Case Financial Model]*.

“Land” means, individually or collectively, as applicable, the real property (including fixtures thereon) described in Exhibit A-1 (Legal Description of Adelphi Area Middle School Land), Exhibit B-1 (Legal Description of Drew-Freeman Middle School Land), Exhibit C-1 (Legal Description of Hyattsville Middle School Land), Exhibit D-1 (Legal Description of Kenmoor Middle School Land), Exhibit E-1 (Legal Description of Southern Area K-8 School Land), and Exhibit F-1 (Legal Description of Walker Mill Middle School Land).

“Late Delivery Damages” means the amount of Five Thousand Dollars (\$5,000) per School per day after the Scheduled School Occupancy Readiness Date up to a maximum aggregate, per School, of One Million Dollars (\$1,000,000).

“LEED” means the Leadership in Energy and Environmental Design Green Building Rating System, developed and maintained by the U.S. Green Building Council.

“LEED Cure Period” has the meaning set forth in Section 7.24 (LEED Requirements).

“LEED Requirements” means the technical standards for a LEED “silver” rating for new construction that are in effect as of the Proposal Submittal Date.

“Lenders” means all Persons providing debt financing to Developer under the Financing Documents.

“Life Cycle Plan” has the meaning set forth in Section 4.4 (Life Cycle Plan) of Exhibit W (Services Requirements).

“Life Cycle Schedule” has the meaning set forth in Section 4.1 (Life Cycle Schedule and Start-Up Plan) of Exhibit W (Services Requirements).

“Liquidated Damage Right” has the meaning set forth in Section 19.16 (PGCPS Liquidated Damage Rights).

“Longstop Date” means, for each School, the date that is three hundred and sixty-five (365) days after the Scheduled School Occupancy Readiness Date for that School.

“Longstop Return Date” has the meaning set forth in Section 9.10 (Longstop Return Date) of Exhibit X-2 (Deductions).

“Loss” or **“Losses”** means, with respect to any Person, any loss, claim, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, or out-of-pocket and documented cost or expense (including fees and expenses of counsel and any tax losses) actually suffered or incurred by such Person, but excluding loss of use, loss of profit, loss of anticipated revenue, in each case whether or not foreseeable, and any punitive, special, indirect, and consequential damages, and any contingent liability until such liability becomes actual.

“Maintained Elements” means all elements of the Project, constructed or installed pursuant to this Agreement, including all manufactured equipment, building systems,

improvements, property, or assets, whether or not constituting personal property or fixtures, constituting part of the Project, but excluding in each case Moveable FF&E.

“Maintenance Access Times” means the times set forth in the Annual Service Plan during which Developer may perform Facilities Maintenance.

“Market Disruption Event” means (a) a general banking moratorium has been declared by either federal or New York authorities having jurisdiction and is in force; (b) the Benchmark Interest Rates are not available to the market, including for example the applicable Bloomberg screen page is not available or is not publishing such rates and no alternative commercially available source for obtaining such rates at such time has been generally recognized by the financial markets as an accurate and reliable source for the quotation of such rates; or (c) the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets.

“Master Specifications” means those specifications set forth in Exhibit T-4 (Master Specifications).

“Maximum Availability Payment” means a final Availability Payment that is no greater than []% in excess of the indicative Availability Payment provided by Developer in its Proposal, or such greater amount as the Board shall approve.

“Maximum Unknown Land Condition Cost” has the meaning set forth in Section 5.8.4 (Maximum Unknown Land Condition Cost).

“MBE and CBB Report” has the meaning set forth in Section 18.8 (MBE and CBB Reporting).

“MBE and CBB Subcontracting Plan” means the MBE and CBB Subcontracting Plan set forth in Exhibit L (MBE and CBB Subcontracting Plan), as such plan may be amended with the written approval of PGCPS.

“Milestone Payment Notice” has the meaning set forth in Section 14.3.1 (Milestone Payments).

“Milestone Payment(s)” means the amounts eligible for payment from PGCPS to Developer in accordance with Section 14.3 (Milestone Payments).

“Minority Business Enterprises” or **“MBE”** means any legal entity, other than a joint venture, that is (a) at least fifty-one percent (51%) owned and controlled by one or more minority person(s), organized to engage in commercial transactions, and (b) duly certified as an MBE by either the Maryland Department of Transportation (MDOT), the Prince George’s County Supplier Development and Diversity Division (SDDD), or the Washington Metropolitan Area Transit Authority (WMATA). Minority person means a member of a socially or economically disadvantaged minority group which includes African American/Black (not of Hispanic origins),

Asian American, Native American, Women, Hispanic, Physically and Mentally Disabled, and not-for-profit entities organized to promote the interests of the physically or mentally disabled individuals and those that are accredited by the Department of Education, Division of Rehabilitation, as Community Rehabilitation Programs.

“**Monthly Billing Statement**” has the meaning set forth in Section 14.6 (Monthly Billing Statements).

“**Monthly Design-Build Report**” means the report required to be submitted by Developer to PGCPs as described in Section 18.6 (Monthly Design-Build Report).

“**MOSHA**” means the Maryland Occupational Safety and Health Act, codified as Title 5 of the Labor and Employment Article of the Laws of Maryland, including the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

“**MOU**” has the meaning set forth in the Recitals.

“**Moveable FF&E**” means the items identified as Moveable FF&E in the Educational Specifications.

“**Mutual Conditions Precedent**” means those conditions precedent to the Effective Date that are for the benefit of both PGCPs and Developer, as set forth in Section 6.8 (Mutual Conditions Precedent).

“**NA Charge**” has the meaning set forth in Section 14.4.3 (Net Adjustments and Carry Over).

“**NA Charges Cap**” has the meaning set forth in Section 14.4.3.1 (NA Charges Cap).

“**NA Credit**” has the meaning set forth in Section 14.4.3 (Net Adjustments and Carry Over).

“**Net Adjustments**” has the meaning set forth in Section 14.4.3 (Net Adjustments and Carry Over).

“**Net Equity**” means, on and as of the Termination Date, an amount equal to the sum of all Equity Contributions made prior to the Termination Date *less* the sum of all Equity Distributions made prior to the Termination Date; provided that, if such difference shall result in an amount that is less than zero (0), such amount shall be deemed to be zero (0).

“**New Trees**” has the meaning set forth in Section 2.11 (Reforestation).

“**Nominal**” means calculated in nominal terms at current prices recognizing adjustment for indexation in respect of forecasted inflation.

“Operating Hours” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Operational Condition” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Overdue Rate” means a rate of interest equal to the prime rate as published in The Wall Street Journal (Eastern Edition), or a mutually agreeable alternative source of the prime rate if it is no longer published in The Wall Street Journal (Eastern Edition) or the method of computation thereof is substantially modified.

“Parties” means, collectively, PGPCS and Developer.

“Party” means, individually, PGPCS or Developer.

“Performance Failure” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Performance Failure Deduction” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Performance Monitoring Program” has the meaning set forth in Section 5.1 (Developer Performance Monitoring) of Exhibit W (Services Requirements).

“Performance Monitoring Report” has the meaning set forth in Section 5.2 (Periodic Reporting) of Exhibit W (Services Requirements).

“Permanent Repair” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Permanent Repair Deadline” has the meaning set forth in Section 8.2 (Rectification Plan Proposal) of Exhibit X-2 (Deductions).

“Permitted Debt” means (a) trade or other similar indebtedness incurred in the ordinary course of business; (b) Taxes and governmental charges, salaries, related employee payments, and trade payables; (c) contingent liabilities relating to the endorsement of negotiable instruments received in the normal course of business or incurred with respect to any Governmental Approvals, the Project Contracts, or this Agreement; and (d) debt incurred by way of loans from Unit Holders; but does not include any Senior Debt (other than the Senior Debt incurred or issued on the Financial Close Date).

“Permitted Encumbrances” means, as of any particular time, any one or more of the following:

(a) encumbrances for utility charges, taxes, rates, and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by Developer and against which Developer has established appropriate reserves in accordance with GAAP;

(b) any encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by Developer, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of Developer to perform the Design-Build Work or the Services;

(c) any encumbrance arising in the ordinary course of business imposed by law dealing with materialmen's, mechanics', workmen's, repairmen's, warehousemen's, landlords', vendors', or carriers' encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by Developer and against which Developer has established appropriate reserves;

(d) servitudes, licenses, easements, encumbrances, restrictions, rights-of-way, and rights in the nature of easements or similar charges which shall not in the aggregate materially and adversely impair the performance of the Design-Build Work or the Services by Developer;

(e) applicable zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants, which do not materially interfere with the performance of the Design-Build Work or the Services by Developer;

(f) encumbrances which are created on or before the Proposal Submittal Date;

(g) encumbrances which are created by a Change in Law Event on or after the Proposal Submittal Date;

(h) any encumbrance created by an act or omission by any Governmental Authority or with respect to which PGCPS has given its consent; and

(i) any servitudes, licenses, easements, restrictions, rights-of-way, rights, and encumbrances specifically identified in the Title Reports.

“Person” means an individual, a general or limited partnership, a joint venture, a company, a corporation, a trust, an unincorporated organization, or a Governmental Authority.

“PGCPS” has the meaning set forth in the Preamble.

“PGCPS Activities” means, collectively, (a) Educational Activities, (b) Educational Support Activities, (c) Ad Hoc School Use, (d) Third Party and Community Use, (e) the performance of the PGCPS Retained Responsibilities, or (f) any other activity at a School duly authorized by PGCPS to be performed by a Person at a School or required by Applicable Law, other than any activity performed by any Developer Person.

“**PGCPS Conditions Precedent**” means those conditions precedent to the Effective Date that are for the benefit of PGCPS, as set forth in Section 6.7 (Conditions Precedent for the Benefit of PGCPS).

“**PGCPS Default**” has the meaning set forth in Section 19.4 (Default by PGCPS).

“**PGCPS Default Notice**” has the meaning set forth in Section 19.6 (PGCPS Default Notice and Cure Periods).

“**PGCPS Fault**” means (a) a breach by PGCPS of any of PGCPS’ material obligations under this Agreement; (b) a breach of any material representation or warranty by PGCPS under this Agreement; (c) willful misconduct of any PGCPS Indemnitee; or (d) a grossly negligent act or omission of any PGCPS Indemnitee.

“**PGCPS Hazardous Materials**” has the meaning set forth in Section 4.9.1.1 (PGCPS Hazardous Materials).

“**PGCPS Indemnitee**” means, collectively (a) PGCPS; (b) the Board; (c) any director, officer, employee, or agent of PGCPS or the Board in each case acting as such; and (d) the County, including, without limitation, any agencies, instrumentalities, and departments of the County, and the County’s elected and appointed officials (including, without limitation, the County Executive and the County Council), officers, directors, agents, and employees.

“**PGCPS Information**” means the information contained in Exhibit A-3 (Title Report for Adelphi Area Middle School Land); Exhibit A-4 (Information Regarding the Adelphi Area Middle School Site); Exhibit B-3 (Title Report for Drew-Freeman Middle School Land); Exhibit B-4 (Information Regarding the Drew-Freeman Middle School Site); Exhibit C-3 (Title Report for Hyattsville Middle School Land); Exhibit C-4 (Information Regarding the Hyattsville Middle School Site); Exhibit D-3 (Title Report for Kenmoor Middle School Land); Exhibit D-4 (Information Regarding the Kenmoor Middle School Site); Exhibit E-3 (Title Report for Southern Area K-8 School Land); Exhibit E-4 (Information Regarding the Southern Area K-8 School Site); Exhibit F-3 (Title Report for Walker Mill Middle School Land); and Exhibit F-4 (Information Regarding the Walker Mill Middle School Site), all of which were delivered by PGCPS to Developer in advance of the Proposal Submittal Date.

“**PGCPS Lender Notice**” has the meaning set forth in Section 12.7.2 (PGCPS Lender Notice).

“**PGCPS Person**” means (a) PGCPS; (b) the Board; (c) any director, officer, employee, or agent of PGCPS or the Board in each case acting as such; (d) students, volunteers, and visitors using or present at the School(s) with PGCPS’ approval; and (e) any representative, advisor (including any legal and financial advisor), contractor, or subcontractor (of any tier) of PGCPS or the Board in connection with the Project or at a School, other than Developer, Project Contractors, or Subcontractors.

“PGCPS Prospective Termination Notice” has the meaning set forth in Section 12.7.3 (PGCPS Prospective Termination Notice).

“PGCPS Prospective Termination Notice Period” means the period beginning on the date of giving of a PGCPS Prospective Termination Notice and ending on the earlier of: (a) the Step-In Date; (b) the date PGCPS gives the Financing Party notice of revocation of a PGCPS Prospective Termination Notice; and (c) the proposed Termination Date set forth in the PGCPS Prospective Termination Notice.

“PGCPS Retained Responsibilities” has the meaning set forth in Section 2.1 (PGCPS Retained Responsibilities) of Exhibit W (Services Requirements).

“PGCPS Satisfaction Report” has the meaning set forth in Section 5.10 (PGCPS Satisfaction System) of Exhibit W (Services Requirements).

“PGCPS Satisfaction System” has the meaning set forth in Section 5.10 (PGCPS Satisfaction System) of Exhibit W (Services Requirements).

“PII” has the meaning set forth in Section 22.7.1 (Personally Identifiable Information).

“Plans” means, collectively, the Financing Plan, the Design-Build Work Plan, the Design-Build Quality Management Plan, the Safety Plan, the Commissioning Plans, the Handback Work Plan, the Start-Up Plan, the Annual Service Plan, the Five Year Maintenance Plan, the Life Cycle Plan, the Services Quality Management Plan, the Environmental Management Plan, the Energy Management Plan, the MBE and CBB Subcontracting Plan, the Community Investment Program, and the Community Engagement and Outreach Plan.

“Pre-Occupancy Period” means, for each School, the period (if any) between the occurrence of School Occupancy Readiness and the School Occupancy Readiness Date.

“Pre-Occupancy Period Activities” has the meaning set forth in Section 10.7.2 (PGCPS Access Rights).

“Post-Refinancing Financial Model” has the meaning set forth in Exhibit V (Calculation and Payment of Refinancing Gains).

“Pre-Refinancing Financial Model” has the meaning set forth in Exhibit V (Calculation and Payment of Refinancing Gains).

“Progress Payment” means the amount of Fifteen Million Dollars (\$15,000,000.00) that PGCPS shall pay to Developer in accordance with Section 14.2 (Progress Payment).

“Prohibited Person” means any of the following Persons:

(a) any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of, has pleaded guilty in a criminal proceeding for, or is an on-going target

of a grand jury investigation concerning, a felony for one or more of the following: (i) fraud; (ii) intentional misappropriation of funds; (iii) bribery; (iv) conspiracy to commit a crime; (v) making false statements to a governmental agency; (vi) improperly influencing a governmental official; and (vii) extortion;

(b) any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (i) the Trading with the Enemy Act of 1917, 50 U.S.C. § 4301 et seq., as amended; (ii) the International Emergency Economic Powers Act of 1977, 50 U.S.C. § 1701 et seq., as amended; and (iii) the Antiterrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. § 4605, as amended;

(c) any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions; or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time;

(d) any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order described above;

(e) any Person who could be debarred if the standards applied in Section 10A-148 of Prince George's County, Maryland Code of Ordinances were applied to such Person's failure to satisfy a contractual obligation to the County;

(f) any Person who is disqualified from doing any work at a PGCCPS location site due to his/her status (i) as a registered sex offender under Maryland Criminal Procedure Article Section 11.722; (ii) individuals convicted of a crime involving third or fourth degree sexual offense under sections 3-307 or 3-308 of the Criminal Law Article, child sexual abuse under Section 3-602 of the Criminal Law Article, a crime of violence as defined in Section 14-101 of the Criminal Law Article, or comparable offenses in another state pursuant to Maryland Education Article Section 6-113; and (iii) Persons identified as an alleged abuser or neglecter following completing of a Child Protective Services investigation with a finding of "indicated" child abuse or neglect;

(g) any Person who is on the County's list of debarred, suspended, or ineligible Persons; or

(h) any Affiliate of any of the Persons described in any one or more of clauses (a) through (g) above.

“Project” means the design, build, financing, testing, commissioning, maintenance, and life cycle rehabilitation of the Schools and all other Design-Build Work and Services provided in accordance with this Agreement.

“Project Component” means each of the components of the Project identified in Exhibit Y (Handback Useful Life Requirements).

“Project Contractors” means, collectively, the Design-Builder and the Services Provider.

“Project Contracts” means, collectively, the Design-Build Agreement and the Services Agreement.

“Project Management Unit” or **“PMU”** means the multi-disciplinary unit established by PGCPs for the purpose of administering this Agreement and overseeing Developer’s performance under this Agreement.

“Project Readiness” means that the School Occupancy Readiness Dates have been achieved for all Schools.

“Project Readiness Date” means the date when Project Readiness has been achieved.

“Proposal” has the meaning set forth in the Recitals.

“Proposal Submittal Date” means [September 14, 2020].¹¹

“Proposal Validity Period End Date” means [March 13, 2021].¹²

“Punch List” has the meaning set forth in Section 10.4.1 (Punch List).

“Punch List Items” means, for any School, any defects, deficiencies, and items of outstanding work that would not materially impair PGCPs Activities or the performance of the Services and could be rectified with minimal interference to the occupancy, use, and lawful operation of the School.

“QMS” means Developer’s quality management system.

“Qualified Insurer” means an insurer authorized to do business in the State and having a Financial Strength Rating of “A-” and a Financial Size Category of “Class IX” or better in the latest evaluation of A.M. Best Company (if A.M. Best Company changes its rating system or ceases to provide ratings at some later date, then such insurance company shall have a rating from A.M. Best Company (or some other comparable rating service if A.M. Best Company ceases to provide ratings) comparable to the requirement set forth above).

¹¹ Will insert date when Developer’s Proposal is submitted to PGCPs.

¹² Date that is 180 days after Proposal submission will be inserted.

“Qualifying Bank Transaction” means (a) the disposition by a Lender to a Qualifying Institution, any other Lender, or an Affiliate of such Lender of any of its rights or interests in the Financing Documents; (b) the assignment of its interest in or grant by a Lender of any rights of participation in respect of the Financing Documents in favor of (i) any of its Affiliates or another Lender; (ii) any Qualifying Institution or any trustee thereof; or (iii) a local authority or public authority; (c) the syndication of a Lender’s rights and interests under any Financing Document; or (d) the disposition or grant by a Lender to a Qualifying Institution, any other Lender, or an Affiliate of such Lender of any other form of benefit or interest in either the Financing Documents or the revenues or assets of Developer, whether by way of security or otherwise.

“Qualifying Institution” means (a) a United States trust company, insurance company, investment company, pension fund, or institution which has at least Five Hundred Million in assets, including entities wholly owned by any of the foregoing; (b) a bank regulated by the Board of Governors of the Federal Reserve System of the United States or a United States bank, saving and loan institution, insurance company, investment company, employee benefit plan, or other institution that has or manages at least Five Hundred Million in assets and would be a “qualified institutional buyer” under United States securities law, including entities wholly owned by any of the foregoing; (c) an institution which is recognized or permitted under the law of any member state of the European Economic Area (“EEA”) to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in any other EEA member state; (d) an institution which is recognized or permitted under the law of the United Kingdom to carry on the business of a credit institution pursuant to Applicable Law in the United Kingdom; (e) an institution which is recognized or permitted under the law of any member state of the Organization for Economic Cooperation and Development (in this definition, “OECD”) to carry on within the OECD member states the business of a credit institution, insurance company, investment company, or pension fund and which has or manages at least Five Hundred Million in assets, including entities wholly owned by any such institution; or (e) any other institution PGCPs designates in writing as a “Qualifying Institution.”

“Qualifying Refinancing” means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing.

“Quarter” means the period of time between (a) January 1 – March 31; (b) April 1 – June 30; (c) July 1 – September 30; and (d) October 1 – December 31, except that (i) the first Quarter shall be equal to the period of time between the start of the first Billing Period and the next closest Quarter end, and (ii) the last Quarter shall end on the last day of the Term.

“Quarterly Net Adjustments Report” has the meaning set forth in Section 14.7 (Quarterly Net Adjustments Report).

“Rated Questions” has the meaning set forth in Section 5.10 (PGCPS Satisfaction System) of Exhibit W (Services Requirements).

“Reasonable Wear and Tear” means normal day-to-day wear and tear that could reasonably be expected to exist at schools similar to the Schools, operating in a similar environment and similar circumstances and of a similar age, but does not include any degradation in the functionality or operability of the Schools such that the Schools or any of the Building Systems and Maintained Elements of the Schools fails to meet the Availability Conditions or the performance requirements and standards set forth in the Services Requirements, and which, for certainty, excludes Vandalism.

“Recording Frequency” has the meaning set forth in Table 1 of Appendix X-2 (Performance Failure Deductions) to Exhibit X-2 (Deductions).

“Recurring Termination Payments” has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

“Re-Commissioning Plan” has the meaning set forth in Section 12.2 of Exhibit R (Commissioning Requirements).

“Rectification” has the meaning set forth in Section 1.1 of Exhibit X-2 (Deductions).

“Rectification Period” has the meaning set forth in Section 1.1 of Exhibit X-2 (Deductions).

“Rectification Plan” has the meaning set forth in Section 1.1 of Exhibit X-2 (Deductions).

“Rectification Plan Proposal” has the meaning set forth in Section 1.1 of Exhibit X-2 (Deductions).

“Refinancing” means:

(a) Developer incurring, creating, assuming, or permitting to exist any Debt other than Permitted Debt;

(b) any amendment, variation, novation, supplement, or replacement of any Senior Debt or Senior Financing Agreement or any refinancing of Senior Debt;

(c) the exercise of any right, or the grant of any waiver or consent, under any Senior Financing Agreement;

(d) the disposition of any rights or interest in, or the creation of any rights of participation in respect of, the Senior Financing Agreements or Senior Debt or the creation or granting of any other form of benefit or interest in the Senior Financing Agreements, the Senior Debt, or the contracts, revenues, or assets of Developer whether by way of security or otherwise;

(e) the execution and delivery by Developer of any instrument relating in any way to the financing of the Project, other than the Senior Financing Agreements, instruments relating to the Junior Debt and the organizational agreement governing Developer; or

(f) any other arrangement put in place by Developer or another person which has an effect which is similar to any of (a) through (e) above or which has the effect of limiting Developer's ability to carry out any of the actions referred to in (a) through (d) above.

"Refinancing Gain" has the meaning set forth in Exhibit V (Calculation and Payment of Refinancing Gains).

"Reforestation Plan" has the meaning set forth in Section 2.11 (Reforestation).

"Reimbursement Agreements" means the Proposal Preparation Reimbursement Agreements PGCPs entered into with each bidder in accordance with the RFP.

"Relief Event" means (a) a Governmental Delay; (b) a Force Majeure Event; or (c) any of the following events or circumstances occurring after the Commercial Close Date if and to the extent such event or circumstance materially interferes with or delays the Design-Build Work or the Services, as applicable, except to the extent that such event or circumstance arises from or is contributed to by, directly or indirectly, a Developer Fault:

(i) a Change in Law Event;

(ii) a PGCPs Fault or PGCPs Default;

(iii) a preliminary or permanent injunction or temporary restraining order or other order is issued by a Governmental Authority of competent jurisdiction or other legal restraint or prohibition (including any condemnation or other taking by eminent domain) enjoining, interfering, or preventing the Project from proceeding or Developer or PGCPs from performing its respective obligations under this Agreement;

(iv) performance of work in, under, adjacent to, or near any Site carried out by PGCPs, a PGCPs Person, or another Governmental Authority that materially disrupts or prevents Developer's performance of the Design-Build Work or the Services, as applicable;

(v) any reduction, suspension, interruption, or cessation in delivery of, or failure to provide and maintain, adequate and suitable supply of a Utility service to any Site, whether planned or unplanned;

(vi) implementation of or compliance with an affirmative obligation required by a Governmental Authority or PGCPs in or in connection with any traffic studies or other studies or reports required to be performed or delivered to Developer after the Proposal Submittal Date that was not reasonably foreseeable to Developer based on the information available as of the Proposal Submission Date;

(vii) the closure, due to an accident, construction, or otherwise, of a road necessary for direct access to a Site by order of a Governmental Authority having police power;

(viii) delay in the payment of any Insurance Receivable beyond thirty (30) days from the approval date of the related claim;

(ix) the existence of any encumbrance enforceable against or affecting the Sites or Schools other than a Permitted Encumbrance;

(x) an official or unofficial strike, lockout, work rule, job action, or other labor dispute by public sector employees or private sector employees (other than employees of Developer, Project Contractors, or Subcontractors) (a) which (i) is regional or national in nature and affects the PGCPS system, the construction, building maintenance, or facilities management industry generally, or (ii) takes place at a facility manufacturing materials or equipment for the Project and is not directed at the Project, and (b) which event lasts for more than thirty (30) days; and

(xi) any other event that, under a specific provision of this Agreement, constitutes or is deemed to constitute a Relief Event, including:

(1) the discovery of any historical, archeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity in accordance with Section 4.9.5 (Artifacts);

(2) if, in accordance with Section 5.3.3 (Actual Site Availability Dates), an Actual Site Availability Date deviates from the Expected Site Availability Date set forth in Section 5.3.1 (Expected Site Availability Dates);

(3) a delay in receipt of the final results of a security clearance check application from the relevant security clearance check authority in accordance with Exhibit O (Background Check Requirements);

(4) the release, presence, or remediation of any Unknown Land Conditions in accordance with Section 5.8 (Unknown Land Conditions);

(5) a delay directly caused by (a) certain PGCPS tests, observations, and inspections in accordance with Section 7.17.1 (PGCPS Tests, Observations, and Inspections), provided such efforts do not reveal any material failure or non-compliance by Developer, or (b) uncovering of certain Design-Build Work in accordance with Section 7.17.4 (Notice of Covering Design-Build Work);

(6) implementing a Change Order reflecting a Design-Build Change in accordance with Section 7.20 (Design-Build Changes Requested by PGCPS);

(7) the need to acquire Moveable FF&E in excess of the types and quantities set forth in Section 7.22.2 (Moveable FF&E);

(8) to the extent set forth in Section 2.4 of Exhibit W (Services Requirements), the failure of PGCPS to perform any of the PGCPS Retained Responsibilities in accordance with Good Industry Practice or any other standard expressly applicable to PGCPS under this Agreement; and

(9) to the extent set forth in Section 3.8 (School Use and Scheduling) of Exhibit W (Services Requirements), Developer accommodating Unscheduled Third Party and Community Use or Ad Hoc School Use upon less than forty-eight (48) hours' notice from PGCPS.

“Relief Payment” means the payment to be made by PGCPS in accordance with Section 14.11 (Relief Payment), which shall be calculated as set forth in Exhibit X-1 (Payment Calculations).

“Remedial Program” has the meaning set forth in Section 19.3 (Remedial Program).

“Removed Trees” has the meaning set forth in Section 2.11 (Reforestation).

“Reporting Error” has the meaning set forth in Section 11.3 (Reporting Errors) of Exhibit X-2 (Deductions).

“Reported Event Time” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Reporting Failure” has the meaning set forth in Section 11.2 (Reporting Failures) of Exhibit X-2 (Deductions).

“Required FF&E” means the Base FF&E and Moveable FF&E listed in the Educational Specifications.

“Required Design-Build Period Insurance” means the insurance specified in Section 1 of Exhibit CC (Required Insurance).

“Required Insurance” means the Required Design-Build Period Insurance and the Required Services Period Insurance.

“Required Services Period Insurance” means the insurance specified in Section 2 of Exhibit CC (Required Insurance).

“Required Response Time” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Required Subcontractors” means those entities listed in Exhibit BB (Required Subcontractors) and such other entities that PGCPS may notify Developer of in writing to perform the same services as those entities listed in Exhibit BB (Required Subcontractors).

“Respond” and **“Response”** have the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Restricted Action” means the exercise of, and delivery of any notice to Developer with respect to, any right to (a) cancel, terminate, step in, novate, expropriate, condemn, or take any other action that may result in PGCPS having a right to take any such action; (b) cancel, step in,

novate, or otherwise assume (whether directly or through a substitute entity) the benefit or burden of Developer's rights against, or obligations to, a Project Contractor, as the case may be, or any payment or performance bonds or guaranties delivered in connection therewith; or (c) make any claim or take any action or enforce any rights under or in connection with any collateral agreement or security agreement entered into by PGCPs, a Project Contractor, or Developer.

“Return Date” has the meaning set forth in Section 9.3 (Notice Requirements) of Exhibit X-2 (Deductions).

“RFP” has the meaning set forth in the Recitals.

“RFQ” has the meaning set forth in the Recitals.

“Routine Event” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Safety Condition” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Safety Plan” means Developer's plan to ensure the health and safety of PGCPs Persons, Developer Persons, and the general public affected by the Project during the Design-Build Period as set forth in Exhibit P (Safety Plan), as such plan may be amended with the written approval of PGCPs.

“Scheduled Maintenance” means planned and preventive Facilities Maintenance.

“Scheduled Maintenance Plan” has the meaning set forth in Section 2.2 (Scheduled Maintenance) of Appendix W-1 (Facilities Maintenance) to Exhibit W (Services Requirements).

“Scheduled School Occupancy Readiness Date” means, as applicable, (a) July 15, 2023 with respect to each Group A School; (b) December 30, 2023 with respect to each Group B School; and (c) July 15, 2024 with respect to each Group C School, as any such date may be extended as a result of a Relief Event in accordance with Section 16.3 (Schedule Relief Upon Occurrence of a Relief Event).

“Schematic Development Documents” has the meaning set forth in Section 7.3.1 (100% Schematic Design).

“School” or **“Schools”** means, individually or collectively, the buildings, related structures, Utility connections, landscaping, and other improvements to be constructed and maintained by Developer pursuant to this Agreement on the Land.

“School Availability Payment” has the meaning set forth in Exhibit X-1 (Payment Calculations).

“School Capital Charge” has the meaning set forth in Exhibit X-1 (Payment Calculations).

“Schools Condition Report” has the meaning set forth in Section 1.3(d) (Joint Technical Review) of Exhibit W (Services Requirements).

“School Occupancy Readiness” means, for a School, satisfaction of the relevant School Occupancy Readiness Conditions as evidenced by the issuance of a School Occupancy Readiness Certificate for such School.

“School Occupancy Readiness Certificate” means, for each School, the certificate delivered by the Independent Engineer in accordance with Section 4.2 of the Independent Engineer Agreement, substantially in the form of Appendix E to Exhibit J (Form of the Independent Engineer Agreement).

“School Occupancy Readiness Conditions” means, for each School, the conditions set forth in Section 10.2 (School Occupancy Readiness Conditions).

“School Occupancy Readiness Date” means:

(a) for a Group A School, the later of (i) July 15, 2023; or (ii) the date on which School Occupancy Readiness occurs for the School; provided, however, for any Group A School that has not achieved School Occupancy Readiness before August 14, 2023, the School Occupancy Readiness Date shall be deemed to be [(x) with respect to Kenmoor Middle School or Walker Mill Middle School, if School Occupancy Readiness occurs before December 30, 2023, December 30, 2023, and (y) in all other cases and for all other Group A Schools,¹³] the next July 15 following the date on which School Occupancy Readiness is achieved for the relevant School, unless such requirement is waived by PGCPs in its sole and absolute discretion;

(b) for a Group B School, the later of (i) December 30, 2023; or (ii) the date on which School Occupancy Readiness occurs for the School; provided, however, for any Group B School that has not achieved School Occupancy Readiness by December 30, 2023, the School Occupancy Readiness Date shall be deemed to be the next July 15 following the date on which School Occupancy Readiness is achieved for the relevant School, unless such requirement is waived by PGCPs in its sole and absolute discretion; and

(c) for a Group C School, the later of (i) July 15, 2024; or (ii) the date on which School Occupancy Readiness occurs for the School; provided, however, for any Group C School that has not achieved School Occupancy Readiness before August 14, 2024, the School Occupancy Readiness Date shall be deemed to be the next July 15 following the date on which School Occupancy Readiness is achieved for the relevant School, unless such requirement is waived by PGCPs in its sole and absolute discretion.

¹³ Note: bracketed text will only remain to the extent Kenmoor Middle School or Walker Mill Middle School are listed as Group A Schools in Developer’s Proposal.

provided, however, that PGCPs may, in its sole and absolute discretion, waive any of the requirements set forth above in order to permit early delivery and occupancy of a School at any time following School Occupancy Readiness for a School, in which case, PGCPs shall provide Developer at least thirty (30) days prior written notice of its intent to occupy a School for any PGCPs Activity (other than those activities permitted during the Pre-Occupancy Period), and the School Occupancy Readiness Date for such School shall be the date such occupancy occurs.

“School Occupancy Readiness Deficiency Report” means a report that may delivered by the Independent Engineer to indicate that any School Occupancy Readiness Conditions have not been satisfied for a School, as further described in Section 10.3.3 (Deficiencies) and the Independent Engineer Agreement.

“School Occupancy Readiness Notice” means a written notice, in the form attached as Appendix D to Exhibit J (Form of the Independent Engineer Agreement), provided by Developer to PGCPs and the Independent Engineer, requesting certification of School Occupancy Readiness with respect to a School.

“School Services Charge” has the meaning set forth in Exhibit X-1 (Payment Calculations).

“School Substantial Completion” has the meaning set forth in Section 8.1 (Conditions to Substantial Completion for the Schools).

“Seasonal Fine Tuning Reports” has the meaning set forth in Exhibit R (Commissioning Requirements).

“Senior Debt” means (a) all amounts, including interest, default interest, and capitalized interest, owing to the Senior Lenders under the Senior Financing Agreements, provided that default interest will not include any increased interest, fees, or penalty amounts payable by Developer for any reason other than failure by Developer to pay any amount when due; (b) Senior Debt Breakage Amounts payable by Developer (but not Senior Debt Breakage Amounts payable or credited to Developer); and (c) all other transaction fees, costs, and expenses for which Developer is responsible under the Senior Financing Agreements, including, without limitation, banking fees, premiums, or reimbursement obligations with respect to financial insurance policies and agent and trustee fees.

“Senior Debt Breakage Amounts” means any prepayment premiums or penalties, make-whole payments, or other prepayment amounts, including costs of early termination of any hedging arrangement, that Developer must pay, or that may be payable or credited to Developer, under any Senior Financing Agreement or otherwise as a result of the payment, redemption, acceleration, or reduction of all or any portion of the principal amount of Senior Debt prior to its scheduled payment date, excluding, however, any such amounts included in the principal amount of any Refinancing.

“Senior Financing Agreements” means the Financing Documents entered into with respect to or in connection with the Senior Debt or, in the event of any Refinancing, any agreements replacing such Financing Documents and such other agreements entered into in connection with such Refinancing.

“Senior Lenders” means the Lenders to whom Senior Debt is owed.

“Services” means all operation and maintenance obligations of Developer, including anything required to be furnished by Developer, pursuant to this Agreement during the Services Period.

“Services Agreement” means the agreement between Developer and Services Provider, a certified copy of which has been delivered by Developer to PGCPs, as amended, supplemented, or replaced from time to time.

“Services Change” means a change, including an addition, deletion, alteration, substitution or modification, to Developer’s Services obligations under this Agreement, made pursuant to Section 15.6 (Services Changes).

“Services Change Certificate” means a certificate issued by PGCPs describing and authorizing a Services Change, the value or method of valuation of the Services Change, and the adjustment, if any, to the Availability Payment associated with the Services Change.

“Services Change Notice” has the meaning set forth in Section 15.6.1 (Services Changes).

“Services Change Report” has the meaning set forth in Section 15.6.2 (Services Change Report).

“Services Charge” means the Services Charge for all Schools, which is equal to [\$_____],¹⁴ (Index-Linked) as of Financial Close.

“Services Period” means in respect of any School, the period from the School Occupancy Readiness Date for that School to the Termination Date.

“Services Period MBE and CBB Participation” has the meaning set forth in Section 4.7.2 (MBE and CBB Subcontracting Plan).

“Services Period Representative” means the representative appointed by Developer in accordance with Section 4.5 (Developer Representatives) and Section 1.1 (Developer Services Period Representative(s)) of Exhibit W (Services Requirements).

“Services Period Reserve Account” has the meaning set forth in Section 11.6.1 (Services Period Reserve Amount).

¹⁴ To be inserted at Financial Close.

“Services Provider” means [_____]¹⁵ or any assignee or replacement permitted under this Agreement.

“Services Quality Management Plan” means the quality plan established by Developer, based on the QMS and updated annually, to measure and monitor delivery of the Services and other obligations set forth in Exhibit W (Services Requirements).

“Services Requirements” mean those requirements imposed on Developer pursuant to this Agreement during the Services Period, including those set forth in Exhibit W (Services Requirements).

“Site” or **“Sites”** means, individually or collectively, as applicable, (a) the Land, (b) all Improvements on the Land as of the Commercial Close Date, (c) any and all Improvements from time to time constructed by Developer on the Land, and (d) all appurtenances, rights, easements, rights-of-way, tenements, and hereditaments now or hereafter incident to the Land.

“Southern Area K-8 School” means the School to be constructed on the Site described in Exhibit E-1 (Legal Description of Southern Area K-8 School Land).

“Staging Plan” means the plan established by Developer to identify the storage of construction equipment, supplies, and other staging issues for each Site set forth in Exhibit S (Staging Plan), as such plan may be amended with the written approval of PGCPS.

“Start-Up Plan” has the meaning set forth in Section 4.1 (Start-Up Plan) of Exhibit W (Services Requirements).

“State” means the state of Maryland.

“Step-In Date” means five (5) Business Days after delivery of a Step-In Notice.

“Step-In Notice” has the meaning set forth in Section 12.8 (Collateral Agent Step-In).

“Step-In Period” means the period from the Step-In Date up to and including the earliest of: (a) the last day of the Cure Period; (b) the Step-Out Date; (c) the date of any substitution under Section 12.10 (Substitution of Developer); (d) the date of any termination of this Agreement by PGCPS; and (e) the Expiration Date.

“Step-Out Date” means the date that is twenty (20) Business Days after the date of a Step-Out Notice.

“Step-Out Notice” has the meaning set forth in Section 12.9 (Collateral Agent Step-Out).

“Subcontract” means any contract entered into by a Project Contractor (except those contracts entered into between each Project Contractor and Developer), or a subcontractor of a

¹⁵ To be inserted from Developer’s Proposal.

Project Contractor of any tier, with one or more Persons in connection with the carrying out of Developer's obligations under this Agreement, as amended or replaced from time to time.

"Subcontractor" means any Person (other than a Project Contractor) that enters into a Subcontract.

"Suitable Substitute Developer" means a Person that: (a) has the legal capacity, power, and authority to become a party to and perform the obligations of Developer under this Agreement; (b) employs Persons having the appropriate qualifications, experience, and technical competence (whether directly or through subcontracts) and has resources available (including applicable committed financial resources) sufficient to enable such Person to perform the obligations of Developer under this Agreement; (c) is not a Prohibited Person; and (d) is approved in writing by PGCPs.

"Surveyed Element" has the meaning set forth in Section 5.10 (PGCPs Satisfaction System) of Exhibit W (Services Requirements).

"Tax" means, from time to time, all taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues, and other charges of any nature imposed by any Governmental Authority, together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues, and other charges.

"Technical Requirements" means, collectively, the standards, terms, conditions, methods, techniques, requirements, and practices imposed, required by, or set forth in the Educational Specifications (as may be modified in accordance with Section 4.14 (Modifications to Educational Specifications)), the Base FF&E, the Moveable FF&E, the Master Specifications, the Services Requirements, and, upon approval by PGCPs, the Final Construction Documents.

"Temporary Alternative Accommodation Notice" has the meaning set forth in Section 9.1 (Developer Option to Provide) of Exhibit X-2 (Deductions).

"Temporary Availability Condition" has the meaning set forth in Section 8.2 (Rectification Plan Proposal) of Exhibit X-2 (Deductions).

"Temporary Repair" has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

"Temporary Repair Deadline" has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

"Term" has the meaning set forth in Section 2.1 (Term).

"Termination by Court Ruling" means the issuance of a final, non-appealable court order by a court of competent jurisdiction: (a) to the effect that this Agreement is void, unenforceable, or impossible to perform in its entirety, except where void, unenforceable, or impossible to perform

by reason of a Developer Fault; or (b) upholding the binding effect on Developer or PGCPS of a Change in Law Event that causes impossibility of performance of a fundamental obligation of Developer or PGCPS under this Agreement.

“**Termination Compensation**” means the amount, if any, to be paid by PGCPS in the event this Agreement is terminated by Developer or by PGCPS after the Effective Date and prior to the expiration of the Term, as calculated in accordance with Exhibit Z (Calculation of Termination Compensation).

“**Termination Compensation Claim**” has the meaning set forth in Section 19.11.1 (Termination Compensation Claim).

“**Termination Compensation Due Date**” has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

“**Termination Date**” means the earlier of the Expiration Date or the date of termination of this Agreement provided in Article 19 (Events of Default, Remedies, Termination, and Termination Compensation).

“**Third Party and Community Use**” means any use of a School, other than for Educational Activities or Educational Support Activities, pursuant to a lease or license or access agreement between PGCPS and a third party, or any arrangements for the non-commercial use of a School for community-based programs, including, without limitation, community sports, arts and crafts, meetings, club activities, church services, election activities, and any other community based function with the approval of PGCPS or required by Applicable Law.

“**Title Reports**” means the information collectively set forth in Exhibit A-3 (Title Report for Adelphi Area Middle School Land), Exhibit B-3 (Title Report for Drew-Freeman Middle School Land), Exhibit C-3 (Title Report for Hyattsville Middle School Land), Exhibit D-3 (Title Report for Kenmoor Middle School Land), Exhibit E-3 (Title Report for Southern Area K-8 School Land), and Exhibit F-3 (Title Report for Walker Mill Middle School Land).

“**Total Contract Value**” has the meaning set forth in Section 4.7.1 (Minimum Quantitative Requirement).

“**Total Unavailability**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Transfer**” means to sell, convey, assign, encumber, transfer, or otherwise dispose of.

“**Transition Period**” means the period of time between the Commercial Close Date and the Effective Date.

“**Transition Period Schedule**” has the meaning set forth in Section 6.2 (Transition Period Schedule).

“Trees Deficit” has the meaning set forth in Section 2.11 (Reforestation).

“Unavailability Deduction” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Unavailability Event” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Unavailable” and **“Unavailability”** have the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Unit Holders” means the holder or owner of Units.

“Units” means units or other equity interests of any class in the capital of Developer.

“Unknown Land Condition” means a condition in or on the Land that was not disclosed in or reasonably inferable from the PGCPIS Information that is required to be addressed by Applicable Law or in order to perform the Design-Build Work which impacts the construction of a School on the Land as established in accordance with Section 5.8 (Unknown Land Conditions), including for the avoidance of doubt and without limiting the scope of the definition, the following items only to the extent that the conditions or characteristics listed are not disclosed in or reasonably inferable from the PGCPIS Information:

(a) surface or subsurface structures, materials, properties, conditions, or characteristics having historical, cultural, archaeological, religious, or similar significance;

(b) any wetlands or habitat of an endangered, threatened, or protected species as provided in Applicable Law;

(c) the presence of Hazardous Materials (other than those introduced to any Site after the Effective Date by, caused by, or attributable to any acts or omissions of any Developer Person) in, on, or under any Site (including presence in air, surface water, groundwater, soils, or subsurface strata);

(d) releases and contamination from wells or underground storage tanks for the storage of Hazardous Materials present anywhere in, on, or under any Site prior to the Effective Date; or

(e) Land and soil conditions which differ materially from the information provided in the PGCPIS Information.

“Unknown Land Condition Notice” means the notice described in Section 5.8.1 (Unknown Land Condition Notice).

“Unknown Land Condition Remedial Work” means the notice described in Section 5.8.4 (Maximum Unknown Land Condition Cost).

“Unused School” has the meaning set forth in Section 15.8 (Unused School).

“Use Condition” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Use Impediment” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“Utilities” or “Utility” means any and all utility services and installations whatsoever (including gas, water, sewer and sanitary waste, electricity, including back-up and stand-by emergency power, stormwater, telephone, telecommunications, and internet), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

“Utility Company” means any company designated by PGCPs to provide Utilities to the Schools or the Sites.

“Vandalism” means any damage to, or destruction (including graffiti) of, the Schools or any part thereof (including all mechanical equipment, structures, improvements, grounds, and all other property constituting the Project), which requires repair, and which is caused by malicious, intentional, or willful conduct where such conduct was not reasonably contemplated by Reasonable Wear and Tear or the Intended Uses.

“Walker Mill Middle School” means the School to be constructed on the Site described in Exhibit F-1 (Legal Description of Walker Mill Middle School Land).

“Withdrawal Notice” has the meaning set forth in Section 12.7.5 (Withdrawal Notice).

“Work Group” has the meaning set forth in the Recitals.

ARTICLE 2 GENERAL PROJECT TERMS

2.1 Term. The term of this Agreement shall commence on the Commercial Close Date and continue until the earlier of (i) 11:59 p.m. Eastern Time on the Expiration Date, or (ii) the effective time of a termination made in accordance with this Agreement (the “Term”).

2.2 No Developer Ownership. In no event shall Developer have any ownership interest in the Sites, including the Schools.

2.3 Assumption of Risk. Except to the extent expressly allocated to PGCPs or otherwise provided for under this Agreement, all risks, costs, and expenses in relation to the performance by Developer of Developer’s obligations under this Agreement are allocated to, and accepted by, Developer as its entire and exclusive responsibility.

2.4 Other Opportunities. Except as expressly provided in this Agreement, or as may be specifically agreed in writing between PGCPS and Developer during the Term, PGCPS reserves the right to all commercial and other opportunities for, or related to, the Project, the Schools, and the Sites.

2.5 General Duty of Developer to Mitigate. In all cases where Developer is entitled to receive from PGCPS any compensation in addition to the payments described in Section 3.1 (Payments), costs, damages, or extensions of time, Developer will use commercially reasonable efforts to mitigate such amount required to be paid by PGCPS to Developer under this Agreement, or the length of the extension of time. Upon request from PGCPS, Developer will promptly submit a detailed description, supported by all such documentation as PGCPS may reasonably require, of the measures and steps taken by Developer to mitigate and meet its obligations under this Section 2.5 (General Duty of Developer to Mitigate).

2.6 General Duty of PGCPS to Mitigate. In all cases where PGCPS is entitled to receive from Developer any compensation, costs, or damages, but not in any other case, PGCPS will use all reasonable efforts to mitigate such amount required to be paid by Developer to PGCPS under this Agreement, provided that such obligation will not require PGCPS to: (a) take any action which is contrary to the public interest, as determined by PGCPS in its discretion; or (b) alter the amount of any Deductions it is entitled to make in accordance with this Agreement. PGCPS will have no obligation to mitigate, implied or otherwise, except as set forth in this Section 2.6 (General Duty of PGCPS to Mitigate) or as otherwise expressly set forth in this Agreement. Upon request from Developer, PGCPS will promptly submit a detailed description, supported by all such documentation as Developer may reasonably require, of the measures and steps taken by PGCPS to mitigate and meet its obligations under this Section 2.6 (General Duty of PGCPS to Mitigate).

2.7 Naming. PGCPS will have the exclusive right to name the Schools and any other parts of the Sites and retains all rights, trademarks, naming, and branding regarding the Schools, the Sites, and any parts thereof.

2.8 Signs. Developer acknowledges that PGCPS reserves and retains all rights to signage in relation to the Sites, including the Schools. Developer will not erect or maintain any signs on the Sites or in the Schools without the written consent of PGCPS, not to be unreasonably withheld or delayed and which shall comply with Applicable Law. Developer acknowledges that it is unlikely that PGCPS will consent to any signage containing the name of Developer or any Project Contractor or Subcontractor after any School Occupancy Readiness Date.

2.9 Cooperation. PGCPS agrees, to the extent consistent with Applicable Law, at Developer's request to: (a) provide reasonable assistance to Developer to carry out the Project and to make available to Developer the benefits of Developer rights provided hereunder; (b) provide reasonable cooperation in seeking the assistance of the appropriate Governmental Authorities in carrying out the operation and maintenance of the Schools when completed; (c) provide reasonable assistance to Developer in obtaining any relevant consents required to be obtained by Developer; and (d) if any claim is asserted against Developer, or Developer is made a party in any action or proceeding, in connection with the Project, provide reasonable assistance, as requested by

Developer, within the discretion of PGCPS; provided that Developer shall provide PGCPS with (i) written notice of the assistance requested promptly upon receipt of any applicable compliant, summons, or court order, and (ii) all relevant facts and information which is reasonably necessary with respect to such PGCPS cooperation. Unless otherwise expressly agreed to in this Agreement, nothing herein shall require PGCPS to provide any funding for the Project or to incur any obligations or liabilities or to take any action, give any consent, or enter into any document inconsistent with the provisions of this Agreement or which would modify the consideration or rights provided to PGCPS under this Agreement.

2.10 Public Communication and Consultation. PGCPS and Developer agree to cooperate with each other on all aspects of public communication and consultation with respect to the Project.

2.10.1 Press Releases. Developer shall use good faith efforts to coordinate with PGCPS on all press releases issued by Developer relating to the Project starting from the Commercial Close Date; provided, however, any press releases prepared by Developer that reference the duties, obligations, or commitments of PGCPS with respect to the Project shall be subject to PGCPS' prior written approval in its sole and absolute discretion, which PGCPS written approval shall be obtained prior to publication of the press release. PGCPS shall use good faith efforts to coordinate with Developer on all press releases issued by PGCPS relating to the Project starting from the Commercial Close Date.

2.10.2 Notice to PGCPS. Developer shall coordinate with, invite, and provide notice to PGCPS of all significant Project public events (such as community meetings, stakeholder meetings, presentations to parent-teacher associations, or other meetings with School officials or the public) organized by Developer. For any event involving the community or public officials (such as the County Executive and her/his staff, County Council members and their staff, Board members and their staff, members of the State legislature and their staff, members of the United States Congress and their staff, and executives of other governmental or inter-governmental organizations), Developer shall use commercially reasonable efforts to timely notify PGCPS and schedule such meetings such that PGCPS representatives may attend. Any event organized by Developer that is required to be coordinated with PGCPS pursuant to this Section 2.10.2 (Notice to PGCPS) that are to be attended by public officials will be coordinated using the protocols appropriate to the office of the public official as reasonably directed by PGCPS.

2.10.3 Community Engagement and Outreach Plan. Developer shall comply with Exhibit N (Community Engagement and Outreach Plan) with respect to public involvement, education, and outreach on the Project (including input from the community that is impacted by the Project as the Schools are designed, developed, constructed, and operated). Developer shall document all public meetings, including a narrative description of the events of each meeting, the concerns raised by members of the public, and Developer's responses to such concerns. Such documentation shall be submitted by Developer to PGCPS promptly following each meeting. Developer shall make reasonable modifications, with PGCPS' approval, to the Project to accommodate feedback from the community. Developer shall be in compliance with the Maryland General Provisions Code, Title 3, Subtitle 3 of the Open Meetings Act.

2.11 Reforestation. Together with or prior to submission of the 65% Design Development Documents in accordance with Section 7.3.2 (65% Design Development), Developer shall submit to PGCPs a plan (the “**Reforestation Plan**”) which identifies the number of trees Developer plans to remove from each Site in order to perform the Design-Build Work (collectively, the “**Removed Trees**”) and the number of new trees Developer plans to plant on each Site (collectively, the “**New Trees**”). Developer shall use its best efforts so that Developer plants on each Site an equal number of New Trees of a similar species as the Removed Trees on each Site. To the extent Developer is unable to do so, Developer shall use its best efforts so that the total number of New Trees planted on all Sites equals the total number of Removed Trees from all Sites. To the extent, despite Developer’s best efforts, Developer is unable to plant an equal number of New Trees as Removed Trees on all Sites (the “**Trees Deficit**”), the Reforestation Plan shall identify (a) the total number of Removed Trees from each Site, (b) the total number of New Trees at each Site, and (c) the Trees Deficit. If PGCPs agrees, acting reasonably, that Developer cannot reasonably plant enough New Trees on any of the Sites to satisfy any such Trees Deficit, Developer shall be deemed to have satisfied its obligations with respect to the Trees Deficit.

ARTICLE 3 PGCPs’ GENERAL OBLIGATIONS

3.1 Payments. Subject to and in accordance with the provisions of this Agreement, including Developer meeting the requirements for payment set forth in this Agreement, PGCPs will pay Developer the amounts expressly provided for in this Agreement.

3.2 Provision of Sites. PGCPs will make the Sites available to Developer for the Project in accordance with this Agreement.

3.3 PGCPs Ownership of Land. PGCPs owns the Land in fee simple, subject to the easements and other exceptions to title indicated or referred to in the Title Reports.

3.4 School Decisions. PGCPs retains sole decision-making authority with respect to the operation and use of the Schools, including authorizing any uses within the Schools, consistent with the terms of this Agreement.

3.5 PGCPs Retained Responsibilities. PGCPs shall perform the PGCPs Retained Responsibilities in accordance with the standards set forth in Exhibit W (Services Requirements).

ARTICLE 4 DEVELOPER’S GENERAL OBLIGATIONS

4.1 General Project Obligations. Subject to and in accordance with the provisions of this Agreement, Developer will perform the Project through the provision of the Design-Build Work and the Services.

4.2 No Other Business. Developer will not engage in any business or activity other than the business or activities conducted for the purpose of the Project.

4.3 Project Contractors. The Project Contractors can only be replaced by Developer with the prior written approval of PGCPs. The Project Contracts shall include clauses consistent with the requirements of this Agreement.

4.4 Key Personnel. Attached as Exhibit K-2 (Key Personnel) is a list of Persons (collectively, the “Key Personnel”) that Developer will utilize in managing the Project and performing the Design-Build Work and the Services. With respect to each Key Personnel, Developer will use commercially reasonable efforts to retain the Key Personnel to perform the duties for the period described in Exhibit K-2 (Key Personnel). If for any reason any Key Personnel resigns or is otherwise unavailable to perform the duties described in Exhibit K-2 (Key Personnel), then Developer will use commercially reasonable efforts to retain a replacement with similar expertise and experience to the unavailable Key Personnel. Developer shall submit information with respect to any such replacement(s) to PGCPs at least ten (10) Business Days prior to such replacement(s) assuming responsibility on the Project; provided, however, that within five (5) Business Days of receiving such notice, PGCPs, acting reasonably, will have the opportunity to object to such replacement(s), and, in such event, Developer shall propose another replacement(s) for consideration by PGCPs. Failure of PGCPs to object to any replacement proposed by Developer within ten (10) Business Days from receipt of Developer’s written request shall be deemed to represent no objection to the proposed replacement. No later than twelve (12) months prior to the earliest School Occupancy Readiness Date, Developer will notify PGCPs of the name and qualifications of the person designated by Developer to be the “Lead Executive” or equivalent as of the start of the Services Period, and such person will from the date of such notice also be a Key Personnel for the purposes of this Section 4.4 (Key Personnel).

4.5 Developer Representatives. Developer shall appoint a Design-Build Representative and a Services Period Representative to have primary responsibility for communicating with PGCPs regarding Design-Build Work and Services issues, respectively. Developer’s Design-Build Representative and Services Period Representative may be the same person, and Developer may change its Design-Build Representative or Services Period Representative through the provision of written notice to PGCPs. Exhibit W (Services Requirements) details further responsibilities of the Services Period Representative.

4.6 Use of Subcontractors. PGCPs acknowledges that Developer may carry out the Design-Build Work and Services by contracting such obligations to the Project Contractors who in turn may contract all or part of their obligations under any agreement with Developer to one or more Subcontractors. In respect of the Project, Developer will not contract with, or allow any of its Project Contractors or any Subcontractors to contract with, any Person that is a Prohibited Person. Notwithstanding the use of Project Contractors or Subcontractors, Developer will not be relieved or excused from any of its obligations or liabilities under this Agreement; will remain principally liable to PGCPs for the due observance and performance of all the covenants, obligations, agreements, and conditions of this Agreement that are to be observed and performed by Developer; and as between itself and PGCPs will be wholly responsible for the acts, omissions, breaches, defaults, non-compliance, negligence, and willful misconduct of its subcontractors, including Project Contractors, Subcontractors, and any other Developer Persons, as if they were the acts, defaults, or negligence of Developer. Accordingly, all references in this Agreement to

any act, omission, breach, default, non-compliance, negligence, or willful misconduct of Developer will be construed to include any such act, omission, breach, default, non-compliance, negligence, or willful misconduct committed by a Developer Person, including any Project Contractor or Subcontractor.

4.7 Use of Minority Business Enterprises and County Based Businesses.

4.7.1 Minimum Quantitative Requirement. Developer shall be required to cause at least thirty percent (30%) of the Total Contract Value in connection with the Project to be incurred pursuant to contracts with MBEs, with a minimum of twenty percent (20%) of those MBE contracts being directed towards CBBs. For purposes of this MBE minimum quantitative requirement, the “**Total Contract Value**” shall refer to Developer’s total design and construction expenditures during the Design-Build Period, as well as Developer’s total Services expenditures during the Services Period, excluding financing, financing costs, interest on financing, and related fees.

4.7.2 MBE and CBB Subcontracting Plan. Developer’s MBE and CBB Subcontracting Plan evidencing how Developer intends to meet both the MBE and CBB subcontracting requirements of Section 4.7.1 (Minimum Quantitative Requirement) is attached hereto as Exhibit L (MBE and CBB Subcontracting Plan). The MBE and CBB Subcontracting Plan identifies the percentage of total design and construction expenditures (excluding financing, financing costs, interest on financing, and related fees) that Developer will pay to MBEs and CBBs to perform Commercially Useful Functions during the Design-Build Period (which percentage shall be, the “**Design-Build Period MBE and CBB Participation**”) and percentage of total Services expenditures (excluding financing, financing costs, interest on financing, and related fees) Developer will pay to MBEs and CBBs to perform Commercially Useful Functions during the Services Period (which percentage shall be, the “**Services Period MBE and CBB Participation**”). Developer shall implement and comply with such MBE and CBB Subcontracting Plan.

4.7.3 Credit for Commercially Useful Functions Only. Developer shall only be credited towards the MBE minimum quantitative requirement stated in Section 4.7.1 (Minimum Quantitative Requirement) for funds disbursed to MBE companies that perform a Commercially Useful Function.

4.7.4 Failure to Achieve Design-Build Period MBE and CBB Participation. No later than ten (10) Business Days prior to the Project Readiness Date, Developer shall provide PGCPs with a written assessment identifying (a) whether Developer will meet the Design-Build Period MBE and CBB Participation (for both the MBE and CBB components) prior to the completion of the Design-Build Period, (b) the amount of design and construction expenditures (excluding financing, financing costs, interest on financing, and related fees) during the Design-Build Period to date, (c) a reasonable estimate of expenditures to be made during the remainder of the Design-Build Period by Developer, and (d) the amount of such funds actually or reasonably expected to be disbursed to MBE and CBB companies to perform Commercially Useful Functions through the remainder of the Design-Build Period. To the extent Developer’s good faith

assessment projects that Developer will fail to meet the Design-Build Period MBE and CBB Participation (for either the MBE or CBB component) prior to the completion of the Design-Build Period, PGCPs shall deduct from the final Milestone Payment as a Liquidated Damages Right an amount equal to twenty-five percent (25%) of any deficit (a) between the amount of design and construction expenditures (excluding financing, financing costs, interest on financing, and related fees) that would have been disbursed to MBEs had Developer met the MBE component of the Design-Build Period MBE and CBB Participation and the amount of such funds Developer actually and reasonably expects to be disbursed to MBEs to perform Commercially Useful Functions prior to the completion of the Design-Build Period, and (b) between the amount of design and construction expenditures (excluding financing, financing costs, interest on financing, and related fees) that would have been disbursed to CBBs had Developer met the CBB component of the Design-Build Period MBE and CBB Participation and the amount of such funds Developer actually and reasonably expects to be disbursed to CBBs to perform Commercially Useful Functions prior to the completion of the Design-Build Period. To the extent such deficit exceeds the amount of the final Milestone Payment, any such outstanding amounts shall be applied as an Extraordinary Item credit for the benefit of PGCPs to the first Availability Payment following the Project Readiness Date (subject to Section 14.4.3.1 (Limit on Monthly Services Charge Adjustments)).

4.7.5 MBE and CBB Participation Failures at the Expiration Date. If Developer fails to meet either the minimum quantitative requirement set forth in Section 4.7.1 (Minimum Quantitative Requirement) or the Services Period MBE and CBB Participation (for both the MBE and CBB component) by the Expiration Date, PGCPs shall be entitled, as a Liquidated Damages Right, to be included on the final Quarterly Net Adjustments Report, to payment from Developer of an amount equal to:

(a) if applicable, five percent (5%) of any deficit (a) between (i) the amount of the Total Contract Value that would have been disbursed to MBEs above the minimum quantitative requirement set forth in Section 4.7.1 (Minimum Quantitative Requirement) had Developer met the MBE component of the Design-Build Period MBE and CBB Participation and the Services Period MBE and CBB Participation, and (ii) the amount of the Total Contract Value Developer actually disbursed to MBEs to perform Commercially Useful Functions during the Term, and (b) between (i) the amount of the Total Contract Value that would have been disbursed to CBBs above the minimum quantitative requirement set forth in Section 4.7.1 (Minimum Quantitative Requirement) had Developer met the CBB component of the Design-Build Period MBE and CBB Participation and the Services Period MBE and CBB Participation, and (ii) the amount of such funds Developer actually disbursed to CBBs to perform Commercially Useful Functions during the Term; plus

(b) if applicable, twenty-five percent (25%) of any deficit (a) between (i) the amount of the Total Contract Value that would have been disbursed to MBEs had Developer met the minimum quantitative requirement set forth in Section 4.7.1 (Minimum Quantitative Requirement) and the amount of the Total Contract Value Developer actually disbursed to MBEs to perform Commercially Useful Functions during the Term, and (b) between (i) the amount of the Total Contract Value that would have been disbursed to CBBs had Developer met the minimum

quantitative requirement set forth in Section 4.7.1 (Minimum Quantitative Requirement), and (ii) the amount of such funds Developer actually disbursed to CBBs to perform Commercially Useful Functions during the Term; provided, however,

(c) Developer shall be entitled to a credit against the amount of the deficit calculated under this Section 4.7.5 (MBE and CBB Participation Failures at the Expiration Date) equal to any Liquidated Damages Right paid by Developer under Section 4.7.4 (Failure to Achieve Design-Build Period MBE and CBB Participation).

4.8 Compliance with Applicable Law. Developer shall perform the Design-Build Work and Services in accordance with Applicable Law and shall cause all Developer Persons to comply with Applicable Law.

4.9 Compliance with Environmental Law. Developer hereby covenants that, at Developer's sole cost and expense, Developer shall comply with all provisions of Environmental Law applicable to the Project and all uses, improvements, and appurtenances of, at, and to the Sites, and shall perform all investigations, removal, disposal, remedial actions, cleanup and abatement, corrective action, or other remediation that may be or is required pursuant to any applicable Environmental Law, and no PGCPs Indemnitee shall have any responsibility or liability with respect thereto except as expressly set forth in this Agreement.

4.9.1 Hazardous Materials.

4.9.1.1 PGCPs Hazardous Materials. The Parties acknowledge and agree that Developer is not, prior to the Effective Date, the generator, operator, arranger, or transporter of any Hazardous Substances present in, on, or under the Sites that existed at the Sites prior to the Effective Date (irrespective of when such Hazardous Substances are discovered and whether they are Unknown Land Conditions) (the "**PGCPs Hazardous Materials**") and shall not be identified as such on any waste manifests and documentation required under Applicable Law except to the extent that Developer is a cogenerator.

4.9.1.2 Developer Responsibility for Certain PGCPs Hazardous Materials. To the extent required by Environmental Law, Developer is responsible for the proper disposal of any PGCPs Hazardous Materials that are (i) disclosed in the PGCPs Information, or (ii) within the improvements existing on the Land as of the Effective Date that are part of the Demolition Work (collectively, the "**Assigned PGCPs Hazardous Materials**"). Developer assumes responsibility for the proper disposal of any Assigned PGCPs Hazardous Materials. Developer will have exclusive decision-making authority with regard to the selection of the destination facility to which the Assigned PGCPs Hazardous Materials will be transported. Developer and PGCPs shall jointly execute any disposal manifests associated with the removal of the Assigned PGCPs Hazardous Materials from the Sites.

4.9.1.3 Unknown PGCPs Hazardous Materials. Except for the Assigned PGCPs Hazardous Materials, any PGCPs Hazardous Materials that Developer, by reason of performing its responsibilities with respect to the Design-Build Work or the Services,

must address under Environmental Law shall be treated as Unknown Land Conditions and responsibility for addressing the unknown PGCPS Hazardous Materials shall be determined in accordance with Section 5.8 (Unknown Land Conditions).

4.9.1.4 Developer Hazardous Materials. Developer will be the generator, operator, arranger, and transporter of any Hazardous Materials brought to the Sites by any Developer Person (the “**Developer Hazardous Materials**”) and shall be identified as such on all waste manifests and documentation required under Applicable Law. In the event PGCPS is nonetheless deemed to be a generator, operator, arranger, or transporter of any Developer Hazardous Materials by any Governmental Authority having jurisdiction, Developer shall pay PGCPS as an Extraordinary Item an amount equal to all reasonable expenses incurred by PGCPS as a result thereof.

4.9.2 Developer Indemnification. Without limiting the generality of Section 21.2 (Developer’s Obligation to Indemnify), Developer hereby indemnifies and holds harmless each PGCPS Indemnitee from and against any and all Environmental Damages created, caused, or released by any Developer Person; provided, however, that Developer shall not be required to indemnify any PGCPS Indemnitee to the extent that such Environmental Damage was caused by a PGCPS Fault or a PGCPS Default. Without limiting the foregoing, if the presence or release of any Hazardous Materials on or from a Site caused or permitted by any Developer Person results in any contamination of a Site or Environmental Damage, Developer shall promptly take all actions at its sole cost and expense as are necessary to return the Site to the condition existing prior to the introduction of such Hazardous Material.

4.9.3 Notices of Violation. Developer shall provide PGCPS and PGCPS shall provide Developer with copies of any written notices of violations of Environmental Law that Developer or PGCPS, as applicable, has received or is aware of relating to any potential environmental liability with respect to the Land, the Sites, or the Project, promptly after the applicable Party receives or becomes aware of such notice or allegation.

4.9.4 Non-Routine Correspondence. Developer shall provide PGCPS and PGCPS shall provide Developer with copies of all non-routine correspondence with Governmental Authorities related to enforcement actions or notices of violations affecting any potential environmental liability that Developer or PGCPS, as applicable, has received or is aware of relating to the Project promptly after the applicable Party receives or becomes aware of such non-routine correspondence.

4.9.5 Artifacts. Developer shall not cause or permit to be removed or disturbed any historical, archeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity in violation of Applicable Law. In the event such items are discovered, Developer shall immediately notify PGCPS and protect the site and the material from further disturbance until PGCPS gives clearance to proceed, and Developer may notify PGCPS of a Relief Event in accordance with Article 16 (Relief Events) to the extent such actions will materially interfere with or delay the Design-Build Work or the Services.

4.10 Compliance with Plans. Developer shall comply with all Plans and shall submit annual updates to each Plan (or a certification that Developer reviewed the Plan and no updates are required) on or before each yearly anniversary of the Effective Date, or such earlier time period as may be set forth in the Technical Requirements. Any changes to the Plans need to be approved in writing by PGCPS, which such approval shall not be unreasonably withheld.

4.11 Compliance with PGCPS Policies. Developer shall comply with any reasonable policies issued by PGCPS that are applicable to all visitors or contractors entering PGCPS property for which PGCPS notifies Developer of in writing. As of the Commercial Close Date, PGCPS has notified Developer of, and Developer has agreed to require all Developer Persons to comply with, the following policies: AP 0500 School Visitor Access; 4218 Dating and Sexual Relationships Among Students and Employees, Independent Contractors and Volunteers; 4219 Inappropriate Interactions Among Students and Employees, Independent Contractors and Volunteers; and 4221 Employee and Adult Use of Student Restrooms, Locker Rooms and Designated Changing Areas.

4.12 Community Investment Program. Developer shall implement the Community Investment Program described in Exhibit M (Community Investment Program).

4.13 Behavior on Sites. Developer shall at all times maintain, and cause all Developer Persons to maintain, courteous business-like relations with all PGCPS Persons. PGCPS may require, in writing, that Developer remove from a Site any Developer Person that is an individual and that PGCPS deems to be engaged in unlawful, unruly, offensive, or otherwise objectionable behavior.

4.14 Modifications to Educational Specifications. So long as all required educational program areas and functional capabilities identified in the Educational Specifications are provided within a School, the size of a School or individual area(s) within a School identified in the Educational Specifications may be reduced at Developer's election by up to ten percent (10%). Prior to implementing any reduction authorized by this Section 4.14 (Modifications to Educational Specifications), Developer shall submit to PGCPS a report detailing any planned modification(s).

4.15 Prevailing Wages. In accordance with PGCPS policy, wages paid on this Project will be subject to the prevailing wage rates issued by the State of Maryland, Department of Labor, Licensing and Regulation pursuant to the authority of the Commissioner of Labor and Industry given under State Finance and Procurement Article, Section 17-209, Annotated Code of Maryland. The wage determination for this Project is included as Exhibit AA (Wage Determination). State Finance and Procurement Article, Section 17-201 through 17-226 inclusive shall apply.

4.16 Required Subcontractors. For the services listed in Exhibit BB (Required Subcontractors), Developer must subcontract with the Required Subcontractors to perform the services listed therein.

4.17 Amendments to Project Contracts. Developer shall promptly provide copies of any amendments to the Project Contracts to PGCPS.

**ARTICLE 5
SITES**

5.1 Schools. In accordance with the terms and conditions set forth in this Agreement, Developer will be responsible for performing the Design-Build Work and Services at the following Schools, which collectively total [_____] square feet¹⁶:

(a) Adelphi Area Middle School, with an as-built enrollment capacity of 1,200 middle school students and [_____] square feet¹⁷;

(b) Drew-Freeman Middle School, with an as-built enrollment capacity of 1,200 middle school students and [_____] square feet¹⁸;

(c) Hyattsville Middle School, with an as-built enrollment capacity of 1,200 middle school students and [_____] square feet¹⁹;

(d) Kenmoor Middle School, with an as-built enrollment capacity of 1,200 middle school students and [_____] square feet²⁰;

(e) Southern Area K-8 School, with an as-built enrollment capacity of 800 elementary school students and 1,200 middle school students and [_____] square feet²¹; and

(f) Walker Mill Middle School, with an as-built enrollment capacity of 1,200 middle school students and [_____] square feet²².

5.2 Familiarity with the Sites. Developer acknowledges that Developer is generally familiar with surface conditions, normal and usual soil conditions, roads, Utilities, topographical conditions, and air and water quality conditions in the area in which the Sites are located, including access, availability, disposal, handling, and storage of materials and equipment; and availability and quality of labor and Utilities), and has received and reviewed the PGCPS Information provided to it hereunder or obtained by Developer in the course of performing Developer's obligations under this Agreement. Developer also acknowledges that Developer has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable or inferable from the PGCPS Information.

¹⁶ Insert amount of square footage in (a) through (f) combined.

¹⁷ Insert amount of square feet identified for School in Form T-7 of Developer's Proposal.

¹⁸ Insert amount of square feet identified for School in Form T-7 of Developer's Proposal.

¹⁹ Insert amount of square feet identified for School in Form T-7 of Developer's Proposal.

²⁰ Insert amount of square feet identified for School in Form T-7 of Developer's Proposal.

²¹ Insert amount of square feet identified for School in Form T-7 of Developer's Proposal.

²² Insert amount of square feet identified for School in Form T-7 of Developer's Proposal.

5.3 Availability of Sites.

5.3.1 Expected Site Availability Dates. PGCPS expects that the Sites will be made available to Developer on or before each of the following dates (each, an “**Expected Site Availability Date**”):

Site	Expected Site Availability Date
Adelphi Area Middle School Site	July 15, 2021
Drew-Freeman Middle School Site	Existing athletic fields, on the Effective Date; remainder of the Site, July 15, 2021
Hyattsville Middle School Site	July 15, 2021
Kenmoor Middle School Site	Effective Date
Southern Area K-8 School Site	Effective Date
Walker Mill Middle School Site	Effective Date

5.3.2 Changes to Expected Site Availability Dates. To the extent PGCPS, in its sole discretion, determines that any Site cannot be made available to Developer on or before an Expected Site Availability Date, PGCPS shall provide written notice to Developer of an amended Expected Site Availability Date.

5.3.3 Actual Site Availability Dates. PGCPS shall provide a written notice to Developer confirming the date of each Site’s availability for Developer’s access in accordance with Section 5.4.2 (Access Following Actual Site Availability Dates) (each, an “**Actual Site Availability Date**”). To the extent that any Actual Site Availability Date deviates from the Expected Site Availability Date set forth in Section 5.3.1 (Expected Site Availability Dates), Developer may notify PGCPs of a Relief Event in accordance with Article 16 (Relief Events) to the extent such circumstance materially interferes with or delays Developer’s performance of the Design-Build Work. Prior to the Actual Site Availability Date, PGCPs shall have (i) removed all loose furnishings from the schools existing on the Adelphi Area Middle School Land, the Drew-Freeman Middle School Land, and the Hyattsville Middle School Land as of the Effective Date; (ii) paid all outstanding utility bills; and (iii) disconnected all utilities from the schools existing on the Land as of the Effective Date.

5.4 Access to the Sites.

5.4.1 Access Prior to Actual Site Availability Dates. Prior to any Actual Site Availability Dates, any access to the Sites desired by Developer shall be coordinated through PGCPs, and Developer shall not access the Sites unless Developer has the prior written authorization from PGCPs. Developer will have the opportunity to visit the Sites between 8:00 a.m. and 4:00 p.m. on a Saturday or Sunday for up to four hours at a time. Developer must provide at least five (5) Business Days advance written notice to PGCPs. Such notice shall include the nature of the activities to be performed and the preferred hours of access to each Site. PGCPs will advise Developer as to whether the requested time is available and, to the extent it is not, will coordinate with Developer to confirm another mutually acceptable time.

5.4.2 Access Following Actual Site Availability Dates.

5.4.2.1 Granting of License. Following each Actual Site Availability Date, subject to Section 5.4.2.2 (Continued Use of Certain Sites by PGCPS) and Section 5.5 (Security Clearance and Site Access Protocol), this Agreement shall be deemed to constitute the granting of a license to Developer and, upon Developer's authorization, to Developer Persons, for full access to the Sites for the purpose of performing the Design-Build Work and the Services, including mobilization and performing engineering, analysis, and such additional subsurface and geotechnical studies or tests as deemed necessary by Developer prior to commencement of construction.

5.4.2.2 Continued Use of Certain Sites by PGCPS. Following the Actual Site Availability Date, PGCPS will continue to use and operate the existing Improvements on the Kenmoor Middle School Site and the Walker Mill Middle School Site for Educational Activities, Educational Support Activities, Ad Hoc School Use, Third Party and Community Use, and any other activity duly authorized by PGCPS or required by Applicable Law. In its development of its Safety Plan, Design-Build Quality Management Plan, and Design-Build Work Plan, and in accordance with Section 7.16 (Accident Prevention and Coordination), Developer shall coordinate with PGCPS to ensure the continued uninterrupted operation by PGCPS of the existing Improvements on the Kenmoor Middle School Site and the Walker Mill Middle School Site and the safety of all PGCPS Persons and the public accessing these existing Improvements during the Design-Build Period.

5.4.3 Developer Responsibility. At all times, Developer shall assume all risks associated with access to the Sites by any Developer Persons (except for risks expressly assumed herein by PGCPS) and shall, to the extent and in proportion to the degree of fault or negligence by any Developer Person in causing any harm, indemnify, defend, and hold harmless each PGCPS Indemnitee in accordance with Section 21.2 (Developer's Obligation to Indemnify) from and against all Loss arising therefrom.

5.5 Security Clearance and Site Access Protocol. Developer will establish and implement, throughout the Term, procedures for obtaining and reviewing with PGCPS criminal records checks and other background checks in accordance with Exhibit O (Background Check Requirements) and as may be reasonably required by PGCPS from time to time, for all employees and agents of Developer, the Project Contractors, or any Subcontractors.

5.6 Utilities. During the Design-Build Period, Developer shall make all arrangements necessary to ensure the connection of all Utilities as required in order to construct and operate the Schools. During the Services Period, PGCPS will contract with and pay directly to the Utilities any charges incurred for the receipt of Utilities at the Sites.

5.7 Permitted Uses. Developer may access, use, and permit to be used the Sites only for purposes of performing the Project and in accordance with the terms and conditions of this Agreement. No other uses shall be permitted during the Term without PGCPS' prior written approval, in its sole and absolute discretion.

5.8 Unknown Land Conditions.

5.8.1 Unknown Land Condition Notice. In the event either Developer or PGCPs discovers an Unknown Land Condition, the identifying Party shall provide written notice to the other Party within seven (7) days of discovery of the purported Unknown Land Condition (the “**Unknown Land Condition Notice**”); provided, however, if the Unknown Land Condition may give rise to a safety issue, the Party identifying the purported Unknown Land Condition shall provide immediate notice to the other Party. The Unknown Land Condition Notice shall include a description of the purported Unknown Land Condition and any information known by such Party with respect to how the purported Unknown Land Condition could impact the Design-Build Work.

5.8.2 Response. Within seven (7) days of receipt of an Unknown Land Condition Notice, the Party receiving the Unknown Land Condition Notice shall respond in writing to the other Party indicating (i) that such Party agrees that the purported Unknown Land Condition is an Unknown Land Condition; or (ii) that such Party disagrees that the purported Unknown Land Condition is an Unknown Land Condition and refers the determination of an Unknown Land Condition for resolution in accordance with Article 24 (Resolution of Disputes), and if the matter is so referred, the Parties will request the party responsible for resolving the Dispute to determine the schedule and performance relief and the amount of Direct Losses payable to Developer as a result of the existence of such Unknown Land Condition.

5.8.3 Assessment Meeting. Within five (5) days of receipt of an undisputed Unknown Land Condition Notice or a determination in accordance with Article 24 (Resolution of Disputes) that a disputed circumstance is an Unknown Land Condition, the Parties shall meet to discuss a plan to address the Unknown Land Condition, including allocation of responsibilities, actions, and costs associated with such Unknown Land Condition.

5.8.4 Maximum Unknown Land Condition Cost. The assessment meeting described in Section 5.8.3 (Assessment Meeting) shall establish the timing and costs of the work necessary to remediate such Unknown Land Condition and to enable the Design-Build Work to proceed (collectively, the “**Unknown Land Condition Remedial Work**”). **To the extent the Unknown Land Condition Remedial Work identified in the assessment meeting described in Section 5.8.3 (Assessment Meeting) can be performed with Direct Losses to Developer of less than Four Hundred Thousand Dollars (\$400,000.00) (cumulative of all Unknown Land Conditions on all Land, the “**Maximum Unknown Land Condition Cost**”), then Developer shall proceed in accordance with the agreed upon plan, which shall be documented in writing by the Parties, and Developer may notify PGCPs of a Relief Event in accordance with Article 16 (Relief Events) to the extent such actions will directly delay Developer’s performance of its obligations under this Agreement.**

5.8.5 Addressing Certain Unknown Land Conditions. **To the extent the cost to remediate or modify the Design-Build Work on account of an Unknown Land Condition will exceed the Maximum Unknown Land Condition Cost, Developer shall provide written notice to PGCPs identifying the Direct Losses in excess of the Maximum Unknown Land Condition Cost that Developer anticipates to remediate or modify the Design-Build Work on account of such**

Unknown Land Condition. Within thirty (30) days of receipt of such notice, PGCPs shall notify Developer whether (a) PGCPs will remediate the Unknown Land Condition such that the Design-Build Work can proceed on the Land, and Developer may notify PGCPs of a Relief Event in accordance with Article 16 (Relief Events) to the extent such actions will directly impact or delay Developer's performance of its obligations under this Agreement; (b) Developer should remediate the Unknown Land Condition or modify the Design-Build Work in accordance with a written plan agreed upon by PGCPs and Developer, and Developer may notify PGCPs of a Relief Event in accordance with Article 16 (Relief Events) to the extent implementing such plan will directly delay Developer's performance of its obligations under this Agreement and may seek compensation in accordance with Article 16 (Relief Events) for Direct Losses associated with implementing the plan that are in excess of the Maximum Unknown Land Condition Cost; (c) the Parties may amend this Agreement to eliminate the Land and the scope of the Design-Build Work and Services to be performed on such Land from the Project and make equitable adjustments to the Milestone Payments and the Availability Payments, in consideration of the reduced Project scope and any payments Developer will owe to the Financing Party as a result of the elimination of the Land from the Project; or (d) the Parties shall amend this Agreement to reflect PGCPs' replacement of the Land with alternate land.

5.9 Underground Storage Tanks. PGCPs will remove the following underground storage tanks, as more specifically described in the applicable PGCPs Information:

- (a) By August 1, 2021, PGCPs will remove Drew-Freeman MS #19824;
- (b) By August 1, 2021, PGCPs will remove Adelphi ES #14703;
- (c) By August 1, 2021, PGCPs will remove Hyattsville MS #18791;
- (d) By August 1, 2021, PGCPs will remove Kenmoor MS # 18293; and
- (e) Within forty-five (45) days following the School Occupancy Readiness Date for Walker Mill Middle School, PGCPs will remove Walker Mill MS #18837.

To the extent PGCPs fails to do remove those underground storage tanks by the dates set forth in this Section 5.9 (Underground Storage Tanks), Developer may notify PGCPs of a Relief Event in accordance with Article 16 (Relief Events) to the extent such actions will directly impact or delay Developer's performance of its obligations under this Agreement.

ARTICLE 6 RESPONSIBILITIES DURING THE TRANSITION PERIOD; CONDITIONS PRECEDENT

6.1 Financial Close Security. On or before the Commercial Close Date, Developer delivered to PGCPs cash, in escrow, and/or one or more standby letter(s) of credit, financial close bond(s), or demand guarantee(s) in an aggregate amount equal to Ten Million Dollars

(\$10,000,000.00) (the “**Financial Close Security**”) as set forth in Exhibit G (Financial Close Security). The Financial Close Security shall designate PGCPS as the beneficiary.²³

6.2 Transition Period Schedule. No later than ten (10) Business Days following the Commercial Close Date, Developer shall submit to PGCPS for its acceptance, acting reasonably, a closing checklist and timeline identifying all documents, submissions, and other actions (including actions of the Parties and any required action of a third party) then reasonably anticipated by Developer to be necessary to satisfy all obligations set forth in this Article 6 (Responsibilities During the Transition Period; Conditions Precedent) on or prior to the Effective Date Deadline. The Parties shall use commercially reasonable efforts to deliver, respond to, and comment on documents, including draft documents, necessary to satisfy all obligations set forth in this Article 6 (Responsibilities During the Transition Period; Conditions Precedent) in conformity with the closing checklist and timeline, as accepted by PGCPS in accordance with this Section 6.2 (Transition Period Schedule) (as approved, the “**Transition Period Schedule**”). To the extent agreed to by the Parties, Financial Close and the Effective Date may occur on the same date.

6.3 Community Engagement During the Transition Period. Developer shall comply with Section 2.10.3 (Community Engagement and Outreach Plan) and the Community Engagement and Outreach Plan during the Transition Period.

6.4 Financing Activities During the Transition Period. During the Transition Period, Developer shall pursue any necessary financing in compliance with Section 6.5 (Additional Transition Period Rights and Obligations). If and to the extent reasonably requested by Developer, PGCPS agrees to provide reasonable assistance to the Financing Party, or any representatives or advisors thereof, in connection with any due diligence relating to the Financing Documents performed by, or on behalf of, the Financing Party.

6.4.1 Revision of the Capital Charge Prior to Financial Close. The Parties agree that, except as may be approved in writing by PGCPS (in its discretion), PGCPS shall provide Benchmark Interest Rate protection in accordance with Section 6.4.1.1 (Benchmark Interest Rate Protection Changes), on the basis of the Benchmark Interest Rates and debt structure included in the Initial Base Case Financial Model.

6.4.1.1 Benchmark Interest Rate Protection Changes. Benchmark Interest Rate protection changes in any Benchmark Interest Rate shall have the following effect:

6.4.1.1.1 Subject to PGCPS’ rights to terminate this Agreement, PGCPS will bear the risk and have the benefit of one hundred percent (100%) of the impact (either positive or negative) on the Capital Charge of changes in any Benchmark Interest Rate in the Initial Base Case Financial Model until Financial Close.

6.4.1.1.2 The interest rate adjustment will be based on the movement, if any, in the applicable Benchmark Interest Rate.

²³ Note: PGCPS will waive this requirement to the extent that Financial Close occurs on the Commercial Close Date.

6.4.1.1.3 On the Financial Close Date, Developer shall adjust the Initial Base Case Financial Model according to the terms of Section 6.4.1.4 (Capital Charge Update Protocol).

6.4.1.2 Credit Spread Protection Changes.

6.4.1.2.1 Subject to PGCPs' rights to terminate this Agreement, PGCPs will bear the risk and have the benefit of eighty-five percent (85%) of the impact (either positive or negative) on the Capital Charge of the differences between the credit spreads for any publicly issued bonds (taxable or tax-exempt) assumed and indicated in the Initial Base Case Financial Model until Financial Close.

6.4.1.2.2 PGCPs shall not accept increases in credit spreads in respect of publicly issued bonds (taxable or tax-exempt) which are part of the Developer's financing resulting from the credit rating of such bonds being lower than the indicative rating(s) of such bonds provided in the Initial Base Case Financial Model.

6.4.1.2.3 Movements in credit spreads or margins associated with private placements or margins associated with any commercial bank debt which is part of the Developer's financing, including bank lender margins and swap credit margins from the Initial Base Case Financial Model to the date of Financial Close will be borne by the Developer.

6.4.1.2.4 On the Financial Close Date, Developer shall adjust the Initial Base Case Financial Model according to the terms of Section 6.4.1.4 (Capital Charge Update Protocol).

6.4.1.3 Design-Build Agreement Price Changes.

6.4.1.3.1 If Financial Close (a) occurs after the Proposal Validity Period End Date, and (b) Developer used commercially reasonable efforts to (i) achieve the PGCPs Conditions Precedent, and (ii) cooperate with and assist PGCPs in achieving the Developer Conditions Precedent, the Capital Charge shall be adjusted to reflect the adjustment to the Design-Build Agreement Price calculated in accordance with Section 6.4.1.3.2.

6.4.1.3.2 If the Capital Charge is required to be adjusted pursuant to Section 6.4.1.3.1, then: (a) the Design-Build Agreement Price shall be multiplied by a fraction, (i) the numerator of which is the most recently published Construction Cost Index, as of Financial Close; and (ii) the denominator of which is the Construction Cost Index for the month in which the Proposal Validity Period End Date occurs; and (b) on Financial Close, Developer shall adjust the Initial Base Case Financial Model according to the terms of Section 6.4.1.4 (Capital Charge Update Protocol).

6.4.1.4 Capital Charge Update Protocol. The Parties will use the Initial Base Case Financial Model to calculate the changes under Section 6.4.1 (Revision of the

Capital Charge Prior to Financial Close), positive or negative, in the Capital Charge. The Parties shall make such calculation and produce the Base Case Financial Model in the following manner:

6.4.1.4.1 The Initial Base Case Financial Model shall be run to solve for the Capital Charge, inputting only the changes, if any, in financial terms recognizable under Section 6.4.1.3 (Design-Build Agreement Price Changes) and holding the Initial Base Case Equity IRR constant.

6.4.1.4.2 As a means of mitigating against the negative impact of any changes in Benchmark Interest Rates for any bonds or bank debt which is part of Developer's financing, as applicable, on the minimum prevailing debt covenants established in the Initial Base Case Financial Model, Developer will optimize, to the extent possible, the maturities and make consequential amendments to the Initial Base Case Financial Model as updated to incorporate any changes resulting from Section 6.4.1.4.1.

6.4.1.4.3 The Initial Base Case Financial Model as updated to incorporate any changes resulting from Section 6.4.1.4.1 and Section 6.4.1.4.2 shall be run to solve for the lowest possible Capital Charge, inputting only the changes, if any, in Benchmark Interest Rates as described in Section 6.4.1.1 (Benchmark Interest Rate Protection Changes) and eighty-five percent (85%) of the changes, if any, in credit spreads as described in Section 6.4.1.2 (Credit Spread Protection Changes), and holding the Initial Base Case Equity IRR constant. As part of this process, it will be ensured that the minimum prevailing debt covenants in the Initial Base Case Financial Model are not breached.

6.4.1.4.4 The Capital Charge resulting from the calculations in Section 6.4.1.4.3 shall be the final Capital Charge for the purposes of calculating the Availability Payment in accordance with Exhibit X-1 (Payment Calculations).

6.4.1.4.5 The interim financial model resulting from the calculations in Section 6.4.1.4.3 shall be adjusted to reflect all other changes in terms of financing between those assumed and indicated in the Initial Base Case Financial Model and those set forth in the Financing Documents as obtained on Financial Close. The resulting financial model shall be the Base Case Financial Model, and the resulting Equity IRR shall be the Base Case Equity IRR.

6.4.1.5 Notwithstanding anything in this Agreement to the contrary and without limiting Section 6.4.1 (Revision of the Capital Charge Prior to Financial Close), Developer shall bear the full risk of changes to any financing terms not explicitly identified within this Section 6.4.1 (Revision of the Capital Charge Prior to Financial Close).

6.5 Additional Transition Period Rights and Obligations. During the Transition Period, the following activities shall take place:

6.5.1 Selection of Escrow Agent. PGCPs shall propose to Developer, for Developer's reasonable approval, a financial institution with offices in the County to serve as the Escrow Agent.

6.5.2 Selection of the Independent Engineer. Developer and PGCPs shall each identify several entities that may be qualified to act as the Independent Engineer. The entities identified by PGCPs and Developer shall be invited to participate in a competitive selection process, and Developer and PGCPs shall mutually select the entity to serve as the Independent Engineer.

6.5.3 Achievement of Conditions Precedent. The Parties shall attempt to achieve the Conditions Precedent in accordance with the timeframes set forth in the Transition Period Schedule.

6.5.4 Market Disruption Events; Extension. Developer shall promptly notify PGCPs in writing upon the occurrence of a Market Disruption Event with the potential to impact Developer's ability to achieve Financial Close. In response to such notice, PGCPs shall have the right in its sole discretion to extend the Effective Date Deadline, subject to Section 6.9.6 (Market Disruption Event; Termination), during which time the Parties shall identify and discuss any actions available to the Parties to mitigate any material adverse change in Developer's overall risk profile with respect to the Project, including Developer incorporating alternative sources of debt or debt structures into its Financing Plan, in which case PGCPs may require Developer to use commercially reasonable efforts to conduct a timely, transparent financing competition to identify and arrange for the lowest-priced debt financing commercially available on terms reasonably satisfactory to Developer.

6.6 Conditions Precedent for the Benefit of Developer. PGCPs shall be responsible for satisfying the following conditions, unless such conditions are waived by Developer in writing in Developer's sole discretion (collectively, the "**Developer Conditions Precedent**"):

6.6.1 PGCPs Certification. PGCPs has certified that the representations and warranties of PGCPs set forth in Section 23.2 (Representations and Warranties of PGCPs) remain true and correct in all material respects.

6.6.2 Legal Opinion. PGCPs has delivered to Developer a legal opinion evidencing the authority of PGCPs to enter into this Agreement, the Escrow Agreement, and the Independent Engineer Agreement, and the enforceability of this Agreement, the Escrow Agreement, and the Independent Engineer Agreement in a form mutually agreed upon by Developer and PGCPs.

6.6.3 Escrow Agreement and Independent Engineer Agreement. PGCPs has executed the Escrow Agreement and the Independent Engineer Agreement.

6.7 Conditions Precedent for the Benefit of PGCPs. Developer shall be responsible for satisfying the following conditions, unless such conditions are waived by PGCPs in writing in PGCPs' sole discretion (collectively, the "**PGCPs Conditions Precedent**"):

6.7.1 Insurance. Developer has furnished to PGCPs binders or certificates of insurance required pursuant to this Agreement, which binders or certificates shall be acceptable in form and substance to PGCPs and shall be in full force and effect as of Financial Close.

6.7.2 Developer Certification. Developer has certified that the representations and warranties of Developer set forth in Section 23.1 (Representations and Warranties of Developer) remain true and correct in all material respects.

6.7.3 Design-Build Agreement. Developer and Design-Builder have executed the Design-Build Agreement, a copy of which shall have been provided to PGCPs.

6.7.4 Financial Close. Financial Close has been achieved.

6.7.5 Financing. Developer has delivered to PGCPs fully executed copies of the Senior Financing Agreements and equity contribution agreements with each Equity Member that are certified by Developer as being true, complete, and accurate copies of the originals. To the extent not expressly set forth in the executed equity contribution agreements, Developer has certified to PGCPs in writing that Developer has received written confirmation from each Equity Member that such Equity Member accepts the restriction on the transfer by the Equity Member of the Equity Member's equity in Developer contained in Article 17 (Assignment and Transfer).

6.7.6 Conditions Precedent to Financing. Developer has delivered evidence satisfactory to PGCPs that all conditions precedent to initial disbursement by the Financing Party pursuant to the Financing Documents (including the making of any equity contributions that are required to be made on or before the Financial Close) have been fulfilled or waived, as the case may be, except any condition precedent regarding the unconditional effectiveness of this Agreement.

6.7.7 Financing Documents Compliance. Developer has certified to PGCPs in writing that, as of the Effective Date, (a) there is no default or event which with the passage of time or giving of notice or both would become a default by any party under the Financing Documents, and (b) the terms of the Financing Documents are consistent with the terms reviewed by PGCPs as part of the Final Availability Payment Proposal.

6.7.8 Equity Contributions to Developer. The Equity Members have delivered evidence satisfactory to PGCPs that the amount of equity to be contributed by the Equity Members to Developer on the Effective Date pursuant to the Financing Plan has been committed to Developer.

6.7.9 Payments to Escrow Agent for Bidder Stipends. Developer shall have paid, or to the extent Financial Close is occurring simultaneously with the execution of the

Effective Date Certificate, shall have provided evidence of the initiation of a wire transfer to, the Escrow Agent of the amount identified in writing by PGCPs, which such amount shall be equal to Five Hundred Thousand Dollars (\$500,000.00) multiplied by the number of bidders responding to the RFP that PGCPs identifies as eligible for reimbursement in accordance with the Reimbursement Agreements. Such amount shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00).

6.7.10 Performance Bond. Developer has provided, or caused to be provided by the Design-Builder, a performance bond in an amount equal to the Design-Build Agreement Price (the “**Design-Build Security**”). The Design-Build Security shall be in the form of a surety or letter of credit and issued by one or more surety companies that are admitted as bonding carriers listed on the then most current version of U.S. Treasury Circular 570 or any replacement or substitute U.S. government listing, having an A.M. Best Company’s rating of at least A-:VII or better (if A.M. Best Company changes its rating system or ceases to provide ratings at some later date, then such insurance company shall have a rating from A.M. Best Company (or some other comparable rating service if A.M. Best Company ceases to provide ratings) comparable to the “A-:VII or better” requirement set forth above) and are duly licensed and authorized to conduct and transact surety business in the State. Developer shall cause each of PGCPs and the Senior Lenders (or their Collateral Agent) to be named, upon issuance of such performance bond, as an additional obligee or beneficiary thereunder, and shall deliver a certified copy thereof, with the multiple obligee rider or other comparable documentation, to PGCPs.

6.7.11 Legal Opinion. Developer has delivered to PGCPs a legal opinion evidencing the authority of Developer to enter into this Agreement, the Escrow Agreement, the Independent Engineer Agreement, the Design-Build Agreement, and the Financing Documents, and the enforceability of such agreements, in a form mutually agreed upon by Developer and PGCPs.

6.7.12 Deposit to Design-Build Period Reserve Account. Developer has funded, or to the extent Financial Close is occurring simultaneously with the execution of the Effective Date Certificate, has provided evidence of the initiation of a wire transfer in the amount required to fund, the Design-Build Period Reserve Account in accordance with Section 7.6.1 (Design-Build Period Reserve Amount).

6.7.13 Escrow Agreement and Independent Engineer Agreement. Developer has executed the Escrow Agreement and the Independent Engineer Agreement.

6.8 Mutual Conditions Precedent. The following conditions shall be satisfied or waived in writing by each of the Parties, in each Party’s sole discretion (collectively, the “**Mutual Conditions Precedent**”):

6.8.1 No Government Orders. There shall be no preliminary or permanent injunction or temporary restraining order or other order issued by a Governmental Authority of competent jurisdiction or other legal restraint or prohibition enjoining or preventing the consummation of the Project.

6.8.2 No Restrictions. There shall be no action taken, or omission of any known required action, or any Applicable Law enacted, entered, enforced, or deemed applicable to the Project by any Governmental Authority of competent jurisdiction that, in any such case, has resulted or (in the case of any pending review or proceeding, if adversely determined) could reasonably be expected to result in such Governmental Authority's conditioning or restricting the consummation of the transaction in a manner that would impose a material impairment on the transaction or make the consummation of the transaction illegal.

6.8.3 No Proceedings. There shall be no proceeding, action, or claim pending or threatened which may have a potentially adverse effect on the Project or which involves or otherwise affects (a) the public procurement process by which Developer was awarded the right to enter into this Agreement, (b) this Agreement, or (c) the Project.

6.8.4 Escrow Agreement. The selected Escrow Agent shall have executed the Escrow Agreement.

6.8.5 Independent Engineer Agreement. The selected Independent Engineer shall have executed the Independent Engineer Agreement.

6.8.6 No Termination. This Agreement shall not have been terminated pursuant to any provision hereof.

6.9 Termination Prior to the Effective Date. This Agreement may be terminated prior to the Effective Date solely as set forth below:

6.9.1 Mutual Consent. By the mutual consent of PGCPs and Developer in a written instrument at any time prior to the Effective Date Deadline;

6.9.2 Maximum Availability Payment Exceeded. By PGCPs, upon written notice to Developer, at any time prior to the Effective Date Deadline, if the Availability Payment exceeds the Maximum Availability Payment.

6.9.3 Certain Mutual Conditions Precedent. By either PGCPs or Developer, upon notice to the other Party, at any time prior to the Effective Date Deadline if any of the circumstances set out in Section 6.8.1 (No Government Orders), Section 6.8.2 (No Restrictions), or Section 6.8.3 (No Proceedings) shall have occurred and shall be likely, in the reasonable discretion of either Party, to be continuing as at and following the Effective Date Deadline, or if any of the other Mutual Conditions Precedent set out in Section 6.8.4 (Escrow Agreement) or Section 6.8.5 (Independent Engineer Agreement) shall have not been met by the Effective Date Deadline;

6.9.4 Developer Conditions Precedent. By Developer, upon notice to PGCPs, if any of the Developer Conditions Precedent have not been satisfied by the Effective Date Deadline; provided, however, that Developer shall not have the right to terminate this Agreement under this Section 6.9.4 (Developer Conditions Precedent) if Developer's failure to comply with

any provision of this Agreement or other conduct of Developer has been the cause of, or resulted in, the failure of such Developer Condition(s) Precedent to be satisfied;

6.9.5 PGCPS Conditions Precedent. By PGCPS, upon notice to Developer, if any of the PGCPS Conditions Precedent have not been satisfied by the Effective Date Deadline; provided, however, that PGCPS shall not have the right to terminate this Agreement under this Section 6.9.5 (PGCPS Conditions Precedent) if PGCPS's failure to comply with any provision of this Agreement or other conduct of PGCPS has been the cause of, or resulted in, the failure of such PGCPS Condition(s) Precedent to be satisfied; or

6.9.6 Market Disruption Event; Termination. After notice of the Market Disruption Event is provided to PGCPS by Developer in accordance with Section 6.5.4 (Market Disruption Events; Extension), by Developer, in its discretion and upon written notice to PGCPS, if (a) PGCPS has extended the Effective Date Deadline by more than one hundred and eighty (180) days and such period has expired, or (b) PGCPS notifies Developer in writing of its decision not to extend the Effective Date Deadline.

6.10 Effect of Termination Prior to the Effective Date. In the event of termination of this Agreement by either PGCPS or Developer as provided in Section 6.9 (Termination Prior to the Effective Date), except as provided in Section 6.11 (Disposition of the Financial Close Security) and all other provisions that are expressly agreed to survive, this Agreement shall forthwith become void, and there shall be no liability or obligation on the part of PGCPS or Developer or their respective representatives for any Losses in any respect whatsoever.

6.11 Disposition of the Financial Close Security.

6.11.1 PGCPS Retention. If this Agreement is terminated in accordance with Section 6.9.5 (PGCPS Conditions Precedent), and provided that each of the Developer Conditions Precedent have been satisfied, then PGCPS may immediately draw on the Financial Close Security and retain such funds for use by PGCPS in its sole discretion.

6.11.2 PGCPS Return.

6.11.2.1 If (a) this Agreement is terminated in accordance with Section 6.9.1 (Mutual Consent), Section 6.9.2 (Maximum Availability Payment Exceeded), Section 6.9.3 (Certain Mutual Conditions Precedent), or Section 6.9.6 (Market Disruption Event; Termination), and (b) so long as PGCPS is not disputing in good faith pursuant to Article 24 (Resolution of Disputes) any Developer's claims for termination in accordance with one of these listed Sections, PGCPS shall return to Developer Financial Close Security within ten (10) Business Days of termination.

6.11.2.2 If (a) this Agreement is terminated in accordance with Section 6.9.4 (Developer Conditions Precedent), and (b) so long as (i) each of the PGCPS Conditions Precedent have been satisfied, and (ii) PGCPS is not disputing in good faith pursuant to Article 24 (Resolution of Disputes) any Developer's claims for termination in accordance with one of these

listed Sections, PGCPS shall return to Developer the Financial Close Security within ten (10) Business Days of termination.

6.12 Reimbursement. If this Agreement is terminated as provided in Section 6.11.2 (PGCPS Return), Developer will remain eligible for a stipend to the extent set forth in the Reimbursement Agreement.

ARTICLE 7 DESIGN AND CONSTRUCTION

7.1 General Design Requirements. Unless otherwise stipulated in this Agreement, Developer shall perform the Design-Build Work in compliance with the Contract Standards. The Technical Requirements are intended to include the basic design principles, concepts, and requirements for the Design-Build Work but do not include the final, detailed design, plans, or specifications or indicate or describe each and every item required for full performance of the Design-Build Work or for achieving Project Readiness. Developer agrees to prepare and furnish all necessary detailed designs, plans, drawings, and specifications in conformity with this Agreement and the Contract Standards. Developer further agrees that it shall not have the right to bring any claim whatsoever against any PGCPS Person arising out of any designs, plans, drawings, or specifications included in the RFP or made available during the Project's procurement process. Developer shall use the Conceptual Designs as the basis for the further design of the Project and shall incorporate reasonable comments from PGCPS on the Conceptual Designs when further developing the design of the Project. In no event shall Developer proceed with the physical construction of any particular segment of the Design-Build Work without first complying with the requirements of the design submittal protocol set forth in this Agreement. Developer shall give due consideration and provide written responses, in the time and manner provided in this Agreement, to any comments delivered by PGCPS as to Developer's design submittals. Save to the extent Developer is entitled to a Relief Event pursuant to Section 7.17.4 (Notice of Covering Design-Build Work), neither compliance by Developer with the Technical Requirements, nor review and comment by PGCPS on Developer's design submittals, nor any failure or delay by PGCPS in commenting on any design submittals shall in any way relieve Developer of full responsibility for the design, construction, performance, operation, and maintenance of the Project in accordance with the Contract Standards.

7.2 Design Review. Developer shall prepare, or cause to be prepared, design documents necessary or appropriate to carry out and complete the Design-Build Work in accordance with the Technical Requirements. The Parties understand and accept that Developer is wholly and exclusively responsible for producing Project designs in accordance with the Technical Requirements and this Agreement; however, the Parties commit to working collaboratively during the design process to ensure that the Project design meets PGCPS' objectives as set forth in this Agreement. Developer will prepare, or cause to be prepared, design documents for the building shells and improvements for implementation of the Project in accordance with the Technical Requirements. Representatives of the PMU and its advisors shall attend the design process meetings to ensure PGCPS has input into the design process and ensure that PGCPS' concerns, comments, and requirements are articulated to Developer prior to

Developer's submittal of design documents for formal review. The design process meetings shall occur a minimum of every two (2) weeks or more frequently as agreed upon by the Parties. For the formal review of design documents, Developer shall submit design documents for each School to PGCPS at the following levels of completion for the approval of PGCPS in accordance with the provisions of Section 7.3 (Design Review Defined): 100% Schematic Design, 65% Design Development, 95% Design Development, and Final Construction Documents.

7.3 Design Review Defined.

7.3.1 100% Schematic Design. For each School, the Schematic Design phase documents (“**Schematic Development Documents**”) should be a mock-up or “outline” of the working drawings prepared at the scale(s) and sheet size needed for Construction Documents and shall reflect the requirements of the Technical Requirements. Schematic Development Documents should illustrate the concepts of the design and include spatial relationship, scale, and form of the improvements and include a site plan, floor plans, sections, and elevation, and other illustrative materials including overall dimensions. All disciplines shall exhibit generally equivalent levels of completeness and display approximately thirty-five percent (35%) development of the information required for construction. A cost estimate for the Design-Build Work shall be provided with these documents.

7.3.2 65% Design Development. For each School, the 65% Design Development Documents shall contain documents prepared at the scale(s) and sheet sizes needed for Construction Documents and supporting materials that clearly demonstrate Project design progress, adherence to Project scope, and design criteria and coordination between disciplines. All disciplines shall exhibit equivalent levels of completeness and display approximately sixty-five percent (65%) development of the information required for construction. The 65% Design Development Documents submission should include the Reforestation Plan described in Section 2.11 (Reforestation).

7.3.3 95% Design Development. For each School, the 95% Design Development Documents submission shall contain documents prepared at the scale(s) and sheet sizes needed for Construction Documents and supporting materials that clearly demonstrate Project design progress, adherence to Project scope, and design criteria and coordination between disciplines. All disciplines shall exhibit equivalent levels of completeness and display ninety-five percent (95%) development of the information required for construction.

7.3.4 Final Construction Documents. The 100% final drawings, specifications, and other documents (“**Final Construction Documents**”) shall be acceptable to PGCPS for Developer construction and shall reflect the permit approved drawings. All prior Construction Document submissions shall be revised/corrected to incorporate applicable PGCPS review comments and shall be resubmitted as Final Construction Documents. Except for any changes required to comply with the Technical Requirements, each additional change provided by PGCPS as part of the review of the Final Construction Documents shall be considered a Design-Build Change. The submission of Final Construction Documents for each School shall include the following completed items:

- (a) Record drawings for the School with professional seals and signatures of the registered architect(s) and engineer(s);
- (b) Record specifications;
- (c) Construction time schedule;
- (d) Construction submittal and sample schedule/log;
- (e) Supporting materials (analyses and calculations);
- (f) Electronic file copies of the specifications;
- (g) Electronic file copies of the drawings; and
- (h) Responses to 95% review comments (if not submitted earlier).

Upon PGCPs approval of the Final Construction Documents, Developer shall be required to comply with the Final Construction Documents when performing the Design-Build Work, and such documents identified under this Section will be collectively referred to and deemed incorporated into the Technical Requirements.

7.4 PGCPs Design Review and Responses. For each design review, PGCPs shall return its comments on the design documents to Developer within seven (7) Business Days after receipt of the design documents. In the event PGCPs does not approve the submitted design documents or in the alternative returns the submitted design documents with comments, PGCPs shall meet with Developer in a one- or two-day working session immediately following PGCPs' disapproval or return of the design documents with comments, to use best efforts to address and resolve all comments. PGCPs may only disapprove a submittal if, in the opinion of PGCPs, the submittal is inconsistent with the Technical Requirements or previous comments submitted to Developer and agreed to by Developer during one of the design review periods outlined above. PGCPs shall provide reasons and details explaining the non-conformance. In no case shall the meeting occur later than five (5) Business Days following Developer's receipt of PGCPs' comments. If the Parties are unable to reach an agreement on the design documents, the Parties shall use the dispute procedures set forth in Article 24 (Resolution of Disputes).

7.5 Requirements for Registration of Designers. The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the Technical Requirements shall be accomplished or reviewed and approved by architects or engineers registered in the State to practice in the particular professional field involved.

7.6 Design-Build Period Reserve Account.

7.6.1 Design-Build Period Reserve Amount. The Escrow Agreement shall require that the Escrow Agent establish a separate interest-bearing account for the sole benefit of the Project (the "**Design-Build Period Reserve Account**"). On or before the Effective Date,

Developer shall deposit Two Million Dollars (\$2,000,000.00) into the Design-Build Period Reserve Account. To the extent any funds remain in the Design-Build Period Reserve Account at the end of the Design-Build Period, PGCPs shall instruct the Escrow Agent to apply the remaining funds in the Design-Build Period Reserve Account to the final Milestone Payment. In the event the Termination Date occurs prior to the end of the Design-Build Period, PGCPs shall have the right to instruct the Escrow Agent to disburse such funds directly to PGCPs for use by PGCPs in its sole discretion.

7.6.2 Use of Funds. During the Design-Build Period, PGCPs may direct that Developer use funds in the Design-Build Period Reserve Account to fund compensation claims determined in accordance with Section 14.14 (Payments for Compensation Events and Other Additional Costs); provided that, any such costs incurred by Developer above the balance of the Design-Build Period Reserve Account shall be paid by PGCPs through another payment method selected by PGCPs in accordance with Section 14.14.3 (PGCPs Payment Methods).

7.7 Governmental Approvals.

7.7.1 Developer Responsibility. Developer shall obtain and maintain, at its sole expense, any Governmental Approvals required under Applicable Law for its development and operation of the Project and shall pay all fees, costs, and charges due in connection therewith. With PGCPs' prior written approval, and except with respect to trade permits, PGCPs may be listed as the owner on permit applications. Developer shall be responsible for complying with all terms and conditions of any Governmental Approvals at its sole expense. Subject to Section 7.7.2 (Limited Assistance by PGCPs), PGCPs will not co-sign or otherwise be identified as a responsible party for any such permits or activities that Developer conducts on or about the Sites. Developer shall manage the process of obtaining the Governmental Approvals in a manner which affords PGCPs a reasonable opportunity to review and comment upon such submittals and all material documentation submitted to and issued by any Governmental Authority in connection therewith. Where practicable, Developer shall provide PGCPs with advance notice of and an opportunity to jointly participate in meetings, including permit application meetings, with Governmental Authorities relating to the Project. Developer shall not knowingly take any action in any application, data submittal, or other communication with any Governmental Authority regarding the Governmental Approvals or the terms and conditions thereof that would impose any unreasonable cost or burden on PGCPs or that would contravene this Agreement. PGCPs reserves the right to reject, modify, alter, amend, delete, or supplement any information supplied, or term or condition proposed, by Developer which would have the effect described in the preceding sentence.

7.7.2 Limited Assistance by PGCPs. PGCPs shall, upon request by Developer, assign any Governmental Approvals it may have obtained in the name of any PGCPs Person, or execute applications for permits, as fee owner of the Land, to the extent required by the applicable Governmental Authority, at no cost, expense, obligation, or liability to PGCPs. Upon the reasonable request of Developer made directly to PGCPs, and at Developer's expense, PGCPs will provide Developer with existing relevant data and documents that are within PGCPs' custody or control or are reasonably obtainable by PGCPs and which are reasonably required in order for

Developer to request or obtain Governmental Approvals required for its performance of the Design-Build Work. This covenant shall not obligate PGCPs to staff Developer's permitting or development efforts, to undertake any new studies or investigations with respect to the Project, or to affirmatively seek to obtain the issuance of any Governmental Approvals.

7.7.3 Diligent Prosecution. In no event shall Developer commence demolition, construction, or renovation at a Site until Developer has obtained all Governmental Approvals required for such work. Developer shall submit its applications for Governmental Approvals to the applicable Governmental Authority within a period of time that Developer reasonably believes in good faith is sufficient to allow issuance of such Governmental Approvals prior to the date necessary to avoid the delay of any date set forth on the Construction Schedule. From and after the date of Developer's submission of an application for a Governmental Approval, Developer shall diligently prosecute such application until receipt of the Governmental Approval.

7.7.4 Developer Assumption of Permitting Risk for Design-Build Work. Developer explicitly assumes the risk of obtaining and maintaining all Governmental Approvals needed to complete the Design-Build Work, including the risk of delay, non-issuance, or imposition of any term or condition in connection therewith by a Governmental Authority; provided, however, that in accordance with Article 16 (Relief Events), Developer may be afforded relief from the assumption of such risk in the event of the occurrence of a Governmental Delay or Change in Law Event. In assuming this risk, Developer acknowledges in particular that the Governmental Authority issuing any Governmental Approval may impose terms and conditions which require Developer to make changes or additions to the Project, the Sites, property adjacent to or near the Land, or Project operations which may increase the cost or risk to Developer of performing the Design-Build Work or Services, all of which costs or risks shall be for the account of and borne by Developer if said terms and conditions imposed by the Governmental Authority are in accordance with Applicable Law.

7.8 Commencement and Prosecution of Design-Build Work. Commencing on the Effective Date, Developer shall proceed to undertake, perform, and complete the Design-Build Work in accordance with the Contract Standards.

7.8.1 Schedule for School Substantial Completions. Developer shall commence construction of each School and shall thereafter diligently prosecute the same to School Substantial Completion, in each case, in accordance with the milestones and deadlines identified within the Construction Schedule, as such dates may be extended in accordance with this Agreement.

7.8.2 Longstop Dates. Failure to satisfy the School Occupancy Readiness Conditions for a School by the applicable Longstop Date shall constitute a Developer Default upon which PGCPs may terminate this Agreement for cause in accordance with Article 19 (Events of Default, Remedies, Termination, and Termination Compensation).

7.8.3 Athletic Fields. So long as Developer diligently prosecutes to completion, Developer may complete the relevant Athletic Field(s) at a School within eleven (11) months following the applicable School Occupancy Readiness Date.

7.8.4 Existing Walker Mill Middle School Demolition. So long as Developer diligently prosecutes to completion, Developer may demolish the school existing on the Walker Mill Middle School Land as of the Effective Date within eleven (11) months following the School Occupancy Readiness Date for Walker Mill Middle School.

7.9 Construction Sequencing and Schedule. Developer shall not be limited in the sequencing or staging of the Design-Build Work, except to the extent this Agreement or the Contract Standards impose limitations. For each School, Developer shall prepare and provide PGcps with the “critical path method” Construction Schedule for the Design-Build Work.

7.10 Design-Build Work Plan. The Design-Build Work Plan prepared by Developer and approved in writing by PGcps prior to the Effective Date shall serve as the basis for coordination, advancement, and oversight of all activities relating to the performance of the Design-Build Work (as such plan may be amended, with PGcps’ written approval, the “**Design-Build Work Plan**”).

7.11 Quality Assurance and Quality Control. Developer shall have full responsibility for quality assurance and quality control for the Design-Build Work, including compliance with the Design-Build Quality Management Plan set forth in Exhibit Q (Design-Build Quality Management Plan).

7.12 Notice Prior to Construction Commencement. Developer shall provide PGcps with at least thirty (30) days’ notice prior to commencing construction on any of the Sites and shall provide any additional notifications contemplated by the Community Engagement and Outreach Plan.

7.13 Material and Technical Requirements. Developer shall obtain PGcps’ written approval of selected structural components, mechanical systems, electrical systems, plumbing systems, materials, parts, components, equipment, and machinery to be incorporated into the Design-Build Work to the extent any such selections deviate from the Technical Requirements. When requesting approval, Developer shall furnish to PGcps the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. Developer shall also obtain PGcps’ written approval of the material or articles which Developer contemplates incorporating into the Design-Build Work to the extent any such material or articles deviate from the Technical Requirements. When requesting approval, Developer shall provide full information concerning the material or articles. Developer shall ensure that when directed to do so, Developer shall submit samples for approval at Developer’s expense, with all shipping charges prepaid. PGcps shall respond in writing to any approval requested pursuant to this Section 7.13 (Material and Technical Requirements) no later than seven (7) days from receipt of Developer’s written request; provided, however, if PGcps does not approve within such seven (7) day period, such request shall be

deemed to be rejected by PGCPs. Any structural components, mechanical systems, electrical system, plumbing systems, materials, parts, components, equipment, and machinery so approved in writing by PGCPs to be incorporated into the Design-Build Work, shall be deemed to be incorporated in the Technical Requirements from the date of such approval.

7.14 Operation and Storage Areas. Developer shall ensure that all Developer Persons shall, under procedures prescribed by PGCPs, use only established roadways and authorized staging and storage areas as set forth in the Staging Plan. When materials are transported in prosecuting the Design-Build Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal or State law or regulation. When it is necessary to cross curbs or sidewalks, Developer shall protect them from damage. Developer shall promptly repair or cause to be repaired any damaged curbs, sidewalks, or roads caused by Developer's activities on the Sites.

7.15 Removal of Construction Debris. Developer shall at all times keep the Sites, including storage areas, free from accumulations of construction debris. Before completing the Design-Build Work, Developer shall remove from the Sites any rubbish, tools, scaffolding, equipment, and materials that were brought on the Sites by any Developer Person and that are not a portion of the Design-Build Work. Upon completing the Design-Build Work, Developer shall leave the Design-Build Work area in a reasonably neat and orderly condition satisfactory to PGCPs.

7.16 Accident Prevention and Coordination. In accordance with its Safety Plan, Design-Build Quality Management Plan, and Design-Build Work Plan, Developer shall provide and maintain work environments and procedures which will (a) take reasonable steps during construction to safeguard the public, PGCPs Persons, and PGCPs property, materials, supplies, and equipment exposed to Developer operations and activities; and (b) minimize and coordinate with PGCPs in advance of any activities that may cause an interruption in PGCPs operations or disruption to PGCPs activities on Sites where existing schools remain in operation during the Design-Build Period. For these purposes, Developer shall: (a) provide appropriate safety barricades, signs, and signal lights; and (b) comply with Maryland Labor and Employment Article Title 5 and Title 6 and COMAR §§ 09.12.20 through 09.12.25, 09.12.31, 09.12.33, 09.112.35, 09.12.36, 09.12.38, and 29 CFR §§ 1910 and 1926. Developer shall insert this Section 7.16 (Accident Prevention and Coordination), with appropriate changes in the designation of the parties, in all construction subcontracts for the Project.

7.17 Testing, Observations, Inspections, and Uncovering of Design-Build Work.

7.17.1 PGCPs Tests, Observations, and Inspections. PGCPs reserves the right to oversee and to perform, at reasonable times and with reasonable notice, any inspections and tests, without reservation (to include civil, structural, mechanical, electrical, chemical, or other tests), as deemed necessary to assure that Developer is performing in accordance with this Agreement, including the Technical Requirements. Observations and inspections may be made on a daily basis on work performed at Developer's place of business or at any location where work is being performed in conjunction with this Agreement. Observations or inspections by PGCPs

or its designated representatives (including employees, agents, representatives, and contractors, which may be selected in PGCPs' discretion) are for the sole benefit of PGCPs and shall not (i) relieve Developer of responsibility for providing adequate quality control measures during the Term (including quality control for items covered by this Agreement that may be subcontracted); (ii) relieve Developer of responsibility for damage to or loss before Commissioning; (iii) constitute or imply Commissioning; or (iv) affect the continuing rights of PGCPs after Commissioning. Developer shall promptly furnish, at no cost to PGCPs, all facilities, labor, and material reasonably needed for safe access to the Design-Build Work and to perform such safe and convenient inspections and tests as may be required by PGCPs. PGCPs' costs of any such test, observation, or inspection shall be borne by PGCPs, unless such test, observation, or inspection reveals a material failure of the Design-Build Work to comply with this Agreement or Applicable Law, in which event Developer shall pay all reasonable costs and expenses of such observation, inspection, or test within ten (10) Business Days after receipt of an invoice from PGCPs. In the event that any requested test, observation, or inspection causes a material delay in the Construction Schedule, Developer may notify PGCPs of a Relief Event in accordance with Article 16 (Relief Events), but only if such testing, observation, or inspection does not reveal any material failure or non-compliance as set forth herein. Any such inspections shall be performed in accordance with any reasonable safety protocols established by Developer and shall not unreasonably interrupt, interfere with, or impede the performance of the Design-Build Work.

7.17.2 Independent Engineer Tests and Inspection. The Parties acknowledge the Independent Engineer Agreement allows the Independent Engineer, on the terms provided therein, to review the Design Documents to confirm compliance of the Project with the Technical Requirements and the County building code; to serve as the Commissioning agent for the Project;²⁴ to conduct structural peer reviews; to test construction materials; and to inspect the Project during construction. The rights of PGCPs to review, comment on, test, or inspect the Design-Build Work shall apply notwithstanding the performance by the Independent Engineer or its subcontractors of similar duties.

7.17.3 Developer Tests and Inspection; Design-Build Monitor. Developer shall maintain an adequate inspection system and perform such inspections of any construction on the Sites regularly. Upon reasonable notice, PGCPs shall have the right to participate in any inspections or tests of the Design-Build Work performed by Developer or any Design-Build Monitor (defined below). To the extent Developer or a Financing Party retains a third-party monitor (each, a "**Design-Build Monitor**") to provide oversight of the Design-Build Work, Developer shall require (or shall require the Financing Party to require) that the Design-Build Monitor provide a copy of all determinations and documentation to PGCPs simultaneously with the provision of such determinations or documentation to Developer or a Financing Party, as applicable.

²⁴ Note to bidders: PGCPs will engage with the Successful Proposer to determine whether the Independent Engineer should serve as the Commissioning agent or if those functions should be performed by a third party. In either event, Developer will be responsible for costs associated with performance of the Commissioning agent functions as set forth in Section 10.1.4 (Cooperation and Costs).

7.17.4 Notice of Covering Design-Build Work. Developer shall give PGCPS reasonable advance notice of its upcoming schedule with respect to the covering and completion of any Design-Build Work, and shall update such notice, if necessary, within a reasonable time period before such covering and completion. PGCPS shall give Developer reasonable notice (a minimum of forty-eight (48) hours) of any intended inspection or testing of such Design-Build Work in progress prior to its covering or completion, which notice shall be sufficient to afford PGCPS a reasonable opportunity to conduct a full inspection of such Design-Build Work. At PGCPS' written request, Developer shall take apart or uncover for inspection or testing any previously-covered or completed Design-Build Work; provided, however, that PGCPS' right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by PGCPS as to whether the disputed Design-Build Work complies with the requirements of this Agreement. The cost of uncovering, taking apart, or replacing such Design-Build Work along with the costs related to any delay in performing Design-Build Work caused by such actions, shall be borne as follows:

7.17.4.1 By Developer, if such Design-Build Work was covered prior to any observation or test required by the Contract Standards or prior to any observation or test for which PGCPS was not provided reasonable advance notice hereunder and did not have the appropriate observers observe the test; and

7.17.4.2 In all other cases, as follows:

7.17.4.2.1 by Developer, if such observation or test reveals that the Design-Build Work does not comply with this Agreement; or

7.17.4.2.2 by PGCPS, promptly following receipt of an invoice therefor from Developer, if such observation or test reveals that the Design-Build Work complies with this Agreement.

7.17.4.3 In the event such Design-Build Work does comply with this Agreement, Developer may claim any delay directly caused by such observation or test as a Relief Event in accordance with Article 16 (Relief Events).

7.18 Design-Build Security. Developer shall maintain the Design-Build Security, or cause the same to be maintained, until the later of the Project Readiness Date or the date on which all Design-Build Work is completed.

7.19 Additional Bond Security. Developer shall promptly furnish additional security if (a) any surety upon any bond, or issuing financial institution for other security, furnished with this Agreement no longer meets the requirements of Design-Build Security, or (b) the value of the Design-Build Work to be performed under this Agreement is increased above the original Design-Build Security amount so that the penal sum of any bond becomes inadequate to cover the Design-Build Work outstanding for the Project.

7.20 Design-Build Changes Requested by PGCPs. Subject to Section 15.7 (Restrictions on Capital Modifications, Services Changes, and Design-Build Changes Requested by PGCPs), PGCPs shall have the right, but not the obligation, to make Design-Build Changes at any time prior to the applicable School Occupancy Readiness Date at its discretion for any reason whatsoever, whether and however the exercise of such rights affects this Agreement. Any such Design-Build Change and any related change in the terms and conditions of this Agreement shall be reflected in a Change Order. Developer may notify PGCPs of a Relief Event in accordance with Article 16 (Relief Events) to the extent implementing a Change Order reflecting a Design-Build Change will directly delay or impact Developer's performance of its obligations under this Agreement.

7.21 Correction of Design-Build Work.

7.21.1 Correction of Non-Conforming Design-Build Work. Throughout the Design-Build Period, Developer, without charge, shall complete, repair, replace, restore, re-perform, rebuild, and correct promptly any Design-Build Work found by PGCPs not to conform with the Contract Standards.

7.21.2 Election to Accept Non-Conforming Design-Build Work. PGCPs may elect by Change Order, at Developer's request, to accept non-conforming Design-Build Work and charge Developer (through an Extraordinary Item) an amount agreed upon by the Parties by which the value of the Design-Build Work or Services has been reduced.

7.21.3 Relation to Other Obligations. The obligations specified in this Section 7.21.3 (Relation to Other Obligations) establish only Developer's specific obligation to correct the Design-Build Work and shall not be construed to establish any limitation with respect to any other obligations or liabilities of Developer under this Agreement. This Section 7.21 (Correction of Design-Build Work) is intended to supplement (and not to limit) Developer's obligations under the Commissioning Tests, School Occupancy Readiness Conditions, and any other provisions of this Agreement or Applicable Law.

7.22 Furniture, Fixtures, and Equipment.

7.22.1 Required FF&E. Subject to Section 7.22.2 (Moveable FF&E) regarding Moveable FF&E, Developer shall furnish, pay for, install, and maintain as part of the Maintained Elements all furniture, fixtures, and equipment required for the Project as set forth in the Required FF&E.

7.22.2 Moveable FF&E. Developer shall be responsible for selecting, after due consideration of PGCPs' input, and initially purchasing the Moveable FF&E from one of the Required Subcontractors listed in Exhibit BB (Required Subcontractors). Developer shall have no liability to PGCPs for any damages or losses that may occur as a consequence of Developer's purchasing of the Moveable FF&E from the Required Subcontractors. Unless otherwise agreed in writing by the Parties, Developer shall install the Moveable FF&E prior to each School Occupancy Readiness Date, and, following such installation of the Moveable FF&E at each School, Developer

shall have no further responsibility with respect to the Moveable FF&E. Moveable FF&E shall be deemed to be part of the Project only to the extent of Developer's obligations with respect thereto as provided in this Section 7.22.2 (Moveable FF&E).

7.23 Warranties of Design-Build Work. Developer shall, for the protection of PGCPS, obtain from the Project Contractors, all Subcontractors, vendors, suppliers, and other persons from which Developer procures structures, improvements, fixtures, machinery, equipment, and materials to be incorporated in the Project such warranties and guarantees as are normally provided with respect thereto or, to the extent superior in scope or length, as are specifically required in the Contract Standards, each of which shall either be assigned to PGCPS to the full extent of the terms thereof or shall list PGCPS as a third party beneficiary. No such warranty shall relieve Developer of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment, or material shall be the cause for any increase in the Availability Payments or excuse any nonperformance of the Design-Build Work unless such failure is itself attributable to a Relief Event. Developer shall enforce such warranties and guarantees as provided in Section 11.5 (Developer Enforcement of Project Warranties).

7.24 LEED Requirements. Developer shall design and build each School in a manner sufficient to meet the LEED Requirements, but for the avoidance of doubt shall not be required to achieve certification from the U.S. Green Building Council. In the event the Independent Engineer determines that a School does not satisfy the intent of the LEED Requirements as of the School Occupancy Readiness Date for that School, Developer shall, within thirty (30) days of such determination (the "**LEED Cure Period**"), take such actions as are necessary to satisfy the intent of the LEED Requirements. If the Independent Engineer determines that a School still does not satisfy the intent of the LEED Requirements at the end of the LEED Cure Period, the Deductions set forth in Exhibit X-2 (Deductions) will apply until such time that the Independent Engineer notifies the Parties that the LEED Requirements have been achieved.

ARTICLE 8 SUBSTANTIAL COMPLETION

8.1 Conditions to Substantial Completion for the Schools. For each School, "**School Substantial Completion**" shall occur only when all of the following conditions have been satisfied for such School, as determined by the Independent Engineer, except to the extent that any or all of such conditions have been waived by PGCPS:

8.1.1 Physical Completion. Design-Build Work of the applicable School, including any associated parking, is in all respects physically complete and in compliance with this Agreement, except for (a) the Commissioning Tests; (b) Punch List Items; (c) at Developer's election, the Athletic Fields; and (d) if applicable, the Demolition Work associated with the school existing on the Walker Mill Middle School Land;

8.1.2 Maintained Elements. The Maintained Elements for the School are installed such that the Maintained Elements are ready for use and defect free, except for Punch List Items and, at Developer's election, the Athletic Fields;

8.1.3 Safety and Security Systems. The School's security and safety systems are functional in accordance with the Technical Requirements; and

8.1.4 Utilities. All Utilities specified or required under this Agreement to be arranged for by Developer are connected and functioning properly.

8.2 Notice of School Substantial Completion. Developer shall give PGCPs and the Independent Engineer at least thirty (30) days' prior written notice of the expected date of each School Substantial Completion.

ARTICLE 9 COMMISSIONING

9.1 Commissioning Generally. Developer shall comply with the Commissioning requirements of Exhibit R (Commissioning Requirements) and for each School shall, as provided therein:

- (a) Prepare a detailed Commissioning Plan for the conduct of the Commissioning Tests, meeting the minimum requirements set forth therein;
- (b) Include in the Commissioning Plan criteria for achieving the technical standards of the LEED "silver" rating for the School;
- (c) Conduct Commissioning activities during design and construction for the School;
- (d) Perform Commissioning Tests necessary to demonstrate School Occupancy Readiness for the School; and
- (e) Conduct Commissioning Tests during the Commissioning Fine Tuning Period for the School.

9.2 Commissioning Tests Report. Promptly upon its completion of the Commissioning Tests for a School, Developer shall deliver to PGCPs and the Independent Engineer a copy of the Commissioning Tests report prepared by or on behalf of Developer pursuant to Exhibit R (Commissioning Requirements).

ARTICLE 10 OCCUPANCY READINESS

10.1 Independent Engineer.

10.1.1 Independence. In accordance with the Independent Engineer Agreement, the Independent Engineer is required to act impartially and independently of PGCPs and Developer in the performance of its duties as contemplated in this Agreement and the Independent Engineer Agreement.

10.1.2 Limitations. Nothing in this Agreement shall be interpreted as giving the Independent Engineer any responsibility or authority for any aspect of the Design-Build Work, or as relieving Developer of its responsibility for the Design-Build Work as set forth in this Agreement, and neither Developer nor the Design-Builder nor any Subcontractor shall be entitled to rely on any advice or approvals that the Independent Engineer may give with respect to the Design-Build Work.

10.1.3 Joint Approval Required. PGCPs and Developer shall not, without the other's prior written approval, which approval shall not be unreasonably withheld or delayed:

1. Terminate, repudiate, or discharge the Independent Engineer for any reason;
2. Waive, settle, compromise, or otherwise prejudice any rights or claims which the other may have from time to time against the Independent Engineer;
3. Amend or vary the terms of the Independent Engineer Agreement or the services to be performed by the Independent Engineer; or
4. Enter into a separate agreement with the Independent Engineer in connection with the Project.

10.1.4 Cooperation and Costs. PGCPs and Developer shall cooperate with one another generally in relation to all matters within the scope of or in connection with the appointment of the Independent Engineer. All instructions and representations issued or made by either PGCPs or Developer shall be simultaneously copied to the other, and both PGCPs and Developer shall be entitled to attend all inspections undertaken by, or meetings involving, the Independent Engineer. Except as otherwise provided in the Independent Engineer Agreement, all costs (including legal fees of any counsel retained by the Independent Engineer) of the Independent Engineer shall be borne equally by Developer and PGCPs; provided, however, to the extent that the Independent Engineer serves as the Commissioning agent, any costs associated with the Independent Engineer's service as the Commissioning agent shall be paid for solely by Developer. Unless otherwise agreed to by the Parties in writing, and excluding any costs associated with the Independent Engineer's service as the Commissioning Agent, the maximum costs payable by each Party to the Independent Engineer during the term of the Independent Engineer Agreement is Three Million Dollars (\$3,000,000.00).

10.1.5 Independent Engineer as Mediator Prior to Completion of Design-Build Work. During the Design-Build Period, the Disputes Manager appointed in accordance with the Independent Engineer Agreement shall act as the binding mediator for purposes of any mediation conducted under Section 24.3 (Binding Mediation of Certain Disputes During the Design-Build Period).

10.1.6 Replacement of Independent Engineer. In the event that the Independent Engineer Agreement expires (and is otherwise not extended), is terminated in accordance with the Independent Engineer Agreement, or the Independent Engineer is otherwise unable or unavailable

to perform its duties under the Independent Engineer Agreement, PGCPs and Developer shall cooperate with one another in order to appoint, in accordance with this Section 10.1.6 (Replacement of Independent Engineer), a replacement consultant to act as the Independent Engineer as soon as reasonably practicable. The replacement Independent Engineer shall be competitively selected and agreed to by both PGCPs and Developer, acting reasonably, and shall possess skills in design review (including architectural review, structural peer review, and mechanical, electrical, and plumbing) for compliance with design requirements and technical specifications similar to the Technical Requirements, institutional building construction involving complex structural systems similar to the Schools, construction cost consulting, construction claims adjusting, and structural retrofit construction. Such skills may be acquired through a joint venture, association or, with the approval of PGCPs and Developer, a subcontractor. In the event that PGCPs and Developer are unable to agree within twenty (20) Business Days of the previous Independent Engineer's appointment expiring or being terminated, or within twenty (20) Business Days of the Independent Engineer's inability to perform its duties under the Independent Engineer Agreement, the matter may be resolved in accordance with Article 24 (Resolution of Disputes). To the extent possible, PGCPs and Developer shall work with the Independent Engineer in order for such Independent Engineer to continue to fulfill its obligations under the Independent Engineer Agreement until a replacement Independent Engineer is appointed by PGCPs and Developer.

10.2 School Occupancy Readiness Conditions.

10.2.1 Conditions. For each School, the following conditions shall constitute the "School Occupancy Readiness Conditions," each of which shall be and remain satisfied in all material respects by Developer in order to achieve School Occupancy Readiness and establish the School Occupancy Readiness Date for that School:

(a) **Substantial Completion.** School Substantial Completion has occurred;

(b) **Ready for Use.** The Independent Engineer has issued a letter of confirmation to PGCPs indicating that the entirety of the School, including all buildings and systems as well as parking, but, if so elected by Developer, excluding the Athletic Fields, are ready for use for the purposes of all PGCPs Activities (except for Punch List Items, which in each case shall be in shell and core in accordance with the Contract Standards) and to the best of its knowledge have been designed and built in accordance with this Agreement;

(c) **No Encumbrances.** There are no encumbrances registered or recorded on the relevant Site, including any part of the School, other than Permitted Encumbrances;

(d) **Successful Commissioning.** Developer has completed Commissioning of the School in accordance with the relevant Commissioning Plan, and the Commissioning Tests have been successfully performed and satisfied for the School (subject to such Commissioning which is identified in the relevant Commissioning Plan to be conducted after the School Occupancy Readiness Date);

(e) **Certificate of Use and Occupancy.** A temporary or final certificate of use and occupancy has been issued for the School by DPIE, and, to the extent a temporary certificate of use and occupancy has been issued, Developer has submitted to PGCPs a corrective action plan outlining the deficiencies with anticipated milestone dates;

(f) **Governmental Authority Readiness Confirmations.** All Governmental Authorities having jurisdiction have confirmed (and issued all pertinent Governmental Approvals or other documents in respect thereof) that all buildings and structures on the relevant Site are ready for occupancy;

(g) **Required Services Period Insurance.** Developer has obtained and submitted to PGCPs certificates of insurance for all Required Services Period Insurance;

(h) **Life Cycle Schedule.** Developer has delivered to PGCPs a Life Cycle Schedule for the School as required by Exhibit W (Services Requirements);

(i) **Start-Up Plan.** Developer has delivered to PGCPs a Start-Up Plan for the School as required by Exhibit W (Services Requirements);

(j) **Required FF&E.** Developer has procured and installed all Required FF&E; and

(k) **Establishment and Funding of the Services Period Reserve Account.** The Services Period Reserve Account shall be established and funded by Developer in accordance with Section 11.6.1 (Services Period Reserve Amount).

10.2.2 “Ready for Use”. For purposes of subsection (b) of Section 10.2.1 (Conditions), in determining whether the School or any Maintained Element is “ready for use,” the following factors shall be taken into account:

(a) the requirements of this Agreement;

(b) the ability of PGCPs Persons to access the School and the risk of injury to PGCPs Persons;

(c) the security requirements set forth in the Technical Requirements are operational;

(d) any apparent hazard or nuisance;

(e) the need to conduct school operations in a reasonably quiet and stable environment free from dust, chemical, smoke, and other health and safety concerns;

(f) the proper installation of all Maintained Elements and Required FF&E, and the functionality of all Maintained Elements; and

(g) a temporary or final certificate of use and occupancy has been issued for the School by DPIE.

10.3 School Occupancy Readiness Certificates.

10.3.1 Independent Engineer Inspection. For each School, upon request by Developer in accordance with the Independent Engineer Agreement, the Independent Engineer shall inspect the School as soon as possible but no later than five (5) Business Days following such a request and determine whether to issue the School Occupancy Readiness Certificate for the School in accordance with the Independent Engineer Agreement and this Agreement.

10.3.2 Certificate Issuance. If the Independent Engineer determines that the School Occupancy Readiness Conditions for a School have been satisfied or waived by PGCPS in accordance with Section 10.4.3 (Waiver of School Occupancy Requirements), the Independent Engineer shall deliver, within two (2) Business Days from the inspection referred to in Section 10.3.1 (Independent Engineer Inspection), a duplicate signed original School Occupancy Readiness Certificate for the School to PGCPS and Developer pursuant to the Independent Engineer Agreement.

10.3.3 Deficiencies. If, upon inspection and review, the Independent Engineer determines that any of the School Occupancy Readiness Conditions have not been satisfied for a School, the Independent Engineer shall as soon as possible, but no later than three (3) Business Days following the date on which the relevant issue is identified, deliver to PGCPS and Developer a School Occupancy Readiness Deficiency Report in accordance with the Independent Engineer Agreement detailing the deficiencies the Independent Engineer considers are required to be rectified by Developer in order for the School Occupancy Readiness Conditions to be satisfied. Within seven (7) Business Days of Developer's receipt of a School Occupancy Readiness Deficiency Report, Developer shall provide the Independent Engineer and PGCPS with details of all additional rectification actions that need to be performed by Developer at the relevant School to address all of the matters raised in the School Occupancy Readiness Deficiency Report, and Developer shall perform all such additional rectification actions. Upon Developer's notification of such rectification to the Independent Engineer in accordance with the Independent Engineer Agreement, the Independent Engineer, as soon as possible, but no later than three (3) Business Days following the date Developer provides such notification, shall review Developer's rectification actions and either issue a duplicate signed original School Occupancy Readiness Certificate for the School to PGCPS and Developer or issue a revised School Occupancy Readiness Deficiency Report.

10.3.4 Effect of Issuance. The School Occupancy Readiness Certificate shall establish the School Occupancy Readiness Date for the relevant School and be final and binding on PGCPS and Developer with respect to the occurrence of the School Occupancy Readiness Date for that School.

10.3.5 Matters Not Affected by Certificate Issuance. For any School, neither the issuance of the School Occupancy Readiness Certificate for the School, nor any use by PGCPS

of any part of the School or the commencement of any PGCPs Activities under the terms of this Agreement, shall:

- (a) Limit the obligations of Developer under this Agreement, including its obligation to complete the Design-Build Work for the School in accordance with this Agreement and to remedy any defects, deficiencies, or items of outstanding Design-Build Work existing or discovered for the School prior to or after the date of the School Occupancy Readiness Certificate or the date of the Punch List for the School;
- (b) Be construed as an approval by PGCPs of the School or the manner in which the Design-Build Work has been carried out by Developer for the School; or
- (c) Have any effect other than as specified in Section 10.3.4 (Effect of Issuance).

10.3.6 Retain Rights. PGCPs shall retain all of its rights with respect to any matter not affected by the issuance of School Occupancy Readiness Certificates.

10.4 Punch List Items.

10.4.1 Punch List. For each School, the Independent Engineer, in consultation with PGCPs and Developer, shall, prior to inspection of a School to determine whether a School has met the School Occupancy Readiness Conditions, prepare a list of all Punch List Items (each, a “**Punch List**”) identified at that time and an estimate of the cost and the time for rectifying such Punch List Items. The Independent Engineer shall not withhold the School Occupancy Readiness Certificate by reason solely that there are Punch List Items for the School. For each School, the relevant Punch List shall be a statement of repairs, corrections, and adjustments to the Design-Build Work, and incomplete aspects of the Design-Build Work, which in the Independent Engineer’s opinion:

- (a) Developer can complete within the timeframe established in accordance with Section 10.4.4 (Rectification of Punch List Items), and with minimal interference to the occupancy and use of the School; and
- (b) Would represent, to perform or complete, a total cost of not more than one percent (1%) of the portion of the price payable under the Design-Build Agreement with respect to such School (unless PGCPs determines that a higher percentage is acceptable).

To the extent School Occupancy Readiness is achieved for any School on the basis of a temporary certificate of use and occupancy, the need to obtain a permanent certificate of use and occupancy from DPIE shall be included as a Punch List Item for that School.

10.4.2 Minimal Impact on School Operations. For each School, the Punch List shall contain the schedule for the completion and rectification of the Punch List Items for that School. In determining the relevant time for rectifying Punch List Items, Developer shall schedule the completion and rectification of Punch List Items so as to minimize, to the greatest extent

reasonably possible, any impairment of PGCPS Persons' use and enjoyment of the relevant School, disruption of the Services, and PGCPS Activities.

10.4.3 Waiver of Occupancy Readiness Requirements. For any School, PGCPS may, in its discretion, waive any School Occupancy Readiness Condition, and the failure to meet any such requirement shall constitute a Punch List Item for that School.

10.4.4 Rectification of Punch List Items. For each School, Developer shall complete and rectify all Punch List Items within one hundred and twenty (120) days after the relevant School Occupancy Readiness Date or such other earlier period as the Independent Engineer may specify in the Punch List for the School. Developer acknowledges and agrees that the completion and rectification of Punch List Items may require work outside of standard business hours in order to accommodate the efficient operation of the School and conduct of PGCPS Activities.

10.4.5 Failure to Rectify Punch List Items. In the event that Developer fails to complete and rectify the Punch List Items specified in the Punch List for a School within the time period specified pursuant to Section 10.4.4 (Rectification of Punch List Items) and upon not less than three (3) Business Days prior written notice from PGCPS:

(a) PGCPS may withhold from the Availability Payment a holdback amount that is two hundred percent (200%) of the amount estimated by the Independent Engineer for PGCPS to complete and rectify Punch List Items (to the extent then outstanding); and

(b) PGCPS may engage others to perform the work necessary to complete and rectify the Punch List Items, at the risk and cost of Developer, and PGCPS may deduct such cost from the holdback amount set forth in subsection (a) of this Section 10.4.5 (Failure to Rectify Punch List Items).

Upon completion and rectification of all of the Punch List Items for a School pursuant to this Section 10.4.5 (Failure to Rectify Punch List Items), PGCPS shall release to Developer the then remaining amount of the holdback related to the School. If the cost of such completion and rectification exceeds the amount of such holdback, then Developer shall reimburse PGCPS for all such excess cost. During the time period specified pursuant to Section 10.4.4 (Rectification of Punch List Items), Developer shall not incur any Deductions on account of any uncompleted or unrectified Punch List Items.

10.5 Late Delivery Damages. In the event that School Occupancy Readiness has not been achieved for a School by the applicable Scheduled School Occupancy Readiness Date, then PGCPS shall be entitled to deduct Late Delivery Damages from the applicable Milestone Payment until School Occupancy Readiness is achieved, or the One Million Dollar (\$1,000,000) per School cap on Late Delivery Damages is reached.

10.6 Failure to Achieve School Occupancy Readiness by the Applicable Longstop Date. In the event Developer fails to achieve School Occupancy Readiness by the applicable

Longstop Date, a Developer Default hereunder shall be deemed to have occurred, and PGCPs may pursue all remedies available under Article 19 (Events of Default, Remedies, Termination, and Termination Compensation) in accordance with the terms thereof.

10.7 Pre-Occupancy Period.

10.7.1 Developer Obligations. During any Pre-Occupancy Period, Developer shall, with respect the applicable School:

10.7.1.1 maintain possession of the School, which will remain closed for any business activity, including any PGCPs Activity and access by PGCPs Persons (except for Pre-Occupancy Period Activities);

10.7.1.2 perform minimum facilities maintenance activities as are customarily required to keep a commercial building vacant but ready for occupation within thirty (30) days-notice, provided that no Deductions shall be applicable to the performance of such facilities maintenance provided during this period;

10.7.1.3 consistent with its obligations under this Agreement throughout the Term, use care and diligence, and take all reasonable and appropriate precautions, to protect the School, the Site, and the public from loss, damage, or destruction; and

10.7.1.4 insure the School against property and equipment perils in the terms set forth in Sections 2.1 and 2.2 of Exhibit CC (Required Insurance).

10.7.2 PGCPs Access Rights. During any Pre-Occupancy Period, PGCPs shall only access the applicable School with prior notice to Developer, and accompanied by Developer authorized personnel for the limited purposes of (a) inspecting Site conditions, (b) preparing for an imminent commencement of PGCPs Activities, or (c) holding elections or other State or County activities (collectively, the “**Pre-Occupancy Period Activities**”); provided that any Direct Losses resulting from any activities set forth in (c) shall be paid for solely by PGCPs as a Compensation Event.

10.7.3 Limitation on Compensation to Developer During the Pre-Occupancy Period. During the Pre-Occupancy Period for a School, Developer shall bear all cost and expenses associated with the applicable School, including performing the obligations set forth in Section 10.7.1 (Developer’s Obligations), except as expressly provided below:

10.7.3.1 Developer’s right if any to receive Delay Payments with respect to the School; and

10.7.3.2 Developer’s right to claim compensation in accordance with Article 16 (Relief Events) with respect to a Relief Event that arises during the Pre-Occupancy Period. For purposes of determining whether Developer has a right to claim a Relief Event during the Pre-Occupancy Period, but without limiting this Section 10.7.3 (Limitation on Compensation

to Developer During the Pre-Occupancy Period), Developer’s performance of the obligations set forth in Section 10.7.1 (Developer Obligations) shall be considered part of the Design-Build Work.

For clarity, except as set forth above, PGCPS shall have no obligation to compensate Developer for any costs, expenses, losses or otherwise incurred by Developer with respect to a School during such School’s Pre-Occupancy Period, even in the event that a Pre-Occupancy Period for a School is needed, in whole or in part, due such School’s Scheduled School Occupancy Readiness Date being extended. Developer’s right to compensation relief related to a Relief Event occurring before the Pre-Occupancy Period shall be limited to costs incurred by Developer prior to commencement of the Pre-Occupancy Period.

ARTICLE 11 SERVICES

11.1 Developer Obligations.

11.1.1 Delivery of Services. At all times during the Services Period, Developer shall provide the Services in accordance and compliance with the specifications set forth in Exhibit W (Services Requirements), the relevant Plans then in effect, and all other requirements of this Agreement. The Services shall include and Developer shall perform the facility maintenance services allocated to Developer in Appendix W-1 (Facilities Maintenance) to Exhibit W (Services Requirements) (the “**Facilities Maintenance**”) and the help desk services described in Appendix W-2 to Exhibit W (Services Requirements) (the “**Help Desk Services**”).

11.1.2 Delivery of Plans. Developer shall deliver the relevant Plans in accordance with Exhibit W (Services Requirements), update such Plans as required by Exhibit W (Services Requirements), and comply with the Plans.

11.1.3 Additional Services. Developer agrees that in addition to the Services Requirements, Developer will provide all other ancillary and additional services as may be reasonably required to achieve the standards and specifications set forth in this Agreement.

11.2 PGCPS Responsibilities.

11.2.1 Retained Responsibilities. PGCPS will perform the PGCPS’ Retained Responsibilities related to the operations and maintenance of the Schools as set forth in Section 2.1 of Exhibit W (Services Requirements).

11.2.2 PGCPS Not Responsible for the Services. PGCPS’ rights of review, acceptance, approval, or confirmation of compliance with respect to any aspect of the Services will be for PGCPS’ benefit only, and no acceptance, approval, or confirmation of compliance by PGCPS or any representative of PGCPS will in any way relieve Developer of its obligation for all aspects of the Services except as may be expressly set forth in this Agreement or expressly waived by PGCPS in writing.

11.3 Joint Technical Reviews. In accordance with Section 1.3 of Exhibit W (Services Requirements), at the end of each five year period throughout the Services Period (the first such five year period commencing on the Project Readiness Date), Developer and PGCPs, supported by a mutually agreed and duly qualified Independent Inspector and such technical resources as are mutually deemed necessary, will conduct a Joint Technical Review of the Project. The Independent Inspector shall be experienced in conducting facility condition assessments for public schools.

11.4 Unavailability Events and Performance Failures.

11.4.1 Deductions. PGCPs shall have the right to impose Deductions for Unavailability Events and Performance Failures as and to the extent provided in Article 14 (Payments) and Exhibit X-2 (Deductions).

11.4.2 Additional Developer Obligations. In the event the same Unavailability Event or Performance Failure occurs repeatedly or persistently, and Developer is not excused from performance as a result of a Relief Event, Developer shall, in addition to incurring Deductions, take any action (including making all capital investments, improvements, or modifications, repairs, replacements, and operating and management practices changes) necessary in order to continue or resume performance hereunder and eliminate the cause of, and avoid or prevent recurrences of such Unavailability Event or Performance Failure. Further, if any such Unavailability Event or Performance Failure involves a violation of Applicable Law, Developer shall (a) promptly provide PGCPs, within twenty-four (24) hours, with copies of any notices sent to or received from any Governmental Authority having regulatory jurisdiction with respect to any violations of Applicable Law, and (b) pay any other resulting fines, levies, assessments, impositions, penalties, or other charges resulting therefrom.

11.4.3 Minimizing Interruption to PGCPs Activities. Developer shall perform its maintenance, repair, replacement, and related obligations, except for such maintenance, repair, replacement, and related obligations required in response to an Emergency Event, Unavailability Event, or Performance Failure, in a manner that minimizes disruption or interference with PGCPs Activities. Notwithstanding anything to the contrary in Section 2.6 (General Duty of PGCPs to Mitigate), and subject to Developer's rights set forth in Section 3.9 (Scheduling Services) in Exhibit W (Services Requirements), PGCPs has no obligation to conduct PGCPs Activities at a time or location or otherwise to accommodate any maintenance, repair, replacement, or related activities, except for such maintenance, repair, replacement, and related obligations required in response to an Emergency Event, Unavailability Event, or Performance Failure.

11.5 Developer Enforcement of Project Warranties. During the Term, Developer shall be responsible for meeting the maintenance obligations under all manufacturers' warranties on new equipment purchased and installed in the Project by Developer and shall be the agent of PGCPs in enforcing all equipment warranties and guarantees, including warranties and guarantees of the Design-Build Work obtained by Developer pursuant to Section 7.23 (Warranties of Design-Build Work). Developer shall not be required to commence or maintain any litigation with respect

to such warranties or guarantees but may do so in its discretion. Developer shall cooperate with and assist PGCPs if PGCPs seeks to enforce warranties and guarantees through litigation.

11.6 Services Period Reserve Account.

11.6.1 Services Period Reserve Amount. The Escrow Agreement shall require that the Escrow Agent establish a separate interest-bearing account for the sole benefit of the Project (the “**Services Period Reserve Account**”). Developer shall deposit into the Services Period Reserve Account One Hundred and Fifty Thousand Dollars (\$150,000.00) on or before the Project Readiness Date, with a pro rata amount per School deposited on or before each School Occupancy Readiness Date. On the anniversary of each Contract Year (such amount to be prorated to accommodate any partial Contract Year during the Services Period), Developer shall deposit such additional funds as are necessary so that there is One Hundred Fifty Thousand Dollars (\$150,000.00), Index-Linked, following the Project Readiness Date, or such lesser pro rata amount per School following each School Occupancy Readiness Date prior to the Project Readiness Date. To the extent any funds remain in the Services Period Reserve Account at the end of the Term, the balance in the Services Period Reserve Account shall be applied to the last Availability Payment.

11.6.2 Use of Funds. During the Services Period, PGCPs may direct that Developer use funds in the Services Period Reserve Account to fund compensation claims determined in accordance with Section 14.14 (Payments for Compensation Events and Other Additional Costs); provided that, any such costs incurred by Developer above the balance of the Services Period Reserve Account shall be paid by PGCPs through another payment method selected by PGCPs in accordance with Section 14.14.3 (PGCPs Payment Methods).

ARTICLE 12 PROJECT FINANCING AND REFINANCING

12.1 Developer’s Obligations. Developer shall be solely responsible for obtaining any financing for the development, design, and construction of the Project and the performance of Developer’s other obligations under this Agreement, which financing shall comply with all requirements of this Agreement. The financing on this Project shall not be cross-collateralized with any other project.

12.2 PGCPs’ Obligations. PGCPs agrees, to the extent consistent with Applicable Law, to cooperate with Developer with respect to Developer’s documentation reasonably necessary to obtain and maintain financing for the development, design, and construction of the Project and the performance of Developer’s other obligations under this Agreement. Nothing herein shall require PGCPs to provide any funding for the Project or to incur any obligations or liabilities or to take any action, give any consent, or enter into any document inconsistent with the provisions of this Agreement, it being understood, however, that the foregoing shall not be interpreted to excuse PGCPs from its obligation to pay Availability Payments or any other amounts due and owing hereunder from time to time. So long as any of Developer’s obligations under any Financing Document (other than inchoate contingent obligations) remains outstanding, PGCPs shall, unless directed otherwise by the Collateral Agent, cause the Escrow Agent to deposit

all amounts payable by PGCPs under this Agreement into an account controlled by the Collateral Agent to be designated to PGCPs and the Escrow Agent by the Collateral Agent.

12.3 No Recourse to PGCPs. All debt or other financing obligations issued or incurred by Developer in connection with this Agreement or the Project shall be issued or incurred only in the name of Developer. PGCPs shall have no obligation to make payments on any such indebtedness or such other financing obligations, or to join in, execute, or guarantee any note or other evidence of indebtedness of Developer.

12.4 Limited Recourse to Developer. Notwithstanding anything herein to the contrary, and except in the case of fraud, misfeasance, malfeasance, or gross negligence, the liability of Developer under this Agreement to PGCPs and each obligation of Developer hereunder owed to PGCPs (including, but not limited to its indemnity obligations) shall be “limited recourse obligations” and, accordingly, the sole source of satisfaction of such obligations shall be limited to Developer’s interest in (a) this Agreement; (b) the Project; and (c) Developer’s other assets, if any. PGCPs shall not seek to obtain payment or recourse from any member or beneficial owner of Developer or nonprofit sponsor of Developer; recourse being limited to Developer’s assets as set forth above. Notwithstanding anything herein to the contrary, no member, director, officer, or trustee of Developer or the beneficial owner or nonprofit sponsor of Developer shall have any personal liability whatsoever arising under this Agreement, and none of the assets of such members, directors, officers, or trustees shall be subject to judgment, foreclosure, or seizure by PGCPs for any matter arising under this Agreement.

12.5 Financing Party. During the Term, PGCPs acknowledges that Developer will finance its rights to payment pursuant to this Agreement. PGCPs agrees to execute an estoppel certificate as may reasonably be required by a Financing Party so as to evidence PGCPs’ (a) consent to any such financing; (b) consent to the conditional or collateral assignment of this Agreement to the Financing Party; and (c) certifications to the Lenders as to the status of this Agreement and the performance of Developer hereunder as of the date of such certification. Within ten (10) days after assigning or encumbering any portion of its interest in all or any portion of the Project, Developer shall furnish to PGCPs a written notice thereof setting forth (a) the name and address of the Collateral Agent; (b) the name and address of any Financing Party; and (c) certification provided by the Financing Party that the Financing Party is not a Prohibited Person. PGCPs agrees that Developer’s assignment of, and grant of the security interest in and first lien over, all of Developer’s rights, title, and interests in and to this Agreement, the performance by PGCPs, the Collateral Agent (on behalf of the Financing Party), and Developer of their respective obligations hereunder, and the enforcement by the Collateral Agent (on behalf of the Financing Party) of its rights under the Financing Documents, in each case, shall neither constitute a Developer Default or any other breach by Developer of this Agreement nor would, with the giving of notice or lapse of time or both, constitute a Developer Default or any other breach by Developer of this Agreement, nor require the consent of PGCPs, other than as provided herein.

12.6 Exercise of Remedies by Financing Party. If the Financing Party or any successor in interest after the Financing Party has succeeded to ownership of the Developer Interest by virtue of the default by Developer under this Agreement or otherwise, then this Agreement shall

continue in full force and effect, so long as the Financing Party or such successor is diligently taking such action as is reasonable under the circumstances to cure all continuing Developer Defaults (excepting bankruptcy-type defaults) and such continuing Developer Defaults (excluding bankruptcy-type defaults) are in fact cured during the Cure Period. In such event, for the period of time during which the Financing Party or any successor succeeding to ownership of the Developer Interest continues to hold the Developer Interest, the Financing Party or such successor shall become liable and fully bound by the provisions of this Agreement and PGCPs will attorn to the Financing Party and/or such successor for the balance of the Term and on all other terms and conditions herein set forth.

12.7 Rights of Financing Party.

12.7.1 Intended Third-Party Beneficiary. With respect to a Financing Party, PGCPs and Developer agree that each Financing Party shall be a direct, intended third-party beneficiary of the provisions of this Article 12 (Project Financing and Refinancing) (inclusive of all other provisions of this Agreement necessary to give the Collateral Agent's rights under Article 12 (Project Financing and Refinancing) full force and effect) and to the extent the Financing Party is expressly granted other rights under this Agreement or succeeds to the Developer Interest for the purpose of enforcing the rights granted to it.

12.7.2 PGCPs Lender Notice. PGCPs shall promptly provide written notice (a "PGCPs Lender Notice") with respect to any Developer Default to the Collateral Agent at the notice address provided pursuant to Section 12.5 (Financing Party), provided that delivery of the notice or failure to deliver notice to the Collateral Agent shall not extend the time for Developer to cure any default.

12.7.2.1 A PGCPs Lender Notice shall contain a summary of the facts relating to the relevant event in order to assist each Financing Party in determining an appropriate course of action, which shall include (i) the unperformed obligations of Developer under this Agreement; (ii) any grounds for termination of this Agreement in sufficient detail, with applicable supporting documentation, and with references to the specific provisions of this Agreement, to enable the Financing Party to assess the scope and amount of any liability of Developer resulting therefrom; and (iii) all amounts then due and payable by Developer to PGCPs under this Agreement, if any, on or before the date of the PGCPs Lender Notice and which remain unpaid at such date and, by cross-reference to the applicable provision(s) of this Agreement, the nature of Developer's obligation to pay such amounts.

12.7.2.2 PGCPs shall from time to time update any PGCPs Lender Notice issued as and when PGCPs becomes aware of any unperformed obligations of Developer (including non-payment of undisputed amounts that have become due) under this Agreement that were not specified in the relevant PGCPs Lender Notice.

12.7.2.3 For the avoidance of doubt, nothing in this Section 12.7.2 (PGCPs Lender Notice) shall prevent the concurrent running of multiple PGCPs Lender Notices.

12.7.3 PGCPs Prospective Termination Notice.

12.7.3.1 PGCPs shall not terminate or deliver any notice have the effect of terminating this Agreement or take any Restricted Action without giving to the Collateral Agent written notice (a “**PGCPs Prospective Termination Notice**”) stating:

12.7.3.1.1 that a Developer Default has occurred and the proposed Termination Date, which will be not sooner than one hundred and twenty (120) days after the PGCPs Prospective Termination Notice; and

12.7.3.1.2 the grounds for termination in reasonable detail, with supporting documentation, and with reference to the specific provisions of this Agreement, including: (i) the nature of any Developer Default forming the basis of such notice and the resulting grounds for termination of this Agreement so as to enable Developer and the Financing Party to assess the scope and amount of any liability of Developer resulting therefrom; (ii) the nature and amount of all amounts then due and payable by Developer to PGCPs under this Agreement, if any, on or before the date of the PGCPs Prospective Termination Notice and which remain unpaid at such date; and (iii) a reasonably estimated amount of any amounts PGCPs reasonably foresees shall become due and payable from Developer to PGCPs under this Agreement.

12.7.3.2 PGCPs shall not terminate or deliver any notice that would have the effect of terminating this Agreement or take any Restricted Action that would have the effect of terminating this Agreement prior to the expiration of the one hundred and twenty (120) day period referred to in Section 12.7.3.1.1; provided, however, that until the expiration of such period, PGCPs shall be entitled to require Developer to remedy any Developer Default and, subject in each case to the rights of the Financing Party (including specifically any rights that the Financing Party has under this Agreement that may or must precede exercise of any of the following rights by PGCPs), PGCPs shall be entitled to exercise all rights under this Agreement other than termination of this Agreement.

12.7.4 Indicative Notice. At any time upon the occurrence of a Developer Default or the receipt of a PGCPs Prospective Termination Notice, the Collateral Agent may, without limiting any other of the Financing Party’s rights and remedies, give notice to PGCPs of its intention to nominate a representative of the Collateral Agent, on behalf of the Lenders, to step-in in accordance with Section 12.8 (Collateral Agent Step-In) (an “**Indicative Step-In Notice**”) or to effectuate a substitution for Developer in accordance with Section 12.10 (Substitution of Developer) (an “**Indicative Substitution Notice**”).

12.7.5 Withdrawal Notice. If at any time after the giving of an Indicative Step-In Notice, Indicative Substitution Notice, or a PGCPs Prospective Termination Notice, the Collateral Agent has determined that it is not, or is no longer, considering appointing a representative or effecting a substitution of Developer’s rights and liabilities under this Agreement with a Suitable Substitute Developer in accordance with this Agreement, the Collateral Agent shall give PGCPs notice (a “**Withdrawal Notice**”), and thereafter the provisions of this Article 12 (Project Financing and Refinancing) shall not be applicable with respect to the event that led to

such Indicative Step-In Notice, Indicative Substitution Notice, or PGCPs Prospective Termination Notice, and PGCPs shall have the right to take any and all action available to it under this Agreement as of the effective date of the Withdrawal Notice.

12.7.6 Right to Cure. The Financing Party shall have the right (but not the obligation) to take such actions as may be necessary, in their sole discretion, to cure or cause Collateral Agent to cure on their behalf, a Developer Default prior to any Step-In Period and without the necessity of issuing an Indicative Step-In Notice or Indicative Substitution Notice. Prior to exercising any such right, the Collateral Agent shall deliver a written notice thereof to PGCPs (a “**Cure Notice**”). PGCPs will accept performance by or on behalf of the Financing Party as performance by Developer. Any acts by or on behalf of the Financing Party in the exercise of such right shall be deemed to be acts of Developer for the purposes of this Agreement, including the indemnity provisions hereof. The Financing Party may exercise such rights for a period (the “**Cure Period**”) commencing on the date of delivery of a Cure Notice and ending on the earlier of: (a) the Step-In Date; (b) the date of delivery of a Withdrawal Notice; or (c) ninety (90) days following the delivery of a PGCPs Prospective Termination Notice.

12.7.7 No Material Modifications. PGCPs will not accept any election to terminate this Agreement by Developer or enter into any amendment or modification of this Agreement that could adversely impact the Financing Party without the prior written consent thereto of the Collateral Agent.

12.7.8 No Requirement to Perform. Nothing herein shall be construed to require the Financing Party to perform any obligations of Developer under this Agreement or otherwise to cure any default of Developer, but only grants to the Financing Party the option to do so, and the exercise by the Financing Party of its rights and remedies under the Financing Documents shall not constitute an assumption of Developer’s obligations under this Agreement (except to the extent such obligations are expressly so assumed by an instrument in writing executed by the Financing Party).

12.8 Collateral Agent Step-In. The Collateral Agent may give PGCPs notice (a “**Step-In Notice**”) at any time during an Indicative Step-In Notice Period or a PGCPs Prospective Termination Notice Period, as the case may be. The Step-In Notice shall (a) state that the Collateral Agent intends to exercise its step-in rights under this Agreement, and (b) identify the Appointed Representative. From the Step-In Date through the Step-Out Date, the Appointed Representative shall be entitled to exercise and enjoy the rights and powers of Developer under this Agreement, including any rights to cure a Developer breach and to address any PGCPs notices then delivered by PGCPs to Developer or to Collateral Agent during the Step-In Period, and shall perform Developer’s obligations under this Agreement. During the Step-In Period, PGCPs shall interact with the Appointed Representative and not Developer, and PGCPs’ receipt of the Step-In Notice shall be, and be deemed to be, a good and effective discharge of a Developer obligation under this Agreement.

12.9 Collateral Agent Step-Out. The Collateral Agent or the Appointed Representative may at any time during the Step-In Period deliver to PGCPs a written notice (a

“**Step-Out Notice**”) which specifies the Step-Out Date. Upon the expiration of the Step-In Period: (a) PGCPs shall be released from all obligations under this Article 12 (Project Financing and Refinancing) to the Authorized Representative arising from and after the effective date of the step-out set out in the Step-Out Notice; (b) the Authorized Representative shall be released from all obligations and liabilities under this Article 12 (Project Financing and Refinancing) to PGCPs arising from and after such date; and (c) PGCPs shall no longer interact with the Appointed Representative and shall interact with Developer in connection with this Agreement. Developer shall continue to be bound by the terms of this Agreement notwithstanding the giving or occurrence of a Cure Notice, an Indicative Notice, a Step-In Notice, a Step-In Period, a Step-Out Notice, a Step-Out Date, any action by the Collateral Agent, Appointed Representative, or any Financing Party, and Developer shall be liable for any and all obligations and liabilities arising under this Agreement prior to the expiration of the Step-in Period from actions or inactions of the Collateral Agent, the Appointed Representative, or Financing Party. Developer shall remain liable for any unpaid undisputed amounts due and payable to PGCPs by Developer under this Agreement.

12.10 Substitution of Developer. At any time (a) upon the occurrence of a Developer Default, and where relevant to such a Developer Default, during the continuance of a Developer Default, or (b) during the Step-In Period, the Collateral Agent may, on thirty (30) days prior written notice to PGCPs and any Appointed Representative, cause the assignment of Developer’s rights and liabilities under this Agreement, and all of Developer’s right, title and interest in this Agreement to a Suitable Substitute Developer in accordance with the provisions of this Section 12.10 (Substitution of Developer). Upon any substitution referred to in this Section 12.10 (Substitution of Developer) becoming effective, (a) Developer and PGCPs shall retain their obligations under this Agreement to each other, including with respect to indemnification under this Agreement whether arising prior to or following such substitution, and the Suitable Substitute Developer shall not acquire any liability to PGCPs with respect to such obligations; (b) the Suitable Substitute Developer and PGCPs shall assume all new obligations under this Agreement from and after the applicable substitution date and shall cure all continuing Developer Defaults (excepting bankruptcy-type defaults) within the Cure Period; (c) any subsisting ground for termination of this Agreement by PGCPs shall be deemed to have no effect and any subsisting Termination Notice will be automatically revoked to the extent that the continuing Developer Defaults (excepting bankruptcy-type defaults) are cured within the Cure Period; and (d) any Deduction or series of Deductions or consequences arising under this Agreement resulting from any Unavailability Events or Performance Failures hereunder that arose prior to that time, shall not apply to the Suitable Substitute Developer after the substitution.

12.11 Specific Covenants.

12.11.1 PGCPs Covenants. PGCPs agrees that PGCPs shall:

12.11.1.1 As soon as is reasonably practicable, at Developer’s expense and following completion of any internal approvals as may be required by PGCPs, take whatever action the Financing Party, an Appointed Representative, or a Suitable Substitute Developer may reasonably require for perfecting any assignment, transfer, or release under this Agreement, including the execution of any transfer or assignment, and the giving of any notice, order, or

direction and the making of any registration which, in each case, the Financing Party or Appointed Representative or Suitable Substitute Developer reasonably requires; and

12.11.1.2 Not, prior to the date the Collateral Agent has notified PGCPs in writing that the Senior Debt has been discharged, unless the Collateral Agent has consented in writing (acting reasonably): (i) appoint any trustee, receiver, liquidator, sequestrator, administrator, or other custodian in connection with the bankruptcy of Developer or any of its assets; or (ii) commence any formal step (including petition, proposal, application, convening of a meeting, or other proceeding) taken with a view to or for the purpose of considering, or seeking any order or resolution in connection with, or enter into any formal agreement regarding, a dissolution, bankruptcy, receivership, winding-up, liquidation, administration, or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganization, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of Developer (whether voluntary or involuntary) made or commenced by any party under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., as amended from time to time and any successor statute thereto, or any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

12.11.2 Collateral Agent Covenant. In its appointment as Collateral Agent, Developer shall require that the Collateral Agent notify PGCPs of any decision by the Financing Party to exercise its remedies of cure, step-in, or substitution of Developer under the Financing Documents upon the Collateral Agent's receipt of written notice thereof.

12.12 New Agreement. In the event this Agreement shall be terminated by rejection, or otherwise, during a case in which Developer is the debtor under Title 11, United States Code, or other similar federal or state statute, then PGCPs shall, at the option of the Financing Party, upon notice of the Financing Party to PGCPs given within thirty (30) days thereafter, enter into a new agreement with the Financing Party having terms substantially identical to this Agreement, pursuant to which the Financing Party shall have all of the rights and obligations of Developer hereunder.

12.13 Refinancing.

12.13.1 Consent Required for Refinancing. Developer shall not enter into any Refinancing other than an Exempt Refinancing without the prior written consent of PGCPs, provided that PGCPs' consent to any Refinancing will not be unreasonably withheld or delayed if such Refinancing occurs after the Project Readiness Date, has no material and adverse effect on Developer's ability to perform its obligations under this Agreement, and does not increase any liability or potential liability of PGCPs (unless PGCPs is specifically compensated for such liability or potential liability).

12.13.2 PGCPs' Share of Refinancing Gain. PGCPs shall be entitled to receive a fifty percent (50%) share of any Refinancing Gain arising from a Qualifying Refinancing, to be determined as set forth in Article 3 of Exhibit V (Calculation and Payment of Refinancing Gains).

12.13.3 Developer Proposal to Refinance. Developer shall promptly provide PGCPs with full details of any proposed Qualifying Refinancing, as set forth in Article 2 (Data and Projections Required for the Calculation of Refinancing Gain) of Exhibit V (Calculation and Payment of Refinancing Gains). PGCPs shall (before, during, and within two years after any Qualifying Refinancing) have unrestricted rights of audit over any proposed Financial Model, books, records, and other documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Qualifying Refinancing.

12.13.4 Payment to PGCPs. Payment to PGCPs of its portion of any Refinancing Gain shall be made as set forth in Article 5 (Payment of PGCPs' Portion of Refinancing Gain) of Exhibit V (Calculation and Payment of Refinancing Gains).

12.13.5 Calculation of Refinancing Gain. The Refinancing Gain shall be calculated as set forth in Article 3 (Calculation of the Refinancing Gain) of Exhibit V (Calculation and Payment of Refinancing Gains).

12.13.6 PGCPs Cooperation. PGCPs shall cooperate, as reasonably requested by Developer, in connection with the closing of any Refinancing, including providing customary legal opinions and instruments and other documents; provided, however, that PGCPs shall not incur any costs or expenses in connection with any Refinancing.

ARTICLE 13 FINANCIAL MODEL

13.1 Financial Model.

13.1.1 Copy Received. The Financial Model has been provided electronically to PGCPs and is deemed incorporated herein as Exhibit U (Financial Model and Related Information). A summary of such information is included in Exhibit U (Financial Model and Related Information). The Financial Model is considered proprietary to Developer and its contents shall be treated as Confidential Information by all PGCPs Persons.

13.1.2 Risk of Errors or Omissions. Developer shall bear the entire risk of any errors in or omissions from the Financial Model and shall not be entitled to any compensation from or other redress against PGCPs in relation to any loss or damage that it suffers in consequence of such error or omission.

13.1.3 No Guaranteed Return. In no event shall the agreement of the Parties to establish and maintain the Financial Model for certain purposes hereunder be construed to mean that Developer is entitled to receive a guaranteed rate of return on equity invested in connection with the Project.

13.2 Financial Model Updates.

13.2.1 Updates. The Financial Model shall only be updated in the following circumstances:

(a) In connection with a Qualifying Refinancing in accordance with Section 12.13 (Refinancing);

(b) As otherwise required from time to time, to reflect changes as required by this Agreement, upon agreement of both Parties.

The Financial Model update shall only incorporate (a) changes to revenues and expenses that arise directly from the circumstances described above, and (b) consequential changes to the Senior Debt draw down schedule, funding and release of reserves, financing costs, debt service profile, equity draw down schedule, and Developer's profile of Distributions. The Financial Model update shall not (x) generally update projections through the end of the Term based on current market conditions, or (y) incorporate information or assumptions based on Developer's actual financial performance, except by mutual agreement as set forth in Article 2 (Data and Projections Required for the Calculation of Refinancing Gain) of Exhibit V (Calculation and Payment of Refinancing Gains). Following approval by PGCPs, the Financial Model update shall become the Financial Model and shall be attached to this Agreement.

13.2.2 Financial Model Audits. Any Financial Model update required under Section 13.2 (Financial Model Updates) shall be audited by an independent audit firm, and Developer shall deliver a copy of the firm's audit and opinion to PGCPs prior to such Financial Model update becoming effective under this Agreement. In such a case, Developer shall solely bear the cost of the audit.

13.2.3 Developer Preparation. Developer shall prepare the Financial Model updates and shall provide PGCPs with each Financial Model update and a complete set of the updated and revised assumptions, and other data that form a part of the Financial Model as updated, including updated and revised projections and calculations with respect to revenues, expenses, the repayment of Senior Debt and Distributions.

13.2.4 Access and Challenges. PGCPs shall have the right at all times to gain access, on an open book basis, to the Financial Model and each Financial Model update and the set of updated and revised assumptions and other data that form part of each such model. PGCPs shall have the right to challenge the validity, accuracy, or reasonableness of any Financial Model update or the related updated and revised assumptions and data. In the event of a challenge, the immediately preceding Financial Model version that has not been challenged shall remain in effect pending the outcome of the challenge or until a new Financial Model update is issued and unchallenged.

13.2.5 Changes to Financial Model Formulas. In no event shall the Financial Model formulas be changed except with the prior written agreement of both Parties.

13.2.6 PGCPs Audit. Prior to making any use of the output of the Financial Model, PGCPs may, at its own expense, review and audit the Financial Model and all amendments and updates thereto prepared by Developer. Developer shall provide such information as is

reasonably required by PGCPs to conduct such audit on an annual basis and as otherwise required from time to time.

ARTICLE 14 PAYMENTS

14.1 Use of Escrow Agent. PGCPs has decided, for its convenience, to use the Escrow Agent and requested that Developer and the Escrow Agent enter into the Escrow Agreement as a mechanism to effect such payments. PGCPs will deposit, or cause to be deposited, into the Escrow Account all funds due to Developer under this Agreement at least two (2) Business Days prior to any payment by PGCPs becoming due to Developer, and, as of the Commercial Close Date, anticipates depositing such funds prospectively on a quarterly basis. Notwithstanding the foregoing, the use of the Escrow Agent shall not excuse, delay, or impede the making by PGCPs of any payment to which it is obligated under this Agreement. If the Escrow Agent fails to make any payment when due on behalf of PGCPs as contemplated in this Agreement or the Escrow Agreement, then PGCPs shall make such payment within seven (7) Business Days following Developer's written demand.

14.2 Progress Payment. Within fifteen (15) days after receiving a written notice from Developer, certified by the Independent Engineer, identifying that fifty percent (50%) of the Design-Build Agreement Price has been expended, PGCPs shall pay a Progress Payment in the amount of Fifteen Million Dollars (\$15,000,000.00) to Developer. Notwithstanding Section 14.1 (Use of Escrow Agent) and this Section 14.2 (Progress Payment), PGCPs may withhold the Progress Payment if and so long as a Developer Default has occurred and continues without the circumstances giving rise to the Developer Default being fully cured, rectified, or remedied by Developer.

14.3 Milestone Payments.

14.3.1 Milestone Payments. Subject to the limited exceptions set forth in Section 14.3.2 (Exceptions to Timing of Milestone Payment Notices Due to Relief Events), and in accordance with Section 14.3.3 (Payment), PGCPs shall pay Developer Milestone Payments equal to Five Million Dollars (\$5,000,000.00) per School, as such amount may be off-set in accordance with this Agreement, within fifteen (15) days after receiving a written notice from Developer (the "Milestone Payment Notice") identifying that the School Occupancy Readiness Date has been achieved for a School.

14.3.2 Exceptions to Timing of Milestone Payment Notices Due to Relief Events; Limitation on Compensation. Notwithstanding Section 14.3.1 (Milestone Payments), in the event that:

(a) the Scheduled School Occupancy Readiness Date for a Group A School is extended beyond July 15, 2023 due to a Relief Event;

(b) the Scheduled School Occupancy Readiness Date for a Group B School is extended beyond December 30, 2023 due to a Relief Event; or

(c) the Scheduled School Occupancy Readiness Date for a Group C School is extended beyond July 15, 2024 due to a Relief Event;

Developer may deliver to PGCPs a Milestone Payment Notice with respect to such School(s) upon the later of (i) the School achieving School Substantial Completion, as certified by the Independent Engineer, or (ii) July 15, 2023 for a Group A School, December 31, 2023 for a Group B School, or July 15, 2024 for a Group C School. The right to payment of the Milestone Payment in accordance with this Section 14.3.2 (Exceptions to Timing of Milestone Payment Notices Due to Relief Events) shall be Developer's sole remedy with respect to any change in the timing of receipt of such Milestone Payment due to a Relief Event.

14.3.3 Payment. Within fifteen (15) days after receiving a Milestone Payment Notice, PGCPs shall pay Developer the Milestone Payment, as such amount may be off-set in accordance with this Agreement. Notwithstanding Section 14.1 (Use of Escrow Agent) and this Section 14.3.3 (Payment), PGCPs may withhold any Milestone Payment if and so long as a Developer Default has occurred and continues without the circumstances giving rise to the Developer Default being fully cured, rectified, or remedied by Developer, and PGCPs may withhold any funds from the Milestone Payment as authorized herein.

14.4 Availability Payments. Beginning on the first Billing Period that Availability Payments can be made and through the Termination Date, on a monthly basis, PGCPs shall pay the Availability Payment due to Developer in accordance with this Agreement. For avoidance of doubt, there shall be no right to receive or otherwise claim the School Capital Charge amounts listed in Table 2 of Exhibit X-1 (Payment Calculations) for any period of time prior to any School Occupancy Readiness Date for a particular School.

14.4.1 Availability Payments Calculation. Availability Payments shall be calculated and earned by Developer according to the methodology set forth in this Section 14.4 (Availability Payments) and Exhibit X-1 (Payment Calculations).

14.4.2 Availability Payment Formula. The Availability Payment shall be calculated in accordance with the following formula, as more specifically defined in Exhibit X-1 (Payment Calculations):

$$AP = (\sum SAP) - CO \pm NA$$

Whereby,

AP = Availability Payment

SAP = School Availability Payment

CO = Carry Over

NA = Net Adjustments

Whereby,

SAP = (SCC + SSC)

Whereby,

SCC = School Capital Charge

SSC = School Services Charge

14.4.3 Net Adjustments and Carry Over. The “**Net Adjustments**”, which may be a charge or a credit, shall be calculated in accordance with the following formula, as more specifically defined in Exhibit X-1 (Payment Calculations):

NA = DC ± EI

Whereby,

NA = Net Adjustments

DC = Deductions Credit

EI = Extraordinary Items

Where the Net Adjustments in a Quarterly Net Adjustments Report reflect a payment owed by Developer, such NA amount shall be referred to as an “**NA Credit**,” and where the Net Adjustments in a Quarterly Net Adjustments Report reflect a payment owed by PGCPs, such NA amount will be referred to as an “**NA Charge**.”

14.4.3.1 Limit on Monthly Availability Payment Adjustments. It is the intent of the Parties that Carry Over and Net Credits not be applied to the Capital Charge in any given Billing Period. Therefore, for any Billing Period, the maximum Carry Over and NA Credit amounts that can be applied is an amount equal to the Services Charge for that Billing Period (the “**Availability Payment Credit Cap**”). Any Carry Over amounts created as a result of the Availability Payment Credit Cap shall be billed monthly with interest from the date created until paid at the Overdue Rate during the next Billing Period(s) (together with any preexisting Carry Over) until fully paid, subject to the Availability Payment Credit Cap. The Services Charge for any given Billing Period shall be first reduced by any applicable Carry Over generated from prior Billing Periods before applying any NA Credit and determining any new Carry Over amounts. Any Carry Over remaining after the final Billing Period shall be paid from Developer to PGCPs within ten (10) Business Days of the Termination Date.

14.4.3.2 NA Charges Cap. During each Contract Year, the maximum NA Charges that PGCPs expects to be able to pay on a non-deferred basis is an amount equal to

one percent (1%) of the expected Capital Charge and Services Charge to be paid by PGCPs during the Contract Year (without considering any Net Adjustments or Carry Over amounts applied to such Services Charges) plus any amounts available in the Services Period Reserve Account to be used towards NA Charges (the “**NA Charges Cap**”). Subject to PGCPs’ right to elect an alternative payment method in accordance with Section 14.14.3 (PGCPs Payment Methods), to the extent the NA Charges Cap is exceeded during any Contract Year, any NA Charges in excess of the NA Charges Cap shall accrue for the remainder of the Contract Year and be included as a deferred lump sum payment (subject to Section 14.14.4 (Deferral of Compensation) and Section 14.14.5 (Restoration of Financial Balance for Deferral of Compensation)) on the first Monthly Billing Statement of the following Contract Year, or paid by July 31 of the following calendar year if the NA Charges Cap is exceeded in the final Contract Year.

14.5 Limitation on Payments. Other than the payments and compensation amounts expressly provided for in this Agreement, Developer shall have no right to any further payment from PGCPs in connection with the Design-Build Work and Services or otherwise in connection with the Project.

14.6 Monthly Billing Statements. For each Billing Period, Developer shall provide PGCPs an invoice by the fifteenth (15th) day of the Billing Period (each, a “**Monthly Billing Statement**”) setting forth the amount of the Availability Payment due with respect to such Billing Period. Except for Monthly Billing Statements that must reflect Net Adjustments in accordance with Section 14.7 (Quarterly Net Adjustments Report), the Monthly Billing Statement shall set forth the amount of the Availability Payment due without Net Adjustments but including any Carry Over that can be applied. For Monthly Billing Statements that must reflect Net Adjustments in accordance with Section 14.7 (Quarterly Net Adjustments Report), the Monthly Billing Statement shall reflect the applicable Net Adjustments amount and, in addition, shall separately reflect, as applicable, any preexisting Carry Over amount from prior Billing Periods, any new Carry Over amount resulting from application of any Net Adjustments that month, and the aggregate Carry Over left to be applied in subsequent Billing Periods. PGCPs shall pay the Monthly Billing Statement on the last Business Day of the Billing Period. Any outstanding Carry Over or other amounts, including as may be reflected in the final Quarterly Net Adjustments Report, as of the Expiration Date shall be paid by Developer or PGCPs, as applicable, within ten (10) Business Days.

14.7 Quarterly Net Adjustments Report. By the fifteenth (15th) day following the end of each Quarter, Developer shall provide PGCPs with a Net Adjustments report for the foregoing Quarter (each, a “**Quarterly Net Adjustments Report**”). The Quarterly Net Adjustments Report shall set forth on a per School basis all Deductions and Extraordinary Items accrued during the Quarter and the Net Adjustments amount resulting therefrom and, in addition, shall state the annual Availability Payment and each component thereof as calculated for the then-current Contract Year, together with the accumulated payments for each component to the date of such report and such other documentation or information as PGCPs may reasonably require to determine the accuracy and appropriateness of the report in accordance with this Agreement. Developer shall reflect the Net Adjustments amount from the relevant Quarterly Net Adjustments Report on the Monthly

Billing Statement that follows the month in which the Quarterly Net Adjustments Report is received, subject to Section 14.8 (Billing Disputes).

14.8 Billing Disputes. If PGCPs disputes in good faith any amount or item billed by Developer in a Monthly Billing Statement or included in a Quarterly Net Adjustments Report, PGCPs shall pay all amounts when due as though there was no dispute but shall provide Developer with a written objection indicating the amount being disputed and the reasons then known to PGCPs for the dispute. When any dispute referred to in this Section 14.8 (Billing Disputes) is finally resolved, if payment by either PGCPs or Developer of amounts disputed was not required, such amount shall be charged as an Extraordinary Item, as a credit or a charge (as applicable), on the next Quarterly Net Adjustments Report after the date of resolution of the dispute, with interest from the date such amount was inappropriately paid to the date it is actually paid at the Overdue Rate.

14.9 PGCPs Right of Set-Off. If PGCPs determines that any credits, payments, reimbursements, or Liquidated Damage Rights are owed to PGCPs in accordance with this Agreement and have not been reflected in any previously submitted Quarterly Net Adjustments Report or Monthly Billing Statement, PGCPs shall notify Developer, and Developer shall include such amounts as an Extraordinary Item in the next Quarterly Net Adjustments Report provided to PGCPs. In the event Developer does not include such amounts in the next Quarterly Net Adjustments Report provided to PGCPs in accordance with this Section 14.9 (PGCPs Right of Set-Off), PGCPs shall have the right to offset, first and prior to any other adjustments, the Services Charge portion of the Availability Payment otherwise payable for the next Billing Period up to the amount of such credits, payments, reimbursements, or Liquidated Damage Rights subject to Section 14.4.3.1 (Limit on Monthly Services Charge Adjustments).

14.10 Late Availability Payments. In the event PGCPs fails to make an Availability Payment when due under Section 14.6 (Monthly Billing Statements):

(a) Interest shall accrue thereon, as and to the extent provided in Section 14.11 (Interest on Overdue Amounts); and

(b) If such failure continues for the period described in Section 19.5 (Default by PGCPs), then such failure shall constitute a PGCPs Default, and Developer shall have the remedies set forth in Section 19.7 (Developer Remedies Upon PGCPs Default).

14.11 Interest on Overdue Amounts. If payment of any amount payable under this Agreement is not made when due (including Termination Compensation), simple interest will be payable on such amount at the Overdue Rate and shall be calculated on the basis of a 365-day year from the date such payment is due under this Agreement until paid. The Party to whom payment is owed and overdue shall notify the other Party at least quarterly of the overdue amount.

14.12 Relief Payment. To the extent that a Scheduled School Occupancy Readiness Date is extended due to a Relief Event beyond (a) July 15, 2023 with respect to a Group A School, (b) December 30, 2023 with respect to a Group B School, or (c) July 15, 2024 with respect to a Group

C School, commencing on July 15, 2023, December 30, 2023, or July 15, 2024, as applicable, PGCPs shall pay the applicable Relief Payment to Developer as calculated in accordance with Exhibit X-1 (Payment Calculation), through the earlier of (x) School Occupancy Readiness occurring or (y) the applicable Scheduled School Occupancy Readiness Date as extended. In such event, Developer shall submit a Monthly Billing Statement to PGCPs, and PGCPs shall cause Developer to be paid in accordance with the terms of Section 14.6 (Monthly Billing Statements).

14.13 Delay Payment. To the extent that a School Occupancy Readiness Date occurs for (a) a Group A School after August 14, 2023, (b) a Group B School after December 30, 2023, or (c) a Group C School after August 14, 2024 (any such School, a “**Delayed School**”), PGCPs shall pay Developer a Delay Payment for the Delayed School commencing on the date on which School Occupancy Readiness occurs for the Delayed School, as calculated in accordance with Exhibit X-1 (Payment Calculation), through the School Occupancy Readiness Date. In such event, Developer shall submit a Monthly Billing Statement to PGCPs, and PGCPs shall cause Developer to be paid in accordance with the terms of Section 14.6 (Monthly Billing Statements).

14.14 Payments for Compensation Events and Other Additional Costs. This Agreement obligates PGCPs to pay for certain additional costs resulting from Compensation Events or as may otherwise be provided herein. Except for costs to be determined in accordance with Section 15.6 (Services Changes) or as otherwise expressly stated in this Agreement, the amount of such additional costs to be paid by PGCPs shall be determined in accordance with this Section 14.14 (Payments for Compensation Events and Other Additional Costs).

14.14.1 Price Negotiations. It is the expectation of the Parties, in general, that additional costs reasonably expected by Developer to be borne by PGCPs under this Agreement and determined in accordance with this Section 14.14 (Payments for Compensation Events and Other Additional Costs), will be negotiated and agreed to in advance of Developer incurring such costs or performing related work. Where such costs are anticipated to be claimed, Developer shall provide PGCPs with a written notice requesting negotiation of such costs, which notice shall identify the basis in this Agreement for its compensation claim. Subject in all cases to PGCPs’ right to object to or dispute Developer’s entitlement to compensation from PGCPs, as part of these negotiations, the Parties shall seek to agree with regard to the amounts owed, as well as the scope and schedule for the implementation of the relevant work (where applicable), and Developer shall furnish PGCPs with all information reasonably required by PGCPs regarding Developer’s actual or expected costs, including any mark-up to be charged. If mutual agreement on price is reached, PGCPs shall deliver to Developer written notice of the method it intends to use to pay Developer in accordance with Section 14.14.3 (PGCPs Payment Methods). Upon receipt of such notice, the Parties shall seek to further agree as to any additional compensation that may be owed under Section 14.14.5 (Restoration of Financial Balance for Deferral of Compensation) as well as the documentation required in order to receive scheduled payments. Where final mutual agreement is reached under this Section 14.14.1 (Price Negotiations), Developer’s actual costs of performance shall not be subject to Cost Substantiation unless the Parties agree that Developer shall perform additional work on a guaranteed maximum price basis or PGCPs otherwise indicates as part of the Parties’ negotiations establishing price that after-the-fact Cost Substantiation with respect to all or a portion of Developer’s actual costs will be required.

14.14.2 Costs Requiring Cost Substantiation. The Parties shall follow the process (“**Cost Substantiation**”) described in this Section 14.14.2 (Costs Requiring Cost Substantiation) with respect to any additional costs to be determined in accordance with this Section 14.14 (Payments for Compensation Events and Other Additional Costs) that have not been determined as part of a price negotiation under Section 14.14.1 (Price Negotiations). Cost Substantiation is likely to be required when Developer undertakes efforts on an emergency basis to mitigate a Relief Event or the Parties are unable to agree as contemplated in Section 14.14.1 (Price Negotiation) above. Where required, Cost Substantiation shall be provided as soon as reasonably practicable after the costs which require substantiation have been incurred by Developer.

14.14.2.1 Cost Substantiation Generally. In incurring costs which are or may be subject to Cost Substantiation, Developer shall utilize competitive practices to the maximum reasonable extent (including, where practicable, obtaining three competing quotes or estimates for costs expected to be in excess of Fifty Thousand Dollars (\$50,000) (Index-Linked)), and shall enter into Subcontracts on commercially reasonable terms and prices in light of the work to be performed and PGCPs’ potential obligation to pay for it; provided, however, that Developer shall not be required to utilize competitive practices for additional work self-performed by a Project Contractor or Subcontractor that is an original party to (and not an assignee under) a Project Contract or Subcontract that preexisted the need and request for additional work. If Developer is not required to utilize competitive practices, Developer shall instead demonstrate to PGCPs that the costs for which PGCPs is financially responsible are commercially reasonable.

14.14.2.2 Cost Substantiation Certificate. Where Cost Substantiation is required, Developer shall provide PGCPs with a “**Cost Substantiation Certificate**,” which must include an itemization of each cost Developer is claiming to be owed and the provision(s) of this Agreement under which such cost is chargeable to PGCPs, a description of the competitive or other process utilized by Developer to obtain the commercially reasonable price (if applicable pursuant to Section 14.14.2.1 (Cost Substantiation Generally)), and a statement that such services and materials are reasonably required pursuant to this Agreement. Unless the costs subject to Cost Substantiation are lower than Fifteen Thousand Dollars (\$15,000.00) in the aggregate, the Cost Substantiation certificate shall be accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been paid. Such documentation shall be in a format reasonably acceptable to PGCPs and shall include reasonably detailed information concerning all Subcontracts and, with respect to self-performed work:

- (a) the amount and character of materials, equipment, and services furnished or utilized, the Persons from whom purchased, the amounts payable therefor, related delivery and transportation costs, and any sales or personal property Tax;
- (b) a statement of the equipment used and any rental payable therefor;
- (c) employee hours, duties, wages, salaries, benefits, and assessments;

and

(d) profit, administration costs, bonds, insurance, Tax, premiums overhead, and other expenses.

Developer's entitlement to reimbursement for the costs of self-performed work shall be subject to Cost Substantiation and the limitations set forth in this Section 14.14.2 (Costs Requiring Cost Substantiation).

14.14.2.3 Evidence of Costs Incurred. To the extent reasonably necessary to confirm direct costs subject to Cost Substantiation, copies of timesheets, invoices, canceled checks, expense reports, receipts, and other documents, as appropriate, shall be delivered to PGCPs, with the request for reimbursement of such costs.

14.14.2.4 Mark-Ups. For any self-performed work requiring Cost Substantiation, Developer shall be entitled to a mark-up of five percent (5%) for a combination of overhead, risk, profit, and contingency for costs of its own personnel. For any subcontracted work requiring Cost Substantiation, a mark-up of five percent (5%) for a combination of overhead, risk, profit, and contingency for costs of its Subcontractors shall be permitted.

14.14.3 PGCPs Payment Methods. PGCPs may elect, in its sole and exclusive discretion, but subject to Section 14.14.4 (Deferral of Compensation), to pay any amounts determined in accordance with this Section 14.14 (Payments for Compensation Events and Other Additional Costs) through one or any combination of the below methods:

- (a) as a non-deferred lump sum payment, to the extent permitted by Applicable Law;
- (b) as progress payments invoiced as work is completed;
- (c) as a deferred lump sum payment or periodic payments over the Term; or
- (d) as an adjustment to the Availability Payment over the Term;

Following either the Parties' agreement on price in accordance with Section 14.14.1 (Price Negotiations) or PGCPs' receipt of a Cost Substantiation Certificate, PGCPs shall provide Developer with written notice of the method chosen for paying Developer the amounts determined and agreed to be owed in accordance with this Section 14.14 (Payments for Compensation Events and Other Additional Costs).

For payments owed prior to the School Occupancy Readiness Date of the impacted School, PGCPs may elect, in its sole and exclusive discretion, to fund the non-deferred payment options listed in items (a) and (b) or the deferred methods described in item (c) either by (i) directing the Escrow Agent to pay Developer from funds deposited in the Escrow Account for such purposes, or (ii) directing Developer to be reimbursed from the Design-Build Period Reserve Account.

On or after the School Occupancy Readiness Date of the impacted School, such payments may be funded, in PGCPS' sole and exclusive discretion, (i) by directing Developer to be reimbursed from the Services Period Reserve Account, or (ii) as an Extraordinary Item charge to be included on the next Quarterly Net Adjustments Report for the non-deferred options listed in items (a) or (b) or on later Quarterly Net Adjustments Report(s) to be specified in advance by PGCPS for the deferred options listed in item (c), subject in each case to the NA Charges Cap.

If PGCPS elects, in any case, to pay Developer in whole or part using either of the deferred methods described in item (c), at any later time PGCPS may choose to complete compensation through a non-deferred lump sum payment based on the present value of the remaining amount owed.

14.14.4 Deferral of Compensation. If PGCPS elects to compensate Developer in whole or part using the methods described in items (c) or (d) of Section 14.14.3 (PGCPS Payment Methods) (collectively, “**Deferral of Compensation**”), Developer shall use diligent efforts to obtain (a) funding from the Lenders, or other lenders if permitted by the Financing Documents, and/or (b) equity support from existing and potentially new Equity Members, in either case, to finance the applicable effort and costs in advance of receiving the required compensation payments from PGCPS. Developer should demonstrate to PGCPS that their financing plan presents a financially efficient solution reflective of current market conditions. If, despite such diligent efforts and the additional compensation that would be paid pursuant to this Section 14.14 (Payments for Compensation Events and Other Additional Costs), Developer is unable to obtain such funding and equity support (or PGCPS does not accept the terms under which Developer is able to obtain additional financing pursuant to clauses (a) and (b) of this Section 14.14.4 (Deferral of Compensation)), then PGCPS and Developer shall exercise good faith efforts to negotiate a mutually acceptable Developer provided financing solution. In the event that a mutually agreeable debt financing solution cannot be reached, Developer must finance the effort and related costs with equity at a financing cost that is not higher than the original Equity IRR.

14.14.5 Restoration of Financial Balance for Deferral of Compensation. If PGCPS elects to compensate Developer through Deferral of Compensation, Developer shall be entitled to additional compensation as necessary to restore the reduction in the Base Case Equity IRR and Key Ratios resulting from the Deferral of Compensation. Developer shall provide PGCPS with the total amount of compensation that Developer considers owed to restore the Base Case Equity IRR and Key Ratios as a result of the Deferral of Compensation, including supporting calculations and documentation. In no event shall Developer be entitled to any compensation for losses unrelated and not directly caused by the Deferral of Compensation.

14.14.6 Payment Other than by Adjustment of the Availability Payment. If PGCPS elects to compensate Developer for amounts determined in accordance with this Section 14.14 (Payments for Compensation Events and Other Additional Costs) other than by adjustments to the Availability Payment, then PGCPS shall compensate Developer as follows:

14.14.6.1 Lump Sum and Periodic Payments. Where PGCPS elects to compensate Developer in the form of a lump sum payment (deferred or non-deferred) or periodic

payments over the Term, prior to the School Occupancy Readiness Date of the impacted School, payment shall be due and owing thirty (30) days after PGCPs' receipt of (a) an undisputed Cost Substantiation Certificate (where applicable), or (b) all documentation required pursuant to the negotiated lump sum or periodic payment terms in order to receive scheduled payments. On or after the School Occupancy Readiness Date of the impacted School, PGCPs shall direct within the foregoing timeframes either (a) reimbursement from the Services Period Reserve Account, or (b) that the relevant amount be included as an Extraordinary Items charge in the next delivered Quarterly Net Adjustments Report for non-deferred lump sum payments or on later Quarterly Net Adjustments Report(s) to be specified in advance by PGCPs for the deferred lump sum or periodic payments.

14.14.6.2 Progress Payments Invoiced as Work is Completed. Where PGCPs elects to compensate Developer in the form of progress payments invoiced as the relevant work is completed, prior to the School Occupancy Readiness Date of the impacted School, payment of all undisputed amounts shall be due and owing thirty (30) days after each date PGCPs receives from Developer an invoice, not more often than monthly, for the costs incurred for such work during the previous month, which invoice shall be itemized by the components of costs permitted to be recovered under this Agreement with respect to such event or circumstance. On or after the School Occupancy Readiness Date of the impacted School, and where PGCPs has elected for Developer to be reimbursed from the Services Period Reserve Account, payment of all undisputed amounts shall be due and owing thirty (30) days after each date PGCPs receives the invoice described above. Otherwise, PGCPs shall direct Developer to include on each Quarterly Net Adjustments Report the amounts invoiced to PGCPs during the relevant Quarter.

ARTICLE 15 PROJECT CHANGES AND ADDITIONS

15.1 Capital Modifications.

15.1.1 PGCPs Approval. PGCPs shall have the right, in its discretion, to accept, reject, or approve all Capital Modifications. All Capital Modifications and related changes to the terms and conditions of this Agreement shall be reflected in a written amendment to this Agreement.

15.1.2 Conditioned Approvals. PGCPs shall have the express right to condition its approval of Capital Modifications upon a sharing of any net cost savings expected to result therefrom to be split sixty-five percent (65%) to PGCPs and thirty-five percent (35%) to Developer, or upon any further term or condition that PGCPs may seek to establish with respect thereto.

15.1.3 Responsibility for Costs. All Capital Modifications shall be made and implemented in accordance with this Article 15 (Project Changes and Additions). Developer shall bear the cost and expense of all Capital Modifications required in accordance with Section 15.3 (Capital Modifications Arising from Repairs and Replacements or Required to Remedy a Developer Fault). The responsibility for the cost and expense of any Capital Modifications

requested by Developer in accordance with Section 15.2 (Capital Modifications at Developer's Request) shall be determined by PGCPs in its discretion in accordance with its approval rights under this Article 15 (Project Changes and Additions). PGCPs shall bear the cost and expense of all Capital Modifications made pursuant to Section 15.4 (Capital Modifications Required Due to Relief Events) and pursuant to Section 15.5 (Capital Modifications at PGCPs' Direction).

15.2 Capital Modifications at Developer's Request. Developer shall give PGCPs written notice of, and reasonable opportunity to review and comment upon, any Capital Modification proposed to be made at Developer's request. To assist PGCPs in the exercise of its approval rights under Section 15.1 (Capital Modifications), the notice shall contain sufficient information for PGCPs to determine that the Capital Modification: (a) does not materially diminish the capacity of the Project to be operated so as to meet the Contract Standards; (b) does not materially impair the quality, integrity, durability, and reliability of the Project; (c) is reasonably necessary or is advantageous for Developer to fulfill its obligations under this Agreement; and (d) is feasible.

15.2.1 No Developer Ownership. In no event shall Developer have any ownership interest in the Sites, including the Schools, as a result of any Capital Modification.

15.3 Capital Modifications Arising from Repairs and Replacements or Required to Remedy a Developer Fault. In the event that (a) any repair or replacement proposed to be performed by Developer in satisfaction of its obligations under Article 11 (Services), or (b) any capital investment, improvement, or modification required to be made by Developer in order to remedy a Developer Fault, can be reasonably expected to result in a material change to the Project, such repair, replacement, capital investment, improvement, or modification shall constitute a Capital Modification. In no event shall the rejection or modification of any such Capital Modification by PGCPs relieve Developer of its obligation to perform maintenance, repair, and replacement required under Article 11 (Services) or perform any other obligation hereunder. Except as otherwise agreed to by PGCPs, the design and construction costs of any such Capital Modification under this Section, and any related operation, maintenance, repair, and replacement costs, shall be borne by Developer.

15.4 Capital Modifications Required Due to Relief Events. Upon the occurrence of a Relief Event, Developer shall promptly proceed to make or cause to be made all repairs, replacements, and restoration to the Project reasonably necessary to address the Relief Event, as provided in Article 16 (Relief Events). PGCPs shall have the right, but not the obligation, to direct Developer to make Capital Modifications in connection with any such repair, replacement, or restoration work. The design and construction costs attributable to any such Capital Modification and any related operation, maintenance, repair and replacement costs shall be determined in accordance with Section 14.14 (PGCPs Payments for Compensation Events and Other Additional Costs) and borne by PGCPs, and considered separate from any compensation claim Developer may have under Article 16 (Relief Events) with respect to its response to the underlying Relief Event. Developer shall not be required to undertake any Capital Modification under this Section 15.4 (Capital Modifications Required Due to Relief Events) unless and until the Parties have agreed upon a scope, price, and schedule for the implementation of the Capital Modification in

accordance with Section 14.14 (PGCPS Payments for Compensation Events and Other Additional Costs) and all other applicable provisions of this Agreement.

15.5 Capital Modifications at PGCPS' Direction. Subject to Section 15.7 (Restrictions on Capital Modifications, Services Changes, and Design-Build Changes Requested by PGCPS), PGCPS shall have the right to make Capital Modifications at any time and for any reason whatsoever after a School Occupancy Readiness Date, whether and however the exercise of such rights affects this Agreement. The design and construction costs attributable to any such Capital Modification and any related operation, maintenance, repair and replacement costs shall be determined in accordance with Section 14.14 (PGCPS Payments for Compensation Events and Other Additional Costs) and borne by PGCPS. Developer shall not be required to undertake any Capital Modification under this Section 15.5 (Capital Modifications at PGCPS' Direction) unless and until the Parties have agreed upon a scope, price, and schedule for the implementation of the Capital Modification in accordance with all applicable provisions of this Agreement.

15.6 Services Changes.

15.6.1 Services Changes. PGCPS may, on a quarterly basis each Contract Year during the Term (except more frequently as may be appropriate to address urgent PGCPS circumstances), subject to Section 15.7 (Restrictions on Capital Modifications, Services Changes, and Design-Build Changes Requested by PGCPS), require Developer to implement a Services Change in accordance with this Section 15.6 (Services Changes). The implementation procedure set forth in this Section 15.6 (Services Changes) shall apply with respect to all Services Changes which PGCPS may require during the Term. In the event PGCPS requests a Services Change, PGCPS shall issue to Developer a written notice (a "**Services Change Notice**") that includes a description of the contemplated Services Change sufficient to permit Developer to prepare a Services Change Report.

15.6.2 Services Change Report. Within fifteen (15) Business Days, or such longer period as the Parties agree acting reasonably, after Developer's receipt of the Services Change Notice, Developer shall prepare and deliver to PGCPS a report for the contemplated Services Change ("**Services Change Report**"). A Services Change Report shall include, to the extent that it is relevant to the proposed Services Change:

- (a) A description of the scope of the contemplated Services Change with respect to the Services;
- (b) A comparison of the scope of Services as a result of the contemplated Services Change as compared to the scope prior to the Services Change;
- (c) An estimate of all costs, if any, reasonably necessary for and directly associated with the contemplated Services Change, as further described in Section 15.6.3 (Valuation of a Services Change), including the following, as applicable:

- (i) all Services labor, material, and equipment costs, supported as the case may be by quotations from the Services Provider and applicable Subcontractors;
 - (ii) any costs related to Developer's management and oversight of the Project that should reasonably be included in the contemplated Services Change;
 - (iii) all costs of an amendment or renewal of a Governmental Approval required by the contemplated Services Change;
 - (iv) all insurance costs; and
 - (v) all financing costs;
- (d) An estimate of the cost savings, if any, resulting from the contemplated Services Change;
- (e) A description of any changes to the Financing Documents that would be required to reflect a change in the risk profile of the Project arising from the contemplated Services Change;
- (f) A description of any changes to the Availability Payment that are required to reflect any costs or cost savings described in items (c) and (d) above;
- (g) Identification of any amounts payable by PGCPS to Developer, if any, other than the Availability Payment;
- (h) Developer's proposal as to how any increased costs to Developer resulting from the contemplated Services Change may be funded;
- (i) The value of the loss or reduction of benefits resulting from the contemplated Services Change;
- (j) A description of any additional consents or approvals required, including amendments, if any, of any Governmental Approvals required to implement the contemplated Services Change;
- (k) A description of any impact on the obligations of Developer under any Project Contracts;
- (l) A description of the extent to which the contemplated Services Change or the implementation thereof would interfere with Developer's ability to comply with any of its obligations under this Agreement, the Project Contracts, and any Governmental Approvals;
- (m) The name of any Subcontractors which the Services Provider intends to engage for the purposes of assisting with the implementation of the contemplated Services Change;

(n) A description of any further effects (including, without limitation, benefits and impairments) which Developer foresees as being likely to result from the contemplated Services Change or the implementation thereof;

(o) A description of any actions that would be reasonably required by PGCPs to implement the contemplated Services Change;

(p) A description of the steps Developer will take to implement the contemplated Services Change, in such detail as is reasonable and appropriate; and

(q) A description of any impact on expected usage of Utilities for the current Contract Year and subsequent Contract Years.

If Developer prepares a Services Change Report pursuant to this Section and PGCPs elects not to proceed with the contemplated Services Change, then PGCPs shall pay Developer's Services Change Report preparation costs in accordance with Section 14.14 (PGCPs Payments for Compensation Events and Other Additional Costs). Notwithstanding the foregoing, PGCPs shall not be responsible for any Developer costs associated with a Services Change Report prepared pursuant to Section 15.6.10 (Services Changes at Developer Request).

15.6.3 Valuation of a Services Change. PGCPs and Developer shall negotiate in good faith the costs or savings associated with any Services Change in accordance with Section 15.6.5 (Agreement on a Services Change). If the Parties fail to agree on the costs or savings of such Services Change, the costs or savings shall be determined as set forth in this Section 15.6.3 (Valuation of a Services Changes). The costs or savings of a Services Change shall be the net incremental additional costs or savings of implementing the Services Change, calculated as the aggregate cost, if any, of any additions to Developer's Services obligations required to implement the Services Change minus the aggregate cost savings, if any, from all reductions in Developer's Services obligations resulting from the implementation of such Services Change. A Services Change may have a net cost, a net saving, or may result in no net cost or saving. The costs of a Services Change are the aggregate of the costs reasonably incurred by Developer or the Services Provider to implement the Services Change, supported by invoices, purchase orders, time sheets, and other customary industry documentation, as follows:

(a) The amounts of all Subcontractor or supplier agreements;

(b) The direct costs incurred for the Services personnel, based on the number of personnel hours required to undertake the Services Change;

(c) The direct costs incurred for the procurement of materials, consumables, and equipment, for the supply and delivery of such materials, consumables, and equipment, including the costs of any associated testing, commissioning, spare parts, manuals, and software, and including any related design and engineering costs;

(d) The costs incurred for the evaluation of proposals and award of a contract for work associated with the Services Change, and the supervision and management of such contracts;

(e) All direct costs incurred by Developer or the Services Provider in procuring and managing the Services Change (including costs of advisors and extra costs under any management services agreements entered into by Developer); and

(f) All other additional direct costs pertaining to the Services Change, including disposal, insurance, bonding, financing, Governmental Approvals, and directly attributable overheads, calculated at the direct cost to the entity that directly incurs such costs, and the costs incurred or borne by Developer or the Services Provider in preparing a Services Change Report.

The costs applied pursuant to this subsection shall be no greater than the market rates prevailing at the time of the implementation of the Services Change paid between parties contracting at arm's length. In addition to the costs incurred by Developer or the Services Provider described above in this Section 15.6.3 (Valuation of a Services Change), a mark-up not to exceed the limits set forth in Section 14.14.2.4 (Mark-Ups) shall be applied without duplication to such aggregate costs as full payment for all other costs, including indirect overhead costs and profit.

15.6.4 Justification and Supporting Documentation. Developer shall use, or will cause the Services Provider to use, commercially reasonable efforts to obtain competitive quotations and proposals for all work, equipment, and materials required to implement a Services Change. The cost estimates included in a Services Change Report shall be in sufficient detail to allow evaluation by PGCPs and will include such supporting information and justification as is necessary to demonstrate that:

(a) Developer has used commercially reasonable efforts, including utilizing competitive quotes or proposals, to minimize the cost of a contemplated Services Change and maximize potential related cost savings;

(b) Developer and the Services Provider have valued the Services Change as described in Section 15.6.3 (Valuation of a Services Change), and have not included other margins or mark-ups;

(c) The full amount of any and all expenditures that have been reduced or avoided (including any Capital Expenditure) have been fully taken into account; and

(d) Developer has mitigated or will mitigate the impact of the contemplated Services Change, including on the performance of the Services, the expected usage of Utilities, and the direct costs to be incurred.

15.6.5 Agreement on a Services Change. Within fifteen (15) Business Days, or such longer period as the Parties agree acting reasonably, following receipt by PGCPs of a Services Change Report prepared in accordance with Section 15.6.2 (Services Change Report), PGCPs may deliver to Developer any requests for clarifications or amendments, and the Parties'

representatives shall meet and use commercially reasonable efforts to agree to the Services Change Report. Such agreement shall include the costs, payments (including payment of direct costs and adjustments to the Availability Payment, if any), and other information contained in the Services Change Report. If PGCPs would be required by Applicable Law to require Developer to competitively solicit any contract in relation to a contemplated Services Change, PGCPs may require Developer to seek and evaluate competitive proposals for the proposed Services Change. PGCPs may modify any Services Change Notice delivered pursuant to Section 15.6.1 (Services Changes), in writing, at any time prior to the Parties reaching an agreement on the Services Change Report pursuant to this Section 15.6.5 (Agreement on a Services Change). In the event PGCPs delivers notice of any such modification to Developer, Developer shall notify PGCPs of any significant changes to the Services Change Report within twenty (20) Business Days after receipt of such modification notice.

15.6.6 Services Change Certificate. Upon agreement of the Parties with respect to the Services Change in accordance with Section 15.6.5 (Agreement on a Services Change), PGCPs shall issue a signed Services Change Certificate to Developer. In the event PGCPs and Developer do not agree on the Services Change, PGCPs may issue a Services Change Certificate in accordance with Section 15.6.7 (Disagreement on Services Change Report). Developer shall not proceed with a Services Change prior to receiving a signed Services Change Certificate from PGCPs. A Services Change Certificate issued in accordance with this Section 15.6.6 (Services Change Certificate) shall be binding on PGCPs and Developer. Upon receipt of a Services Change Certificate, Developer shall implement the Services Change, without prejudice to Developer's right to refer any dispute concerning the Services Change in accordance with Article 24 (Resolution of Disputes), including valuation of the Services Change in accordance with Section 15.6.3 (Valuation of a Services Change).

15.6.7 Disagreement on Services Change Report. In the event PGCPs and Developer cannot agree on a Services Change Report, PGCPs may elect not to proceed with the Services Change described in the Services Change Notice delivered to Developer. Alternatively, PGCPs may issue the Services Change Certificate to Developer stating PGCPs' determination of the matters referred to in the Services Change Report, and if Developer disagrees with all or any of the determinations set forth in the Services Change Certificate, then Developer may deliver to PGCPs a written notice identifying any such disagreements within ten (10) Business Days of receipt of the Services Change Certificate. Following delivery of the notice to PGCPs identifying any points of disagreement to the Services Change Certificate, Developer may, (a) pursuant to its rights under Section 15.7 (Restrictions on Capital Modifications, Services Changes, and Design-Build Changes Requested by PGCPs) refuse to implement the Services Change; or (b) without prejudice to its rights with respect to such disagreements, use commercially reasonable efforts to implement the Services Change as directed in the Services Change Certificate. If Developer fails to timely deliver the notice to PGCPs identifying any points of disagreement with the Services Change Certificate as set forth in this subsection, Developer shall be deemed to have waived any such objections to the Services Change Certificate.

15.6.8 Responsibility and Payment for Services Changes. Except as specifically provided in this Agreement, PGCPs shall bear no risk or liability whatsoever arising

from any Services Change other than the liability to make payment in connection therewith. PGCPS shall bear the cost and expense of all Services Changes made pursuant to this Section 15.6 (Services Changes). Payments between the Parties and any adjustments to Availability Payments in respect of a Services Change will be made in accordance with any agreed basis for payment set out in the Services Change Certificate. The basis for payment may at PGCPS's discretion include progress draws, milestone payments, lump sum payments, time and materials or maximum amounts. If no basis for payment is included in the Services Change Certificate, payment will be made in accordance with Section 14.14 (PGCPS Payments for Compensation Events and Other Additional Costs).

15.6.9 Cost Savings. In the event any Services Change is reasonably expected to result in a net cost savings to Developer, the Parties shall negotiate in good faith the extent to which any such net cost savings shall be shared with PGCPS, and the Availability Payment shall be reduced accordingly.

15.6.10 Services Changes at Developer's Request. Developer may give PGCPS written notice of, and reasonable opportunity to review and comment upon, any Services Change proposed to be made at Developer's request. PGCPS shall have the right, in its discretion, to accept, reject, approve, or modify all such Services Change requests made by Developer. The responsibility for the cost and expense of any Services Change requested by Developer in accordance with this subsection shall be determined by the PGCPS in its discretion. The written notice provided by Developer shall contain sufficient information for PGCPS to determine that the Services Change:

- (a) does not diminish the capacity of the Project to be operated so as to meet the Contract Standards;
- (b) does not impair the quality, integrity, and reliability of the Services;
- (c) is reasonably necessary or is advantageous for Developer to fulfill its obligations under this Agreement; and
- (d) is feasible.

PGCPS shall not unreasonably deny any Services Change request made by Developer that complies with the requirements of this Section 15.6.10 (Services Changes at Developer's Request) and will result in cost savings to both PGCPS and Developer. Any Services Change proposed to be made at Developer's request, and accepted by PGCPS, shall be implemented as set forth in this Section 15.6 (Services Changes), except that the notice provided by Developer pursuant to this Section 15.6.10 (Services Changes at Developer's Request) shall take the place of the Services Change Notice.

15.7 Restrictions on Capital Modifications, Services Changes, and Design-Build Changes Directed by PGCPS. PGCPS shall not at any time during the Term require, and

Developer may refuse to implement, a Capital Modification, Services Change, or Design-Build Change requested by PGCPs which:

- (a) would be contrary to Applicable Law;
- (b) would render any policy of insurance required by this Agreement void or voidable unless PGCPs agrees to provide replacement insurance or other security reasonably satisfactory to Developer;
- (c) would cause the revocation of any Governmental Approval required for Developer to perform its obligations under this Agreement, and such Governmental Approval would not, using commercially reasonable efforts, be capable of amendment or renewal;
- (d) would require a new Governmental Approval for Developer to perform its obligations under this Agreement, which Governmental Approval would not, using commercially reasonable efforts by Developer or PGCPs, as applicable, be obtainable;
- (e) would materially and adversely affect the risk allocation and payment regime under this Agreement with respect to the Design-Build Work or the Services, unless the material and adverse effects of such a Capital Modification, Services Change, or Design-Build Change are remedied by PGCPs to Developer's reasonable satisfaction;
- (f) would result in a change to the essential nature of the Project; or
- (g) Developer would not, using commercially reasonable efforts, be able to implement within the time specified.

If Developer, acting reasonably, determines that a Capital Modification, Services Change, or Design-Build Change is unacceptable because it contravenes one or more of the above, then Developer will promptly give notice to PGCPs of its objection, with written reasons. If PGCPs disagrees, the Parties will cooperate to have the issue resolved in a timely manner pursuant the dispute procedures set forth in Article 24 (Resolution of Disputes).

15.8 Unused School. If, during the Services Period, PGCPs is only using twenty percent (20%) or less of a School for a period greater than ninety (90) consecutive days (each, an "Unused School"), PGCPs may claim as an Extraordinary Item credit a reduction of twenty-five percent (25%) of the unadjusted School Services Charge attributable to each Unused School, as calculated on a pro rata daily basis, for the period commencing on the ninety-first (91st) day that PGCPs started using less than twenty (20%) of the Unused School and ending on the date that PGCPs started using more than twenty percent (20%) of the Unused School.

ARTICLE 16 RELIEF EVENTS

16.1 Relief Events.

16.1.1 Extent of Relief Available to Developer. If a Relief Event occurs, Developer may seek and shall be entitled to relief as and to the extent provided in this Article 16 (Relief Events) and in accordance with the procedures set forth in Section 16.2 (Relief Event Procedure).

16.1.2 Mitigation Given Effect. Any relief to which Developer is entitled on account of a Relief Event shall be reduced or adjusted to account for the effect of any Losses or delays resulting from a failure by Developer to reasonably comply with Section 2.5 (General Duty of Developer to Mitigate) including by making commercially reasonable efforts to mitigate the length of any delay caused by a Relief Event.

16.1.3 Applicable Law Compliance. Nothing in this Article shall be interpreted as relieving Developer of its obligation, following any and all Relief Events, to perform its obligations under this Agreement in compliance with Applicable Law.

16.2 Relief Event Procedure. The following procedure will apply if a Relief Event occurs:

16.2.1 Notice and Written Report. In order to assert an entitlement based on the occurrence of a Relief Event, Developer shall give notice of the occurrence of the Relief Event to PGCPs as soon as practicable, and in any event within ten (10) Business Days after the date Developer has knowledge that the Relief Event has caused or is likely to cause an entitlement under this Agreement. Developer's notice shall include a written report:

- (a) describing the Relief Event and the cause thereof, to the extent known;
- (b) specifying the Site(s) impacted by the Relief Event;
- (c) stating the date on which the Relief Event began and its estimated duration;
- (d) summarizing the anticipated consequences of the Relief Event and the expected impact on the performance of Developer's obligations under this Agreement, which summary shall be provided on a per Site basis to the extent Developer expects that the Relief Event will impact Developer's performance at more than one Site;
- (e) summarizing the actions Developer is taking or plans to take to mitigate the effects of the Relief Event including commercially reasonable efforts to mitigate the length of any delay; and
- (f) indicating the nature and scope of Developer's potential entitlement to relief in accordance with this Article 16 (Relief Events).

16.2.2 Updates. Developer shall provide PGCPs with weekly written updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Relief Event and the matters described in Section 16.2.1 (Notice and Written Report). In particular, Developer shall notify PGCPs (on a per Site basis, where multiple Sites are impacted by the same event) of the cessation of a Relief Event and of the time when performance of its affected obligations can be resumed, which notice shall be given as soon as practicable after the cessation of the Relief Event.

16.2.3 Submittal of Relief Request. Developer shall submit to PGCPs a further written notice making its request for specific relief (on a per Site basis, where multiple Sites are impacted by the same event), the basis therefor under this Article 16 (Relief Events), and the event giving rise to the requested relief within thirty (30) days after the notice referred to in Section 16.2.1 (Notice and Written Report). If the specific relief cannot reasonably be ascertained within such thirty (30)-day period, Developer, at the conclusion of such thirty (30)-day period, shall furnish a further notice to PGCPs establishing the date by which the appropriate requested relief shall be definitively requested and the basis for such extension. Developer shall then specify the specific relief by the date established in such further notice.

16.2.4 Delay in Notification. If any Relief Event notice or any required information is submitted by Developer to PGCPs after the dates required under this Section, then Developer shall be entitled to relief provided due to the occurrence of the Relief Event except to the extent that the ability to mitigate was adversely affected as a result of the delay in providing such notice or information; provided, however, that if the period of delay in providing the required Relief Event notice or information is six (6) months or more, the rights of Developer with respect to the applicable Relief Event will be of no further force or effect.

16.2.5 Multiple and Overlapping Claims. Developer may make multiple but not duplicative claims with respect to a Relief Event.

16.2.6 Burden of Proof and Mitigation. Developer shall bear the burden of proof in establishing the occurrence of a Relief Event and the entitlement to relief based thereon (e.g., that the Relief Event is in fact the cause of any claimed delay or impact) and shall demonstrate that Developer complied with its mitigation obligations under Section 2.5 (General Duty of Developer to Mitigate), including by making commercially reasonable efforts to mitigate the length of any delay.

16.2.7 Resumption of Performance. Promptly following the occurrence of a Relief Event, Developer shall use all commercially reasonable efforts to eliminate the cause thereof and resume performance in accordance with this Agreement.

16.2.8 Developer Information. PGCPs shall provide Developer information reasonably requested in order for Developer to assert a Relief Event claim.

16.2.9 PGCPs Response. Within thirty (30) days after receipt of a relief request by Developer pursuant to Section 16.2.3 (Submittal of Relief Request), PGCPs shall issue a

written determination as to the extent, if any, to which it concurs with Developer's request, and the reasons therefor.

16.2.10 Agreement or Dispute. The agreement of the Parties as to the specific relief to be given Developer on account of a Relief Event shall be evidenced in writing including, if the nature of the relief requires, by a written amendment to this Agreement or a Change Order. Either Party may refer any dispute under this Article for resolution in accordance with Article 24 (Resolution of Disputes).

16.3 Schedule Relief Available Upon Occurrence of a Relief Event. To the extent a Relief Event occurs before the School Occupancy Readiness Date for a School, and Developer complies with the provisions of Section 16.2 (Relief Event Procedure), the applicable Construction Schedule will be amended and the relevant Scheduled School Occupancy Readiness Date, as well as the applicable Longstop Date, will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Relief Event.

16.4 Performance Relief Available Upon Occurrence of a Relief Event. If a Relief Event occurs, and Developer complies with the provisions of Section 16.2 (Relief Event Procedure), Developer shall not be responsible or liable for, or deemed in default or breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Agreement (except as provided for in Section 19.9 (Termination Due to Extended Relief Event)) which it cannot perform solely as a result of one or more Relief Events or its or their effects or by any combination thereof, and PGCPS shall not have the right to impose Deductions for Unavailability Events or Performance Failures to the extent caused by a Relief Event in accordance with Section 2.4 (Relief Events) of Exhibit X-2 (Services Requirements).

16.5 Compensation Relief Available Upon Occurrence of a Relief Event. If a Relief Event occurs, and Developer complies with the provisions of Section 16.2 (Relief Event Procedure), Developer shall be entitled to claim payment from PGCPS of an amount, to be determined and paid in accordance with Section 14.14 (PGCPS Payments for Compensation Events and Other Additional Costs), necessary to place Developer in a no better or worse position than Developer would have been in had the Relief Event not occurred (subject to any express limitations on compensation for a particular event or circumstance set forth in this Agreement, as further described in Section 16.5.1 (Limits on Compensation Relief)), which assessment shall take into consideration the following (without duplication):

- (a) Direct Losses;
- (b) any net increase or decrease in the cost to Developer of performing the Design-Build Work or the Services as a direct result of such event or circumstance; and
- (c) any other amounts separately payable to Developer under this Agreement, including the Progress Payment, Milestone Payments, Delay Payments, Relief Payments, and/or Availability Payments payable to Developer.

For clarity, the reference to leaving Developer in a “no better or worse position” shall be construed for purposes of Article 16 (Relief Events) by reference to Developer’s:

- (a) rights, duties, and liabilities under or arising pursuant to performance of this Agreement, the Financing Documents, and the Project Contracts; and
- (b) ability to perform its obligations and exercise its rights under this Agreement, the Financing Documents, and the Project Contracts, so as to ensure that:
 - i. Developer is left in a position which is no better or worse in relation to the Key Ratios and the Equity IRR by reference to the version of the Base Case Financial Model applicable immediately prior to the relevant event than had the relevant event not occurred; and
 - ii. the ability of Developer to comply with this Agreement is not adversely affected or improved as a consequence of the relevant event.

16.5.1 Limits on Compensation Relief. Notwithstanding the general relief offered in Section 16.5 (Compensation Relief Available Upon Occurrence of a Relief Event), the Parties understand and agree that this Agreement limits the compensation that can be claimed by Developer in connection with certain Relief Events or in particular events or circumstances, including compensation with respect to:

- (a) Unknown Land Conditions as set forth in Section 5.8 (Unknown Land Conditions);
- (b) Developer’s obligation to fund and PGPCS’ right to direct use of the Design-Build Period Reserve Account and the Services Period Reserve Account in accordance with this Agreement;
- (c) Developer efforts during the Pre-Occupancy Period in accordance with Section 10.7.3 (Limitation on Compensation to Developer During the Pre-Occupancy Period);
- (d) delayed receipt of Milestone Payments in accordance with Section 14.3.2 (Exceptions to Timing of Milestone Payment Notices Due to Relief Events; Limitation on Compensation); and
- (e) any other limitation on compensation, relief, or recovery set forth in this Agreement.

ARTICLE 17 ASSIGNMENT AND TRANSFER

17.1 Restrictions on Transfers by Developer. Except for the collateral assignment of the Developer Interest to a Financing Party, and exercise by a Financing Party of its rights and remedies hereunder (including rights as a third party beneficiary), in accordance with Section 12.7 (Rights of Financing Party), Developer may not Transfer all or any part of the Developer Interest, or otherwise grant an interest, privilege, or license in connection with this Agreement, without the prior written consent of PGPCS, which consent may be withheld in PGPCS' sole and absolute discretion through the shorter of (i) the fifth (5th) anniversary of the Effective Date, provided that such anniversary occurs at least two (2) years following the Project Readiness Date, or (ii) the second (2nd) anniversary of the Project Readiness Date, and shall not be unreasonably withheld or delayed by PGPCS after the expiration of the applicable period. Any prospective assignee shall demonstrate to the satisfaction of PGPCS that it is not a Prohibited Person and that the proposed assignment will not violate any Applicable Law.

17.1.1 Change of Control. A Change of Control of Developer shall be deemed to be a Transfer of the Developer Interest for purposes of this Article. The restriction in Section 17.1 (Restrictions on Transfer by Developer) shall not apply to and no Change in Control of the Developer shall occur:

- (a) in connection with the exercise of rights of the Senior Lenders under the Senior Financing Agreements;
- (b) arising from any bona fide open market transaction in any shares or other securities of the Developer or of any Equity Member or of any holding company of an Equity Member effected on a recognized public stock exchange;
- (c) in connection with a reorganization or transfer of interests within a group of persons under common control (whether directly or indirectly), or of any intermediate entity in the chain of ownership of such persons, so long as there is no substantive change in the person or group of persons that ultimately have control (individually or collectively) of such persons; or
- (d) in the case of [Equity Member ●], a Change in Control that occurs upon the death or disability of an individual so long as the person or persons who shall exercise control after such death or disability are officers of [Equity Member ●] immediately prior to such death or disability.

17.1.2 Developer Default. No Transfer of all or any of the Developer Interest shall be made or have any force or effect if, at the time of such Transfer, there has occurred a Developer Default that has not been remedied or an event that with the lapse of time, the giving of notice, or otherwise would constitute a Developer Default.

17.1.3 Covenant. Before any assignment is carried out as described in this Article 17 (Assignment and Transfer), the prospective assignee shall covenant in writing to the satisfaction of PGPCS that it shall assume, respect, and fully honor all covenants, conditions, obligations, and liabilities of Developer contained in this Agreement.

17.1.4 Assumption. Unless and to the extent otherwise expressly agreed to in writing by PGCPS, any assignee shall be deemed to have assumed all of the obligations of Developer under this Agreement, and no assignment shall relieve Developer of any of its obligations hereunder.

17.1.5 Attempted Transfer. Any attempted Transfer of this Agreement by Developer, including its respective permitted successors or assigns, must include the provisions of this Article 17 (Assignment and Transfer).

17.1.6 No Recognition. Subject to Section 17.1.5 (Attempted Transfer), any attempted Transfer in violation of this Article 17 (Assignment and Transfer) shall be null and void *ab initio* and of no force or effect, and PGCPS shall not be obligated to recognize any right of any Person to an interest in this Agreement or to conduct any other activities at any Sites otherwise authorized under this Agreement that was acquired in violation of this Article 17 (Assignment and Transfer).

17.2 Permitted Succession and Assignments. Developer and PGCPS agree that all of the covenants, conditions, obligations, and liabilities contained in this Agreement shall be binding upon and inure to the benefit of any and all permitted successors and assigns of Developer to the same extent as if the successors and assigns were in each case named as a party to this Agreement.

17.3 Restrictions on Transfers by PGCPS. PGCPS may not assign, transfer or otherwise grant an interest, privilege, or license in connection with this Agreement, except to another Governmental Authority which assumes in writing and is legally capable of discharging all the obligations of PGCPS under this Agreement, without the prior written consent of Developer, which consent may be withheld in Developer's sole and absolute discretion.

ARTICLE 18 RECORDS AND REPORTING REQUIREMENTS

18.1 Records and Reports. Developer will, at its own cost and expense, retain and maintain the records and reports referred to in Section 18.5 (Records to be Kept) in accordance with this Article 18 (Records and Reporting Requirements) and other applicable forms of this Agreement, in chronological order, in a form that is capable of audit. Developer will make all such records available to PGCPS or its representatives or advisors for inspection and copying (at PGCPS' expense) during normal business hours upon reasonable notice, and, upon request from PGCPS, provide PGCPS with electronic copies of any such records as soon as reasonably practicable. All such records shall be kept at Developer's principal office (which at all times shall be in the continental United States).

18.2 Access to Records. Developer will make all such records available to PGCPS or its representatives or advisors for inspection and copying (at PGCPS' expense) during normal business hours upon reasonable notice, and, upon request from PGCPS, provide PGCPS with electronic copies of any such records as soon as reasonably practicable. All such records shall be kept at Developer's principal office (which at all times shall be in the continental United States).

18.3 Maintenance of Records. True copies of the original records may be kept by Developer if it is not practicable to retain original records. Developer shall retain and maintain records referred to in Section 18.5 (Records to be Kept) for at least six (6) years unless a different retention period is expressly stated herein with regard to a particular type of record, all in sufficient detail, in appropriate categories and generally in such a manner to enable Developer to comply with its obligations and exercise rights under this Agreement. On the expiration of such period or at the earlier request of PGCPs after termination of this Agreement, Developer shall deliver all those records (or, if those records are required by statute to remain with Developer, copies thereof) to PGCPs in the manner and at such locations as PGCPs specifies.

18.4 Disposal of Records. Prior to destroying or disposing of any records required to be maintained under Section 18.5 (Records to be Kept), Developer will give PGCPs sixty (60) days' prior written notice of Developer's intention to destroy or dispose of records. Such notice shall specify with particularity the records to be destroyed or disposed. If within such sixty (60)-day period PGCPs gives notice to Developer that PGCPs wishes to receive any of the records, then Developer will, at the cost and expense of PGCPs, deliver such records to PGCPs in the manner and at such location(s) as PGCPs specifies.

18.5 Records to be Kept. Developer shall retain the following, without duplication:

- (a) this Agreement, its Exhibits, the Project Contracts, Subcontracts, Financing Documents, and all other documents and instruments in respect of any financing, including all amendments to such agreements;
- (b) the Financial Model, including all prior versions, amendments, and modifications;
- (c) records relating to the appointment of the Design-Build Representative and the Services Period Representative, Key Personnel, and the Independent Engineer;
- (d) documents relating to Governmental Approvals, including applications, refusals, and appeals;
- (e) notices, reports, results, and certificates relating to the Design-Build Work, Commissioning, and Capital Modifications, including all as-built drawings and permits;
- (f) all records relating to any inspections of the Schools conducted under Applicable Law or by or for any Governmental Authority;
- (g) all operation and maintenance manuals;
- (h) all notices delivered to the Help Desk and all responses from the Help Desk in respect of such notices for a period of six (6) years after such notice was delivered;
- (i) all electronically and manually recorded information with respect to the provision of the Services including Events, Availability Conditions, Unavailability Events, and Performance Failures for a period of six (6) years after such information was recorded;

- (j) all electronically and manually recorded information with respect to actions initiated by Developer to respond to and rectify Events, Availability Conditions, Unavailability Events, and Performance Failures for a period of six (6) years following rectification of such matters;
- (k) documents relating to Relief Events;
- (l) comprehensive maintenance and overhaul records for each School, including the date, time, and scope of each such activity;
- (m) all Performance Monitoring Reports and the information and data used to prepare such reports for a period of six (6) years following the date of each such report;
- (n) invoices and payments, including calculation thereof;
- (o) all documents relating to the dispute resolution procedures as set out in Article 24 (Resolution of Disputes) for a period of ten (10) years following the initiation of such dispute;
- (p) all documents relating to a Refinancing (other than Exempt Refinancing);
- (q) documents relating to a request for the consent of PGCPS to any Change in Control by Developer;
- (r) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Developer with respect to the Design-Build Work and Services;
- (s) all documents relating to the Required Insurance;
- (t) receipts of expenditures incurred and amount of funds withdrawn from the Design-Build Period Reserve Account and the Services Period Reserve Account;
- (u) documents referred to in Exhibit X-2 (Deductions); and
- (v) all other records, notices, or certificates required to be produced or maintained by Developer pursuant to the express terms of this Agreement.

18.6 Monthly Design-Build Report. During the Design-Build Period, Developer shall submit a monthly report (each, a “**Monthly Design-Build Report**”) to PGCPS on or before the tenth (10th) day of each month to report on activities during the prior month. The Monthly Design-Build Report shall be in a format agreed to by PGCPS and Developer, which may be through a third-party software system, and shall include, at a minimum:

- (a) a detailed account, certified by Developer, of current progress of the Design-Build Work as compared to the Construction Schedule and the Design-Build Work Plan;

- (b) the date on which Developer anticipates it will achieve Substantial Completion for each School;
- (c) either confirmation that there have been no changes or a description of any changes in the ownership of the interest in, or Control of, Developer and the Project Contractors;
- (d) the status of any Governmental Approvals;
- (e) any significant events occurring during the prior month;
- (f) a summary of activities expected to be undertaken by Developer during the upcoming month and upcoming critical tasks to be performed in order to maintain the Construction Schedule;
- (g) a summary of Developer's activities with respect to, and in furtherance of, the Community Engagement and Outreach Plan;
- (h) a description of any expenditures incurred, amount of funds withdrawn from, and amount of funds remaining in the Design-Build Period Reserve Account; and
- (i) such other information reasonably requested by PGCPS.

Developer shall include as part of each Monthly Design-Build Report a reasonable number of construction photographs taken since the last report submitted by Developer. Developer shall also contemporaneously submit to PGCPS any progress reports related to the development and construction of the Project that it submits to the Financing Party.

18.7 Performance Monitoring Report. During the Services Period, Developer shall deliver to PGCPS a quarterly Performance Monitoring Report in accordance with Section 5.2 (Periodic Reporting) of Exhibit W (Services Requirements).

18.8 MBE and CBB Reporting. To ensure Developer is meeting the MBE and CBB minimum quantitative requirement stated in Section 4.7.1 (Minimum Quantitative Requirement) and to measure compliance with the MBE and CBB Subcontracting Plan, throughout the Term, PGCPS shall provide a web-based, secure portal for data capture and reporting purposes. Developer will be responsible for ensuring that all Project Contractors and Subcontractors use this portal and provide the required information on a monthly basis (each, a "**MBE and CBB Report**"). Project Contractors and Subcontractors shall be required to input all necessary wage, benefit, and payroll data, as well as upload back-up documentation for PGCPS. This data shall be provided monthly based on the Project Contractors' and/or Subcontractors' payroll periods. Developer will input and update on a monthly basis as part of each MBE and CBB Report the following data for all Project Contractors and Subcontractors: demographics, geographic location, certification status, contract value, and change order values. Project Contractors and Subcontractors will provide data on the amount they have been paid on each Project Contract and Subcontract, as applicable.

18.9 Additional Reports. In addition to the Monthly Design-Build Report, quarterly Performance Monitoring Report, and the MBE and CBB Report, at the time intervals as outlined below, Developer shall submit to PGCPs:

18.9.1 Annually, within ninety (90) days after the end of Developer’s fiscal year, an independent audit;

18.9.2 Within fifteen (15) Business Days after the end of each month in which Developer has received notice that an Event of Default has occurred and/or is continuing, monthly income statements for the Project, including calculations of net cash flow, and updates on actions being taken to remediate the Event of Default; and

18.9.3 Within thirty (30) Business Days after receipt of a written request by PGCPs, such additional information as may reasonably be requested by PGCPs and which is reasonably available to Developer.

18.10 Limited Effect of Reports. Developer’s submittal of reports is for PGCPs’ information only and shall not limit or otherwise affect Developer’s obligations to comply with the requirements of this Agreement. PGCPs’ acceptance of any reports shall not bind PGCPs in any manner and shall not imply PGCPs approval or consent to any of the matters set forth therein.

ARTICLE 19 EVENTS OF DEFAULT, REMEDIES, TERMINATION, AND TERMINATION COMPENSATION

19.1 Default by Developer. The occurrence of any one or more of the following events during the Term shall constitute a “**Developer Default**” under this Agreement:

19.1.1 If Developer fails to comply with, perform, or observe any material obligation, covenant, agreement, term, or condition in this Agreement;

19.1.2 A School Occupancy Readiness Date does not occur on or before the Longstop Date for the relevant School (as such date may be extended pursuant to this Agreement) as provided in Section 10.6 (Failure to Achieve School Occupancy Readiness by the Applicable Longstop Date);

19.1.3 Developer breaches Article 17 (Assignment and Transfer);

19.1.4 If Developer (a) admits, in writing, that it is unable to pay its debts as such become due; (b) makes an assignment for the benefit of creditors; (c) files a voluntary petition under Title 11 of the United States Code, or if such petition is filed against it and an order for relief is entered, or if Developer files any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future United States Bankruptcy Code or any other present or future Applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator, or other similar official of Developer or of

all or any substantial part of its properties or of the Project or any interest therein; or (d) takes any corporate action in furtherance of any action described in this Section 19.1.4;

19.1.5 If within ninety (90) days after the commencement of any proceeding against Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future United States Bankruptcy Code, or any other present or future Applicable Law, such proceeding has not been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Developer, of any trustee, receiver, custodian, assignee, sequestrator, liquidator, or other similar official of Developer or of all or any substantial part of its properties or of the Project or any interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any such stay, such appointment has not been vacated;

19.1.6 If a levy under execution or attachment has been made against all or any part of the Project or any interest therein created, incurred, assumed, or suffered to exist by Developer or any Person claiming through it, and such execution or attachment has not been vacated, removed, or stayed by court order, bonding, or otherwise within sixty (60) days after Developer becomes aware of such levy, unless such levy resulted from actions or omissions of PGCPs;

19.1.7 Any representation or warranty made by Developer under this Agreement is false or misleading in any material respect on the date made;

19.1.8 Developer abandons the Project by failing to perform a material part of the Design-Build Work or the Services for a continuous period in excess of thirty (30) days where such failure is not consistent with the Construction Schedule, as applicable, and is not expressly permitted or excused by the terms of this Agreement;

19.1.9 Developer repudiates in writing any of its material obligations under this Agreement; or

19.1.10 Developer accumulates Deductions that amount to ten percent (10%) or more of the Services Charge in each Billing Period for any twelve (12) consecutive Billing Periods, such that the ten percent (10%) threshold is met or exceeded in all twelve (12) consecutive Billing Periods. For the purposes of this Section 19.1.10, when calculating the amount of Deductions incurred in the applicable twelve (12) consecutive month period, neither (i) Deductions for Total Unavailability, nor (ii) LEED Deductions applied pursuant to Section 5.4 (LEED Deductions) of Exhibit X-2 (Deductions), shall be included in such calculation.

19.2 Developer Default Notice and Cure Periods. PGCPs shall provide a written notice, giving particulars of Developer's failure in reasonable detail (“**Developer Default Notice**”) upon the occurrence of a Developer Default. Notwithstanding the foregoing, Developer shall notify PGCPs of the occurrence, and details, of any Developer Default of which it becomes aware and of any event or circumstance which is likely, with the passage of time or otherwise, to

constitute or give rise to a Developer Default, in either case promptly on Developer becoming aware of its occurrence. Upon receipt of a Developer Default Notice, Developer shall have the following cure periods:

19.2.1 for a Developer Default under Section 19.1.1,

19.2.1.1 a period of thirty (30) days after Developer receives a Developer Default Notice; or

19.2.1.2 if, despite Developer's commencement of meaningful steps to cure immediately after receiving the Developer Default Notice, the Developer Default cannot be cured within such thirty (30) day period, Developer will have such additional period of time as is needed to cure the Developer Default provided that Developer continues to demonstrate, to the satisfaction of PGCPs, that (a) it is proceeding diligently, and will continue to proceed diligently, to cure or cause to be cured such failure; (b) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to PGCPs; (c) such failure will be cured within such period of time; and (d) such failure is in fact cured within one hundred and twenty (120) days (or any later period authorized by PGCPs in writing in PGCPs' sole discretion);

19.2.2 for a Developer Default under Section 19.1.3 or Section 19.1.7, for a period of thirty (30) days after Developer receives a Developer Default Notice; and

19.2.3 for a Developer Default under Section 19.1.2, Section 19.1.4, Section 19.1.5, Section 19.1.6, Section 19.1.8, Section 19.1.9, or Section 19.1.10, there is no cure period.

19.3 Remedial Program. If a Developer Default occurs, PGCPs may, without prejudice, to any other right or remedy available to it, require Developer to prepare and submit, within thirty (30) days of being notified, a remedial program (a "**Remedial Program**"). Notwithstanding the foregoing, Developer may, without being required by PGCPs, submit to PGCPs a Remedial Program in connection with an existing or potential Developer Default.

19.3.1 Remedial Program Requirements. A Remedial Program must set out specific actions and an associated schedule to be followed by Developer to cure the relevant Developer Default and reduce the likelihood of such defaults occurring in the future.

19.3.2 Acceptance. Upon receiving a Remedial Program, PGCPs shall review it and, within thirty (30) days of receipt thereof, PGCPs shall notify Developer whether such Remedial Program is acceptable (in PGCPs' sole discretion). If within thirty (30) days of receipt of a Remedial Program, PGCPs has not notified Developer whether such Remedial Program is acceptable or not, the Remedial Program shall be deemed not to be accepted. If PGCPs notifies Developer that its Remedial Program is acceptable, Developer shall implement such Remedial Program in accordance with its terms, and while Developer is diligently implementing such Remedial Program, PGCPs shall be precluded from exercising any remedies in connection with

the underlying Developer Default as set forth in Section 19.4 (Remedies by PGCPs Upon Developer Default).

19.4 Remedies by PGCPs Upon Developer Default. Upon the failure to cure a Developer Default in accordance with the timeframes set forth in Section 19.2 (Developer Default Notice and Cure Periods), or where, pursuant to Section 19.3 (Remedial Program), a Remedial Program has been accepted by PGCPs and Developer fails to comply with the Remedial Program or cure the Developer Default, in each case in accordance with the schedule provided in such Remedial Program, PGCPs may, by notice to Developer, declare Developer to be in default and do any or all of the following as PGCPs, in its discretion, shall determine, subject to any rights of the Financing Party as set forth in Article 12 (Project Financing and Refinancing), including specifically any rights that the Financing Party has under this Agreement that may or must precede exercise of any of the following rights by PGCPs.

19.4.1 PGCPs may terminate this Agreement by giving written notice to Developer ninety (90) days prior to the effective date of such termination.

19.4.2 If the Developer Default is by reason of the failure to pay any monies to another Person, PGCPs may (without obligation to do so) make payment on behalf of Developer of such monies unless such nonpayment is due to a bona fide dispute, and any amount so paid by PGCPs shall be payable by Developer to PGCPs within five (5) days after demand therefor.

19.4.3 PGCPs may mitigate or cure the Developer Default in accordance with Section 19.17 (PGCPs' Temporary Step-In Rights) (but this shall not obligate PGCPs to cure or attempt to cure a Developer Default or, after having commenced to cure or attempted to cure a Developer Default, to continue to do so).

19.4.4 PGCPs may seek to recover its Losses arising from such Developer Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any PGCPs Person who is owed damages or a debt.

19.4.5 If Developer fails to perform any of its obligations with respect to construction of the Project as set forth in this Agreement, PGCPs shall be entitled to exercise its rights under the bonds identified in Section 7.18 (Design-Build Security) and Section 7.19 (Additional Bond Security). In addition, subject to the rights of the surety, PGCPs may perform such obligation or cause such obligation to be performed, in which case PGCPs shall be entitled to withhold from any amounts due to Developer an amount equal to the reasonable, documented costs and expenses incurred or to be incurred by PGCPs to cure any breach or other failure of Developer to perform any of its obligations under this Agreement. PGCPs shall notify Developer and the surety in writing of any draw on or execution of the bonds identified in Section 7.18 (Design-Build Security) and Section 7.19 (Additional Bond Security) and the circumstances leading to such draw.

19.4.6 PGCPs may exercise any of its other rights and remedies provided for hereunder or at law or equity.

19.5 Default by PGCPS. The occurrence of any one or more of the following events during the Term shall constitute a “**PGCPS Default**” under this Agreement:

19.5.1 if PGCPS fails to make any payment obligation when due;

19.5.2 if PGCPS fails to comply with, perform, or observe any material non-payment obligation, covenant, agreement, term, or condition in this Agreement; or

19.5.3 any representation or warranty made by PGCPS under this Agreement is false or misleading in any material respect on the date made.

19.6 PGCPS Default Notice and Cure Periods. Developer shall provide a written notice, giving particulars of PGCPS’ failure in reasonable detail (“**PGCPS Default Notice**”) upon the occurrence of a PGCPS Default. Notwithstanding the foregoing, PGCPS shall notify PGCPS of the occurrence, and details, of any PGCPS Default of which it becomes aware and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a PGCPS Default, in either case promptly on PGCPS becoming aware of its occurrence. Upon receipt of a PGCPS Default Notice, PGCPS shall have the following cure periods:

19.6.1 for a PGCPS Default under Section 19.5.1 or Section 19.5.3, a period of thirty (30) days after PGCPS receives a PGCPS Default Notice; and

19.6.2 for a PGCPS Default under Section 19.5.2,

19.6.2.1 a period of sixty (60) days after PGCPS receives a PGCPS Default Notice; or

19.6.2.2 if, despite PGCPS’ commencement of meaningful steps to cure immediately after receiving the PGCPS Default Notice, the PGCPS Default cannot be cured within such sixty (60) day period, PGCPS will have such additional period of time as is needed to cure the Developer Default provided that PGCPS continues to demonstrate, to the satisfaction of Developer, that (a) it is proceeding diligently, and will continue to proceed diligently, to cure or cause to be cured such failure; (b) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to Developer; (c) such failure will be cured within such period of time; and (d) such failure is in fact cured within one hundred and twenty (120) days (or any later period authorized by Developer in writing in Developer’s sole discretion).

19.7 Developer Remedies Upon PGCPS Default. Upon the failure to cure a PGCPS Default in accordance with the timeframes set forth in Section 19.6 (PGCPS Default Notice and Cure Periods), Developer may, by written notice to PGCPS, declare PGCPS to be in default and, at its option, exercise one or more of the following, as applicable:

19.7.1 suspend performance of its Design-Build Work or Services obligations, as applicable, until such time as PGCPS has demonstrated to the reasonable satisfaction of Developer that PGCPS will perform and is capable of performing its obligations under this Agreement;

19.7.2 claim a Relief Event in accordance with Section 16.2 (Relief Event Procedure); or

19.7.3 terminate this Agreement by giving written notice to PGCPS; provided, however, for a PGCPS Default under Section 19.5.1, Developer cannot terminate this Agreement until sixty (60) days after the PGCPS Default Notice was provided.

19.8 Termination for Convenience by PGCPS. In the event that PGCPS desires to terminate this Agreement, PGCPS may do so by giving written notice to Developer ninety (90) days prior to the effective date of such termination.

19.9 Termination Due to Extended Relief Event. This Agreement may be terminated by either Party by the provision of written notice to the other Party thirty (30) days prior to the effective date of such termination, which notice shall state that a Relief Event has occurred and, after a period of at least one hundred and eighty (180) consecutive days, continues to materially impact the ability of one or both Parties to perform under this Agreement (an “**Extended Relief Event**”).

19.10 Termination Due to an Insurance Unavailability Event. To the extent an Insurance Unavailability Event occurs, and Developer elects not to establish an account in accordance with Section 20.5.1 (Developer Account), PGCPS may terminate this Agreement by giving written notice to Developer ninety (90) days prior to the effective date of such termination.

19.11 Termination by Court Ruling. To the extent a Termination by Court Ruling occurs, this Agreement shall be terminated as of the date of issuance of a final, non-appealable court order by a court of competent jurisdiction.

19.12 Exclusive Termination Right. After the Effective Date, neither Party shall have the right to terminate this Agreement for breach except as provided in this Article 19 (Events of Default, Remedies, Termination, and Termination Compensation).

19.13 Consequences of Termination or Reversion. Upon the termination or expiration of this Agreement, notwithstanding any claims the Parties may have against each other, the following provisions shall apply:

19.13.1 Surrender. On the Termination Date, Developer shall, without any legal action whatsoever being necessary on the part of PGCPS, relinquish and surrender care, custody, and control of the Project (including all improvements to the Project) and all materials, goods, machinery, equipment, hardware, parts, supplies, and other property of Developer (including inventories) that is included in the Project and used in connection with Developer’s performance of any of its obligations under this Agreement. The Project (including all improvements to the Project) shall be surrendered in good order, condition, and repair (Reasonable Wear and Tear excepted), determined reasonably in accordance with the then applicable Contract Standards, free and clear of all encumbrances other than the Permitted Encumbrances; provided that Developer shall satisfy any obligation to surrender rights to proprietary intellectual property of Developer by

extending to PGCPs on reasonable terms an irrevocable license to use such proprietary intellectual property in connection with the Project.

19.13.2 Notice. Developer hereby waives any notice now or hereafter required by Applicable Law with respect to transfer of the Project on the Termination Date.

19.13.3 Responsibility. PGCPs shall, as of the Termination Date, assume full responsibility for the Design-Build Work, to the extent not completed, and the Services, and as of such date, Developer shall have no liability or responsibility for such obligations occurring after such date.

19.13.4 Costs. Developer shall be liable for all costs, expenses, and other amounts for which it is liable or responsible hereunder incurred up to but not including the Termination Date, and PGCPs shall be liable for all costs, expenses, and amounts incurred in connection with the Design-Build Work and Services on and after the Termination Date.

19.13.5 Records and Plans. Developer, at its sole cost and expense, shall promptly deliver to PGCPs copies of all records and other documents relating to the Project that are in the possession of any Developer Person as PGCPs, acting reasonably, may request. All plans, drawings, specifications, and models prepared in connection with the Design-Build Work and in Developer's possession and all "as-built" drawings shall become the sole and absolute property of PGCPs, and Developer shall promptly deliver to PGCPs in electronic and hard copy format all such plans, drawings, specifications, and models and all such as-built drawings (including any auxiliary works, if undertaken) in sufficient detail to enable PGCPs to operate, maintain, dismantle, reassemble, and adjust the Schools and components thereof as PGCPs may reasonably require. All information provided to PGCPs by Developer shall be accurate, comprehensive, and up-to-date in all respects.

19.13.6 Technology and Know-How. Subject to the rights of any third party permitted under this Agreement, Developer shall provide to PGCPs (a) a copy of all technical documents, including functional specifications, operating manuals, and business processes charts, necessary to support continued operation of the Schools, and (b) an irrevocable royalty-free license in respect of use of such documents.

19.13.7 Subcontracts. At the request of PGCPs, Developer and PGCPs shall execute an agreement or agreements between Developer, PGCPs, and any subcontractor providing services at the election of PGCPs, pursuant to which any contract between Developer and any such subcontractor relating to the provision of the services is to be novated or assigned to PGCPs on the Termination Date; provided however, that the Project Contractors shall have a right to reject any assignment or request for a direct agreement with PGCPs if this Agreement is terminated for any reason pursuant to Section 19.5.4 through Section 19.9.

19.13.8 Evidence of Termination. Developer and PGCPs shall execute and deliver to the other Party, as applicable, any instruments reasonably requested by either Party to evidence such termination.

19.13.9 Assistance. Developer shall assist PGCPs in such manner as PGCPs may require to ensure the orderly transition of the performance of the Services to PGCPs or such other third party as may be selected by PGCPs.

19.13.10 Adjustments. PGCPs and Developer shall make appropriate adjustments, including adjustments relating to any Subcontracts assigned to PGCPs at PGCPs' request that are incurred prior to the Termination Date, and any adjustments and payment therefor shall be made by the appropriate Party on the Termination Date, but shall be subject to readjustment if necessary because of error in matters such as information, calculation, payments, and omissions that are identified within the period of one hundred and eighty (180) days following the Termination Date; provided, however, that PGCPs and Developer acknowledge that certain adjustments or readjustments may have to be made when a third party provides to PGCPs or Developer a final adjustment amount in respect of a matter, and for such matters the adjustment and readjustment date shall each be correspondingly extended.

19.14 Termination Compensation Process.

19.14.1 Termination Compensation Claim. If Developer wishes to claim Termination Compensation, within one hundred and twenty (120) days after the Termination Date, or such longer period as may be agreed to in writing by PGCPs at PGCPs' sole discretion, Developer shall submit a complete termination inventory schedule identifying the amount of Termination Compensation claimed under the applicable scenario in Exhibit Z (Calculation of Termination Compensation) to PGCPs ("**Termination Compensation Claim**"). In the event Developer fails to timely submit a Termination Compensation Claim, Developer is deemed to have waived any claims with respect to Termination Compensation.

19.14.2 Termination Compensation Claim Documentation. The Termination Compensation Claim shall include the following certifications, as applicable:

(a) Developer shall certify to PGCPs in writing that either (a) the termination of this Agreement did not give rise to any right on the part of Developer or any Affiliate(s) of Developer to seek to recover proceeds under any insurance policy or policies or bond maintained by Developer or such Affiliate(s), or (b) the termination of this Agreement did give rise to a right on the part of Developer and/or any Affiliate(s) of Developer to seek to recover proceeds under one or more insurance policies or bonds maintained by Developer and/or such Affiliate(s), the appropriate claim or claims have been made in respect of such insurance, and Developer and/or such Affiliate(s) of Developer have recovered under such insurance the aggregate amount of proceeds to be set forth in such certificate, with the amount of such proceeds to be endorsed by the insurer(s) or insurance broker(s) of Developer and/or such Affiliate(s) of Developer as have been duly paid Developer and/or such Affiliate(s), as the case may be;

(b) Developer shall certify to PGCPs in writing any amounts owed by PGCPs calculated as of the Termination Date, setting forth such calculations;

(c) Developer shall deliver to PGCPs a certificate setting forth the calculation and aggregate amount of any and all cash balances of Developer as of the Termination Date, including, without limitation, any reserves of Developer;

(d) The Unit Holders shall certify to PGCPs in writing that they have released Developer from any payment, performance, or other obligations to them that may have arisen prior to the Termination Date; and

(e) Developer shall deliver to PGCPs an itemized list of all amounts claimed under Section 19.14.2(b), which list shall provide detailed calculations of each amount claimed, the relevant contract under which such amount is claimed, and a textual description of the reason such amount under such contract became due and payable prior to the Termination Date or has become due and payable as a result of the termination of this Agreement. Such list shall be attached to a certificate of a duly authorized officer of Developer, certifying, for and on behalf of Developer, as to the reasonableness and accuracy of the statements made therein.

19.14.3 Agreement on Termination Compensation. After receipt of the information described in Section 19.14.2 (Termination Compensation Claim Documentation), PGCPs and Developer may agree in writing upon the whole or any part of the amount to be paid or remaining to be paid as Termination Compensation. If PGCPs and Developer fail to agree on the whole amount to be paid as Termination Compensation, PGCPs shall cause the Escrow Agent to disburse to Developer such undisputed amounts that PGCPs agrees are due as Termination Compensation at the time required by Exhibit Z (Calculation of Termination Compensation), and Developer may, within thirty (30) days of the failure to reach agreement, refer the disputed amount to resolution in accordance with Article 24 (Resolution of Disputes).

19.14.4 Disbursement to Developer. PGCPs shall cause the Escrow Agent to disburse to Developer the amount determined as Termination Compensation in accordance with this Section 19.14 (Termination Compensation Process) to such account as Developer may instruct in writing no later than the Termination Compensation Due Date, unless PGCPs elects to make Recurring Termination Payments in accordance with and pursuant to Exhibit Z (Calculation of Termination Compensation).

19.15 Calculation of Termination Compensation. The Termination Compensation shall be calculated based on the applicable scenario set forth in Exhibit Z (Calculation of Termination Compensation).

19.16 PGCPs Liquidated Damage Rights.

19.16.1 Liquidated Damage Rights Defined. PGCPs' rights under this Agreement include the right (each of the following, a "**Liquidated Damage Right**"):

(a) to withhold from the final Milestone Payment and any Availability Payments funds under the circumstances set forth in Section 4.7.4 (Failure to Achieve Design-Build Period MBE and CBB Participation);

(b) to withhold from the Availability Payment or otherwise receive a payment from Developer of funds under the circumstances set forth in Section 4.7.5 (Failure to Achieve Services Period MBE and CBB Participation);

(c) to retain the proceeds of a draw on the Financial Close Security under the circumstances set forth in Section 6.11.1 (PGCPS Retention);

(d) to withhold Late Delivery Damages from the applicable Milestone Payment in accordance with Section 10.5 (Late Delivery Damages); and

(e) to impose Deductions from certain payments owed by PGCPS to Developer under the circumstances set forth in Exhibit X-2 (Deductions).

19.16.2 Sole Remedy; Exceptions. The Parties acknowledge and agree that PGCPS' actual damages or losses in each such circumstance are impossible to ascertain as of the Commercial Close Date and that the amounts payable to, or to be retained by, PGCPS through the exercise of any Liquidated Damage Right are a fair and reasonable estimate of fair compensation to PGCPS for the intended circumstance, as applicable, shall constitute liquidated damages in each such circumstance, and are not a penalty against Developer. Developer is expressly estopped from claiming, and waives any right to claim, that the exercise of any Liquidated Damage Right by PGCPS amounts to a penalty or is not enforceable. The liquidated damages resulting from PGCPS' exercise of a Liquidated Damage Right shall constitute the only damages payable by Developer to PGCPS to compensate PGCPS for the damages or losses resulting from the specific circumstances contemplated by such Liquidated Damage Right, and the exercise of such right by PGCPS shall constitute PGCPS' sole remedy in respect of such circumstances; provided, however, that such limitation is subject and without prejudice to:

(a) any entitlement of PGCPS to specific performance of any obligation of Developer under this Agreement;

(b) any right of PGCPS under subsection Section 11.4.2 (Additional Developer Obligations) to require Developer to take additional action upon the repeated or persistent occurrence of unexcused Unavailability Events or Performance Failures;

(c) any entitlement of PGCPS to injunctive relief;

(d) PGCPS' step-in rights under Section 19.17 (PGCPS' Temporary Step-In Rights);

(e) any right of PGCPS to declare the occurrence of a Developer Default under Section 19.4 (Remedies by PGCPS Upon Developer Default), including a Developer Default resulting from the significant accumulation of Deductions based on the occurrence of Unavailability Events or Performance Failures;

(f) Developer's indemnification obligations under Article 21 (Liability; Indemnification);

(g) The determination of Developer liability in respect of a termination for Developer Default made pursuant to Exhibit Z (Calculation of Termination Compensation); or

(h) any other express right of PGCPs pursuant to this Agreement.

19.17 PGCPs' Temporary Step-In Rights.

19.17.1 PGCPs Step-In and Rectification Rights. If PGCPs reasonably considers that (a) a breach by Developer of any obligation under this Agreement (including a Developer Default) or (b) an event (i) is likely to create an immediate and serious threat to the health or safety of any PGCPs Person, any property, the environment or the reputation, integrity of, or public confidence in, the Project and any related operations, or (ii) is prejudicial to the ability to carry on PGCPs Activities to a material degree, then PGCPs, acting reasonably, may either:

19.17.1.1 require Developer by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs (including, if applicable, due to Developer's breach of any terms or conditions of this Agreement), and Developer shall use commercially reasonable efforts to comply with PGCPs' requirements as soon as reasonably practicable; or

19.17.1.2 if it considers that there is not sufficient time for Developer to take the necessary steps to address the situation referred to in clauses (b)(i) or (ii) of this Section 19.17.1 (PGCPs Step-In and Rectification Rights), or if Developer (a) does not confirm, within five (5) Business Days of a written notice delivered in accordance with Section 19.17.1.1, or such shorter period as is appropriate in the case of an emergency, that it is willing to take such steps as are required in such notice or present an alternative plan acceptable to PGCPs (acting reasonably) to mitigate, rectify and protect against such circumstances, or (b) fails to take the steps as are referred to or required in such notice delivered or accepted alternate plan within such time as set forth in such notice or accepted alternate plan (as PGCPs, acting reasonably, may be extend), take such steps as it considers are necessary, appropriate, or expedient (either itself or by engaging others) to mitigate, rectify, or protect against such state of affairs and to ensure performance of the relevant obligations under this Agreement to the standards required (or as close as possible to those standards as the circumstances permit). Such steps may include the partial or total suspension of the right and obligation of Developer to provide the relevant Design-Build Work or Services, but only for so long as the circumstances referred to in Section 19.17.1 (PGCPs Step-In and Rectification Rights) subsist. PGCPs will carry out such steps as quickly as is practicable, and in such manner as will minimize interference with Developer's performance of its obligations under this Agreement. PGCPs' exercise of any rights under this Section 19.17 (PGCPs' Temporary Step-In Rights) shall not affect PGCPs' rights against Developer by reason of a Developer Default or breach (even if PGCPs' efforts have the effect of curing such Developer Default or breach), nor constitute a waiver of PGCPs' rights to pursue any action for any past, present, or future breach by Developer, and PGCPs may seek specific performance, injunction, or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Developer Default.

19.17.2 Project Contracts and Subcontracts. Developer shall ensure that all Project Contracts and Subcontracts permit PGCPs to exercise its rights under Section 19.17 (PGCPs' Temporary Step-In Rights).

19.17.3 Notice of Capital Modifications. PGCPs shall notify Developer of any Capital Modification which PGCPs intends to make pursuant to the exercise of the PGCPs rights under Section 19.17.1 (PGCPs Step-In and Rectification Rights) and provide Developer a reasonable opportunity, taking into account all the circumstances, to comment on the proposed Capital Modification. In making such Capital Modification, PGCPs will reasonably consider comments received in a timely manner from Developer on the proposed Capital Modification.

19.17.4 Allocation of Costs and Provision of Relief for PGCPs' Exercise of Step-In Rights.

19.17.4.1 To the extent that any of the circumstances set forth in Section 19.17 (PGCPs' Temporary Step-In Rights) arise as a result of any breach by Developer of its obligations under this Agreement (including a Developer Default), then Developer shall pay PGCPs the amount of all costs and expenses reasonably incurred by PGCPs in exercising its rights under Section 19.17.1 (PGCPs Step-In and Rectification Rights) and an additional mark-up of fifteen percent (15%) of such costs and expenses in respect of indirect costs and overhead not otherwise directly attributable to the exercise of such rights. Such amounts shall be paid to PGCPs within five (5) days after written demand therefor unless PGCPs identifies that, in lieu of a separate payment, PGCPs will claim such costs and expenses as an Extraordinary Item.

19.17.4.2 In all other cases, PGCPs shall compensate Developer, and provide schedule and performance relief to Developer, for actions taken under Section 19.17 (PGCPs' Temporary Step-In Rights) in the manner provided in Article 16 (Relief Events) as if such circumstances constituted a Relief Event affecting Developer; provided, however, in no case shall PGCPs incur any liability to Developer for any act or omission of PGCPs or any other Person in the course of exercising its rights under Section 19.17 (PGCPs' Temporary Step-In Rights) unless resulting from recklessness or gross negligence.

19.18 No Effect on Contract Services. The exercise by PGCPs of any of its rights under Section 19.16 (PGCPs Liquidated Damage Rights) or Section 19.17 (PGCPs' Temporary Step-In Rights) shall not reduce or affect in any way Developer's responsibility hereunder to perform the Design-Build Work or the Services.

19.19 No Duplicative Recovery or Claims Outside Contract. Every right to claim compensation, indemnification or reimbursement under this Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Agreement. Neither Party shall be entitled to make any claim against the other Party for compensation, indemnification, or reimbursement other than as provided under this Agreement. However, a Party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter, and no single or partial exercise by a Party of any

right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

19.20 No Special, Consequential, or Punitive Damages. In no event shall either Party be liable to the other or obligated in any manner to pay to the other Party any special, incidental, consequential, punitive, or similar losses or damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or any representation made in this Agreement being materially incorrect, whether such claims are based upon contract, tort, negligence, warranty, or any other legal theory. This Section 19.20 (No Special, Consequential, or Punitive Damages) shall not limit the recovery of any such losses or damages under Article 21 (Liability; Indemnification) in respect of claims by third parties.

19.21 Survival. Notwithstanding any other provision of this Agreement, the following provisions hereof will survive the expiration or any earlier termination of this Agreement:

- (a) Section 4.7.5 (Failure to Achieve Services Period MBE and CBB Participation);
- (b) Section 4.9 (Compliance with Environmental Laws);
- (c) Section 14.6 (Monthly Billing Statements)
- (d) Section 14.7 (Quarterly Net Adjustments Report)
- (e) Section 18.5 (Records to be Kept);
- (f) Article 19 (Events of Default, Remedies, Termination, and Termination Compensation), as applicable to the obligations of the Parties following the Termination Date;
- (g) Article 21 (Liability; Indemnification);
- (h) Article 24 (Resolution of Disputes);
- (i) Article 25 (Handback at End of Term);
- (j) Section 27.24 (Confidentiality);
- (k) Any Required Insurance with a tail as set forth in Exhibit CC (Required Insurance),

together with any provisions necessary to give effect to the above provisions.

ARTICLE 20 RISK OF LOSS; INSURANCE; DAMAGE AND DESTRUCTION

20.1 Risk of Loss. Except to the extent explicitly otherwise provided in this Agreement, PGCPS will have no liability whatsoever in matters regarding the Design-Build Work, the

Services, or any other activity performed by any Developer Person pursuant to this Agreement. Except to the extent explicitly otherwise provided in this Agreement, Developer shall, without prejudice to any other rights of PGCPs, bear all risk of loss or damage or destruction to the Sites arising from any causes whatsoever, to the extent caused by any PGCPs Person.

20.2 Required Insurance.

20.2.1 Required Insurance. At all times during the Design-Build Period and the Services Period, as applicable, Developer shall obtain or cause to be obtained, maintain, and comply with the terms and conditions of the Required Insurance. The insurance must meet the requirements set forth in this Section 20.2 (Required Insurance) and Exhibit CC (Required Insurance).

20.2.2 Premiums. Developer shall pay all premiums for the Required Insurance as the same become due and payable and, within fifteen (15) days after payment, shall provide PGCPs with proof of payment. Developer shall be liable for any deductible amount in the event of a loss otherwise covered by the Required Insurance.

20.2.3 PGCPs as an Additional Insured, Additional Named Insured, or Joint Loss Payee. The Required Insurance shall provide by appropriate language that PGCPs is an additional insured, additional named insured, or joint loss payee, as set forth in Exhibit CC (Required Insurance), that the insurance afforded by such policies is primary insurance, and that all rights of the insurer for contribution or otherwise from PGCPs or other insurers of PGCPs are waived. Each such policy shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of any Developer Person, any PGCPs Person, the Financing Party, or any other person.

20.2.4 Project Contractors and Subcontractors. Developer shall require that all Project Contractors and Subcontractors secure and maintain all insurance coverage and other financial sureties required by Applicable Law and otherwise comply with the Insurance Requirements in connection with their presence and the performance of their duties at the Sites or concerning the Project.

20.2.5 Compliance with Insurer Requirements. Developer and PGCPs shall comply promptly with the requirements of all insurers pertaining to the Sites and the Project under any policy of Required Insurance to which such is a named insured, a co-insured, or an additional insured person. Neither Party shall knowingly do or permit anything to be done or fail to take any reasonable action that results in the cancellation or reduction of coverage under any policy of Required Insurance to which such Party is a named insured, co-insured, or an additional insured person.

20.2.6 Evidence of Insurance. Certificates of insurance, and, if requested by PGCPs, binders of insurance, evidencing the effectiveness of the insurance coverage that Developer is required hereunder to maintain or cause to be maintained shall be delivered to PGCPs on or prior to the Effective Date and not less than thirty (30) days prior to the expiration or

termination of coverage. Duplicate or certified copies of such policies shall be delivered to PGCPS within fifteen (15) days after demand. Notice of insurance policy changes by Developer shall be furnished to PGCPS.

20.2.7 Failure to Provide Insurance Coverage. If Developer fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and Developer fails to obtain replacement coverage so that the insurance is maintained on a continuous basis, or if Developer fails to provide evidence of Required Insurance to PGCPS in accordance with Exhibit CC (Required Insurance), PGCPS may, but is not obligated to, pay such premium or procure similar insurance coverage from another insurer, and, upon such payment by PGCPS, the amount thereof shall be immediately reimbursable to PGCPS by Developer. Subject to Section 20.5 (Insurance Unavailability Event), the failure of Developer to obtain and maintain any Required Insurance shall not relieve Developer of its liability for any losses intended to be insured thereby, be a satisfaction of any Developer liability under this Agreement, or in any way limit, modify, or satisfy Developer's indemnity obligations hereunder.

20.2.8 Waiver of Subrogation. Developer shall cause the Required Insurance to be endorsed so as to provide that the insurer or insurers waive any right of subrogation against PGCPS.

20.2.9 Cancellation. Developer understands and agrees that cancellation of any Required Insurance will constitute a failure to comply in a material respect with a material provision of this Agreement. Each policy shall contain an endorsement that will prohibit its cancellation or material modification prior to the expiration of thirty (30) days after notice of such proposed cancellation or material modification to PGCPS.

20.2.10 Not a Limit on Liability. Developer's maintenance of the Required Insurance shall effect no limitation on Developer's liability with respect to any loss or damage resulting from the willful misconduct, lack of good faith, or negligence of any Developer Person, or by any failure on the part of Developer to fully perform its obligations under this Agreement.

20.2.11 Reductions for Insurance Proceeds and Insurance Receivables. Whenever this Agreement obligates PGCPS to pay any amount to Developer in respect of an event or circumstance for which, or with respect to the consequences of which, an insurance claim may be made by Developer under the Required Insurance, the amount which PGCPS is obligated to pay will be reduced by the amount of Insurance Proceeds and Insurance Receivables which Developer recovers or would have been entitled to recover if it had complied with the requirements of this Agreement or the requirements of any policy of Required Insurance.

20.3 Required Design-Build Period Insurance. Developer shall obtain and keep in force, or cause to be obtained and kept in force, throughout the Design-Build Period, the policies of insurance listed in Section 1 (Design Build Period Insurance) of Exhibit CC (Required Insurance). Copies of these policies or binders of insurance as may be specified by PGCPS shall be delivered to PGCPS promptly when received by Developer. Each policy shall be obtained and

be effective prior to the performance of any work or commencement of any activity intended to be insured by each policy.

20.4 Required Services Period Insurance. Developer shall obtain and keep in force, or cause to be obtained and kept in force, throughout the Services Period, the policies of insurance listed in Section 2 (Services Period Insurance) of Exhibit CC (Required Insurance). Copies of these policies or binders of insurance as may be specified by PGCPS shall be delivered to PGCPS promptly when received by Developer. Each policy shall be obtained and be effective prior to the performance of any work or commencement of any activity intended to be insured by each policy.

20.5 Insurance Unavailability Event. If during the Term, (a) any Required Insurance is not available to Developer with Qualified Insurers; or (b) the insurance premium payable or the terms and conditions for insuring against such risk or against third party liability at the levels and on the terms required by this Agreement are at such cost that PGCPS, owners, or others having a substantially similar interest in property such as the Project are not able to insure against such risk with Qualified Insurers, and such premium payable, terms, or conditions do not arise, directly or indirectly from fault, conduct, acts, or omissions of any Developer Person, then such circumstance shall constitute an “**Insurance Unavailability Event**”. Unless the Insurance Unavailability Event is disputed by PGCPS in accordance with Article 24 (Resolution of Disputes), Developer will not be obligated to maintain such Required Insurances and references in this Agreement to such Required Insurance will be construed accordingly; provided, however, that on a regular basis, and no greater than every six (6) months, Developer shall evaluate whether the Required Insurance remains unavailable and report to PGCPS the results of such evaluation.

20.5.1 Developer Account. If an Insurance Unavailability Event occurs, Developer, in its sole discretion, may elect to establish an account with the Escrow Agent which contains funds equal to the deductible and coverage amount for the Required Insurance which is deemed unavailable in accordance with this Section 20.5 (Insurance Unavailability Event). In such event, the adequacy of the amount to be placed in escrow shall be subject to review and concurrence by PGCPS.

20.5.2 PGCPS Rights. If Developer does not establish an escrow account in accordance with Section 20.5.1 (Developer Account), PGCPS may, in its sole discretion:

(a) claim as an Extraordinary Item a credit for an amount equal to the savings in Developer’s insurance costs for not maintaining the unavailable policy; or

(b) terminate this Agreement in accordance with Section 19.10 (Termination Due to an Insurance Unavailability Event).

20.6 Protection of Sites from Damage and Destruction.

20.6.1 Protection. Developer shall use care and diligence, and shall take commercially reasonable and appropriate precautions, to protect the Sites from loss, damage, or destruction. Developer shall report to PGCPS and the insurers immediately upon obtaining

knowledge thereof, any damage or destruction to a Site and as soon as practicable thereafter shall submit a full report to PGCPs. Developer shall also submit to PGCPs within twenty-four (24) hours of receipt copies of all accident and other reports filed with, or given to Developer, by any insurer, adjuster, or Governmental Authority.

20.6.2 Repair of Property. Developer shall promptly repair or replace all property owned by PGCPs or any other public or private owner that is damaged by any Developer Person in connection with the performance of, or the failure to perform, the Design-Build Work or the Services. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to the character and condition existing immediately prior to the damage.

20.6.3 Agreement Not Affected by Damage or Destruction. Except as otherwise expressly provided herein, the partial destruction or damage or complete destruction of Improvements by fire or other casualty will not permit either Party to terminate this Agreement or entitle Developer to demand any increase in any amounts payable to Developer under this Agreement.

20.7 Casualty Restoration.

20.7.1 Notice to PGCPs. In the event that any item or part of a Site shall be damaged (except *de minimis* damage of Twenty-Five Thousand Dollars (\$25,000.00) or less (or such greater amount as PGCPs and Developer shall from time-to-time mutually establish in writing)) or destroyed by a fire or other casualty, ordinary or extraordinary, foreseen or unforeseen (the “**Casualty Property**”), Developer shall promptly give notice thereof and of the estimated amount of such casualty loss to PGCPs.

20.7.2 Obligation to Restore. Developer shall as soon as practicable after the casualty, repair, restore, rebuild or cause to be repaired, restored, or rebuilt the Casualty Property as nearly as possible to the character and condition with materials of like kind and quality and without deduction for depreciation that existed immediately prior to such loss or damage (a “**Casualty Restoration**”).

20.7.3 Disposition of Insurance Proceeds. All Insurance Proceeds received as a result of a casualty loss shall be applied to a Casualty Restoration to the extent required to effect such Casualty Restoration, provided that any excess Insurance Proceeds shall be released to Developer for their application in accordance with the terms of the Financing Documents.

20.7.4 Commencement of Construction Work. Developer shall apply for building permits no later than thirty (30) days following receipt of the Insurance Proceeds and shall commence the construction work in connection with a Casualty Restoration within thirty (30) days after receipt of the building permits. Developer shall diligently pursue the completion of the Casualty Restoration.

20.7.5 Developer's Failure to Perform Casualty Restoration. Absent PGCPs' written agreement to the contrary, if Developer refuses, or fails promptly to repair, restore, or rebuild, or cause the repair, restoration, or rebuilding of the Casualty Property, or any part of the Sites, including the Improvements, damaged or destroyed, to the satisfaction of PGCPs, PGCPs may terminate this Agreement by giving written notice to Developer ninety (90) days prior to the effective date of such termination, and PGCPs may undertake the rebuilding or restoration of the Casualty Property, and any other improvement or the damaged or destroyed portion thereof, and may complete it, by contract or otherwise, and may take possession of and use any materials on the Site(s) necessary for completing the Design-Build Work. In the event PGCPs elects to rebuild or restore the Casualty Property, all applicable Insurance Proceeds relative to the Casualty Property shall be applied first to complete such rebuilding or reconstruction. Subject to the other provisions of this Agreement, PGCPs may retain any remaining balance of the Insurance Proceeds.

20.8 Vandalism.

20.8.1 Response. Developer shall Respond to and Rectify all incidents of Vandalism reported to the Help Desk. All such reported incidents will constitute Demand Maintenance and be classified as Low, Medium, or High in accordance with the requirements of this Agreement. Developer acknowledges that the Schools will be subject to Reasonable Wear and Tear commensurate with their Intended Uses and that ongoing maintenance, repair, renewal, or replacement of the Maintained Elements associated with Reasonable Wear and Tear is the responsibility of Developer under this Agreement. Reasonable Wear and Tear will not include Vandalism. Additionally, all damage or destruction caused in whole or in part by any Developer Person or others who may be on the Sites at the invitation of any Developer Person, will be for the account of Developer and will trigger Demand Maintenance, including with respect to the calculation of Deductions.

20.8.2 Costs. Developer shall be entitled to reimbursement of its Direct Losses incurred in respect of all Demand Maintenance, Rectification, Response, clean-up, removal, renewal, maintenance, repair, or replacement activities that are required to remediate acts of Vandalism. PGCPs may direct that Developer be reimbursed for such costs from funds in the Services Period Reserve Account or through any other payment method available in accordance with Section 14.14 (Payments for Compensation Events and Other Additional Costs).

20.8.3 Developer Obligations. With respect to all Vandalism, Developer will:

20.8.3.1 Investigate, document, photograph, and provide a description in a report to PGCPs of the damage along with an identification, to the extent possible, of the individual(s) responsible for such damage within five (5) days of discovery of Vandalism; and

20.8.3.2 Provide such documentation as may be reasonably required by PGCPs, its insurers, police, and Governmental Authorities.

20.8.4 Reporting. Developer shall further provide quarterly incident and financial reporting of all Vandalism as part of the Performance Monitoring Report. Such written report

shall indicate any amounts that have been withdrawn from the Services Period Reserve Account during the month, together with (a) evidence of the costs that are the subject of such drawings; (b) the purpose for which funds have been used; (c) evidence that all Project Contractors and Subcontractors have waived any rights to Liens; (d) the balance remaining in the Services Period Reserve Account; and (e) such other supporting information as PGCPs may reasonably require. Any amounts that are found to have been improperly withdrawn shall, at the election of PGCPs, either be immediately returned to the Services Period Reserve Account or offset against Availability Payments, as an Extraordinary Item. For purposes of this Section, the term “improperly withdrawn” refers to Developer’s withdrawal of funds in circumstances where Developer cannot provide evidence establishing that the funds were used to remediate acts of Vandalism in accordance with this Section 20.8 (Vandalism) and a finding of improper withdrawal is not being disputed in good faith by Developer.

ARTICLE 21 LIABILITY; INDEMNIFICATION

21.1 PGCPs Not Liable for Injury or Damage. PGCPs shall not be liable to any Developer Person for any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys’ fees and disbursements), penalty, or fine incurred in connection with or arising from any injury, whether physical (including, without limitation, death), economic, or otherwise to a Developer Person in, about, or concerning the Sites or any damage to, or loss (by theft or otherwise) of, any of a Developer Person’s property in, about, or concerning the Sites, irrespective of the cause of injury, damage, or loss or any latent or patent defects in the Sites, except to the extent authorized by Applicable Law, if (i) any of the foregoing is due to a PGCPs Fault or PGCPs Default, (ii) a violation of Applicable Law by any PGCPs Indemnitee, or (iii) as otherwise expressly set forth in this Agreement.

21.2 Developer’s Obligation to Indemnify. Developer shall defend and indemnify each PGCPs Indemnitee from and against all Losses that any PGCPs Indemnitee may sustain in connection with any loss or physical damage to property or assets of any PGCPs Indemnitee, or any claim made by one or more third parties (including for loss of or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease, or illness of any person, any PGCPs Indemnitee, arising by reason of any:

21.2.1 breach of any representation or warranty by Developer under this Agreement;

21.2.2 negligent act or omission of Developer;

21.2.3 breach by Developer of any the provisions of this Agreement or any document, instrument, or agreement delivered to PGCPs as required under this Agreement, except for any of the events or circumstances resulting in the imposition of Liquidated Damage Rights pursuant to Section 19.16 (PGCPs Liquidated Damage Rights); or

21.2.4 breach by Developer of, or non-compliance by Developer with any Governmental Approval or Applicable Law, or the failure of Developer to obtain all necessary Governmental Approvals in accordance with this Agreement or Applicable Law,

except to the extent caused by a PGCPs Fault or PGCPs Default. Developer's obligations under this Section 21.2 (Developer's Obligation to Indemnify) shall not be limited by any coverage exclusions or other provisions in any Required Insurance or other insurance maintained by Developer which is intended to respond to such events. This Section 21.2 (Developer's Obligation to Indemnify) may be relied upon by any PGCPs Indemnitee and may be enforced directly by any of them against Developer in the same manner and for the same purpose as if pursuant to a contractual indemnity between them and Developer.

21.3 Indemnification Procedures.

21.3.1 Notice. If any PGCPs Indemnitee receives any notice, demand, letter, or other document concerning any claim for which it appears that the PGCPs Indemnitee is, or may become entitled to, indemnification or compensation under this Agreement in respect of the entire claim, the PGCPs Indemnitee shall give notice in writing to Developer as soon as reasonably practicable and in any event within ten (10) Business Days after receipt thereof.

21.3.2 Developer Right to Dispute Claim. If notice is given as provided in Section 21.3.1 (Notice), Developer shall be entitled to dispute the claim at Developer's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The PGCPs Indemnitee will give Developer all reasonable cooperation, access, and assistance for the purposes of considering and resisting such claim.

21.3.3 Conflicts of Interest. In defending any claim as described in Section 21.3.2 (Developer Right to Dispute Claim) in which there is a conflict of interest between Developer and the PGCPs Indemnitee, the PGCPs Indemnitee may appoint independent legal counsel in respect of such claim and, if it is determined that the PGCPs Indemnitee is entitled to indemnification by or compensation from Developer, all reasonable costs and expenses incurred by the PGCPs Indemnitee in so doing will be included in the indemnity or compensation from Developer.

21.3.4 Rights and Duties of the Parties. With respect to any claim conducted by Developer pursuant to Section 21.3.2 (Developer Right to Dispute Claim):

21.3.4.1 Developer shall keep PGCPs fully informed and consult with PGCPs and, as needed, the PGCPs Indemnitee, about material elements of the conduct of the claim;

21.3.4.2 Developer shall demonstrate to the PGCPs Indemnitee, at the reasonable request of the PGCPs Indemnitee, that Developer has sufficient means to pay all costs and expenses that Developer may incur by reason of conducting the claim; and

21.3.4.3 Developer shall not pay or settle such claims without the consent of the PGCPS Indemnatee, such consent not to be unreasonably withheld or delayed.

21.3.5 PGCPS Indemnatee Rights to Conduct Defense. The PGCPS Indemnatee may, at its expense, take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations if:

21.3.5.1 Developer fails to notify the PGCPS Indemnatee of its intention to take conduct of the relevant claim within ten (10) Business Days after the notice from the PGCPS Indemnatee under Section 21.3.2 (Developer Right to Dispute Claim) or notifies the PGCPS Indemnatee that it does not intend to take conduct of the claim; or

21.3.5.2 Developer fails to comply in any material respect with Section 21.3.4 (Rights and Duties of the Parties).

21.3.6 Transfer of Conduct of Claim to PGCPS Indemnatee. The PGCPS Indemnatee may at any time give notice to Developer that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which Section 21.3.2 (Developer Right to Dispute Claim) applies at the PGCPS Indemnatee's cost. On receipt of such notice Developer will promptly take all steps necessary to transfer the conduct of such claim to the PGCPS Indemnatee and will provide to the PGCPS Indemnatee all reasonable cooperation, access, and assistance for the purposes of considering and resisting such claim. The PGCPS Indemnatee shall not pay or settle any such claims without the consent of Developer, such consent not to be unreasonably withheld or delayed.

21.3.7 Infringement of Intellectual Property Rights. In response to any claim of infringement or alleged infringement of the intellectual property rights of any person, Developer may replace such infringing or allegedly infringing item provided that the replacement (a) is performed without additional cost to PGCPS, and (b) has at least equal quality performance capabilities when used in conjunction with the Project.

ARTICLE 22 ADDITIONAL REQUIREMENTS

22.1 General Records Clause. Developer's contracts, files, accounts, records, and other documents related to this Agreement (with the exception of records and documents subject to the attorney-client privilege) shall be open to examination and/or audit by PGCPS and made available by Developer to PGCPS and/or its designated agents at any time upon reasonable prior notice, during performance under this Agreement and for a period of six (6) years after the final Availability Payment is made to Developer, or such longer period of time as required by Applicable Law.

22.2 Compliance with Applicable Law. Developer shall comply with all Applicable Law during the performance of the Design-Build Work and the Services.

22.3 Eligibility to Work in the United States. Developer shall comply with all Applicable Law relating to the employment of aliens. It is a mandatory requirement of this Agreement that employees of any Developer Person are screened through the Federal Government's E-Verify system, found at www.dhs.gov/E-Verify.

22.4 Governing Law and Venue. This Agreement is governed by and shall be construed in accordance with, and interpreted under, the laws of the State. Any disputes, legal cases, or other controversies arising out of this Agreement shall be filed in the Circuit Court for Prince George's County, Maryland, and subject to Maryland State Law. Additionally, if applicable, all materials, supplies, equipment, or services supplied as a result of this Agreement shall comply with the applicable United States and Maryland Occupational Safety and Health Act Standards.

22.5 Federal Noise Control Act Compliance. Materials, supplies, equipment, or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

22.6 Protection of Property. Developer shall use reasonable care to avoid damaging existing buildings, equipment, and property at the Sites, and all material furnished by PGCPS. If Developer's failure to use reasonable care causes damage to any property, Developer must replace or repair the damage at no expense to PGCPS as directed by PGCPS. If Developer fails or refuses to make such repair or replacement, Developer will be liable for the cost, which may be deducted from the Availability Payment.

22.7 Protection of Information.

22.7.1 Personally Identifiable Information. Personally Identifiable Information ("PII") includes any information that can be associated with or traced to any individual, including an individual's name, address, telephone number, e-mail address, credit card information, social security number, or other similar specific factual information, regardless of the media on which such information is stored (e.g., on paper or electronically) and includes such information that is generated, collected, stored, or obtained as part of this Agreement, including transactional and other data pertaining to PGCPS Persons. The Parties will comply with all applicable privacy and other laws and regulations relating to protection, collection, use, and distribution of PII. In no event may PII be sold or transferred to third parties, or otherwise provide third parties with access thereto. If any Developer Person becomes aware of a suspected or actual breach of security involving PII, Developer will notify PGCPS within twenty-four (24) hours of a management-level employee becoming aware of such occurrence.

22.7.2 Educational, Medical, and Psychological Records. Developer acknowledges its responsibility to ensure compliance with the confidentiality provisions of the Family Educational Records Privacy Act (34 CFR §99), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") 45 CFR Part 160 and Part 164, Subparts A and E, and COMAR §13A.08.02, with respect to school records provided by PGCPS, if applicable. Any confidential information provided by PGCPS to Developer, including all copies thereof, must be used by Developer only as provided for by this Agreement and only for the purposes described.

Such information shall not be disseminated or disclosed to any third party without the expressed written consent of PGCPS and can only be done in accordance with applicable privacy laws. Developer agrees to return to PGCPS all such information within fifteen (15) days after the expiration or termination of this Agreement, or with the express consent of PGCPS, Developer may destroy such information within fifteen (15) days after termination or expiration of this Agreement certifying to PGCPS in writing that the information has been destroyed.

22.7.3 Protection of Student Records. Developer Persons, at their expense, have a duty to and shall protect from disclosure any and all student records which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in conformance with current industry standards. Developer Persons shall implement and maintain a comprehensive data security program for the protection of student records whether the records are stored electronically and/or in hard copy form. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of student records, and information of a similar character, as set forth in all applicable federal and state law and written policy of PGCPS or the Maryland State Board of Education concerning the confidentiality of student records. Such data-security program shall include, but not be limited to, the following:

- (a) a security policy for employees related to the storage, access, and transportation of data containing student records;
- (b) reasonable restrictions on access to records containing student record information, including access to any locked storage where such records are kept;
- (c) a process for reviewing policies and security measures at least annually;
- (d) creating secure access controls to student records, including but not limited to passwords; and
- (e) encryption of student records that are stored on laptops, portable devices, or being transmitted electronically. Developer Persons shall be required to notify PGCPS as soon as is practicable, but no later than twenty-four (24) hours, after they become aware of or suspect that any student records which any Developer Person possesses or controls have been subject to a student records breach.

Developer shall incorporate the requirements of this Section 22.7.3 (Protection of Student Records) in all subcontracts requiring each Developer Person to safeguard student records in the same manner as provided for in this Section 22.7.3 (Protection of Student Records). Nothing in this Section 22.7.3 (Protection of Student Records) shall supersede in any manner any Developer Person's obligations pursuant to HIPAA, the Family Educational Rights and Privacy Act ("FERPA"), or the provisions of this Agreement concerning the obligations of Developer as a service provider to PGCPS.

22.7.4 Flow Down Requirements. Developer will flow down in all written agreements with and otherwise ensure compliance with the requirements of this Section 22.7

(Protection of Information) by any Project Contractor, Subcontractor, or other third party to which Developer provides access to, in accordance with this Section, the information covered by this Section 22.7 (Protection of Information).

22.8 Public Statements. Developer shall not use or reference the name or emblem of the Board in issuing any press releases or otherwise making any public statement with respect to this Agreement (unless such press release or statement is required by Applicable Law or the requirements of any listing agreement with any applicable stock exchange) without the prior written consent of PGCPs, which consent will not be unreasonably withheld. The unauthorized use of the name or emblem of PGCPs is prohibited by the United States Criminal Code – Section 706.

ARTICLE 23 REPRESENTATIONS AND WARRANTIES

23.1 Representations and Warranties of Developer. As of the Commercial Close Date, Developer hereby represents and warrants to PGCPs as follows:

23.1.1 Due Formation. Developer is a [_____] company, duly formed and validly existing and in good standing and has full power and authority under the laws of the [_____] to conduct the business in which it is now engaged[, and is registered and in good standing as a foreign limited liability company with the State].

23.1.2 Organization and Members. Attached as Exhibit K-1 (Organizational Chart) is a true, accurate, and complete organizational structure chart of Developer, including all members and their respective ownership interests in Developer, and the senior management positions of Developer and the responsibilities and duties of each such position, together with the names of the individuals who will fill such positions and summaries of the background and experience of each such individual.

23.1.3 Execution, Delivery, and Performance. Developer has the full right, power, and authority to perform the Project as provided in this Agreement and to carry out Developer's obligations hereunder, and all requisite action necessary to authorize Developer to enter into this Agreement and to carry out its obligations hereunder have been taken. This Agreement has been duly executed and delivered by Developer, and constitutes the legal, valid, and binding obligation of Developer, enforceable against Developer in accordance with its terms. The person signing this Agreement on behalf of Developer is authorized to do so.

23.1.4 No Consents. No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained or will not be obtained, is required in connection with the execution, delivery, and performance of this Agreement by Developer.

23.1.5 No Violation. The execution, delivery, and performance of this Agreement by Developer and the transactions contemplated hereby and the performance by Developer of its

obligations hereunder do not violate any of the terms, conditions, or provisions of (a) Developer's organizational documents, (b) any judgment, order, injunction, decree, regulation, or ruling of any court or other Governmental Authority, or law to which Developer is subject, or (c) any agreement or contract to which Developer is a party or to which it is subject.

23.1.6 No Litigation. There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or, to Developer's knowledge, threatened in writing against Developer which, if decided adversely to Developer, (a) would impair Developer's ability to enter into and perform its obligations under this Agreement, or (b) would materially adversely affect the financial condition or operations of Developer.

23.1.7 No Bankruptcy. Neither Developer nor any of its members is the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation, or winding up of its assets.

23.1.8 No Prohibited Person. Developer has not, and to Developer's knowledge, no Affiliate of Developer has engaged or contracted with any Prohibited Person as defined in this Agreement

23.1.9 Representations as to the Initial Base Case Financial Model. The Initial Base Case Financial Model:

- (a) was prepared by or on behalf of Developer in good faith;
- (b) was audited and verified by an independent recognized model auditor prior to the Commercial Close Date;
- (c) fully discloses all cost, revenue, and other financial assumptions and projections used by Developer in determining to enter into this Agreement [and by an Equity Member in making an Equity Contribution];
- (d) is substantially identical to the financial model presented to and relied upon by the Lenders in entering into the Financing Documents; and
- (e) is the only financial model used by Developer for the purposes described in items (c) and (d) of this subsection.

23.2 Representations and Warranties of PGCPs. As of the Commercial Close Date, PGCPs hereby represents and warrants to Developer as follows:

23.2.1 Execution, Delivery, and Performance. PGCPs (a) has all requisite right, power, and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and (b) has taken all necessary action to authorize the execution, delivery, and performance of this Agreement by PGCPs. This Agreement has been duly executed and delivered by PGCPs, and constitutes the legal, valid, and binding obligation of PGCPs, enforceable against

it in accordance with its terms. The Person signing this Agreement on behalf of PGCPs is authorized to do so.

23.2.2 Ownership of Land. PGCPs owns the Land in fee simple, subject to the easements and other exceptions to title indicated or referred to in the Title Reports. PGCPs will continue to own or lease the Land for the Term.

23.2.3 No Violation. The execution, delivery, and performance by PGCPs of this Agreement and the transactions contemplated hereby and the performance by PGCPs of its obligations hereunder will not violate any of the terms, conditions, or provisions of (a) any judgment, order, injunction, decree, regulation, or ruling of any court or other Law to which PGCPs is subject, or (b) any agreement or contract to which PGCPs is a party or to which it is subject.

23.2.4 No Litigation. There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or, to PGCPs' knowledge, threatened in writing against PGCPs involving the Project or that, if decided adversely to PGCPs, would impair PGCPs' ability to perform its obligations under this Agreement.

23.2.5 No Consents. No consent or authorization of, or filing with, any Person, which has not been obtained, is required in connection with the execution, delivery, and performance of this Agreement by PGCPs.

23.3 Restatement as of the Effective Date. The representations and warranties of Developer in Section 23.1 (Representations and Warranties of Developer) and PGCPs in Section 23.2 (Representations and Warranties of PGCPs) are affirmed by Developer and PGCPs respectively as true and correct as of the Effective Date and shall be updated and restated in writing by each of Developer and PGCPs as true and correct as of the Effective Date.

ARTICLE 24 RESOLUTION OF DISPUTES

24.1 Informal Dispute Resolution. If any claim, controversy, dispute, or disagreement arising out of, or relating to, this Agreement, the breach thereof, the subject matter thereof, or any legal duty incident thereto, whether stated in contract, or otherwise (collectively, a “**Dispute**”) should arise between the Parties to this Agreement, both Parties agree to meet and confer in good faith to resolve the Dispute. PGCPs shall include the [insert title], and Developer shall include [insert title] in such meeting, to occur within ten (10) Business Days after any Dispute in an effort to resolve the Dispute. If the Dispute is not resolved through such meeting to the satisfaction of both Parties, the Parties shall meet a second time, and PGCPs shall include the [insert title], or his or her designee, and Developer shall include [insert title] in such meeting, to occur within ten (10) Business Days after such initial meeting in an effort to resolve the Dispute. To the extent possible, each Party shall diligently carry out their respective obligations under this Agreement during the pendency of any Dispute.

24.2 Mediation. To the extent any Dispute is not resolved through the informal dispute resolution process set forth in Section 24.1 (Informal Dispute Resolution), the Parties shall enter into non-binding mediation. The costs of the mediator shall be divided equally between PGCPS and Developer. The selected mediator shall be a professional mutually acceptable to the Parties who has no current or on-going relationship to either Party. The mediator shall have full discretion as to the conduct of the mediation. Each Party shall participate in the mediator's program to attempt to resolve the dispute until and unless the Parties reach agreement with respect to the disputed matter or one Party determines in its discretion that its interests are not being served by the mediation.

24.3 Binding Mediation of Certain Disputes During the Design-Build Period. The Parties agree that the Disputes Manager appointed in accordance with the Independent Engineer Agreement shall act as a binding mediator with respect to (i) any dispute or request for interpretation made by either PGCPS or Developer relating to the Design-Build Work matters listed below or (ii) any other Design-Build Work matters that the Parties mutually agreed to refer to the Dispute Manager for resolution in accordance with this Section 24.3 (Binding Mediation of Certain Disputes During the Design-Build Period):

(a) this Agreement as it relates to design development matters and construction matters generally, including particularly time-sensitive determinations relating to (i) the occurrence of a Relief Event during the Design-Build Period, and (ii) the satisfaction of the School Occupancy Readiness Conditions pursuant to Article 10 (Occupancy Readiness);

(b) the schematic design and whether any applicable Technical Requirements are being complied with and interpretation of the intent of the Technical Requirements applicable to the Design-Build Work;

(c) any proposed Design-Build Work Change and delays in construction of the Project resulting from such Design-Build Work Change; and

(d) the cost impact associated with any proposed Design-Build Work Change.

24.4 Formal Dispute Resolution. To the extent any Dispute is not resolved through mediation as set forth in Section 24.2 (Mediation), and is not a Dispute required to be resolved in accordance with Section 24.3 (Binding Mediation of Certain Disputes During the Design-Build Period), the Parties may pursue whatever rights and remedies they may have at law or in equity.

ARTICLE 25
HANDBACK AT END OF TERM

25.1 Handback Requirements. On the Expiration Date (and not on any earlier Termination Date), the following conditions must be satisfied (collectively, the “**Handback Requirements**”):

(a) the Schools and each of the elements comprising the Schools (including, without limitation, the Maintained Elements) shall be in a condition which is consistent with (i) the Schools and each of the elements of the Schools having been designed and constructed in accordance with the Technical Requirements; and (ii) Developer having performed the Services in accordance with the Services Requirements; and

(b) the remaining useful life of each Project Component shall be no less than the required useful life for the Project Component as set forth in Exhibit Y (Handback Useful Life Requirements).

25.2 Handback Inspector. Prior to commencing the Handback Survey, Developer and PGCPs shall mutually agree upon and select a duly qualified independent inspector (a “**Handback Inspector**”) to perform those responsibilities assigned to the Handback Inspector in this Article 25 (Handback at the End of the Term). The cost of the Handback Inspector will be shared equally between Developer and PGCPs.

25.3 Handback Survey. In conjunction with the preparation of the Annual Service Plan for the year commencing three (3) years prior to the Expiration Date, Developer and PGCPs, supported by the Handback Inspector, shall conduct a joint inspection and survey of each of the Schools (the “**Handback Survey**”). Developer shall provide to the Handback Inspector and PGCPs any information as may be reasonably requested and/or as may be reasonably necessary or appropriate to complete the Handback Survey. If the Handback Survey indicates that on the Expiration Date, any element of the Schools (taking into account future major maintenance items anticipated in Developer’s Annual Service Plan or required by Exhibit W (Services Requirements) over the remainder of the Term) shall not be in a condition consistent with the Handback Requirements, within sixty (60) days after completion of the Handback Survey, Developer shall deliver to PGCPs and the Handback Inspector:

(a) a description of the additional work (the “**Handback Work**”) required to be carried out to satisfy the Handback Requirements at the Expiration Date;

(b) Developer’s plan to perform the Handback Work (the “**Handback Work Plan**”), including the method and schedule for performing the Handback Work; and

(c) a cost estimate for the Handback Work.

25.4 Determination of Handback Retainage. Upon submittal of the items required by Section 25.3 (Handback Survey), the Handback Inspector will review and comment on

Developer's Handback Work Plan and shall, after giving due consideration to Developer's cost estimate, determine in good faith the amount (the "**Handback Retainage**") that the Handback Inspector reasonably believes is necessary to complete the Handback Work.

25.5 Establishment and Use of Handback Retainage Account. PGCPS shall hold back and retain from the Availability Payment an amount equal to the Handback Retainage and deposit such amount in an interest-bearing account held by the Escrow Agent in accordance with the Escrow Agreement (the "**Handback Retainage Account**"). The account shall be the property of PGCPs, subject to Developer's withdrawal rights under this Section 25.5 (Establishment and Use of Handback Retainage Account). Developer shall have the right, upon the submittal of certified requisitions to PGCPs and the Handback Inspector with full supporting receipts or other evidence of payment, to withdraw from such account amounts necessary to reimburse itself for amounts actually expended in the performance of the Handback Work. In lieu of PGCPs' withholding the Handback Retainage for deposit in the Handback Retainage Account, Developer may deliver to PGCPs a performance bond, letter of credit, or other cash collateral.

25.6 Performance of the Handback Work and Further Inspection. Developer shall implement the Handback Work Plan and take all other steps necessary to assure compliance with the Handback Requirements. At least one hundred and eighty (180) days prior to the Expiration Date, Developer, PGCPs, and the Handback Inspector shall conduct a further joint inspection and survey of the condition of the Schools and the progress of the Handback Work. Notwithstanding PGCPs' participation in the Handback Survey or review of the Handback Work Plan, the Handback Retainage or other agreed upon security, or the complete or partial performance of the Handback Work, Developer shall not be released from any obligation to conduct any other inspection, service, or other action as required by this Agreement.

25.7 Final Condition Assessment. On, or within five (5) Business Days after the Expiration Date, the Handback Inspector shall either (a) issue to Developer and PGCPs a handback certificate confirming Developer's compliance with the Handback Requirements (a "**Handback Certificate**"); or (b) notify Developer and PGCPs of the Handback Inspector's decision not to issue a Handback Certificate, identifying which Handback Work was not properly performed and/or any School(s) that do not comply with the Handback Requirements and stating the Handback Inspector's estimate of the cost the Handback Inspector reasonably believes is necessary to complete all work required for the School(s) to comply with the Handback Requirements (a "**Handback Deficiency Notice**").

25.7.1 Return of Remaining Handback Retainage. In the event the Handback Inspector issues a Handback Certificate in accordance with Section 25.7 (Final Condition Assessment), within thirty (30) days of the Expiration Date, PGCPs shall return, or instruct the Escrow Agent to return, any remaining Handback Retainage to Developer.

25.7.2 Outstanding Handback Work. In the event the Handback Inspector issues a Handback Deficiency Notice in accordance with Section 25.7 (Final Condition Assessment), Developer shall either (a) complete any work necessary to remediate the deficiencies identified in the Handback Deficiency Notice within sixty (60) days following the Expiration Date,

or (b) pay to PGCPS, no later than thirty (30) days after the Expiration Date, an amount equal to the cost of completing the deficiencies identified in the Handback Deficiency Notice. In the event that any such outstanding work is completed such that the Handback Inspector issues a Handback Certificate in accordance with Section 25.7 (Final Condition Assessment), within thirty (30) days of such Handback Certificate being issued, PGCPS shall return, or instruct the Escrow Agent to return, any remaining Handback Retainage to Developer.

25.8 Termination Prior to Expiration. If the Termination Date occurs prior to the Expiration Date, the amount standing to the credit of the Handback Retainage Account shall be withdrawn and paid to PGCPS; provided that any amount payable to Developer in respect of the Handback Retainage Account balance pursuant to Exhibit Z (Calculation of Termination Compensation) shall be withdrawn and paid to Developer and credited against PGCPS' payment obligation in respect thereof.

ARTICLE 26 NOTICES

Any and all notices, demands, consents, requests, and responses thereto permitted or required to be given under this Agreement shall be in writing, signed by or on behalf of the party giving the same (including by Collateral Agent or any other Financing Party), and shall be deemed to have been properly given or served and shall be effective upon being personally delivered or by electronic communication (including email (and PDF or similar documentary attachment) and Internet or intranet websites) pursuant to procedures approved in writing by PGCPS and Developer from time to time, or within three (3) Business Days upon being deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, to the recipient at the address of such recipient set forth below or at such other address as such recipient may designate by written notice specifically designated as a notice of a change of address and given in accordance herewith; provided, however, that notice of change of address shall not be effective until the date of receipt hereof. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, demand, or request shall be addressed as follows:

PGCPS:

Chief Executive Officer
Prince George's County Public Schools
14201 School Lane
Upper Marlboro, MD 20772

With a copy to:

Public-Private Partnership (P3) Program Office
Prince George's County Public Schools
Louis Wilson Sr. Facilities Administration Building
13300 Old Marlboro Pike
Upper Marlboro, MD 20772

With a copy to:

Office of General Counsel
Prince George's County Public Schools

14201 School Lane
Upper Marlboro, MD 20772

Developer: [insert]

With a copy to: [insert]

Collateral Agent: [insert]

ARTICLE 27 MISCELLANEOUS PROVISIONS

27.1 Number and Gender. In this Agreement, words in the singular include the plural and vice versa and words in one gender include all genders.

27.2 Headings. The division of this Agreement into Articles, Sections, and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

27.3 References to this Agreement. The words “herein,” “hereby,” “hereof,” “hereto,” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular portion of it. The words “Article,” “Section,” “paragraph,” “sentence,” “clause,” and “Schedule” mean and refer to the specified article, section, paragraph, sentence, clause, or schedule of or to this Agreement.

27.4 References to any Person. A reference in this Agreement to any Person at any time refers to such Person’s permitted successors and assigns.

27.5 Meaning of Including. In this Agreement, the words “include,” “includes,” or “including” mean “include without limitation,” “includes without limitation,” and “including without limitation,” respectively, and the words following “include,” “includes,” or “including” shall not be considered to set forth an exhaustive list.

27.6 Meaning of Discretion. In this Agreement, the word “discretion” with respect to any Person means the sole and absolute discretion of such Person.

27.7 Meaning of Notice. In this Agreement, the word “notice” means “written notice,” unless specified otherwise.

27.8 Consents and Approvals. Unless specified otherwise, wherever the provisions of this Agreement require or provide for or permit an approval or consent by either Party, such approval or consent, and any request therefor, must be in writing (unless waived in writing by the other Party).

27.9 Trade Meanings. Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with these meanings.

27.10 Laws. Unless specified otherwise, references to a Law are considered to be a reference to (a) such Law as it may be amended from time to time, (b) all regulations and rules pertaining to or promulgated pursuant to such Law, (c) the successor to the Law resulting from recodification or similar reorganizing of Laws, and (d) all future Laws pertaining to the same or similar subject matter.

27.11 Currency. Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

27.12 Generally Accepted Accounting Principles. All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with GAAP.

27.13 Calculation of Time. For purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event that began the period and to end at 5:00 p.m., which time shall be determined by the time in the state of Maryland, on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m., which time shall be determined by the time in the state of Maryland, on the next Business Day. For purposes of calculation of days, calendar days shall apply except to the extent Business Days are specifically identified.

27.14 Approvals, Consents, and Performance by PGCPS.

27.14.1 Procedures. Wherever the provisions of this Agreement require or provide for or permit an approval or consent by PGCPS of or to any action, Person, Document, or other matter contemplated by this Agreement, the following provisions shall apply: (a) such request for approval or consent must (i) be in writing and contain or be accompanied by any documentation or information required for such approval or consent in reasonably sufficient detail, as reasonably determined by PGCPS, (ii) clearly set forth the matter in respect of which such approval or consent is being sought; (b) such approval or consent shall not be unreasonably or arbitrarily withheld, conditioned, or delayed (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned, or delayed or is subject to the discretion of PGCPS); (c) PGCPS shall advise Developer by written notice either that it consents or approves or that it withholds its consent or approval, in which latter case it shall set forth, in reasonable detail, its reasons for withholding its consent or approval, which reasons may include the insufficiency, as determined by PGCPS acting reasonably, of the information or documentation provided; (d) unless a time period is specifically set forth elsewhere herein, PGCPS shall provide the foregoing written notice no later than fifteen (15) Business Days after receipt of Developer's request; (e) if the responding notice mentioned in clause (iii) of this Section 27.14.1 (Procedures) indicates that PGCPS does not approve or consent, Developer may take whatever steps may be necessary to satisfy the objections of PGCPS set forth in the responding notice and, thereupon, may resubmit such request for approval or consent from time to time and the provisions of this

Section 27.14.1 (Procedures) shall again apply; (f) if the disapproval or withholding of consent mentioned in clause (c) of this Section 27.14.1 (Procedures) is subsequently determined pursuant to Article 24 (Resolution of Disputes) to have been improperly withheld or conditioned by PGCPs, such approval or consent shall be deemed to have been given on the date of such final determination; and (g) for the avoidance of doubt, any dispute as to whether or not a consent or approval has been unreasonably withheld, conditioned, or delayed shall be resolved in accordance with the provisions of Article 24 (Resolution of Disputes).

27.14.2 Approved Documents. Subject to the other provisions hereof, wherever in this Agreement an approval or consent by PGCPs is required with respect to any document, proposal, certificate, plan, drawing, specification, contract, agreement, budget, schedule, report, or other written instrument whatsoever (an “**Approved Document**”), following such approval, such Approved Document shall not be amended, supplemented, replaced, revised, modified, altered, or changed in any manner whatsoever without obtaining a further approval in accordance with the provisions of this Section 27.14.2 (Approved Documents).

27.15 Incorporation of Exhibits. The Exhibits are integral to, and are made a part of, this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any Exhibit, the terms of this Agreement shall control.

27.16 Order of Precedence. In the event of a conflict between the terms and conditions of this Agreement and any exhibit or attachment, the order of precedence shall be as follows: (a) Agreement terms and conditions; and (b) all other exhibits attached to this Agreement. In the event of a direct conflict between any provision of the Educational Specifications and any provision of the Master Specifications, the provision in the Educational Specifications shall prevail.

27.17 Covenant Against Contingent Fees. Developer warrants that no person or agency has been retained to solicit or secure this Agreement for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial agencies maintained by Developer for the purpose of securing business.

27.18 Nondiscrimination. Developer agrees that it will not discriminate against any person because of race, color, religion, sex, or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any Sites, including any and all services, privileges, accommodations, and activities identified in this Agreement.

27.19 No Joint Venture. Notwithstanding anything identifying this Project as a “public-private partnership” in any document, nothing contained in this Agreement creates a partnership or joint venture between the Parties. Nothing in this Agreement shall render either Party liable to any third party for the debts or obligations of the other Party.

27.20 Failure to Insist on Compliance. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a

waiver of any subsequent breach of that provision or of any similar provision. The failure of one Party to insist upon strict performance by the other Party of any of its obligations under this Agreement in any instance shall not be construed as a waiver of such Party's right to the future performance of such obligations. No waiver by PGCPs or Developer of any provisions of this Agreement shall be effective unless expressed in writing and signed by an authorized representative of PGCPs or Developer, as applicable.

27.21 Counterparts and Delivery by Electronic Mail. This Agreement (i) may be executed in any number of counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument, and (ii) may not be amended or modified except in a writing signed by PGCPs and Developer. Execution and delivery of this Agreement by facsimile or e-mail .pdf shall be sufficient for all purposes and shall be binding on any Person who so executes.

27.22 Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the Parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

27.23 Third Party Rights. PGCPs and Developer agree that the Financing Party shall each be express third party beneficiaries of the provisions of Article 12 (Project Financing and Refinancing) (inclusive of all other provisions necessary to give Collateral Agent's rights under Article 12 (Project Financing and Refinancing) full force and effect). This Agreement is exclusively for the benefit of PGCPs and Developer and shall not provide any third parties (with the sole exceptions of the rights of (a) any third party PGCPs Indemnitee as provided in Section 21.2 (Developer's Obligation to Indemnify), and (b) all Financing Party with respect to their respective third-party beneficiary rights of the provisions of Article 12 (Project Financing and Refinancing) with any remedy, claim, liability, reimbursement, cause of action or other rights.

27.24 Confidentiality.

27.24.1 Confidential Information. Subject to Section 27.24.2 (Exceptions), each Party will hold in confidence any Confidential Information received from the other Party, except that this Section will not restrict either Party from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement, and provided further that Developer may, subject to obtaining confidentiality restrictions similar to those set forth in this Agreement:

(a) Provide to the Financing Party and other potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors such

documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Senior Financing Agreements or related agreements; and

(b) Provide to a Project Contractor and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable Developer to perform (or to cause to be performed) its obligations under this Agreement.

27.24.2 Exceptions. Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

(a) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;

(b) to the extent any person is required to disclose such Confidential Information by Applicable Law or, in the case of PGCPs, by generally applicable State, County, or PGCPs information disclosure policies; or

(c) that PGCPs may be entitled to receive from Developer pursuant to this Agreement for the operation, maintenance, or improvement of the Project in the event of, or following, termination of this Agreement.

27.24.3 Equitable Relief. Without prejudice to any other rights and remedies that the other Party may have, each of the Parties agrees that damages may not be an adequate remedy for a breach of Section 27.24 (Confidentiality), and that the other Party will, in such case, be entitled to the remedies of injunction, specific performance, or other equitable relief for any threatened or actual breach of this Section 27.24 (Confidentiality).

27.25 Entire Agreement. This Agreement, together with the Escrow Agreement and the Independent Engineer Agreement, contain the entire agreement between the Parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements among the Parties with respect to such transactions, including the RFP and the Proposal, except to the extent of any portions of the Proposal are included within this Agreement.

[Signatures on the Following Page]

IN WITNESS WHEREOF, PGCPs and Developer have executed this Agreement as of the Commercial Close Date.

BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY

By: _____

Name: _____

Title: _____

[DEVELOPER]

By: _____

Name: _____

Title: _____

DRAFT

EXHIBIT A-1

LEGAL DESCRIPTION OF ADELPHI AREA MIDDLE SCHOOL LAND

DRAFT

EXHIBIT A-2

**MAP IDENTIFYING SCHOOL LOCATION ON ADELPHI
AREA MIDDLE SCHOOL SITE**

DRAFT

EXHIBIT A-3

TITLE REPORT FOR ADELPHI AREA MIDDLE SCHOOL LAND

DRAFT

EXHIBIT A-4

INFORMATION REGARDING THE ADELPHI AREA MIDDLE SCHOOL SITE

DRAFT

EXHIBIT A-5

CONCEPTUAL DESIGN FOR ADELPHI AREA MIDDLE SCHOOL

[Note: Conceptual Design provided in the Proposal will be attached as this exhibit.]

DRAFT

EXHIBIT A-6

CONSTRUCTION SCHEDULE FOR ADELPHI AREA MIDDLE SCHOOL

[Note: Construction Schedule provided in the Proposal will be attached as this exhibit.]

DRAFT

EXHIBIT B-1

LEGAL DESCRIPTION OF DREW-FREEMAN MIDDLE SCHOOL LAND

DRAFT

EXHIBIT B-2

**MAP IDENTIFYING SCHOOL LOCATION ON DREW-FREEMAN
MIDDLE SCHOOL SITE**

DRAFT

EXHIBIT B-3

TITLE REPORT FOR DREW-FREEMAN MIDDLE SCHOOL LAND

DRAFT

EXHIBIT B-4

INFORMATION REGARDING THE DREW-FREEMAN MIDDLE SCHOOL SITE

DRAFT

EXHIBIT B-5

CONCEPTUAL DESIGN FOR DREW-FREEMAN MIDDLE SCHOOL

[Note: Conceptual Design provided in the Proposal will be attached as this exhibit.]

DRAFT

EXHIBIT B-6

CONSTRUCTION SCHEDULE FOR DREW-FREEMAN MIDDLE SCHOOL

[Note: Construction Schedule provided in the Proposal will be attached as this exhibit.]

DRAFT

EXHIBIT C-1

LEGAL DESCRIPTION OF HYATTSVILLE MIDDLE SCHOOL LAND

DRAFT

EXHIBIT C-2

**MAP IDENTIFYING SCHOOL LOCATION ON HYATTSVILLE
MIDDLE SCHOOL SITE**

DRAFT

EXHIBIT C-3

TITLE REPORT FOR HYATTSVILLE MIDDLE SCHOOL LAND

DRAFT

EXHIBIT C-4

INFORMATION REGARDING THE HYATTSVILLE MIDDLE SCHOOL SITE

DRAFT

EXHIBIT C-5

CONCEPTUAL DESIGN FOR HYATTSVILLE MIDDLE SCHOOL

[Note: Conceptual Design provided in the Proposal will be attached as this exhibit.]

DRAFT

EXHIBIT C-6

CONSTRUCTION SCHEDULE FOR HYATTSVILLE MIDDLE SCHOOL

[Note: Construction Schedule provided in the Proposal will be attached as this exhibit.]

DRAFT

EXHIBIT D-1

LEGAL DESCRIPTION OF KENMOOR MIDDLE SCHOOL LAND

DRAFT

EXHIBIT D-2

MAP IDENTIFYING SCHOOL LOCATION ON KENMOOR MIDDLE SCHOOL SITE

DRAFT

EXHIBIT D-3

TITLE REPORT FOR KENMOOR MIDDLE SCHOOL LAND

DRAFT

EXHIBIT D-4

INFORMATION REGARDING THE KENMOOR MIDDLE SCHOOL SITE

DRAFT

EXHIBIT D-5

CONCEPTUAL DESIGN FOR KENMOOR MIDDLE SCHOOL

[Note: Conceptual Design provided in the Proposal will be attached as this exhibit.]

DRAFT

EXHIBIT D-6

CONSTRUCTION SCHEDULE FOR KENMOOR MIDDLE SCHOOL

[Note: Construction Schedule provided in the Proposal will be attached as this exhibit.]

DRAFT

EXHIBIT E-1

LEGAL DESCRIPTION OF SOUTHERN AREA K-8 SCHOOL LAND

DRAFT

EXHIBIT E-2

**MAP IDENTIFYING SCHOOL LOCATION ON SOUTHERN
AREA K-8 SCHOOL SITE**

DRAFT

EXHIBIT E-3

TITLE REPORT FOR SOUTHERN AREA K-8 SCHOOL LAND

DRAFT

EXHIBIT E-4

INFORMATION REGARDING THE SOUTHERN AREA K-8 SCHOOL SITE

DRAFT

EXHIBIT E-5

CONCEPTUAL DESIGN FOR SOUTHERN AREA K-8 SCHOOL

[Note: Conceptual Design provided in the Proposal will be attached as this exhibit.]

DRAFT

EXHIBIT E-6

CONSTRUCTION SCHEDULE FOR SOUTHERN AREA K-8 SCHOOL

[Note: Construction Schedule provided in the Proposal will be attached as this exhibit.]

DRAFT

EXHIBIT F-1

LEGAL DESCRIPTION OF WALKER MILL MIDDLE SCHOOL LAND

DRAFT

EXHIBIT F-2

**MAP IDENTIFYING SCHOOL LOCATION ON WALKER MILL
MIDDLE SCHOOL SITE**

DRAFT

EXHIBIT F-3

TITLE REPORT FOR WALKER MILL MIDDLE SCHOOL LAND

DRAFT

EXHIBIT F-4

INFORMATION REGARDING THE WALKER MILL MIDDLE SCHOOL SITE

DRAFT

EXHIBIT F-5

CONCEPTUAL DESIGN FOR WALKER MILL MIDDLE SCHOOL

[Note: Conceptual Design provided in the Proposal will be attached as this exhibit.]

DRAFT

EXHIBIT F-6

CONSTRUCTION SCHEDULE FOR WALKER MILL MIDDLE SCHOOL

[Note: Construction Schedule provided in the Proposal will be attached as this exhibit.]

DRAFT

EXHIBIT G
FINANCIAL CLOSE SECURITY

DRAFT

EXHIBIT H
FORM OF EFFECTIVE DATE CERTIFICATE

DRAFT

EFFECTIVE DATE CERTIFICATE

THIS EFFECTIVE DATE CERTIFICATE is executed as of the [____] day of [____], 2020 by and between the Board of Education of Prince George’s County (“**PGCPS**”) and [____], a [limited liability] company, (“**Developer**”) (collectively, the “**Parties**”). Any capitalized terms used but not defined herein shall have the meaning as defined in the Agreement.

WHEREAS, the Parties executed that certain Project Agreement for the Design, Build, Finance, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1, dated [____], 2020 (as may be amended in accordance with its terms, the “**Agreement**”);

WHEREAS, the Agreement sets forth, in Section 6.6, Section 6.7, and Section 6.8, respectively, Developer Conditions Precedent, PGCPS Conditions Precedent, and Mutual Conditions Precedent, which must be satisfied or waived by the Parties in order to certify the Effective Date of the Agreement; and

WHEREAS, the Parties wish to memorialize the Effective Date for the Agreement through the execution of this Effective Date Certificate.

NOW THEREFORE, the Parties, each having performed the necessary reviews, investigations, and examinations, do hereby acknowledge and agree as follows:

1. Developer certifies that all Developer Conditions Precedent have been satisfied or waived by Developer in its sole discretion;
2. PGCPS certifies that all PGCPS Conditions Precedent have been satisfied or waived by PGCPS in its sole discretion;
3. The Parties each certify that, for their respective purposes, all Mutual Conditions Precedent have been satisfied or waived by the Parties; and
4. That the Effective Date of the Agreement shall be [_____].

[Signatures on the Following Pages]

IN WITNESS WHEREOF, the Parties hereby execute this Effective Date Certificate on the date indicated above.

BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY

By: _____

Name: _____

Title: _____

PRINCE GEORGE'S COUNTY) ss:

On this ____ day of _____, 2020, before me appeared _____, the _____ for Prince George's County Public Schools, personally known to me to be the person described in and who executed this Effective Date Certificate, being authorized to do so on behalf of Prince George's County Public Schools, and acknowledged that (he/she) signed the same freely and voluntarily for the uses and purposes therein described.

In witness thereof, I have hereunto set my hand and affixed by official seal the day and year last written above.

[Notarial Seal]

Notary Public

[DEVELOPER]

By: _____

Name: _____

Title: _____

[_____] COUNTY) ss:

On this ____ day of _____, 2020, before me appeared _____, the _____ for [DEVELOPER], personally known to me to be the person described in and who executed this Effective Date Certificate, being authorized to do so on behalf of [DEVELOPER], and acknowledged that (he/she) signed the same freely and voluntarily for the uses and purposes therein described.

In witness thereof, I have hereunto set my hand and affixed by official seal the day and year last written above.

[Notarial Seal]

Notary Public

DRAFT

EXHIBIT I
FORM OF ESCROW AGREEMENT

DRAFT

EXHIBIT I

FORM OF ESCROW AGREEMENT

This Escrow Agreement (“**Agreement**”) is entered into as of the ___ day of _____, 2020 (“**Agreement Date**”), by and among the Board of Education of Prince George’s County (the “**Board**” or “**PGCPS**”), [____], a [limited liability company] organized and existing under the laws of the State of [____] (“**Developer**”), and [____], a [____] (“**Escrow Agent**”). Each may be referred to herein as a “**Party**” or collectively as the “**Parties**,” as the context of the usage of such term may require. Capitalized terms used herein without definition shall have the meanings assigned to them under that certain Project Agreement for the Design, Build, Finance, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1, dated [____],] 2020 (as may be amended in accordance with its terms, the “**Project Agreement**”).

RECITALS

WHEREAS, PGCPS and Developer executed the Project Agreement for purposes of establishing a public-private partnership through which Developer will design, build, finance, and maintain the Schools in accordance with the specifications and requirements of the Project Agreement;

WHEREAS, the Project Agreement requires that PGCPS and Developer procure the services of a third-party qualified bank to receive and manage any payments due under the Project Agreement (collectively, the “**Project Payments**”);

WHEREAS, PGCPS desires to deposit funds (collectively, the “**Project Funds**”) into an escrow account managed by a third-party qualified bank to manage the Project Funds; and

WHEREAS, PGCPS and Developer desire to engage the services of the Escrow Agent to receive, deposit, manage, disburse, invest (with written instructions), account for, and report on the Project Funds and the Project Payments in accordance with the Project Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties do covenant and agree as follows:

ARTICLE 1 SCOPE OF WORK

1.1. Appointment. PGCPS and Developer hereby appoint the Escrow Agent to serve as escrow agent with respect to the Accounts (defined herein) for the term hereof, and the Escrow Agent accepts such appointment, all on the terms and conditions of this Agreement.

1.2. Escrow Agent’s Responsibility. The Escrow Agent’s “**Scope of Work**” shall comprise the following:

1.2.1. The Escrow Agent shall receive, deposit, manage, disburse, invest (with written instructions), account for, and report on the Project Funds and the Project Payments in accordance with the terms of this Agreement.

1.2.2. The Escrow Agent represents that it has received and examined a copy of the Project Agreement and has fully acquainted itself with all conditions relevant to the performance of the services required to be performed hereunder. The Escrow Agent agrees that it has taken into account the existence of such information and relevant conditions and that it shall fully complete the services on the terms stated in this Agreement.

1.2.3. The Parties agree that the Scope of Work consists of furnishing all labor, materials, equipment, and other expenditures to complete all services related to the work described herein.

1.3. Depository Bank. The Escrow Agent shall act as the “Depository Bank” as defined under section 4-105 of the Maryland Uniform Commercial Code (as amended and in effect from time to time, the “MD UCC”) pursuant to the terms of this Agreement and the applicable other provisions of the MD UCC. The Escrow Agent shall administer and manage the Accounts (defined herein) in strict compliance with all the terms applicable to the Accounts pursuant to this Agreement and shall be subject to and comply with all the obligations of the Depository Bank with respect to the Accounts pursuant to the terms of this Agreement. The Depository Bank shall credit the Accounts with all receipts of cash, interest, dividends, and other income received from PGCPs or Developer in accordance with the terms of this Agreement and as instructed by the applicable depositing Party.

1.4. Separate Accounts.

1.4.1. The Depository Bank shall initially establish three (3) separate interest-bearing accounts for the Project Payments, and such additional accounts as may be later instructed by PGCPs or Developer in writing in accordance with Section 2.5 (Services Period Reserve Account) and Section 2.6 (Handback Retainage Account) or as otherwise agreed to by PGCPs and Developer in writing (collectively, the “Accounts”). The Depository Bank shall not invest the funds in any of the Accounts in investments (other than simple interest) unless such investments are made pursuant to written investment instructions from PGCPs.

1.4.2. The initial Accounts shall be titled as follows: (i) Stipends Account; (ii) Payment Escrow Account; and (iii) Design-Build Period Reserve Account.

1.4.3. All funds delivered to the Depository Bank pursuant to this Agreement shall be promptly credited to the applicable Account in accordance with the terms hereof.

1.4.4. Notwithstanding anything to the contrary in this Agreement, PGCPs hereby irrevocably directs, and the Depository Bank hereby agrees, that the Depository Bank will comply with all lawful instructions and lawful orders regarding each Account originated by an Authorized Representative of PGCPs or Developer, as applicable, each in their official capacity, that in each case are compliant with this Agreement and do not contravene the purpose of the Accounts.

1.4.5. The Depository Bank shall not change the name or account number of any Account without at least ten (10) Business Days’ prior written notice to PGCPs and Developer.

1.5. Interest and Dividends. All interest, dividends, and other income derived from each Account shall be re-deposited into the originating Account and shall be disbursed as directed in writing by PGCPs. The Escrow Agent shall not commingle the interest, dividends, or other income that derive from each Account with any other funds of Escrow Agent.

1.6. Standard of Care. The Depository Bank shall exercise due care in accordance with reasonable commercial standards in administering the funds held in the Accounts in accordance with the terms of this Agreement and as required by Applicable Law. The Depository Bank is not party to and shall not execute and deliver, or otherwise become bound by, any agreement (other than this Agreement) under which the Depository Bank agrees with any Person other than the Authorized Representatives of PGCPs (or the Collateral Agent, acting on behalf of the Financing Party, under, and as such terms are defined in, the Project Agreement, as and when so entitled thereunder) to comply with instructions originated by such Person relating to any of the Accounts that are the subject of this Agreement.

1.7. Depository Bank's Recourse to the Accounts. Unless the Depository Bank has obtained PGCPs' prior written consent (or, without requirement for PGCPs' consent, obtained direction from the Collateral Agent, acting on behalf of the Financing Party, under, and as such terms are defined in, the Project Agreement, as and when so entitled thereunder), the Depository Bank shall not exercise any right of recoupment or set-off or assert any security interest or other lien against the Accounts.

1.8. Account Insurance/Collateralization. Collateral shall be maintained by the Depository Bank for funds deposited in each Account in excess of the Federal Deposit Insurance Corporation (FDIC) coverage limit of Two Hundred and Fifty Thousand Dollars (\$250,000.00). Acceptable collateral shall consist of obligations of the United States, its agencies, or instrumentalities as specified under Section 6-202 of Title 6 of the State Finance and Procurement Article of the Annotated Code of Maryland. The collateral shall be held in the name of PGCPs and shall be administered according to a collateral security agreement between PGCPs and the Depository Bank.

1.9. Ownership for Tax Purposes. The Parties to this Agreement hereby agree and acknowledge that for any and all tax purposes and tax reporting obligations relating thereto under Applicable Law, PGCPs shall be deemed and considered to be the owner of all money, securities, and other property held by the Escrow Agent in the Accounts, including any interest accrued therein.

ARTICLE 2 DEPOSITS AND DISBURSEMENTS FROM ACCOUNTS

2.1. PGCPs' Direction of Project Funds. PGCPs shall have the sole right to direct the Escrow Agent to disburse any Project Funds.

2.2. Stipend Account.

2.2.1. PGCPs shall cause Developer to transfer to the Escrow Agent One Million Five Hundred Thousand Dollars (\$1,500,000.00), or such lesser amount as is required in accordance

Section 6.6.10 (Payment to Escrow Agent for Bidder Stipends) of the Project Agreement, to be deposited into the Stipend Account.

2.2.2. Funds in the Stipend Account shall be disbursed at the direction of PGCPs to those parties, if any, meeting the conditions of the Reimbursement Agreements, as determined by PGCPs in its sole discretion. To the extent any excess funds remain in the Stipend Account following PGCPs' written notification to the Parties that PGCPs has satisfied its obligations under the Reimbursement Agreements, then such remaining funds in the Stipend Account shall be paid by the Escrow Agent, without further direction, to Developer, and the Stipends Account shall be permanently closed.

2.3. Payment Escrow Account.

2.3.1. PGCPs shall provide the Escrow Agent with the Project Funds which shall be deposited into the Payment Escrow Account.

2.3.2. PGCPs shall direct the Escrow Agent to pay Developer the Progress Payment, each Milestone Payment, each Availability Payment, any Termination Payment, and any other payment deposited with the Escrow Agent by or on behalf of PGCPs that is due from PGCPs to Developer under the Project Agreement in such a manner so as such sums are paid to Developer by the date when due under the Project Agreement, as stated in written directions from PGCPs to the Escrow Agent.

2.3.3. Upon the termination of the Project Agreement, all funds remaining in the Payment Escrow Account, including earning thereon, shall be disbursed as directed by PGCPs.

2.4. Design-Build Period Reserve Account.

2.4.1. PGCPs shall cause Developer to transfer to the Escrow Agent Four Hundred and Fifty Thousand Dollars (\$450,000.00) in accordance with Section 6.6.13 (Deposit to Design-Build Period Reserve Account) of the Project Agreement. The Escrow Agent shall deposit such funds into the Design-Build Period Reserve Account.

2.4.2. The Escrow Agent shall disburse funds in the Design-Build Period Reserve Account upon receipt of a written instruction by Developer and PGCPs in accordance with Section 7.6 (Design-Build Period Reserve Account) of the Project Agreement.

2.4.3. Upon receipt of written notice from Developer and PGCPs confirming that the Design-Build Period has been completed, the Escrow Agent shall transfer any funds in the Design-Build Period Reserve Account to the Payment Escrow Account, and the Design-Build Period Reserve Account shall be closed.

2.5. Services Period Reserve Account.

2.5.1. At the request of Developer, the Escrow Agent shall establish the Services Period Reserve Account. Developer shall deposit such funds as are necessary into the Services Period Reserve Account to comply with Section 11.6.1 (Services Period Reserve Amount) of the Project Agreement.

2.5.2. The Escrow Agent shall disburse funds in the Services Period Reserve Account upon receipt of a written instruction by Developer and PGCPS in accordance with Section 11.6.2 (Use of Funds) of the Project Agreement.

2.5.3. Upon the termination of the Project Agreement, the Escrow Agent shall transfer any funds in the Services Period Reserve Account to the Payment Escrow Account, and the Services Period Reserve Account shall be closed.

2.6. Handback Retainage Account.

2.6.1. At the request of PGCPS, the Escrow Agent shall establish the Handback Retainage Account. Within three years prior to the Expiration Date, PGCPS shall instruct the Escrow Agent to hold back and retain from each Availability Payment an amount equal to the Handback Retainage and deposit such amount in the Handback Retainage Account.

2.6.2. Developer may instruct in writing Escrow Agent to pay to Developer funds from the Handback Retainage Account in such amounts and at such times as needed to pay amounts or reimburse Developer for amounts paid that are attributable to Developer's performance of the Handback Work. Developer shall provide the Escrow Agent evidence of written notice to PGCPS prior to the withdrawal of funds. The Escrow Agent has the right, not the obligation, to request any supporting documentation in connection with the request for withdrawal.

2.6.3. Any funds remaining in the Handback Retainage Account upon the termination of the Agreement shall be paid as directed by PGCPS, which such direction shall be consistent with Section 25.7 (Final Condition Assessment) and Section 25.8 (Termination Prior to Expiration) of the Project Agreement.

2.7. Payment Requirements. PGCPS shall instruct the Escrow Agent to pay the amounts due and payable to Developer from funds deposited by or on behalf of PGCPS such that each such payment is paid to Developer on or before the date when due to Developer under the Project Agreement.

**ARTICLE 3
ACCOUNTING AND REPORTING**

3.1. Notice Upon Receipt of Funds. Immediately upon receipt of any funds by PGCPS or Developer in accordance with this Agreement, the Escrow Agent shall send a notice to PGCPS and Developer, identifying the amount and any purpose of such payment if designated by PGCPS or Developer, as applicable.

3.2. Notice Upon Disbursements. Immediately upon disbursement of any funds in any of the Accounts, the Escrow Agent shall provide written notice of such payment to PGCPS and Developer.

3.3. Monthly Reports. Each month, the Escrow Agent shall provide PGCPS with a report of all transactions from each Account, including balances, interest income, and actions taken by the Escrow Agent pursuant to this Agreement and the written instructions of PGCPS or Developer.

ARTICLE 4 PGCPS FUNDING

The Escrow Agent recognizes and agrees that, pursuant to the terms and conditions of this Agreement, the costs and fees payable hereunder will be paid over a multi-year period but that PGCPS cannot, by law, expend or contract for the expenditure in any year of more than the amount authorized, appropriated, budgeted, and made available for funding the Scope of Work. If a subsequent County Council fails to approve, authorize, appropriate, set aside, and make available funds for the Scope of Work, PGCPS may terminate this Agreement (“**Fiscal Non-Funding**”). If this Agreement is terminated by PGCPS for Fiscal Non-Funding, following such termination, PGCPS shall pay all amounts then owed to Escrow Agent hereunder, provided that monies have been budgeted by PGCPS and are available for payment. The termination of this Agreement will discharge PGCPS and Developer from future performance, but not from its obligations existing at the time of termination or its rights hereunder. PGCPS shall notify the Escrow Agent as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding year.

ARTICLE 5 COMPENSATION AND PAYMENT TO ESCROW AGENT

5.1. Compensation. PGCPS shall pay the Escrow Agent for the Scope of Work herein based on the prices set forth in the Escrow Agent’s Compensation Schedule attached hereto as Exhibit B (Compensation Schedule).

5.2. Payment. The Escrow Agent shall submit an “**Application for Payment**” to PGCPS on or before the eighth (8th) day of each month, or at such time as determined by PGCPS and the Escrow Agent, which shall include the following information:

- A) Escrow Agent’s name and remittance address;
- B) Escrow Agent’s Tax Identification Number;
- C) Date(s) and Services provided; and
- D) Documentation as to the resultant services completed during the timeframe covering the invoice submitted.

Within five (5) Business Days after receipt of the Escrow Agent’s Application for Payment, PGCPS shall review such Application for Payment and notify the Escrow Agent in writing of any reasons then known for withholding its approval of all or any portion of such application. After five (5) Business Days of PGCPS’ receipt of the Escrow Agent’s Application for Payment, PGCPS shall pay to Escrow Agent any undisputed amount set forth in the Application for Payment.

PGCPS’ approval of an Application for Payment shall not constitute any verification or approval by PGCPS of the quality or any other aspect of such work.

**ARTICLE 6
INDEMNIFICATION AND INSURANCE**

6.1. Indemnification. The Escrow Agent shall indemnify, hold harmless, and defend the PGCPs Indemnitees from and against any and all losses, claims, suits, judgments, expenses, actions, damages, and costs of every name and description on account of any negligence, recklessness, or willful misconduct (including any act or fraud) of the Escrow Agent and its employees and agents with respect to performance under this Agreement. This provision is intended to apply even if the injury or damage is caused in part by any act, omission, or default of the PGCPs Indemnitees. PGCPs shall promptly notify the Escrow Agent of the assertion of any claims against which the PGCPs Indemnitees seek to be indemnified hereunder; provided, however, that the failure to give such notice shall not affect the Escrow Agent's indemnification obligation hereunder, except insofar as the failure to provide such notice increases the amount of the particular Losses.

6.2. Insurance. Throughout the term of this Agreement, the Escrow Agent shall secure and maintain the insurance coverage for the benefit of PGCPs specified herein. The Escrow Agent shall provide PGCPs with evidence of the Escrow Agent's commercial insurance coverage pursuant to the following:

6.2.1. Workers' Compensation. An insurance policy complying with the requirements of the statutes of the jurisdiction(s) in which the work will be performed, and if there is any exposure to the Escrow Agent or any of the Escrow Agent's personnel due to the U.S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Laws or the Federal Employers' Liability Act, the Escrow Agent will provide coverage for these exposures on an "if any basis" and in accordance with the written requirements of PGCPs.

6.2.2. Commercial General Liability Insurance. An insurance policy covering the liability of the Escrow Agent for all work or operations under or in connection with this Agreement and all obligations assumed by the Escrow Agent under this Agreement. Products, Completed Operations, and Contractual Liability must be included. The required limits of liability in this section may be met by the purchase of an Excess or Umbrella Liability policy. The coverage under such an insurance policy or policies shall have limits of not less than:

COMMERCIAL GENERAL LIABILITY	\$10,000,000
BODILY INJURY AND PROPERTY	\$1,000,000 per occurrence
DAMAGE LIABILITY	\$3,000,000 aggregate
PREMISES MEDICAL PAYMENTS	\$5,000
FIRE LEGAL LIABILITY	\$1,000,000
PERSONAL INJURY/ADVERTISING	\$1,000,000

Or combined single limit not less than \$2,000,000

PGCPS must be included as an additional insured under the General Liability coverage, and Employers Liability of \$500,000 each for each accident, disease each employee, and policy limit disease.

6.2.3. Miscellaneous Professional Liability Insurance. The Escrow Agent shall maintain a separate insurance policy to pay on behalf of the Escrow Agent all costs the Escrow Agent shall become legally obligated to pay as damages due to any claim caused by any negligent act, error, or omission of the Escrow Agent or any other person for whose acts the Escrow Agent is legally liable arising out of the performance under this Agreement. The coverage under such an insurance policy shall have a limit of liability not less than \$1,000,000 per claim.

6.2.4. Crime/Fidelity Insurance. The Escrow Agent shall maintain a standard crime policy with limits of liability covering losses of Escrow Agent and PGCPS money or property caused by dishonesty of employees, loss of money or securities while being conveyed by messenger outside the premises in an amount not less than the available balance in each Account. The policy should also include loss caused by forgery of outgoing monies, but not limited to cash, securities, or other forms of negotiable instruments, for loss caused by burglary, theft, robbery, and mysterious disappearance. The indemnity provisions under such policy shall have the following limits unless the Escrow Agent provides self-insurance satisfactory to PGCPS:

BLANKET EMPLOYEE DISHONESTY	\$1,000,000
FORGERY AND ALTERATIONS	\$1,000,000
THEFT, DISAPPEARANCE, AND DESTRUCTION	\$1,000,000
COMPUTER FRAUD W/ WIRE TRANSFER	\$1,000,000

6.3. Special Provisions for Insurance.

6.3.1. The Escrow Agent shall forward to PGCPS a certificate(s) of insurance indicating the insurance and any special provisions required under the foregoing provisions. Such certificate(s) shall provide that PGCPS be notified in writing by the insurer at least thirty (30) calendar days prior to cancellation or material change of any such coverage. The certificate(s) shall be in a form satisfactory to PGCPS and shall list the various coverages and limits. Insurance companies providing the coverage must be acceptable to PGCPS, rated by A.M. Best, and carry at least an “A” Rating VIII. In addition to the aforementioned provisions, the insurance shall automatically be renewed upon expiration and continued in full force and effect until the termination of this Agreement, unless PGCPS is given thirty (30) calendar days written notice before any change or cancellation is made effective. If requested, the Escrow Agent shall directly furnish PGCPS with a certified copy of each insurance policy.

6.3.2. The initial and subsequent certificate(s) shall include a description of the work and the assigned contract number.

6.3.3. Prior to beginning any work, the insurance requirements as outlined must be submitted and approved in writing by PGCPS.

6.3.4. All insurance shall be procured from insurance or indemnity companies acceptable to PGCPs and licensed and authorized to conduct business in the State of Maryland. PGCPs' approval or failure to disapprove insurance furnished by the Escrow Agent shall not release the Escrow Agent of full liability for damage and accidents.

6.3.5. If at any time the above required insurance policies should be canceled, terminated, or modified so that the insurance is not in full force and effect as required herein, PGCPs and Developer reserve the right to terminate this Agreement in accordance with Section 7.3 (Escrow Agent Replacement).

6.3.6. The Escrow Agent shall require any subcontractor at all tiers to provide evidence of insurance coverage specified herein and such evidence of coverage shall be provided to PGCPs prior to commencement of the Scope of Work. Such coverage shall remain in full force and effect during the performance of activities under this Agreement.

6.3.7. Any contract of insurance or indemnification naming PGCPs or any of its departments, agencies, administrators, or authorities as an additional insured shall be endorsed to provide that the insurer will not contend in the event of any occurrence, accident, or claim that PGCPs et al, are not liable in tort by virtue of being governmental instrumentalities or public or quasi-public bodies.

6.3.8. In the event the required certificate(s) as specified herein are not furnished pursuant to this Agreement, the Escrow Agent shall not be permitted to commence or continue the duties outlined in this Agreement until all required insurance certificates or evidence of self-insurance have been received.

6.3.9. The certificate(s) shall be sent to the Parties listed in Exhibit A (Authorized Representatives) and the Notices section of this Agreement.

ARTICLE 7 TERMINATION

7.1. Termination Events. This Agreement shall only terminate upon the occurrence of any of: (1) a mutual written Termination Agreement executed among PGCPs and Developer; (2) the Escrow Agent's final and irrevocable disbursement of all funds held in the Accounts upon the termination of the Project Agreement; or (3) PGCPs' termination in accordance with Article 4 (PGCPs Funding) above.

7.2. Disposition of Funds. Upon such termination, to the extent any funds then remain in any Account, the Escrow Agent shall disburse such remaining funds to PGCPs and close all Accounts.

7.3. Escrow Agent Resignation or Replacement. The Escrow Agent may, at any time, resign as escrow agent hereunder by furnishing written notice of its resignation to each other Party not less than thirty (30) days prior to the effective date of its resignation. PGCPs and Developer may remove Escrow Agent by giving Escrow Agent joint written notice thereof, such removal to be effective thirty (30) days after the delivery of such notice or upon the earlier appointment of a successor Escrow Agent. In the event the Escrow Agent resigns or must be replaced during the

term of the Project Agreement, the Escrow Agent shall continue to act until a replacement has been selected by PGCPs and Developer, and this Agreement has been effectively assigned to such replacement or a new escrow agreement substantially similar to this Agreement has been executed and becomes effective. Upon request of the Parties, the Escrow Agent shall cooperate with and assist them in transitioning the provision of services to any successor. PGCPs shall pay the Escrow Agent fair and equitable compensation for satisfactory performance prior to the termination effective date, less the amount of any damages caused by any breach of this Agreement by the Escrow Agent. If the damages are more than the compensation payable to the Escrow Agent, the Escrow Agent will remain liable after termination, and PGCPs can affirmatively collect damages or deduct from monies due the Escrow Agent on this or other agreements with PGCPs. Damages may include costs associated with any re-procurement activities required by PGCPs. The Escrow Agent shall not be reimbursed for any anticipatory profits that have not been earned up to the termination effective date or paid any damages or costs arising from such termination.

ARTICLE 8 MISCELLANEOUS

8.1. Authorized Representatives. The Authorized Representatives of PGCPs and Developer shall initially be those persons listed in Exhibit A (Authorized Representatives), and thereafter, such persons as shall be notified by any Party to the other Parties upon the giving of five (5) Business Days' notice (individually, an "**Authorized Representative**" and, collectively, the "**Authorized Representatives**"). In carrying out any of the provisions of this Agreement, or in exercising any power or authority granted to them by or within the scope of this Agreement, there shall be no liability upon PGCPs' or Developer's Authorized Representatives, it being understood that in all such matters they act solely as agents and representatives of PGCPs or Developer, respectively.

8.2. Initiation of Work. The Escrow Agent shall commence performance of the Scope of Work as of the Agreement Date.

8.3. Amendment. No amendment, modification, or change to this Agreement shall be effective unless the same shall be in writing and duly executed by the Parties.

8.4. Assignment and Control. The terms and conditions contained in the Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto. It is mutually understood and agreed that the Escrow Agent shall not assign, transfer, convey, or otherwise dispose of its right, title, or interest in the Agreement to any other person, firm, or corporation, without the previous written consent of PGCPs and Developer, but in no case shall such consent relieve the Escrow Agent from the obligations or change the terms of this Agreement. The Escrow Agent shall not enter into any contractual agreement with a third party for the delegation to such third party of performance obligations of the Escrow Agent of any part of this Agreement without the prior written consent of PGCPs and Developer.

8.5. Governing Law and Severability. This Agreement shall be governed by and construed in accordance with the laws of Prince George's County and the State of Maryland. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such provision shall be ineffective to the extent

of such invalidity, illegality, or unenforceability without invalidating the remainder of this Agreement, which shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

8.6. Standard of Professional Service and Compliance with Law. The work and services to be provided and performed by the Escrow Agent will be done in accordance with the generally accepted standards of professional practice and in compliance with all Applicable Laws. References in this Agreement to Codes and Standards are to the most recent published professional Codes and Standards governing Escrow Agent in effect on the Agreement Date. Unless otherwise specified to the contrary, (a) all such Codes and Standards will apply as if incorporated in this Agreement, and (b) if any revision occurs after the Agreement Date and prior to completion of the Parties' respective obligations under this Agreement, the Party whose obligations are affected by the revision will perform the applicable work in accordance with the revised Codes and Standards if and to the extent applicable.

8.7. Ownership of Documents and Funds. Upon the expiration or termination of this Agreement, the Escrow Agent shall provide to PGCPS all records, documents, and funds in the Escrow Agent's possession created pursuant to this Agreement.

8.8. Employment. The Escrow Agent shall not engage or otherwise employ any employee or official of PGCPS or any Developer Person during the performance term of this Agreement without the written consent of PGCPS.

8.9. Licensure Requirements. The Escrow Agent and the Escrow Agent's employees performing the Scope of Work shall obtain and maintain all necessary licenses and/or certifications, where licensure and/or certification are required for the provision of services under the terms of this Agreement.

8.10. Non-Discrimination. The provisions of Title VII of the Civil Rights Act of 1964 are hereby included in this Agreement to the end that no person in the United States shall, on the grounds of race, color, sex, religion, national origin, or disability, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under this Agreement. The provisions of State Government Article, Annotated Code of Maryland, Title 20 Human Relations, Subtitle 6, Discrimination in Employment, are incorporated by reference and are made a part hereof. The Escrow Agent agrees to be in full compliance with the Federal mandate of the Americans with Disabilities Act. The Escrow Agent further agrees that this Section will be incorporated by the Escrow Agent in all contracts entered into with suppliers of materials or services and the consultants and subcontractors and all labor organizations, furnishing skilled, unskilled and craft union labor, or who may perform any such labor services in connection with this Agreement. The Escrow Agent and any subcontractors shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

8.11. Release of Information. To the extent permitted by Applicable Law, during the term of this Agreement, the Escrow Agent may not release any information related to the services or performance of the services under this Agreement, nor publish any reports or documents relating

to PGCPS, any Account, or performance of services under this Agreement, without the prior written consent of PGCPS.

8.12. Status of Escrow Agent. The Escrow Agent is deemed by this Agreement to be an independent contractor and is not an agent or an employee of PGCPS or Developer.

8.13. Subcontractors. The Escrow Agent may not subcontract any portion of the Scope of Work without the prior written consent of PGCPS.

8.14. Conflict of Interest. As a prerequisite for the payment pursuant to the terms of this Agreement, there shall be furnished to PGCPS a statement, under oath and in the form set forth in Exhibit C, that no member of the elected governing body of Prince George's County, or members of his or her immediate family, including spouse, parents, or children, or any person representing or purporting to represent any member or members of the elected governing body has received or has been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee, political contribution, or any other similar form of remuneration and/or on account of the acts of awarding and/or executing the Agreement and that upon request by PGCPS, as a prerequisite to payment pursuant to the terms of this Agreement, there will be furnished to the requester, under oath, answers to any interrogatories related to a possible conflict of interest as herein embodied. Any contract made or entered into where it is discovered that the violation of the intent of this provision exists shall be declared null and void and all monies received by the Escrow Agent shall be returned to PGCPS. Whenever any person shall be convicted of falsely executing a statement under oath, as required above, such person shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a fine not exceeding \$1,000 or imprisonment not exceeding six (6) months, or both such fine and imprisonment.

8.15. Relationship of the Parties. The Parties to this Agreement shall not have any responsibility whatsoever with respect to services provided pursuant to this Agreement or contractual obligations under this Agreement assumed by another Party, and nothing in this Agreement shall be deemed to constitute any Party a partner, agent, or legal representative of another Party or to create any fiduciary relationship between the Parties, in each case, under this Agreement.

8.16. Notices. All notices and consents required or permitted by this Agreement (collectively, the "Notices") shall be in writing, shall be transmitted by (a) registered or certified mail, return receipt requested, with Notice deemed to be given upon receipt; postage pre-paid, (b) delivered by hand or by nationally recognized courier service, or (c) if sent by facsimile transmission with confirmed receipt thereof or email, and addressed as follows:

To PGCPS:

Chief Executive Officer
Prince George's County Public Schools
14201 School Lane
Upper Marlboro, MD 20772
Email: [insert]

With a copy to:

Public-Private Partnership (P3) Program Office
Prince George's County Public Schools

Louis Wilson Sr. Facilities Administration Building
13300 Old Marlboro Pike
Upper Marlboro, MD 20772

With a copy to:

Office of General Counsel
Prince George's County Public Schools
14201 School Lane
Upper Marlboro, MD 20772
Email: [insert]

To Developer:

With a copy to:

To the Escrow Agent:

Changes in the respective names and addresses to which such Notices may be directed may be made from time to time by a Party by Notice to the other Parties.

8.17. Waiver. Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the Party granting such waiver. If any representation, warranty, or covenant contained in this Agreement is breached by a Party and thereafter waived by the other Parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

8.18. Certification of Signatories. The signatories executing this Agreement on behalf of the Parties warrant and represent that they have the legal authority to do so and furthermore agree that each shall, upon request of another Party, furnish legally sufficient evidence of such authority.

8.19. Further Assurances. The Parties agree that they shall at any time and from time to time prior to or after the execution of this Agreement, execute and deliver any and all additional writings, instruments, and other documents and shall take such further action as shall be reasonably required or requested by another Party to effectuate the transactions contemplated by this Agreement.

8.20. Captions and Headings. Captions and headings in this Agreement are for convenience and ease of reference only, and in no way define or limit the interests, rights, or obligations of the Parties hereunder.

8.21. Recitals. The Recitals are expressly incorporated herein by reference.

8.22. Counterparts and Delivery by Electronic Mail. This Agreement (i) may be executed in any number of counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument, and (ii) may not be amended or

modified except in a writing signed by the Parties. Execution and delivery of this Agreement by facsimile or e-mail .pdf shall be sufficient for all purposes and shall be binding on any Person who so executes.

8.23. Prevailing Wage Rate. This Agreement is not subject to the wage requirements of County Code Sec. 10A-144.

[Signature Page Follows]

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IN WITNESS THEREOF, the undersigned Parties intending to be legally bound hereby, have duly executed this Agreement as of the date first written above.

BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY

By: _____

Name: _____

Title: _____

[DEVELOPER]

By: _____

Name: _____

Title: _____

[ESCROW AGENT]

By: _____

Name: _____

Title: _____

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EXHIBIT A

Authorized Representatives

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EXHIBIT B
Compensation Schedule

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EXHIBIT C

Vendor's Oath and Certification

Pursuant to Subtitle 10, Section 10A-110 of the Prince George's County Code, the Purchasing Agent requests as a matter of law that any contractor receiving a contract or award from Prince George's County, Maryland, shall affirm under oath as below. Receipt of such certification, under oath, shall be a prerequisite to payment.

"I (We) hereby declare and affirm under oath and the penalty of making a false statement that if the contract is awarded to our firm, partnership or corporation that no officer or employee of the County whether elected or appointed, is in any manner whatsoever interested in, or will receive or has been promised any benefit from, the profits or emoluments of this contract, unless such interest, ownership or benefit has been specifically authorized by resolution of the Board of Ethics pursuant to Section 1002 of the Charter of Prince George's County, Maryland; and

I (We) hereby declare and affirm under oath and the penalty of making a false statement that if the contract is awarded to our firm, partnership or corporation that no member of the elected governing body of Prince George's County, Maryland, or members of his or her immediate family, including spouse, parents or children, or any person representing or purporting to represent any member or members of the elected governing body has received or has been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee, political contribution, or any other similar form of remuneration and/or on account of the acts of awarding and/or executing this contract, unless such officer or employee has been exempted by Section 1002 of the Charter of Prince George's County, Maryland."

Handwritten Signature of Authorized Principal(s):

Name: _____

Title: _____

EXHIBIT J
FORM OF THE INDEPENDENT ENGINEER AGREEMENT

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EXHIBIT J
FORM OF INDEPENDENT ENGINEER AGREEMENT

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INDEPENDENT ENGINEER AGREEMENT

for the

PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS
ALTERNATIVE CONSTRUCTION FINANCING PACKAGE 1 PROJECT

by and among

BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY

and

[DEVELOPER]

and

[INDEPENDENT ENGINEER]

Dated _____, 2020

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INDEPENDENT ENGINEER AGREEMENT

This Independent Engineer Agreement (“**Agreement**”) is entered into as of the ___ day of _____, 2020 (“**Agreement Date**”), by and among the Board of Education of Prince George’s County (the “**Board**” or “**PGCPS**”), [____], a [limited liability company] organized and existing under the laws of the State of [____] (“**Developer**”), and [____], a [____] (“**Independent Engineer**”). Each may be referred to herein as a “**Party**” or collectively as the “**Parties**,” as the context of the usage of such term may require. Capitalized terms used herein without definition shall have the meanings assigned to them under that certain Project Agreement for the Design, Build, Finance, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1, dated [____], 2020 (as may be amended in accordance with its terms, the “**Project Agreement**”).

RECITALS

WHEREAS, PGCPS and Developer executed the Project Agreement for purposes of establishing a public-private partnership through which Developer will design, build, finance, and maintain the Schools in accordance with the specifications and requirements of the Project Agreement;

WHEREAS, the Project Agreement contemplates the hiring of an independent engineer to act impartially and independently of PGCPS and Developer to perform certain duties outlined in the Project Agreement and this Agreement;

WHEREAS, PGCPS and Developer desire to engage the Independent Engineer, and the Independent Engineer wishes to accept such engagement, to perform certain services in connection with the Project Agreement; and

WHEREAS, PGCPS, Developer, and the Independent Engineer wish to enter into this Agreement in order to record the terms by which the Independent Engineer will perform such services.

NOW, THEREFORE, in consideration of the mutual promises and agreements of the Parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATIONS

1.1. Definitions. Unless otherwise specified or the context otherwise requires, the following terms will have the following meanings:

“**Additional Insured Parties**” has the meaning set forth in Section 6.1.1 (Insurance Requirements).

“Additional Services” means any additions or changes to the Services.

“Additional Services Fee Notice” has the meaning set forth in Section 8.2.1 (Response to IE Additional Services Claim or Joint Additional Services Price Request).

“Additional Services Order” has the meaning set forth in Section 8.2.2 (Additional Services Order).

“Agreement” means this Agreement, including any recitals, schedules, and appendices to this Agreement, as may be amended in accordance with the terms hereof.

“Anticipated School Occupancy Readiness Notice” has the meaning set forth in Section 4.1.9 (Notice of Anticipated School Occupancy Readiness).

“Disputes Manager” has the meaning set forth in Section 2.6 (Disputes Manager).

“Fee” means the fees and disbursements payable to the Independent Engineer for the Services, as such fees are specified and made payable in Appendix B (Fee) to this Agreement.

“IE Additional Services Claim” has the meaning set forth in Section 8.1.1 (Independent Engineer Additional Services Claim; Continuation of Services).

“Indemnitee(s)” means, individually and collectively, as applicable, Developer and each PGCPs Indemnitee.

“Independent Engineer Person” has the meaning set forth in Section 11.2 (Independent Engineer Persons).

“Joint Additional Services Price Request” has the meaning set forth in Section 8.1.2 (Joint Additional Services Price Request).

“Liability Payment” has the meaning set forth in Section 10.3 (General Obligation to Pursue Third Person Recovery).

“Project Agreement” has the meaning set forth in the Preamble.

“Project Material” means all material (a) provided to the Independent Engineer or created by or required to be created by either PGCPs or Developer; and (b) provided by or created by or required to be created by the Independent Engineer as part of, or for the purpose of, performing the Services, including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules, and data (stored and recorded by any means).

“School Occupancy Readiness Certificate” has the meaning set forth in Section 4.2.2 (School Occupancy Readiness Certificate).

“School Occupancy Readiness Deficiency Report” has the meaning set forth in Section 4.2.1 (Procedure).

“**School Occupancy Readiness Notice**” has the meaning set forth in Section 4.2.1 (Procedure).

“**Services**” means (a) all of the services performed by and obligations conferred on the Independent Engineer under the Project Agreement; (b) all of the services performed by and obligations conferred on the Independent Engineer under this Agreement, including the services described in Appendix A (Services) to this Agreement; and (c) all other obligations or tasks which the Independent Engineer is required to do to comply with its obligations under this Agreement.

1.2. Interpretation. This Agreement shall be interpreted according to the following provisions, except to the extent that the context or the express provisions of this Agreement otherwise require.

1.2.1 Plurality. Words importing the singular number mean and include the plural number and vice versa.

1.2.2 Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

1.2.3 Headings. The table of contents and any headings preceding the text of the Articles, Sections, and subsections of this Agreement shall be solely for convenience of reference and shall not affect its meaning, construction, or effect.

1.2.4 References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder,” and any similar terms refer to this Agreement.

1.2.5 References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Eastern Standard time or Eastern Daylight Savings time, as the case may be.

1.2.6 References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

1.2.7 References to Including. The words “include”, “includes”, and “including” are to be construed as meaning “include without limitation”, “includes without limitation”, and “including without limitation”, respectively.

1.2.8 References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates, or replaces the statute or statutory provision or which has been amended, extended, consolidated, or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice, or instruments made under the relevant statute.

1.2.9 References to Governmental Authorities. Each reference to a Governmental Authority is deemed to include a reference to any successor to such Governmental Authority or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Authority.

1.2.10 References to Documents and Standards. Each reference to an agreement, document, standard, principle, or other instrument includes (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle, or other instrument) a reference to that agreement, document, standard, principle, or instrument as amended, supplemented, substituted, novated, or assigned.

1.2.11 References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of PGPCS, the Independent Engineer, Developer, or any other Developer Person, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each Party’s obligations hereunder to mitigate delays and additional costs to the other Party, and in any event taking no fewer steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

1.2.12 Counterparts and Delivery by Electronic Mail. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement. Any Party may deliver an executed copy of this Agreement by electronic mail and such counterpart shall be deemed effective upon receipt, but that Party will promptly deliver via mail or courier to the other Parties an originally executed copy of this Agreement

1.2.13 Governing Law and Venue. This Agreement is governed by and shall be construed in accordance with, and interpreted under, the laws of Maryland. Any disputes, legal cases, or other controversies arising out of this Agreement shall be filed in the Circuit Court for Prince George’s County, Maryland, and subject to the laws of Maryland.

1.2.14 Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable, or illegal to any extent, such provision may be severed, and such invalidity, unenforceability, or illegality shall not prejudice or affect the validity, enforceability, and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable, or illegal, the Parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability, or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

1.2.15 Drafting Responsibility. The Parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

1.2.16 Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with generally accepted accounting principles, consistently applied, in the United States.

1.2.17 Consents. Any consent required to be given under this Agreement must be in writing.

ARTICLE 2 ROLE OF THE INDEPENDENT ENGINEER

2.1. Engagement. PGCPs and Developer hereby appoint the Independent Engineer, and the Independent Engineer hereby accepts such appointment, to carry out the Services in accordance with this Agreement. The Independent Engineer will perform the Services in accordance with this Agreement and unless stated otherwise, where there is an inconsistency between this Agreement and the Project Agreement, the terms of the Project Agreement shall prevail.

2.2. Acknowledgement by Independent Engineer. The Independent Engineer hereby acknowledges in favor of PGCPs and Developer that the Independent Engineer has received and reviewed the Project Agreement. The Independent Engineer acknowledges that PGCPs and Developer shall each rely upon the performance of the Services by the Independent Engineer, including all determinations and findings of fact, the expression of all opinions and conclusions, the issuance of all certificates, and, accordingly, the Independent Engineer shall use its best skills and judgment in providing the Services.

2.3. Standard of Care. The Independent Engineer shall in all respects act as an independent professional. The Independent Engineer represents and warrants that it does and shall at all times during the term of this Agreement possess and exercise the standard of skill, care, and diligence in the performance of the Services that would be expected of an expert professional experienced in providing each of the services falling within the definition of the Services as set forth in Section 1.1 (Definitions) of this Agreement.

2.4. Duty of Independent Judgment. In performing the Services, the Independent Engineer will act:

- (1) impartially and independently of PGCPs and Developer, giving fair consideration to the interests and views of each in accordance with the terms of this Agreement and the Project Agreement;
- (2) reasonably, honestly, and professionally in all respects, and in accordance with the highest standards of commercial integrity; and
- (3) in a timely manner in its performance of the Services:
 - (a) in accordance with the times prescribed in this Agreement or the Project Agreement, as applicable; or

(b) where no times are prescribed, within five (5) Business Days or such earlier time so as to enable PGCPs and Developer to perform their respective obligations under the Project Agreement.

2.5. Determinations and Conclusions.

2.5.1 Independent Professional Judgment. All determinations of fact and the drawing of conclusion based upon any facts so determined shall be made in the exercise of the Independent Engineer's independent professional judgment. Although the Independent Engineer should take account of any opinions or representations made by PGCPs and Developer, and their respective professional advisors and consultants, the Independent Engineer shall not be bound to comply with any opinions, representations, requests, or directions made by either PGCPs, Developer, or their respective professional advisors and consultants in connection with any matter on which the Independent Engineer is required to exercise its professional judgment. Notwithstanding the foregoing, the Independent Engineer shall accept all agreed statements of fact made by PGCPs and Developer jointly provided that doing so would not prejudice the exercise by the Independent Engineer of its professional judgment under this Agreement.

2.5.2 Best Skill and Judgment. The Independent Engineer will use its best skill and judgment in providing the Services and making any certifications.

2.6. Disputes Manager. In accordance with Section 10.1.5 (Independent Engineer as Mediator Prior to Completion of Design-Build Work) and Section 24.3 (Binding Mediation of Certain Disputes During the Design-Build Period) of the Project Agreement, PGCPs and Developer have agreed that a pre-determined and mutually agreeable representative of the Independent Engineer (the "**Disputes Manager**") shall serve as the binding mediator for purposes of resolving certain disputes, as further detailed in the Project Agreement, during the Design-Build Period. The Parties agree that the initial Disputes Manager shall be [insert name].

2.6.1 Unavailability of the Disputes Manager. The Independent Engineer shall take all reasonable efforts to provide PGCPs and Developer with sufficient notice of the Disputes Manager becoming unaffiliated with the Independent Engineer or otherwise permanently unavailable to serve as the Disputes Manager so that the replacement process can be completed prior to the Disputes Manager becoming unavailable. If for any reason the Disputes Manager resigns or is otherwise unavailable to perform the duties assigned to the Disputes Manager under this Agreement and the Project Agreement, the Independent Engineer shall immediately notify PGCPs and Developer and engage in the process set forth in Section 2.6.3 (Replacement of the Disputes Manager).

2.6.2 Termination of the Disputes Manager. The Disputes Manager can be terminated by the provision of a written notice of termination to the Independent Engineer signed jointly by PGCPs and Developer.

2.6.3 Replacement of the Disputes Manager. If the Disputes Manager becomes unavailable in accordance with Section 2.6.1 (Unavailability of the Disputes Manager) or is terminated by PGCPs and Developer in accordance with Section 2.6.2 (Termination of the Disputes Manager), the Independent Engineer shall identify at least three (3) alternate candidates

with similar expertise and experience as the Disputes Manager that will be made available for a minimum one (1) hour interview with PGCPS and Developer, separately, unless waived in any or all cases by PGCPS or Developer. Following their independent review and consideration of each candidate, PGCPS and Developer shall meet and confer in an attempt to mutually select one of the candidates offered to be the Disputes Manager. In the event PGCPS and Developer are unable to agree on a Disputes Manager based on the initial candidates offered, the Independent Engineer shall continue to offer alternative candidates until a mutual selection is made by PGCPS and Developer.

2.7. Authority to Act. The Independent Engineer:

(1) is an independent consultant and is not, and will not purport to be, a partner, joint venturer, or agent of either PGCPS or Developer;

(2) has no direct or indirect material interest in or connection with, and it will not at any time have any direct or indirect material interest in or connection with, any person, trust, partnership, joint venture, or other entity that is not at arm's length to PGCPS or Developer;

(3) has no direct or indirect material interest in, and will not at any time have a direct or indirect interest in, the certification of School Occupancy Readiness except with respect to the performance of the Services under this Agreement and the payment of its Fee;

(4) other than as may be expressly set out in this Agreement or the Project Agreement, has no authority to give any directions to any PGCPS Person or Developer Person;

(5) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release either PGCPS or Developer from any of its obligations under the Project Agreement unless jointly agreed in writing by PGCPS and Developer;

(6) shall act in accordance with the joint direction of PGCPS and Developer provided that the directions are not inconsistent with the other terms of this Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Engineer's authority or responsibility or the exercise by the Independent Engineer of its professional judgment under this Agreement; and

(7) is not aware of any other circumstances or relationships, having made due inquiries with respect thereto, that could reasonably be perceived to constitute a conflict of interest with respect to the performance of the Services or its role as Independent Engineer.

2.8. Knowledge of PGCPS' and Developer's Requirements. The Independent Engineer warrants that:

(1) it has and will be deemed to have informed itself fully of the requirements of the Project Agreement;

(2) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Services;

(3) without limiting items (1) or (2) above, it has and will be deemed to have informed itself fully of all time limits and other requirements for any Services which the Independent Engineer carries out under the Project Agreement and this Agreement;

(4) it has and will be deemed to have informed itself fully of the nature of the work necessary for the performance of the Services and the means of access to all facilities at the Project and the Sites, and it agrees to follow procedures established by PGCPs with respect to access to Sites, including compliance with Exhibit O (Background Check Requirements) to the Project Agreement; and

(5) it has satisfied itself as to the correctness and sufficiency of its proposal for the Services and that the Fee covers the cost of complying with all of the obligations under this Agreement and of all matters and things necessary for the due and proper performance and completion of the Services.

2.9. Coordination by Independent Engineer. The Independent Engineer shall:

(1) fully cooperate with PGCPs, Developer, and Governmental Authorities having jurisdiction;

(2) carefully coordinate the Services with the work and services performed by PGCPs and Developer, including the PGCPs Activities;

(3) perform the Services so as to avoid unreasonably interfering with, disrupting, or delaying the work and services performed by PGCPs and Developer, including the PGCPs Activities; and

(4) simultaneously provide copies to PGCPs and Developer of all reports, communications, certificates, and other documentation that it provides to either PGCPs or Developer.

2.10. Conflict of Interest. The Independent Engineer warrants that:

(1) in addition to the warranties set out in subsections (2) and (7) of Section 2.7 (Authority to Act) of this Agreement, at the date of signing this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement, and, without limitation, the Independent Engineer has no interest that would constitute a conflict of interest as defined under Code of Maryland Regulations (COMAR) § 21.05.08.08 or any Board ethics policies promulgated in accordance with § 15-811 through § 15-815 of the State Government Article of the Annotated Code of Maryland, including Board Policy 0107 prohibiting PGCPs employees from benefiting from business with the school system; and

(2) if, during the term of this Agreement, any such conflict or risk of conflict of interest arises, or there is reasonable apprehension that a conflict of interest has arisen or may arise, the Independent Engineer shall immediately notify PGCPs and Developer in writing of that conflict or risk of conflict and shall take such steps as may be required by PGCPs and Developer to avoid, or (where it is not possible to avoid that conflict) mitigate that conflict or risk to the greatest extent possible, or (where it is not possible to avoid that conflict, and PGCPs and Developer jointly request) resign.

2.11. Independent Engineer Personnel.

2.11.1 Personnel to be Used. Subject to Section 2.11.2 (Removal and Replacement), the Independent Engineer will use the partners, directors, or employees described in Appendix C (Independent Engineer Personnel) to this Agreement in connection with the performance of the Services and such persons' services will be available for so long as may be necessary to ensure the proper performance by the Independent Engineer of the Services. Such persons will have full authority to act on behalf of the Independent Engineer for all purposes in connection with this Agreement.

2.11.2 Removal and Replacement. None of the persons listed in Appendix C (Independent Engineer Personnel) to this Agreement will be removed or replaced unless (i) Developer and PGCPs mutually agree to remove or replace such person; (ii) such person ceases to work as a partner in or a director or employee of the Independent Engineer; or (iii) such person is unable to work because of death or illness. The Independent Engineer shall notify PGCPs and Developer of any such circumstances and shall be responsible for finding a replacement who will previously have been approved in writing by PGCPs and Developer.

2.12. Engagement of Subcontractors. If so instructed or approved by Developer and PGCPs, the Independent Engineer may engage a separate, qualified, licensed, and independent firm to perform specific responsibilities. Each firm selected to perform such services, the scope of work, and the terms of the service agreements shall be subject to the prior approval of PGCPs and Developer and shall not itself have any conflict of interest as set out in Section 2.10 (Conflict of Interest) of this Agreement.

2.12.1 Costs. The costs and expenses of such selected firms, if and to the extent approved by Developer and PGCPs, shall constitute disbursements of the Independent Engineer, which shall be reimbursable to the Independent Engineer as part of the Fee as provided in Article 7 (Payment for Services) of this Agreement.

2.12.2 Use of Work Product. The work product of the subcontractors engaged pursuant to this Section shall be made available to PGCPs, Developer, and the Independent Engineer for their information and consideration in exercising their rights and carrying out their responsibilities with respect to the Project, but shall not be binding upon any of PGCPs, Developer, or the Independent Engineer for any purpose.

2.13. Obligations of Others. Nothing in this Agreement or the Project Agreement shall be interpreted or construed to render the Independent Engineer responsible for the performance of

the Design-Build Work, or for the performance of any obligation of Developer, or the professional responsibility of any of the other professionals of record with respect to the Project.

ARTICLE 3 ROLE OF PGCPS AND DEVELOPER

3.1. Assistance. PGCPS and Developer agree to cooperate with and provide reasonable assistance to the Independent Engineer to familiarize the Independent Engineer with all necessary aspects of the Project and to enable the Independent Engineer to carry out its obligations, including the determination of School Occupancy Readiness under this Agreement. Neither PGCPS nor Developer shall in any way obstruct or otherwise impede or interfere with the performance of the Services by the Independent Engineer.

3.2. Instructions in Writing. All instructions given to the Independent Engineer by PGCPS and Developer shall be in writing.

3.3. Obligations and Exercise of Rights. Except as otherwise expressly provided in this Agreement:

(1) Where a power, authority, or discretion may be exercised by PGCPS and Developer, it shall be exercised by them jointly; and

(2) Any obligation of PGCPS and Developer shall be deemed to be a several obligation of PGCPS and Developer, acting individually.

3.4. Information and Services. PGCPS and Developer will each make available to the Independent Engineer, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Engineer to carry out the Services, including such information, documents, and particulars required in order for the Independent Engineer to determine whether the School Occupancy Readiness Conditions have been achieved, and will simultaneously provide copies of all such information, documents, and particulars to the other Party.

3.5. Additional Information.

3.5.1 Requests by Independent Engineer. If any information, documents, or particulars are reasonably required to enable the Independent Engineer to perform the Services and have not been provided by Developer or PGCPS, as the case may be, then:

(1) the Independent Engineer will give notice in writing to PGCPS and Developer of the details of the information, documents, or particulars demonstrating the need and the reasons why they are required; and

(2) PGCPS or Developer, as the case may be, will arrange for the provision of the required information, documents, or particulars to both the Independent Engineer and the non-responding Party as soon as possible, but no later than ten (10) Business Days

following the Independent Engineer's notice under Section 3.5.1(1) (Requests by Independent Engineer).

3.5.2 Failure to Provide Requested Information. Any failure or refusal to provide such information may be resolved in accordance with the dispute resolution procedures set forth in Article 24 (Resolution of Disputes) of the Project Agreement.

3.6. Right to Enter and Inspect. Upon giving reasonable notice to Developer and PGCPs, the Independent Engineer (and any person authorized by it) may enter and inspect the Sites and work in progress at any reasonable time when a Developer Person is present in connection with the exercise or proposed exercise of rights under this Agreement, subject to:

(1) observance of the reasonable rules of Developer and PGCPs as to safety and security for the Sites and work in progress;

(2) not causing unreasonable delay to the carrying out of the Design-Build Work by reason of its presence at the Sites; and

(3) not causing any damage to the Sites or work in progress.

3.7. Performance of Obligations Under the Project Agreement Not Relieved. Neither PGCPs nor Developer shall be relieved from its obligations to perform their respective obligations, or from any other liabilities, under the Project Agreement at the time and in the manner contemplated in the Project Agreement by reason of the appointment of or the performance or non-performance of the Services by the Independent Engineer.

3.8. Liability for Actions of Independent Engineer. In no event will PGCPs or Developer be liable to one another for any act or omission by the Independent Engineer whether under, or purportedly under, a provision of the Project Agreement, this Agreement, or otherwise, provided that any such act or omission will not extinguish, relieve, limit, or qualify the nature or extent of any right or remedy of either PGCPs or Developer against or any obligation or liability of either PGCPs or Developer which would have existed regardless of such act or omission.

ARTICLE 4 DUTIES OF INDEPENDENT ENGINEER

4.1. Reviews and Inspection of the Project.

4.1.1 General Duties. The Independent Engineer shall review comments received during the building code plan reviews.

4.1.2 Commissioning Agent. The Independent Engineer shall serve as the Commissioning agent on the Project in accordance with Exhibit R (Commissioning Requirements) to the Project Agreement.

4.1.3 Design Review Scope. The Independent Engineer shall be familiar with all Contract Standards and shall review Developer's proposed design as it is developed to assure such design complies with the Contract Standards. The Independent Engineer may recommend changes

to ensure compliance with the Contract Standards or to improve energy efficiency, operation and maintenance and equipment reliability to Developer so that any necessary changes may be made by Developer prior to, rather than after, installation. The general scope of the Independent Engineer’s review during the design phase shall be as set forth in Table 1.

TABLE 1
Independent Engineer Design Review Scope for Each School

Design Aspect	Review Scope
Certification Facilitation	Review Design Documents to facilitate project certification goals
Commissioning Facilitation	Review Design Documents to facilitate effective Commissioning Tests
Commissioning Specifications	Verify that Design Documents adequately specify Commissioning, including testing requirements by equipment type
Constructability	Review Design Documents for constructability of all building systems
Contract Standards	Verify that the Design Documents comply with the Contract Standards
Project Agreement	Verify that the Design Documents and the facilities management protocol comply with PGCPS’s Project requirements set forth in the Project Agreement
Electrical	Review the electrical concepts and systems for possible enhancements
Energy Efficiency	Review of adequacy of the effectiveness of building layout and efficiency of system types and components for building shell, HVAC systems and lighting systems
Envelope	Review envelope design and assemblies for thermal and water integrity, moisture vapor control and assembly life, including impacts of interior surface finishes and impacts and interaction with HVAC systems
Indoor Environmental Quality	Review to ensure that system relating to thermal, visual, acoustical, air quality, comfort, and air distribution maximize comfort and are in compliance with the Contract Standards
Life Cycle Costs	Review a life cycle assessment of the primary competing mechanical systems relative to energy efficiency, operation and maintenance, indoor environmental quality, functionality, and sustainability
Mechanical	Review Design Documents to ensure flexible and efficient operation as required by the Contract Standards, including off-peak heating/cooling, air handling unit operations, size and zoning of air handling units, and thermostated areas

Design Aspect	Review Scope
Operations and Maintenance	Review for effects of specified systems and layout toward facilitating operations and maintenance (equipment accessibility, system control, etc.)
Operations and Maintenance Documentation	Verify adequate School operations and maintenance documentation requirements, including review of operating and maintenance manuals for each component of a School and Maintained Elements and each complete system to be tested in the School
Sustainability	Review to ensure that the building materials, landscaping, water and waste management create less of an impact on the environment, contribute to creating a healthful and productive workspace, and are in compliance with the Agreement
Training	Verify adequate operator training requirements

4.1.4 Design Review Responsibilities. During the design review phase, the Independent Engineer shall:

- (1) meet with Developer and PGCPs to verify design plan submittal requirements;
- (2) conduct document pre-submittal meetings with the Design-Builder, and review documents, issue comments, and back check documents;
- (3) perform structural design peer review;
- (4) review multiple design and construction document packages with Developer and PGCPs (including at the 35% and 65% complete stages) for compliance with the applicable Contract Standards in order to expedite construction;
- (5) certify acceptance of each Construction Documents Submission, with such certification to include (i) verification that the 95% Construction Documents Submission complies with the applicable Contract Standards, and (ii) that the Final Construction Documents comply with the applicable Contract Standards and are the documents according to which Developer shall construct the Project, as provided in Article 7 of the Project Agreement.

Final interpretations made by the Independent Engineer during the design review process shall be binding on Developer and PGCPs.

4.1.5 Construction Phase. During the construction phase, the Independent Engineer shall:

- (1) Cooperate with the construction inspector of record;

(2) Inspect the Sites, including each School, for conformance with the Final Construction Documents;

(3) Review the results of tests performed by Developer;

(4) Review independent laboratory tests of materials;

(5) Review special inspection reports;

(6) Confirm that Developer is in compliance with the Design-Build Quality Management Plan; and

(7) Review the Commissioning Plans and the Commissioning of each School in accordance with the responsibilities assigned to the Independent Engineer, as the Commissioning agent on the Project, in Exhibit R (Commissioning Requirements) to the Project Agreement.

4.1.6 Inspection for School Substantial Completion. In accordance with Article 8 of the Project Agreement, the Independent Engineer shall inspect each School (including any required re-inspections thereof) to determine whether the conditions to School Substantial Completion set forth in Section 8.1 (Conditions to Substantial Completion for the Schools) of the Project Agreement have been satisfied within three (3) Business Days from receipt of the notice described in Section 4.1.7 (Notice of Anticipated School Substantial Completion) below. As soon as possible, but no later than two (2) Business Days from the inspection conducted in accordance with this Section, the Independent Engineer shall notify Developer and PGCPs in writing either (i) that School Substantial Completion has been achieved for the relevant School, or (ii) of the deficiencies that the Independent Engineer considers are required to be rectified by Developer in order for the conditions for School Substantial Completion to be satisfied. In the latter case, Developer shall deliver a new notice in accordance with Section 4.1.7 (Notice of Anticipated School Substantial Completion) below once such deficiencies are rectified, and the process described in this Section 4.1.6 (Inspection for School Substantial Completion) shall be repeated until the Independent Engineer notifies Developer and PGCPs in writing that School Substantial Completion has been achieved for each School.

4.1.7 Notice of Anticipated School Substantial Completion. In accordance with Section 8.2 (Notice of School Substantial Completion) of the Project Agreement, for each School, Developer shall give the Independent Engineer and PGCPs each not less than thirty (30) days' written notice of the date on which it anticipates such School will satisfy the conditions for School Substantial Completion.

4.1.8 Inspection for School Occupancy Readiness and Punch List Items. In addition to any obligations imposed under the Project Agreement, the Independent Engineer shall inspect each School (including any re-inspections thereof) to determine whether the School Occupancy Readiness Conditions have been satisfied in accordance with the procedures for certification set forth in this Agreement and shall prepare a Punch List for each School, if applicable, and otherwise comply with the procedures for certification set forth in this Article.

4.1.9 Notice of Anticipated School Occupancy Readiness. For each School, Developer shall give the Independent Engineer and PGCPs each not less than thirty (30) days' written notice ("**Anticipated School Occupancy Readiness Notice**") of the date on which it anticipates the relevant School will be in a condition necessary to satisfy the School Occupancy Readiness Conditions and the dates on which it is intended that the Independent Engineer carry out the inspection of the School with a view toward issuing the School Occupancy Readiness Certificate.

4.2. Certification of School Occupancy Readiness.

4.2.1 Procedure. For each School, the Independent Engineer shall make its determination of School Occupancy Readiness and certify that the relevant School has achieved School Occupancy Readiness in accordance with the following procedures:

(1) Developer shall provide the Independent Engineer and PGCPs the Anticipated School Occupancy Readiness Notice;

(2) within ten (10) Business Days after Developer provides the Anticipated School Occupancy Readiness Notice, and in any event at least twenty (20) Business Days prior to the inspection of the relevant School by the Independent Engineer, Developer shall give the Independent Engineer and PGCPs an application for a School Occupancy Readiness Certificate (the "**School Occupancy Readiness Notice**") in the form set forth in Appendix D to this Agreement, together with Developer's opinion as to whether the conditions for issuance of the School Occupancy Readiness Certificate have been satisfied (which School Occupancy Readiness Notice may be given concurrently with the giving of the Anticipated School Occupancy Readiness Notice); and

(3) provided that Developer has complied with clauses (1) and (2) of this Section 4.2.1 (Procedure), upon the written request of Developer, the Parties shall cause the Independent Engineer to, as soon as possible, but no later than five (5) Business Days following such request, determine whether the School Occupancy Readiness Conditions have been satisfied, having regard to the opinions of Developer and PGCPs, and to issue to PGCPs and Developer either:

(a) the School Occupancy Readiness Certificate in accordance with Section 4.2.2 (School Occupancy Readiness Certificate) within two (2) Business Days from the inspection, stating the date upon which the Independent Engineer certifies that the School has satisfied the School Occupancy Readiness Conditions; or

(b) a written report (the "**School Occupancy Readiness Deficiency Report**"), as soon as possible but no later than three (3) Business Days following the inspection performed under Section 4.1.8 (Inspection for School Occupancy Readiness and Punch List Items) for the School, detailing the deficiencies that the Independent Engineer considers are required to be rectified by Developer in order for the School Occupancy Readiness Conditions to be satisfied.

4.2.2 School Occupancy Readiness Certificate. In the event the Independent Engineer determines that the School Occupancy Readiness Conditions have been satisfied for a School, the Independent Engineer shall certify that fact by execution of a certification of School Occupancy Readiness (the “**School Occupancy Readiness Certificate**”) in the form set forth in Appendix E (Form of School Occupancy Readiness Certificate) to this Agreement. The Independent Engineer shall deliver a duplicate signed original of the School Occupancy Readiness Certificate to PGCPs and Developer on the date in which the Independent Engineer has determined that such School meets the criteria for School Occupancy Readiness.

4.2.3 Independent Engineer Determination. In determining whether there is an entitlement for the issuance of a School Occupancy Readiness Certificate, the Independent Engineer shall:

(1) witness such tests and investigations and make such inquiries as seem to the Independent Engineer to be reasonably necessary or advisable to the question of whether the School Occupancy Readiness Conditions have been satisfied; and

(2) in connection therewith, consult and consider the views of Developer and PGCPs.

The obligation to carry out tests and investigations and consult and consider the views under this Section 4.2.3 (Independent Engineer Determination) shall not apply where, in the circumstances, a competent professional expert in the position of the Independent Engineer would consider it clear that School Occupancy Readiness Conditions have not been satisfied.

4.2.4 Independent Assessment. In carrying out its responsibilities under this Section, the Independent Engineer shall act as an independent professional and in particular shall make an independent assessment of such facts as are relevant to its determination.

4.2.5 Deficiencies, Rectification Actions, and Re-Inspection. Where the Independent Engineer has issued a School Occupancy Readiness Deficiency Report, Developer shall, within seven (7) Business Days of the receipt thereof, provide the Independent Engineer and PGCPs with details of all additional rectification actions and Commissioning that need to be performed by Developer at the relevant School to address all of the matters raised in the School Occupancy Readiness Deficiency Report, and Developer shall perform all such additional rectification actions. As soon as Developer has completed such rectification actions, Developer may deliver a new School Occupancy Readiness Notice, and the Independent Engineer shall review such rectification actions and, within three (3) Business Days from receipt of the new School Occupancy Readiness Notice, (i) issue a School Occupancy Readiness Certificate, or (ii) issue a revised School Occupancy Readiness Deficiency Report. The procedures set out in this Section 4.2 (Procedure for Certification of School Occupancy Readiness) (including, if needed, this Section 4.2.5 (Deficiencies, Rectification Actions, and Re-Inspection)) shall be repeated until the School Occupancy Readiness Certificate has been issued, except that the Parties shall use reasonable efforts to perform their respective obligations within time periods shorter than provided herein.

4.3. Expedited Dispute Resolution Procedure. The Parties hereby agree that disputes regarding any Independent Engineer determinations made in connection with the duties described

in Section 4.2 (Certification of School Occupancy Readiness) shall be resolved by in accordance with the expedited dispute resolution procedure set forth in this Section 4.3 (Expedited Dispute Resolution Procedure).

4.3.1 Good Faith Meet and Confer Requirement. The Party disputing an Independent Engineer determination subject to this expedited dispute resolution procedure shall promptly notify each of the other Parties of the disputed matter. Within five (5) Business Days after such notice, the Parties shall meet and make a good faith effort to resolve the dispute by mutual discussion and reconsideration. If the Parties are unable to mutually resolve the dispute during such five (5) Business Day period, the matter shall immediately be submitted to binding arbitration to be resolved in accordance with Section 4.3.2 (Binding Arbitration).

4.3.2 Binding Arbitration. Within five (5) Business Days after submittal of the dispute to binding arbitration, the Party disputing the Independent Engineer's determination subject to this expedited dispute resolution procedure shall submit a brief with all supporting evidence to the Arbiter with copies to all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Party may choose to submit in its discretion to assist the Arbiter in resolving the dispute. Within three (3) Business Days after distribution of the initial brief, the Independent Engineer shall submit a brief with all supporting evidence in support of the disputed determination and any other interested Party may submit an additional brief presenting its views and evidence on the matter. The Arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within ten (10) Business Days after the initiation of the binding arbitration, unless the Arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the Arbiter shall be submitted to the Arbiter (with copies to all Parties) within five (5) Business Days after the Arbiter's request, and thereafter the Arbiter shall hold a telephonic hearing and issue a decision promptly but in any event within two (2) Business Days after submission of such additional briefs, and no later than seventeen (17) Business Days after the initiation of the binding arbitration.

4.3.3 Arbiter Selection and Qualifications. PGCPs and Developer have pre-determined and mutually agreed that, for the term of this Agreement, the arbiter for purposes of this Section 4.3 (Expedited Dispute Resolution Procedure) shall be [insert name] (the "**Arbiter**"). The Arbiter meets the Arbiter's Qualifications and will hear all disputes under this Section 4.3 (Expedited Dispute Resolution Procedure) unless the Arbiter is not available to meet the time schedule set forth herein, in which case PGCPs and Developer shall promptly select and direct the dispute to another mutually agreeable arbiter that meets the Arbiter's Qualifications. The "**Arbiter's Qualifications**" shall be defined as at least ten (10) years experience in school construction in the state of Maryland.

4.3.4 Disputes Involving Arbitrability of Disputes. The Arbiter shall decide any dispute involving either the right to have a disputed matter submitted to binding arbitration or whether the matter is properly the subject of the expedited dispute resolution procedure pursuant to this Section 4.3 (Expedited Dispute Resolution Procedure). The Parties to such dispute shall promptly provide notice of the dispute to the Arbiter and each of the other Parties. Within three (3) Business Days of such notice, each interested Party shall submit in writing their respective

positions regarding the dispute to the Arbiter. No such submission shall exceed ten (10) double-spaced pages. The Arbiter shall make his or her decision within five (5) days of the last submission.

4.3.5 No Ex Parte Communications. No Party or anyone acting on its behalf shall have any ex parte communication with the Arbiter with regard to any matters in issue. Communications concerning procedural matters such as scheduling shall not be included in this prohibition.

4.3.6 Fees and Costs. Initially, Developer shall contract directly with the Arbiter and shall be responsible for payment of the fees and costs of the Arbiter. Developer shall have the right to claim as an Extraordinary Item fifty percent (50%) of the full amount of the Arbiter's fees and costs incurred to resolve any dispute under this Section 4.3 (Expedited Dispute Resolution Procedure) except for disputes submitted by Developer where the disputed determination of the Independent Engineer is upheld by the Arbiter.

4.3.7 No Cessation of Work Pending Resolution of a Dispute. Pending the decision of the Arbiter of any dispute submitted in accordance with this Section 4.3 (Expedited Dispute Resolution Procedure), the Parties agree that time is of the essence under this Agreement and that except with regard to work directly related to the narrow matter being disputed the Project shall not cease or be delayed.

4.4. Punch List Items. In the event that Punch List Items exist for a School when Developer applies for a School Occupancy Readiness Certificate related to such School, the Independent Engineer, in consultation with PGCPs and Developer, shall prepare a Punch List for the School, as further described in Section 10.4.1 (Punch List) of the Project Agreement.

4.5. School Occupancy Readiness Conditions Relating to the Design-Builder. In the event that the School Occupancy Readiness Conditions specified in items (a) through (g) of Section 10.2.1 (Conditions) of the Project Agreement are satisfied prior to the satisfaction of all of the School Occupancy Readiness Conditions, Developer may request, and the Independent Engineer shall consider and may issue, a certificate to that effect, following the same procedures and applying the same standards to be followed and applied under this Independent Engineer Agreement generally for the issuance of the School Occupancy Readiness Certificate. The issuance of any such certificate shall be for the convenience of Developer only in its relationship with the Design-Builder under the Design-Build Agreement, and shall have no bearing or effect on the determination, as between PGCPs and Developer, as to whether the entirety of the School Occupancy Readiness Conditions have been achieved or whether the School Occupancy Readiness Date has occurred, which shall be made and shall have the effect provided under this Independent Engineer Agreement and the Project Agreement.

ARTICLE 5 SUSPENSION OF SERVICES

5.1. Suspension Notice. The Services (or any part) may be suspended at any time by PGCPs and Developer:

5.1.1 if the Independent Engineer fails to comply with its obligations under this Agreement, immediately by PGCPs and Developer giving joint notice in writing to the Independent Engineer; or

5.1.2 in any other case, by PGCPs and Developer giving seven (7) Business Days joint notice in writing to the Independent Engineer.

5.2. Costs of Suspension. The Independent Engineer shall:

5.2.1 subject to the Independent Engineer complying with Article 8 (Additional Services), be entitled to recover the extra costs incurred by the Independent Engineer by reason of a suspension directed under Section 5.1.2 of this Agreement valued as an Additional Service under Article 7 (Payment for Services) of this Agreement; and

5.2.2 have no entitlement to be paid any costs, expenses, losses, or damages arising from a suspension under Section 5.1.1 of this Agreement.

5.3. Recommencement. The Independent Engineer shall immediately recommence the carrying out of the Services (or any part) upon receipt of a joint written notice from PGCPs and Developer requiring it to do so.

ARTICLE 6 INSURANCE AND LIABILITY

6.1. Independent Engineer's Professional Indemnity Insurance.

6.1.1 Insurance Requirements. The Independent Engineer shall have in place at all times during the term of this Agreement the following insurance:

(1) professional liability insurance covering the Independent Engineer's acts, errors, or omissions committed or alleged to have been committed which arise out of rendering or failure to render the Services provided under the terms of this Agreement. The policy shall provide limits of not less than \$1,000,000 per claim or per occurrence and \$1,000,000 annual aggregate. If the policy is written on a "claims made" form, the Independent Engineer shall continue such coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than ten (10) years from the date of completion of the Services which are the subject of this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that Services commence pursuant to this Agreement.

(2) commercial general liability insurance in the amount of \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operation aggregate, covering liabilities resulting from this Agreement, and in the annual aggregate designated solely for the obligations resulting from this Agreement. Such policy shall be provided on the latest ISO Form CG 00 01 or its equivalent. Such policy must be further endorsed to: (a) name the parties listed in clause (6) of Section 6.1.1 (Insurance Requirements) below (individually, an “**Additional Insured Party**” and collectively, the “**Additional Insured Parties**”) as additional insureds; (b) stipulate that such insurance is primary and is not contributing with any other insurance, self-insurance, or other risk management program maintained by or for the benefit of the Additional Insured Parties; (c) waive any and all right of recovery or subrogation the insurer may have against any or all of the Additional Insured Parties; and (d) apply separately to each insured against whom a claim is made or a lawsuit is brought, subject only to the policy limit of liability.

(3) business auto liability insurance including hired and non-owned liability with a limit of no less than \$1,000,000 per accident or loss. Such policy must be further endorsed to: (a) name the Additional Insured Parties as additional insureds; (b) stipulate that such insurance is primary and is not contributing with, any other insurance self-insurance, or other risk management program maintained by, or for the benefit of the Additional Insured Parties; and (c) waive any and all right of recovery or subrogation the insurer may have against any or all of the Additional Insured Parties.

(4) statutory workers’ compensation and employer’s liability with limits of no less than \$1,000,000 for each accident, \$1,000,000 for disease (per employee), and \$1,000,000 for disease (policy limit). Such policy must be further endorsed to: (a) name the Additional Insured Parties as additional insureds under the employer’s liability coverage; and (b) waive any and all right of recovery or subrogation to the benefit of the Additional Insured Parties.

(5) umbrella or excess liability with limits of no less than \$10,000,000 per occurrence and in the aggregate providing for excess over the commercial general liability, automobile liability, auto liability, and employer’s liability policies described above. This insurance shall be endorsed to (a) name the Additional Insured Parties as additional insureds; (b) stipulate that such insurance is primary and is not contributing with, any other insurance, self-insurance, or other risk management program maintained by, or for the benefit of the additional insured parties; and (c) waive any and all right of subrogation or recovery against any or all of the Additional Insured Parties.

(6) the “Additional Insured Parties” are Developer and each PGCPS Indemnitee. In addition, PGCPS or Developer may notify the Independent Engineer in writing of other entities it wishes to include as Additional Insured Parties. Upon such notification, the Independent Engineer shall use commercially reasonable efforts to name such entities as additional insureds and provide evidence of coverage to PGCPS and Developer within five (5) Business Days of such request.

6.1.2 Subcontractor Insurance. Any subcontractor engaged pursuant to this Agreement shall comply with the requirements of Section 6.1.1 (Insurance Requirements) of this Agreement;

provided, however such subcontractor shall not be required to comply with clause (5) of Section 6.1.1 (Insurance Requirements) of this Agreement.

6.1.3 Copies of Policies. The Independent Engineer shall provide copies of its or any subcontractor's insurance policies to PGCPs and Developer upon request.

6.2. Developer's Responsibility. Without limiting any other insurance requirements imposed on Developer related to the Project, Developer shall include the Independent Engineer in its Project specific professional liability insurance.

ARTICLE 7 PAYMENT FOR SERVICES

7.1. Fee.

7.1.1 PGCPs and Developer Responsibilities. In consideration of the Independent Engineer performing the Services in accordance with this Agreement, PGCPs and Developer shall pay the Independent Engineer the Fee, including all reasonable out-of-pocket costs and fees associated with re-inspection and re-testing, in accordance with Section 10.1.5 (Cooperation and Costs) of the Project Agreement.

7.1.2 Sole Compensation to Independent Engineer. The Fee, as it may be adjusted pursuant to Section 8.3 (Cost of Additional Services) of this Agreement, includes all taxes, disbursements, and expenses (including accommodation, car hire, equipment, and travel expenses), overhead, and profit to perform the Services.

7.2. Payment of Fee.

7.2.1 Generally. PGCPs and Developer shall pay their respective share of the Fee, as and to the extent provided under Section 10.1.5 (Cooperation and Costs) of the Project Agreement, to the Independent Engineer in accordance with the payment schedule specified in Appendix B (Fee) to this Agreement.

7.2.2 Compensation for Structural Peer Review and the Material Testing and Inspection Firm. Notwithstanding Section 7.2.1 (Generally) of this Agreement, Developer shall be responsible for all fees and costs associated with (1) the structural design peer review process and (2) any material testing and inspection firm the Independent Engineer elects to hire in accordance with Section 2.12 (Engagement of Subcontractors) of this Agreement to the extent PGCPs and Developer direct the Independent Engineer to conduct material testing and inspection related to the Project.

7.2.3 Certification by Independent Engineer. PGCPs and Developer acknowledge and agree that if any amount due and payable by Developer to the Independent Engineer is outstanding, the Independent Engineer will not have any obligation to make any certification hereunder.

ARTICLE 8 ADDITIONAL SERVICES

8.1. Notice of Additional Services by the Parties.

8.1.1 Independent Engineer Additional Services Claim; Continuation of Services. If the Independent Engineer believes, other than an “Additional Services Order” under Section 8.2 (Additional Services Procedure), that any direction by PGCPs and Developer constitutes or involves Additional Services, it shall, within seven (7) Business Days after receiving the direction and before commencing work on the subject matter of the direction, give written notice to PGCPs and Developer that it considers that the direction constitutes or involves Additional Services (each, an “**IE Additional Services Claim**”). Regardless of whether the Independent Engineer considers that a direction given by PGCPs and Developer constitutes or involves Additional Services, the Independent Engineer shall continue to perform the Services in accordance with this Agreement and all directions, including any direction in respect of which an IE Additional Services Notice has been given.

8.1.2 Joint Additional Services Price Request. PGCPs and Developer may at any time and from time to time jointly issue a document titled “**Joint Additional Services Price Request**” to the Independent Engineer, which shall set out details of proposed Additional Services which PGCPs and Developer are considering.

8.2. Additional Services Procedure.

8.2.1 Response to IE Additional Services Claim or Joint Additional Services Price Request. Within seven (7) Business Days after the receipt of an IE Additional Services Claim or a Joint Additional Services Price Request, the Independent Engineer shall provide PGCPs and Developer with a written notice setting forth the effect which the proposed Additional Services will have on the Fee (“**Additional Services Fee Notice**”).

8.2.2 Additional Services Order. Following the receipt of the Additional Services Fee Notice, (a) PGCPs and Developer, either jointly or individually, may provide written notice to the other Parties detailing the reason(s) that the direction addressed by the IE Additional Services Claim does not constitute or involve Additional Services requiring consideration of a Fee adjustment, in which case any continued dispute shall be resolved in accordance with Article 24 (Resolution of Disputes) of the Project Agreement without giving regard to Section 24.3 (Binding Mediation of Certain Disputes During the Design-Build Period), or (b) PGCPs and Developer may jointly direct the Independent Engineer to carry out Additional Services by execution of a written document titled “**Additional Services Order**” which shall state either that:

- (1) the Fee shall be adjusted as set out in the Additional Services Fee Notice; or
- (2) the adjustment (if any) to the Fee will be determined under Section 8.3 (Cost of Additional Services) of this Agreement.

8.3. Cost of Additional Services.

8.3.1 Adjustment of Fee. Subject to Section 8.2 (Additional Services Procedure), the Fee shall be adjusted for all Additional Services or suspensions under Section 5.1.2 of this Agreement carried out by the Independent Engineer by:

(1) the amount (if any) stated in the “Additional Services Order” in accordance with Section 8.3.3 (Cost of Additional Services) of this Agreement;

(2) if subsection (1) above is not applicable, an amount determined pursuant to the fee schedule for Additional Services set forth in Appendix B (Fee) to this Agreement; or

(3) where such rates or prices are not applicable, a reasonable amount to be agreed between PGCPS, Developer, and the Independent Engineer or, failing agreement, an amount determined pursuant to the dispute resolution procedures set forth in Article 24 (Resolution of Disputes) of the Project Agreement without giving regard to Section 24.3 (Binding Mediation of Certain Disputes During the Design-Build Period).

8.3.2 Fee Reductions. Any reductions in the Fee due to Additional Services or suspensions under Section 5.1.2 shall be calculated on the same basis as any increases as set forth in Section 8.3.1 (Adjustment of Fee)

8.3.3 No Adjustment for Failure to Comply. If the Independent Engineer fails to comply with the notice requirement set forth in Section 8.1.1 (Independent Engineer Additional Services Claim; Continuation of Services) of this Agreement prior to commencing work related to a relevant direction, the Fee shall not be adjusted as a result of the relevant direction.

ARTICLE 9 TERM AND TERMINATION

9.1. Term. Subject to earlier termination pursuant to this Article 9 (Term and Termination), this Agreement shall commence on the Agreement Date and continue in full force until sixty (60) days after the later of (1) issuance by DPIE of a permanent Certificate of Use and Occupancy or (2) completion of the Commissioning Fine Tuning Period, or such later date as may be mutually agreed in writing between PGCPS, Developer, and the Independent Engineer.

9.2. Notice of Breach. In addition to the rights set forth in subsection 1 of Section 5.1 (Suspension Notice), if the Independent Engineer commits a breach of this Agreement, PGCPS and Developer may give written notice to the Independent Engineer specifying the breach and directing the Independent Engineer to rectify the breach in the period specified in the notice, such period being not less than seven (7) Business Days from the date of receipt of such notice by the Independent Engineer.

9.3. Termination for Breach. In the event the Independent Engineer fails to rectify a breach within the period specified in the notice issued under Section 9.2 (Notice of Breach) of this

Agreement, PGCPs and Developer may, without prejudice to any other rights of PGCPs and Developer, or either of them, immediately terminate this Agreement.

9.4. Termination for Financial Difficulty. PGCPs and Developer may, without prejudice to any other rights of PGCPs and Developer, or either of them, terminate this Agreement immediately if:

(1) events have occurred or circumstances exist which, in the opinion of PGCPs and Developer, may result in or have resulted in insolvency or the control of the Independent Engineer passing to another body or corporation; or

(2) the Independent Engineer has communications with its creditors with a view toward entering into, or enters into, any form of compromise, arrangement, or moratorium of any debts whether formal or informal, with its creditors.

9.5. Termination for Convenience. Notwithstanding anything to the contrary in this Agreement and subject to Section 9.5.1 (Independent Engineer's Rights), PGCPs and Developer may at any time jointly terminate this Agreement upon thirty (30) days written notice to the Independent Engineer stating that termination is for convenience pursuant to this Section.

9.5.1 Independent Engineer's Rights. Upon a termination under Section 9.5 (Termination for Convenience), the Independent Engineer shall:

(1) be entitled to be reimbursed by PGCPs and Developer, as and to the extent provided under Section 10.1.4 (Cooperation and Costs) of the Project Agreement, for the value of the Services performed by the Independent Engineer through the date of termination; and

(2) not be entitled to any damages or other compensation with respect to the termination and (without limitation) any amount with respect to (a) the lost opportunity to earn a profit with respect to the Services not performed at the date of termination; and (b) any lost opportunity to recover overhead from the revenues which would have been generated under this Agreement but for it being terminated.

9.6. Procedure Upon Termination. Upon completion of the Independent Engineer's engagement under this Agreement or earlier termination of this Agreement (whether under Section 9.3 (Termination for Breach), Section 9.4 (Termination for Financial Difficulty), Section 9.5 (Termination for Convenience), or otherwise), the Independent Engineer shall:

(1) cooperate with PGCPs and Developer;

(2) hand to PGCPs and Developer all Project Material and all other information concerning the Project held or prepared by the Independent Engineer; and

(3) as and when required by PGCPs and Developer, meet with PGCPs and Developer and such other persons nominated by them with a view to providing them with

sufficient information to enable PGCPs and Developer to execute the Project or the persons nominated to provide the Services.

9.7. Effect of Termination. Except as otherwise expressly provided in this Agreement, the termination of this Agreement by PGCPs and Developer shall be without prejudice to any accrued rights and obligations under this Agreement as of the date of termination (including the right of PGCPs and Developer to recover damages from the Independent Engineer).

9.8. Survival. Termination of this Agreement shall not affect the continuing rights and obligations of PGCPs or Developer and the Independent Engineer under this Section or Section 11.7 (Confidentiality), Section 11.8 (Project Material), Article 5 (Suspension of Services), Article 6 (Insurance and Liability), and Article 10 (Indemnity) or under any other Section of this Agreement which is expressed to survive termination, or which is required to give effect to such termination or the consequences of such termination.

ARTICLE 10 INDEMNITY

10.1. Independent Engineer's Obligation to Indemnify.

10.1.1 Generally. The Independent Engineer shall indemnify and keep indemnified at all times each Indemnitee from and against any Loss that any Indemnitee may sustain by reason of, resulting from, in connection with, or arising out of:

- (1) the breach of any representation, warranty, covenant, term, duty, or obligation of the Independent Engineer set forth in, or arising under, this Agreement or the Project Agreement;
- (2) any act or omission of the Independent Engineer in connection with the subject matters of this Agreement or the Project Agreement;
- (3) willful misconduct of the Independent Engineer;
- (4) non-compliance by the Independent Engineer with any of the provisions of this Agreement, the Project Agreement, or any document, instrument, or agreement delivered to PGCPs and Developer as required under this Agreement or the Project Agreement; and
- (5) breach by the Independent Engineer of, or non-compliance by the Independent Engineer with, any Governmental Approval or Applicable Law.

10.1.2 Rights of Indemnitees. This Section may be relied upon by each Indemnitee and may be enforced directly by any of them against the Independent Engineer in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Independent Engineer.

10.2. Indemnification Procedures.

10.2.1 Notice. If an Indemnitee receives any notice, demand, letter, or other document concerning any claim for which it appears the Indemnitee is, or may become entitled to, indemnification or compensation under this Agreement in respect of the entire claim, the Indemnitee will give notice in writing to the Independent Engineer as soon as reasonably practicable and in any event within ten (10) Business Days of receipt thereof.

10.2.2 Independent Engineer Right to Dispute Claim. If notice is given as provided in Section 10.2.1 (Notice), the Independent Engineer shall be entitled to dispute the claim at the Independent Engineer's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Indemnitee, as applicable, will give the Independent Engineer all reasonable cooperation, access, and assistance for the purposes of considering and resisting such claim.

10.2.3 Conflicts of Interest. In defending any claim as described in Section 10.2.2 (Independent Engineer Right to Dispute Claim) in which there is a conflict of interest between the Independent Engineer and an Indemnitee, the Indemnitee, as applicable, may appoint independent legal counsel in respect of such claim and, if it is determined that such Indemnitee is entitled to indemnification by or compensation from the Independent Engineer, all reasonable costs and expenses incurred by the Indemnitee, as applicable, in so doing will be included in the indemnity or compensation from the Independent Engineer.

10.2.4 Rights and Duties of the Parties. With respect to any claim conducted by the Independent Engineer pursuant to Section 10.2.2 (Independent Engineer Right to Dispute Claim):

- (1) The Independent Engineer shall keep the Indemnitee, as applicable, fully informed and consult with it about material elements of the conduct of the claim;
- (2) The Independent Engineer shall demonstrate to the Indemnitee, as applicable, at the reasonable request of such Indemnitee, that the Independent Engineer has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and
- (3) The Independent Engineer shall not pay or settle such claims without the consent of the Indemnitee, as applicable, such consent not to be unreasonably withheld or delayed.

10.2.5 Indemnitee Rights to Conduct Defense. An Indemnitee, as applicable, may, at its expense, take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations if:

- (1) the Independent Engineer (a) fails to notify an Indemnitee, as applicable, under Section 10.2.2 (Independent Engineer Right to Dispute Claim) of its intention to take conduct of the relevant claim within ten (10) Business Days after the notice from the Indemnitee under Section 10.2.1 (Notice) or (b) notifies such Indemnitee that it does not intend to take conduct of the claim; or

(2) the Independent Engineer fails to comply in any material respect with Section 10.2.4 (Rights and Duties of the Parties).

10.2.6 Transfer of Conduct of Claim to Indemnitee. The Indemnitee, as applicable, may at any time give notice to the Independent Engineer that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement, or appeal of any claim, or of any incidental negotiations, to which Section 10.2.2 (Independent Engineer Right to Dispute Claim) applies. On receipt of such notice, the Independent Engineer will promptly take all steps necessary to transfer the conduct of such claim to the Indemnitee, as applicable, and will provide to such Indemnitee all reasonable cooperation, access, and assistance for the purposes of considering and resisting such claim.

10.3. General Obligation to Pursue Third Person Recovery. If the Independent Engineer has paid to an Indemnitee an amount in respect of any indemnity hereunder (a “**Liability Payment**”), and such Indemnitee has a bona fide claim for recovery of any such Liability Payment from a third person or under any insurance required pursuant to this Agreement, the Indemnitee, as applicable, shall:

(1) as directed by the Independent Engineer either:

(a) promptly make all reasonable efforts to pursue and recover such claim and provide evidence of such efforts to the Independent Engineer; or

(b) assign to the Independent Engineer the right to pursue and recover such claim and, at the Independent Engineer’s cost, provide reasonable cooperation in connection with the pursuit and recovery of such claim; and

(2) if it subsequently recovers, or the Independent Engineer makes recovery on behalf of the Indemnitee, as applicable, (whether by payment, discount, credit, saving, relief, or other benefit, or otherwise) an amount which is directly referable to the fact, matter, event, or circumstances giving rise to the payment of the Liability Payment, forthwith repay to the Independent Engineer an amount equal to the lesser of:

(a) an amount equal to the sum recovered (or of the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Indemnitee, as applicable, in recovering such sum; and

(b) the Liability Payment,

provided that the Independent Engineer will be repaid only to the extent that the amount of such recovery plus the Liability Payment exceeds the total loss or liability of the Indemnitee, as applicable, in respect of the fact, matter, or circumstance giving rise to the Liability Payment.

ARTICLE 11 MISCELLANEOUS PROVISIONS

11.1. Relationship of The Parties.

11.1.1 Generally. The Independent Engineer is an independent contractor of PGCPs and Developer, and the relationship between the Parties shall be limited to performance of this Agreement in accordance with its terms. No Party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by any other Party.

11.1.2 No Partnership or Employment Relationship. The Independent Engineer, its officers, employees, representatives, agents, and any other persons engaged by the Independent Engineer in the performance of the Services will not by virtue of this Agreement or the performance of the Services become a partner, agent, legal representative, or employee of either PGCPs or Developer for any purpose.

11.1.3 Independent Engineer Employees. The Independent Engineer will be responsible for all matters requisite as employer or otherwise in relation to such officers, employees, servants, agents, and other persons who are engaged by the Independent Engineer. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to PGCPs or Developer as a result of this Agreement or the performance thereof.

11.2. Independent Engineer Persons. The Independent Engineer shall, as between itself and PGCPs and Developer, be responsible for, and not relieved of its Independent Engineer obligations hereunder by, the acts, omissions, breaches, defaults, non-compliance, negligence, and willful misconduct of any of its directors, officers, employees, agents, subcontractors, representatives, or advisors (each an “**Independent Engineer Person**”), and all references in this Agreement to any act, omission, breach, default, non-compliance, negligence, or willful misconduct of the Independent Engineer shall be construed accordingly to include any such act, omission, breach, default, non-compliance, negligence, or willful misconduct committed by an Independent Engineer Person.

11.3. General Independent Engineer Assumption of Risk. Except to the extent expressly allocated to PGCPs or Developer or otherwise provided for under this Agreement, all risks, costs, and expenses in relation to the performance by the Independent Engineer of its obligations under this Agreement are allocated to, and accepted by, the Independent Engineer as its entire and exclusive responsibility.

11.4. Waiver. Failure by PGCPs, Developer, or the Independent Engineer to enforce a provision of this Agreement shall not be construed as a waiver by that Party of any right with respect to that provision or any other provisions of this Agreement.

11.5. Notices. Any and all notices, demands, consents, requests, determinations, certifications, approvals, and responses thereto permitted or required to be given under this Agreement shall be in writing, signed by or on behalf of the Party giving the same, and shall be deemed to have been properly given or served and shall be effective upon being personally

delivered or by electronic communication (including email (and PDF or similar documentary attachment) and Internet or intranet websites) pursuant to procedures approved in writing by the Parties from time to time, or within three (3) Business Days upon being deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, to the Party at the address of such Party set forth below or at such other address as such Party may designate by notice specifically designated as a notice of a change of address and given in accordance herewith; provided, however, that notice of change of address shall not be effective until the date of receipt hereof. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, demand, or request under this Section or Agreement shall be addressed as follows:

if to PGCPs: Chief Executive Officer
Prince George's County Public Schools
14201 School Lane
Upper Marlboro, MD 20772

With a copy to: Office of General Counsel
Prince George's County Public Schools
14201 School Lane
Upper Marlboro, MD 20772

if to the Independent Engineer:
[INDEPENDENT ENGINEER]
[Address]

Attention: _____
Telephone No.:
Email:

With a copy to:

[Address]

Attention: _____
Telephone No.:
Email:

if to Developer:

[Address]

Attention: _____
Telephone No.:
Email:

with a copy to:

[Address]

Attention: _____

Telephone No.:

Email:

11.6. Transfer and Assignment.

11.6.1 Independent Engineer Actions. The Independent Engineer:

(1) shall not assign, transfer, mortgage, charge, or encumber any right or obligation under this Agreement without the prior written consent of PGCPs and Developer, which either PGCPs or Developer may give or withhold in their absolute discretion; and

(2) agrees that any assignment, transfer, mortgage, charge, or encumbrance will not operate to release or discharge the Independent Engineer from any obligation or liability under this Agreement.

11.6.2 Change in Control of Independent Engineer. For the purposes of this Section, an assignment will be deemed to have occurred where there is a Change of Control of the Independent Engineer after the date of this Agreement.

11.6.3 PGCPs and Developer Actions. PGCPs and Developer may assign, transfer, mortgage, charge, or encumber any right or obligation under this Agreement in accordance with the terms of the Project Agreement.

11.7. Confidentiality.

11.7.1 Independent Engineer Responsibilities. The Independent Engineer will ensure that:

(1) neither it nor any of its officers, employees, servants, and agents disclose, or otherwise make public, any Project Material or any other information or material acquired in connection with or during the performance of the Services without prior written approval of PGCPs and Developer; and

(2) no Project Material is used, copied, supplied, or reproduced for any purpose other than for the performance of the Services under this Agreement.

11.7.2 Confidentiality Agreements. PGCPs and Developer may at any time require the Independent Engineer to give and to arrange for its officers, employees, servants, and agents engaged in the performance of the Services to give written undertakings, in the form of confidentiality agreements on terms required by PGCPs and Developer, relating to the non-disclosure of confidential information, in which case the Independent Engineer will promptly arrange for such agreements to be executed and delivered.

11.8. Project Material.

11.8.1 Rights. PGCPS, Developer, and the Independent Engineer agree that the Independent Engineer does not and will not have any rights, including any intellectual property rights, in any Project Material provided to the Independent Engineer or created or required to be created by either PGCPS or Developer.

11.8.2 Title. All title and ownership, including all intellectual property rights, in and to the Project Material created or required to be created by the Independent Engineer as part of, or for the purposes of performing the Services, is hereby assigned jointly to PGCPS and Developer on creation, or where such title, ownership, and intellectual property rights cannot be assigned before creation of the Project Material, it will be assigned to PGCPS and Developer on creation. In addition, to the extent that there may be any copyright rights in such Project Material so created by the Independent Engineer, the Independent Engineer hereby waives all past, present, and future moral rights therein and the Independent Engineer will ensure that any agent or employee of Independent Engineer will have waived all such moral rights. The Independent Engineer shall do all such things and execute all such documents as reasonably requested by either of PGCPS and Developer in order to confirm or perfect the assignment of intellectual property rights in the Project Material referred to in this subsection.

11.9. Time of The Essence. Time will be of the essence of this Agreement and of the transactions contemplated by this Agreement.

11.10. Amendment. No change or modification of this Agreement will be valid unless it is in writing and signed by each Party to this Agreement.

11.11. Binding Effect. Subject to the restrictions on transfer contained in this Agreement, this Agreement shall inure to the benefit of and shall be binding on PGCPS, Developer, and the Independent Engineer, and their respective heirs, executors, administrators, successors, and assigns.

11.12. Representations and Warranties of the Independent Engineer.

11.12.1 Representations and Warranties. The Independent Engineer warrants that:

(1) **No Conflict of Interest.** As further specified in subsections (2) and (7) of Section 2.7 (Authority to Act) and in Section 2.10 (Conflict of Interest) of this Agreement, the Independent Engineer has no interest that would constitute a conflict of interest.

(2) **Existence, Powers, and Due Authorization.** The Independent Engineer is a corporation validly organized and existing under the laws of the State of [_____] and has the necessary power and authority and has been duly authorized to execute, deliver, and perform its obligations under this Agreement.

(3) **Compliance with Applicable Law.** The Independent Engineer is in compliance in all material respects with Applicable Law and possesses the required license(s) pertaining to the Independent Engineer's business and services and the

performance of its obligations hereunder. The Independent Engineer shall perform the Services in accordance with Applicable Law and shall cause any subcontractors to comply with Applicable Law.

(4) **Non-Discrimination.** The Independent Engineer agrees that it will not discriminate against any person because of race, color, religion, sex, or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any Sites, including any and all services, privileges, accommodations, and activities identified in this Agreement.

11.12.2 Continuing Effect. During the term of this Agreement, the Independent Engineer shall not take any action, or omit to perform any act, that results in a representation and warranty made in this Section becoming untrue. The Independent Engineer shall promptly notify PGCPS if any such representation and warranty becomes untrue. From time to time, the Independent Engineer shall provide PGCPS, upon PGCPS's request, with proof of the continuing accuracy of these representations and warranties.

[Signature Page Follows]

DRAFT

IN WITNESS THEREOF, the undersigned Parties intending to be legally bound hereby, have duly executed this Agreement as of the date first written above.

BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY

By: _____

Name: _____

Title: _____

[DEVELOPER]

By: _____

Name: _____

Title: _____

[INDEPENDENT ENGINEER]

By: _____

Name: _____

Title: _____

DRAFT

APPENDIX A

SERVICES

The Independent Engineer shall, subject to and without limiting the other provisions of this Agreement and the Project Agreement, provide the services as set out below for each School.

1. Pre-School Occupancy Readiness Date Services

1.1. The Independent Engineer shall carry out the responsibilities assigned to the Independent Engineer under this Agreement and the Project Agreement.

1.2. Without limitation to the obligations set forth in Section 1.1 (Definitions) prior to each School Occupancy Readiness Date, the Independent Engineer shall:

(a) receive and monitor all components of the schematic design and other Project Materials related to School design as are necessary for the Independent Engineer to be informed of all schematic design issues and the performance of Developer's obligations under the Project Agreement;

(b) receive and monitor Design Documents as are necessary for the Independent Engineer to be informed in all design issues, the progress of the Design-Build Work, and the performance of Developer's obligations under the Project Agreement;

(c) consult with PGCPS and Developer and make determinations, if requested by PGCPS or Developer or if otherwise provided for under the Project Agreement, that verify planned design and construction milestones have been achieved;

(d) conduct inspections of the School as necessary for the Independent Engineer to be satisfied that the Project is proceeding in accordance with the requirements of the Project Agreement with respect to such School;

(e) attend meetings relating to the Project, review minutes, and participate as necessary to remain informed of Project issues related to the School, or as requested by either PGCPS or Developer in connection with the Project Agreement;

(f) review the draft Commissioning Plan and the detailed tests, test methodology, and expected test results proposed by Developer and provide comments to the Parties, including a report on the effectiveness of the proposed Commissioning Plan, to identify any errors or omissions, and with respect to any risks inherent in the draft Commissioning Plan;

(g) receive and review the Commissioning Test report to confirm that Developer has completed Commissioning the School in accordance with the Commissioning Plan, and the Commissioning Tests have been successfully performed and satisfied;

- (h) prior to any certification, consider the views and comments of both PGCPS and Developer in relation to the satisfaction that the Design-Build Work is proceeding in accordance with the requirements of the Project Agreement;
- (i) review and monitor reports of Developer and of any inspection agency retained by PGCPS and Developer with respect to the Design-Build Work;
- (j) manage and supervise any material testing and inspection firm retained in accordance with this Agreement;
- (k) make any determinations set forth in the Project Agreement to be determined or reviewed by the Independent Engineer;
- (l) have the Disputes Manager serve as mediator in accordance with Section 10.1.5 (Independent Engineer as Mediator Prior to Completion of Design-Build Work) and Section 24.3 (Binding Mediation of Certain Disputes During the Design-Build Period) of the Project Agreement;
- (m) carry out inspections (including re-inspections if necessary) in order to determine whether the School Occupancy Readiness Conditions have been satisfied and comply with the rules and procedures set forth in this Agreement and the Project Agreement in order to make such determination; and
- (n) prepare, in consultation with PGCPS and Developer, as soon as reasonably practicable and, in any event, within the time period specified in the Project Agreement, the Punch List, which shall include an estimate of the time for rectifying the Punch List Items for the relevant School and a schedule for the completion and rectification of the Punch List Items.

1.3. Prior to the School Occupancy Readiness Date for a School, the Parties may request the Independent Engineer to provide the following Additional Services, among others:

- (a) provide any determination contemplated by this Agreement and the Project Agreement (other than those determinations already directed to be determined or reviewed by Independent Engineer and to the extent such determinations relate to aspects of the Project which are not specifically identified in Part 1 of this Appendix A (Services)), which determinations may, except as otherwise expressly provided in the Project Agreement, be subject to resolution between PGCPS and Developer in accordance with the dispute resolution procedures set forth in Article 24 (Resolution of Disputes) of the Project Agreement without giving regard to Section 24.3 (Binding Mediation of Certain Disputes During the Design-Build Period);
- (b) provide advice on other matters that may arise that both PGCPS and Developer may jointly require to the extent such matters relate to the Project and which are not specifically identified in Part 1 of this Appendix A (Services);

(c) at the request of PGCPs and Developer, review information relating to Relief Events as they relate to the Project that occur prior to any School Occupancy Readiness Date; and

(d) participate in and give PGCPs, Developer, and their respective counsel, reasonable cooperation, access, and assistance (including providing or making available documents, information, and witnesses for attendance at hearings and other proceedings) in connection with any proceedings between PGCPs and Developer that relate to the Services identified in this Part 1 of this Appendix.

2. Post-School Occupancy Readiness Date Services

With respect to each School:

2.1. The Independent Engineer shall perform any duties and responsibilities and make such determinations as may be specifically provided for in the Project Agreement after the School Occupancy Readiness Date for a School and the determinations as may be specifically provided for in the Commissioning Plan, once accepted, in accordance with the terms of the Project Agreement (where applicable or as PGCPs and Developer may jointly request from time to time).

2.2. The Independent Engineer shall review record drawings received from Developer after the School Occupancy Readiness Date to ensure completeness before Developer prepares final drawings.

2.3. In accordance with Exhibit R (Commissioning Requirements) of the Project Agreement, the Independent Engineer shall monitor the conduct of Commissioning Tests during the Commissioning Fine Tuning Period, including, without limitation, any re-tests; review Commissioning Test reports and results and copies of any Governmental Approvals received by Developer in connection with any Commissioning Test conducted during the Commissioning Fine Tuning Period; review and accept interim and final Commissioning reports required to be delivered pursuant to Exhibit R (Commissioning Requirements) of the Project Agreement; and perform such other similar responsibilities (other than performing Commissioning Tests or performance of inspections) with respect to any matter relating to Commissioning after each School Occupancy Readiness Date as either Party may request, and report to each of the Parties thereon, including review of acoustical performance test reports, vibration test reports, and air balancing reports provided to the Independent Engineer pursuant to Exhibit R (Commissioning Requirements) of the Project Agreement.

2.4. The Independent Engineer shall make all determinations set forth in the Project Agreement to be determined or reviewed by the Independent Engineer as it relates to post-School Occupancy Readiness Date Commissioning.

2.5. The Independent Engineer shall make any determinations set forth in the Project Agreement to be determined or reviewed by the Independent Engineer (to the extent such determinations relate to aspects of a School to be performed after the School Occupancy Readiness Date).

2.6. The Independent Engineer shall have the Disputes Manager serve as mediator for the duration of the Design-Build Period with respect to any School in accordance with Section 10.1.5 (Independent Engineer as Mediator Prior to Completion of Design-Build Work) and Section 24.3 (Binding Mediation of Certain Disputes During the Design-Build Period) of the Project Agreement;

2.7. Subsequent to a School Occupancy Readiness Date, the Parties may request the Independent Engineer to provide the following Additional Services, among others:

(a) provide any determination contemplated by this Agreement and the Project Agreement (other than those determinations already directed to be determined or reviewed by Independent Engineer and to the extent such determinations relate to aspects of the Project which are not specifically identified in Part 2 of this Appendix A (Services)), which determinations may, except as otherwise expressly provided in the Project Agreement, be subject to resolution between PGCPs and Developer in accordance with the dispute resolution procedures set forth in Article 24 (Resolution of Disputes) of the Project Agreement without giving regard to Section 24.3 (Binding Mediation of Certain Disputes During the Design-Build Period);

(b) provide advice on other matters that may arise that both PGCPs and Developer may jointly require to the extent such matters relate to aspects of the Project to be completed for a School after the School Occupancy Readiness Date and which are not specifically identified in Part 2 of this Appendix A (Services);

(c) have the Disputes Manager to serve as mediator for post-Design-Build Period disputes in a manner consistent with Section 10.1.5 (Independent Engineer as Mediator Prior to Completion of Design-Build Work) and Section 24.3 (Binding Mediation of Certain Disputes During the Design-Build Period) of the Project Agreement, and subject to the need (if applicable) for the Parties to agree to an extension of the term of this Agreement;

(d) participate in and give PGCPs, Developer, and their respective counsel, reasonable cooperation, access, and assistance (including providing or making available documents, information, and witnesses for attendance at hearings and other proceedings) in connection with any proceedings between PGCPs and Developer that relates to the Services identified in this Part 2 of this Appendix A (Services)

APPENDIX B

FEE

1. Pre-School Occupancy Readiness Date Services Fee

The Independent Engineer shall be paid the following fee, per School, relating to the Services identified in Part 1 of Appendix A (Services) of this Agreement (the “**Pre-School Occupancy Readiness Date Services Fee**”):

Pre-School Occupancy
Readiness Date Services Fee: \$ _____

2. School Occupancy Readiness Certificate

The Independent Engineer shall be paid the following fee relating to the delivery of each School Occupancy Readiness Certificate (the “**School Occupancy Readiness Certificate Fee**”):

School Occupancy Readiness
Certificate Fee: \$ _____

3. Post-School Occupancy Readiness Date

The Independent Engineer shall be paid the following fee, per School, relating to the Services identified in Part 2 of Appendix A (Services) of this Agreement (the “**Post-School Occupancy Readiness Date Services Fee**”):

Post-School Occupancy
Readiness Date Services Fee: \$ _____

4. Disputes Manager Services

The Independent Engineer shall invoice for the Disputes Manager’s time on an hourly basis at the rate of [\$ _____] and be paid within thirty (30) days of receipt of such invoices.

5. Additional Services

[insert fee schedule]

6. Disbursements

The Disbursements (as defined below) reasonably incurred by the Independent Engineer directly on account of and specifically related to the Services and which would not otherwise be incurred but for the Services shall be paid within thirty (30) days of receipt of invoices for such Disbursements from the Independent Engineer. “**Disbursements**” shall mean:

- (a) reasonable costs and expenses of the subcontractors engaged pursuant to Section 2.11 (Independent Engineer Personnel) of this Agreement;

- (b) reasonable travel and subsistence expenses; and
- (c) reasonable charges for long distance telephone and facsimile communications, courier services, express mail services, drawing production, and photocopying incurred in relation to the performance of the Services.

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APPENDIX C

INDEPENDENT ENGINEER PERSONNEL

The following personnel shall be involved in the performance of the Services:

[Name and titles of relevant individuals to be inserted]

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APPENDIX D

FORM OF SCHOOL OCCUPANCY READINESS NOTICE

To: [Name and address of Independent Engineer, with a copy to PGCPS]

From: [Name and Address of Developer]

Re: Project Agreement for the Design, Build, Finance, and Maintenance of Prince George's County Schools Alternative Construction Financing Package 1 (the "**Project Agreement**") entered into _____, 2020, Prince George's County Public Schools ("**PGCPS**"), and [_____] a [limited liability company] organized and existing under the laws of the State of [_____] ("**Developer**").

Applicable School: [_____] ("**School**")

Note: This Notice of School Occupancy Readiness is subject to the terms and conditions of the Independent Engineer Agreement and the Project Agreement and any revision required by such should be made to this Notice of School Occupancy Readiness.

Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Project Agreement.

Under and subject to the terms and conditions of the Project Agreement, the undersigned hereby applies for the certification of School Occupancy Readiness of the above-listed School. In support of that application, I hereby certify the following with respect to the School:

- (a) School Substantial Completion has occurred;
- (b) the Independent Engineer has issued a letter of confirmation to PGCPS indicating that the entirety of the School, including all buildings and systems as well as parking, but, if so elected by Developer, excluding the Athletic Fields, are ready for use for the purposes of all PGCPS Activities (except for Punch List Items, which in each case shall be in shell and core in accordance with the Contract Standards) and to the best of its knowledge have been designed and built in accordance with the Project Agreement;
- (c) there are no encumbrances registered or recorded on the relevant Site, including any part of the School, other than Permitted Encumbrances;
- (d) Developer has completed Commissioning of the School in accordance with the relevant Commissioning Plan, and the Commissioning Tests have been successfully performed and satisfied for the School (subject to such Commissioning which is identified in the Commissioning Plan to be conducted after the School Occupancy Readiness Date);
- (e) a temporary or final certificate of use and occupancy has been issued for the School by DPIE, and, to the extent a temporary certificate of occupancy has been issued, Developer has submitted to PGCPS a corrective action plan outlining the deficiencies with anticipated milestone dates;

(f) all other Governmental Authorities having jurisdiction have confirmed (and issued all pertinent Government Approvals or other documents in respect thereof) that all buildings and structures on the relevant Site are ready for occupancy;

(g) Developer has obtained and submitted to PGCPs certificates of insurance for all Required Services Period Insurance;

(h) Developer has delivered to PGCPs a Life Cycle Schedule for the School as required by Exhibit W (Services Requirements) to the Project Agreement;

(i) Developer has delivered to PGCPs a Start-Up Plan for the School as required by Exhibit W (Services Requirements) to the Project Agreement;

(j) Developer has procured and installed all Required FF&E; and

(k) The Services Period Reserve Account has been established and funded by Developer in accordance with Section 11.6.1 (Services Period Reserve Amount) of the Project Agreement.

Without limiting the generality of the foregoing, it is further certified that:

(a) All Design-Build Work to be done with respect to the School has been completed in accordance with the terms of the Project Agreement (other than Punch List Items), and in so doing has been carried out in a competent and professional manner.

(b) There are no latent structural defects with regards to the School, known to the undersigned, that have not been reported to PGCPs, and the Independent Engineer having made reasonable inquiries and conducted (either directly or by a qualified representative on Developer's behalf) appropriate observations, inspections, investigations, and testing of the School in accordance with Good Industry Practice to confirm the absence thereof.

(c) Attached to this certificate is evidence confirming the delivery of:

(1) the applications programming and related documentation for all microprocessor-based controllers for the School;

(2) copies of all operating instructions, maintenance manuals, spare parts, and materials relating to the School and operation thereof as well as record drawings relating to security systems at the School; and

(3) The estimated cost of completion of Punch List Items related to the School is \$_____.

It is hereby acknowledged that the issuance of a School Occupancy Readiness Certificate does not constitute, and shall not be construed, as a waiver of any defect in the work or in the materials supplied in connection therewith (whether latent or otherwise), or any other breach by Developer of any of its obligations under the Project Agreement, whether known or not known to PGCPs at

the time of the issue of a School Occupancy Readiness Certificate in respect of this Notice of School Occupancy Readiness.

Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Project Agreement.

[_____]

By: _____
(Name and Signature of Authorized Signatory)

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APPENDIX E

FORM OF SCHOOL OCCUPANCY READINESS CERTIFICATE

This certificate is delivered pursuant to Section 4.2.2 (School Occupancy Readiness Certificate) of the Independent Engineer Agreement dated [_____], 2020, between the undersigned, Prince George’s County Public Schools (“**PGCPS**”), and [_____], a [limited liability company] organized and existing under the laws of the State of [_____] (“**Developer**”), in connection with the Project Agreement between PGCPS and Developer dated _____, 2020, with respect to the Design, Build, Finance, and Maintenance of Prince George’s County Public Schools Alternative Construction Package 1 (the “**Project Agreement**”).

Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Project Agreement.

I hereby certify that the School Occupancy Readiness Conditions specified in Section 10.2 (School Occupancy Readiness Conditions) of the Project Agreement have been satisfied at [School Name], and accordingly that School Occupancy Readiness for [School Name] has occurred.

This certificate is issued on this ____ day of _____, 20__.

[INDEPENDENT ENGINEER]

By: _____

Name: _____

Title: _____

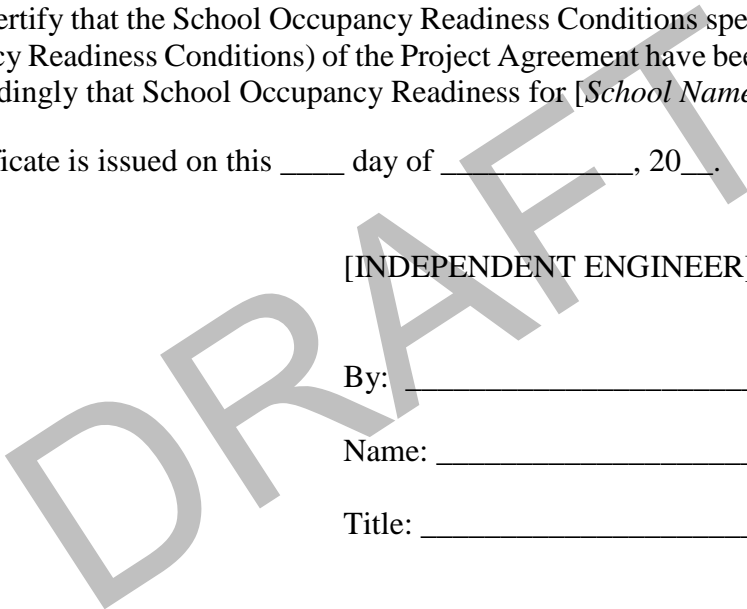


EXHIBIT K-1

ORGANIZATIONAL CHART

[Note: Organizational Chart provided in the Proposal will be attached as this exhibit.]

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EXHIBIT K-2
KEY PERSONNEL

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EXHIBIT L

MBE AND CBB SUBCONTRACTING PLAN

[Note: MBE and CBB Subcontracting Plan provided in the Proposal will be attached as this exhibit.]

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EXHIBIT M
COMMUNITY INVESTMENT PROGRAM

[Note: Community Investment Program provided in the Proposal will be attached as this exhibit.]

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EXHIBIT N

COMMUNITY ENGAGEMENT AND OUTREACH PLAN

[Note: Community Engagement and Outreach Plan provided in the Proposal will be attached as this exhibit.]

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EXHIBIT O

BACKGROUND CHECK REQUIREMENTS

A. Definitions

1. **Child Protective Service clearances** are completed through PGCPSS and involve the submission of an applicant's information to Prince George's County Department of Social Services to confirm if the applicant is the subject of an investigation or has been found indicated, substantiated or unsubstantiated in a child abuse or neglect case. The search will include review of the Maryland Children's Electronic Social Services Information Exchange ("MD CHESSIE"), a statewide-automated case management system; the Department's Client Information System ("CIS"); or the Central Registry, a component of the CIS or other confidential computerized database that contains information regarding child abuse and neglect investigations.

2. **Fingerprint-Based National and State Criminal History Checks:** Pursuant to Federal and Maryland law, PGCPSS conducts a national and state fingerprint background check on all individuals who will have direct contact with children under the supervision of PGCPSS. The process must be completed through PGCPSS and involve a full fingerprint supported criminal records check through the Criminal Justice Information System ("CJIS"), a State of Maryland legal database. Criminal background results are usually received by PGCPSS from the State of Maryland and FBI within seven working days.

3. **Independent Contractors, subcontractors and vendors ("contractors")** include those individuals who are not employees and paid through the PGCPSS payroll system, but who work on a Site through any Developer Person pursuant to the Agreement.

4. **SafeSchools Training Modules** are online safety training programs used to train contractors on school-related safety issues. Assigned, mandatory course(s) must be completed prior to commencing any Design-Build Work or Services.

B. Procedures for Independent Contractors/Subcontractors/Vendors

1. Contractors must undergo a Maryland Criminal Justice Information System (CJIS) and the FBI fingerprint background check, a Child Protective Services clearance conducted by the Prince George's County Department of Social Services, and complete the SafeSchools training module – Prince George's County Child Abuse: Mandatory Reporting and any training required by federal, state or local law pursuant to a mandate or policy set forth by PGCPSS.

2. The cost associated with all background check requirements, including but not limited to fingerprint background checks and child protective service clearance is absorbed by the contractor.

3. All background checks must be completed fifteen (15) Business Days prior to beginning work in and around any Site. The background checks must be completed by the Fingerprinting Office in the Sasscer Administrative Building or by the PGCPSS satellite fingerprinting offices located in Prince George's County. No person may begin working on a Site

until fifteen (15) Business Days after completing the background clearance process (fingerprint and CPS) and required online training through SafeSchools.

4. Any employee of contractor who has a lapse in employment shall be required to undergo the full fingerprint background check process in order to return to work on a Site.

5. Prior to initiating any work in an existing school building, contractors must sign in and sign out via the Raptor Visitor Management System, which requires a copy of their government issued identification.

C. Ineligibility for Assignment at a Site

1. Any individual convicted of or currently charged with the following crimes are ineligible to access a Site for purposes of the Project (references below are to the Criminal Law Article of the Maryland Annotated Code):

a. A crime involving third or fourth degree sexual offense under § 3-307 or § 3-308 of the Criminal Law Article or an offense under the laws of another state that would constitute a violation of § 3-307 or § 3-308 of the Criminal Law Article if committed in Maryland;

b. A crime involving child sexual abuse under § 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under § 3-602 of the Criminal Law Article if committed in Maryland;

c. A crime involving a crime of violence as defined in § 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of § 14-101 of the Criminal Law Article if committed in Maryland; or

d. Identification as an alleged abuser or neglecter following completion of a Child Protective Services investigation with a finding of “indicated” child abuse or neglect.

2. Pursuant to Md. Code Ann., Criminal Procedure § 11-722, a person who enters into a contract with a county board of education may not knowingly employ an individual to work at a school if the individual is a sex offender registrant. A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.

3. In addition to the crimes listed above, an individual may be found ineligible based on a conviction or pending criminal charge for other crime(s), depending on the nature and frequency of the charge(s); the time elapsed since the crime(s) or charge(s); and other factors that may weigh against hiring or assigning the individual to work at a Site for purposes of the Project.

4. The Chief of Human Resources, or designee, shall notify the Department of Capital Programs to contact the contractor and advise them of their ineligibility to work on a Site for purposes of the Project. Strict confidentiality shall be maintained regarding all information disclosed through any Fingerprint Background Check or Child Protective Service Clearance.

5. Pursuant to Md. Code Ann., Education §6-113.2 (Code), a contractor of a Board of Education who provides services to a school or the students of a school shall meet the requirements set forth for screening its employees assigned to work at a school site to determine whether such employees have a history of child sexual abuse and/or sexual misconduct. Contractor shall be solely responsible for completing the screening set forth in the Code, shall maintain records of employee screenings, and shall make such records available to PGCPS upon request.

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EXHIBIT P
SAFETY PLAN

[Note: Safety Plan provided in the Proposal will be attached as this exhibit.]

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EXHIBIT Q

DESIGN-BUILD QUALITY MANAGEMENT PLAN

[Note: Design-Build Quality Management Plan provided in the Proposal will be attached as this exhibit.]

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EXHIBIT R

COMMISSIONING REQUIREMENTS

1. PURPOSE

1.1. Developer Services Period Representative(s). The purpose of Commissioning is to provide a systematic process of assuring by verification and documentation, from the design phase and throughout the Term, that systems within each School perform interactively in accordance with the Contract Standards. The parties acknowledge that because the systems within a School are integrated, a deficiency in one or more components can result in sub-optimal operation and performance among other components in the School. Remedying these deficiencies can result in a variety of benefits including: (i) improved productivity of School users; (ii) lower Utility bills through energy savings; (iii) increased satisfaction of School users; (iv) enhanced environmental conditions, health conditions and comfort of School users; (v) improved School system and functioning of Maintained Elements; (vi) improved School operation and maintenance; (vii) increased safety for School users; (viii) better Project documentation; (ix) shortened occupancy transition period; and (x) significant extension of Maintained Elements and School systems life cycles.

1.2. Minimum Requirements. This Exhibit sets forth the minimum Commissioning requirements to be incorporated into the Commissioning Plan for each School. Developer is required to comply with each Commissioning Plan with respect to testing equipment and sub-systems as well as conducting Project operations for each School.

2. DEFINITIONS

In this Exhibit, in addition to the definitions set forth in the Agreement:

“**Commissioning Tests**” means for each School the quality assurance process implemented by Developer to achieve, verify and document that the planning, design, construction and operational processes and all components of the School (including Maintained Elements) are functional and in compliance with the Contract Standards.

“**Seasonal Fine Tuning Reports**” means the written reports prepared by Developer which set forth and detail the Seasonal Fine Tuning conducted by Developer at the end of each heating and cooling season (or such earlier time as PGCPS may reasonably agree) up until the end of the Commissioning Fine Tuning Period (and includes, a final Seasonal Fine Tuning Report delivered at the end of the Commissioning Fine Tuning Period).

All other capitalized terms used in this Exhibit R and not otherwise defined shall have the meanings given to them in Section 1.1 (Definitions) of the Agreement.

3. COMMISSIONING PLAN OBJECTIVES

Pursuant to Article 9 (Commissioning) of the Agreement, for each School, Developer shall prepare and submit to PGCPS for its approval a detailed Commissioning Plan for the conduct of Commissioning Tests that will ensure:

- (a) the planning, design, construction and operational processes have achieved their intended outcome;
- (b) the continued efficient operation of the School during the Services Period;
- (c) all participants follow an approved plan to ensure the completed School will realize its intended level of comfort for PGCPS Persons using the School and operational efficiency by the School Occupancy Readiness Date and throughout the Services Period;
- (d) all stakeholders in the Project understand their responsibilities for Commissioning Tests prior to the School Occupancy Readiness Date and during the Commissioning Fine Tuning Period;
- (e) all relevant PGCPS Persons will be fully familiar with the Project and will understand their continuous role in its efficient operation;
- (f) the completed School allows PGCPS to carry out school activities in a secure and efficient manner and achieves a balance between the circulation, proximity, appropriate room adjacencies and the security requirements of a school building in accordance with the Contract Standards; and
- (g) the technical standards for a LEED NC “silver” rating for new construction can be achieved and can also be maintained through the Services Period.

4. COMMISSIONING AGENT

As set forth in Exhibit J (Form of the Independent Engineer Agreement), the Independent Engineer shall serve as the Commissioning agent for the Project. In this capacity, the Independent Engineer will be involved in coordinating the Commissioning process, from preparation of each Commissioning Plan through to the completion of each Commissioning Fine Tuning Period, as set forth in this Exhibit R (Commissioning Requirements). The Independent Engineer shall also be responsible for all items identified in Section 6 of this Exhibit R (Commissioning Requirements) relating to each School being capable of achieving the technical standards for a LEED “silver” rating for new construction. The Independent Engineer shall be Developer’s only representative with respect to the Commissioning process and shall be the only point of contact in respect of Commissioning matters for PGCPS throughout the Commissioning process. The responsibilities of the Independent Engineer set forth herein are not intended in any way to limit the responsibilities assigned to the Independent Engineer under the Independent Engineer Agreement.

5. COMMISSIONING PLAN REQUIREMENTS AND FORMAT

5.1. Purpose. The object of conducting Commissioning Tests is to provide documented confirmation that the Project fulfills the functional and performance requirements set forth in the Agreement. To attain this goal, it is necessary to address all PGCPS requirements and criteria relating to system function, performance and maintainability as set forth in the Contract Standards.

5.2. Commissioning Plans Preparation. For each School, the preparation of the Commissioning Plan shall begin as early as practicable in the design process and shall be submitted to PGCPS in accordance with Article 9 (Commissioning) of the Agreement and this Exhibit R.

(a) Developer will deliver a preliminary draft of the Commissioning Plan for each School to PGCPS not less than twelve (12) months before the Scheduled School Occupancy Readiness Date for that School;

(b) PGCPS will provide its comments, if any, on the preliminary draft Commissioning Plan for each School to Developer within twenty (20) Business Days of receipt of the preliminary draft. Developer will deliver a revised draft of the Commissioning Plan for each School to PGCPS not less than forty (40) Business Days after receipt of PGCPS's comments on the preliminary draft;

(c) Developer will deliver a revised draft of the Commissioning Plan for each School to PGCPS not less than forty (40) Business Days after receipt of PGCPS's comments on the preliminary draft;

(d) PGCPS will, within fifteen (15) Business Days of receipt of such revised draft, advise Developer whether PGCPS accepts such Commissioning Plan, or if PGCPS does not accept it, PGCPS will provide its reasons for such non-acceptance in sufficient detail to allow Developer to address them;

(e) if PGCPS does not accept such Commissioning Plan, the Parties will, acting reasonably, diligently work together with a view to revising the Commissioning Plan to address PGCPS' reasons for non-acceptance; and

(f) if PGCPS has not accepted such Commissioning Plan by the date that is six (6) months before the Scheduled School Occupancy Readiness Date for that School, Developer may refer the dispute for resolution in accordance with Article 24 (Resolution of Disputes) to determine whether Developer's proposed Commissioning Plan is reasonable.

5.3. Commissioning Plan Requirements. Each Commissioning Plan shall include HVAC, security system, audio/visual system, IT systems, lighting control, emergency generator, plumbing systems and other building systems. Table R-1 below provides a minimum framework for the types of requirements that shall be considered by the Independent Engineer and Developer when preparing the Commissioning Plans.

Minimum Commissioning Plan Requirements

TABLE R-1

Category	Requirement
Accessibility	Access and use by children, aged and disabled person
Acoustics	Control of internal and external noise and intelligibility of sound
Comfort	Identify and document those comfort problems that have caused complaints in the past and which will be avoided in the Project (<i>i.e.</i> , glare, uneven air distribution, water pressure, etc.)
Communications	Capacity to provide inter-telecommunications and intra-telecommunications throughout each School, including audio/visual classroom systems
Constructability	Constructability of commissioned systems
Durability	Retention of performance over required service life
Energy	Conformance with goals for energy efficiency
Flexibility	For future Project changes and expansions
Fire Protection and Life Safety	Fire protection and life safety systems
Green Building Concepts	Sustainability concepts, including LEED goals
Health and Hygiene	Protection from contamination from wastewater, garbage and other wastes, emissions and toxic materials
Indoor Environment	Including hygrothermal, air temperature, humidity, condensation, indoor air quality and weather resistance
Maintenance Requirements	Varied level of knowledge of maintenance staff and the expected complexity of the proposed systems
Security	Protection against intrusion (physical, thermal, sound, etc.) and vandalism and chemical/biological/radiological threats
Standards Integration	Integration of approved federal, State, local and County standards and requirements
Structural Safety	Resistance to static and dynamic forces, impact and progressive collapse

5.4. Additions to Commissioning Plans. Each Commissioning Plan shall also provide for Commissioning Tests to be conducted with respect to major equipment and building systems, relating to the following:

- (a) installation verification and quality checks (pre-functional checklists);
- (b) start-up;

- (c) functional testing;
- (d) representative sampling, where appropriate;
- (e) acceptance reports;
- (f) deficiency documentation and correction process;
- (g) user instruction, where appropriate;

(h) orientation, classroom, and field training to be provided by Developer for necessary PGCPs Persons prior to the School Occupancy Readiness Date (to be identified by PGCPs at a reasonable time prior to each such date), such training to be acceptable to PGCPs, in its reasonable discretion. Such training and orientation shall include, among other things: security systems, audio-visual systems, communications systems, and Maintained Elements installed by Developer. Additional orientation, classroom, and field training on other specific requirements regarding building orientation and security and communications systems for PGCPs personnel shall also be provided by Developer, as requested by PGCPs in its reasonable discretion;

(i) recorded media for demonstration and training for PGCPs Persons, where appropriate;

(j) recorded media for demonstration and training in form acceptable to PGCPs; and

(k) preparation of operating and maintenance manuals for each component of the School and Maintained Elements and each complete system to be tested in the School, notwithstanding the fact that Developer shall be responsible for such operation and maintenance during the Term.

5.5. Commissioning Standards. Developer shall prepare each Commissioning Plan by taking into account the Contract Standards, including the items in Table R-1, and each Commissioning Plan shall set forth how Commissioning Tests will be handled and managed for the applicable School. In general, each Commissioning Plan shall include a discussion of the Commissioning process, schedule, team and team member responsibilities, communication structures and a general description of the systems to be tested.

5.6. Independent Engineer Duties as Commissioning Agent. Without limiting the Independent Engineer's duties and responsibilities under the Independent Engineer Agreement, in its capacity as Commissioning agent, the Independent Engineer shall be engaged sufficiently early in the design process to ensure the technical standards for a LEED "silver" rating for new construction can be achieved for each School, including enhanced Commissioning of the mechanical systems as specified by the applicable LEED standards. The Independent Engineer shall inform the design process, ensure Commissioning Tests requirements are considered in design selections and appropriate Commissioning Tests instructions are included in the construction specifications for each aspect of the Design-Build Work. The Independent Engineer

shall work with Developer for the inclusion of Commissioning activities in the Construction Schedules.

5.7. Monthly Reports. Prior to the commencement of the Commissioning Tests, the Independent Engineer shall prepare monthly reports to record the progress made on Commissioning decisions and procedures. Developer shall provide PGCPs with at least thirty (30) days' prior written notice of the expected initiation of the Commissioning Tests.

5.8. Commissioning Plans. The Commissioning Plan for each School shall:

(a) identify the names, roles, and where appropriate, the qualifications of all persons proposed to perform a role in the Commissioning process;

(b) contain provisions which will ensure successful completion of all Commissioning Tests and all other Commissioning activities required for the proper Commissioning of the School and all Maintained Elements (both prior to the School Occupancy Readiness Date and during the Commissioning Fine Tuning Period), to the satisfaction of PGCPs and the Independent Engineer, in their reasonable discretion;

(c) contain provisions which will ensure successful completion of all Commissioning Tests and other Commissioning activities required prior to the School Occupancy Readiness Date, to the satisfaction of PGCPs and the Independent Engineer, in their reasonable discretion;

(d) contain provisions which will ensure successful completion of all Commissioning Tests and other Commissioning activities during the Commissioning Fine Tuning Period, to the satisfaction of PGCPs and the Independent Engineer, in their reasonable discretion;

(e) contain provisions which will ensure employment by Developer of commissioning procedures that are prescribed by Applicable Law using methodologies so prescribed and methodologies prescribed in the Contract Standards;

(f) contain provisions which will ensure that standards or results to be achieved in each test, for such tests to be successful, shall satisfy all standards or results applicable to such Commissioning Tests as contained in the Contract Standards and those recommended by the manufacturer of that part of the Project or the Maintained Elements with respect to which the Commissioning Tests is to be performed;

(g) contain provisions which ensure that the Commissioning Plan shall not propose a test or procedure that deviates from any procedure, standard, or specification intended by the Contract Standards unless specifically approved in writing by PGCPs and the Independent Engineer;

(h) contain provisions which require that all Commissioning Tests results and copies of all certificates and Governmental Approvals received by Developer in connection with any Commissioning Tests shall be provided to PGCPs and the Independent Engineer;

(i) ensure that there are no provisions which create greater burdens to be imposed on the Independent Engineer, PGCPs, or any other advisor to PGCPs that is contemplated in the Agreement;

(j) contain an achievable schedule for the Commissioning Tests which shows the name, timing and dependencies of each step in: (i) the critical path schedule to achieve School Occupancy Readiness; and (ii) the schedule to complete Seasonal Fine Tuning during the Commissioning Fine Tuning Period;

(k) ensure that the technical standards for a LEED “silver” rating for new construction can be achieved and can also be maintained through the Services Period; and

(l) contain provisions providing that where Commissioning Tests have been successfully completed as required by the approved Commissioning Plan and where such Commissioning Tests are identical to Commissioning Tests that are required to satisfy any subsequent approved Commissioning Plan requirement and such test would be redundant, the Commissioning Tests do not need to be repeated unless specifically required by a Governmental Body or Applicable Law.

5.9. Plan Structure. The suggested structure of each Commissioning Plan is set forth in Table R-2. Developer may prepare a Commissioning Plan that deviates from this suggested structure. Any Commissioning Plan shall, however, be approved by PGCPs, acting reasonably.

TABLE R-2

Suggested Commissioning Plan Structure

Section	Description
Introduction	Purpose and general summary of the Commissioning Plan
General Project Information	Overview of the Project, emphasizing key Project information and delivery method characteristics
Commissioning Scope	The Commissioning scope including which Project assemblies, systems, subsystems and equipment will be tested
Team Contacts	The Independent Engineer’s contact information as well as any other relevant Commissioning team member’s contact information
Communication Plan and Protocols	Documentation of the communication channels to be used throughout the Project with respect to Commissioning Tests
Commissioning Process	Detailed description of the specific tasks to be accomplished during the Design-Build Period and the Services Period

Section	Description
Commissioning Documentation	List of Commissioning Test documents required to identify expectations, track conditions and decisions and validate/certify performance
Commissioning Schedule	Specific sequences of events and relative timeframes, dates and durations

6. COMMISSIONING FOR LEED REQUIREMENTS

6.1. LEED Requirements Preparation. Pursuant to the Agreement and as set forth in Article 7 (Design and Construction), each School shall achieve the technical standards for a LEED “silver” rating for new construction. Developer shall ensure that the Commissioning process activities comply with the prerequisite criteria for fundamental building Commissioning to achieve the technical standards for a LEED “silver” rating for new construction.

6.2. LEED Requirements for the Commissioning Plan. In accordance with all applicable LEED Commissioning Tests requirements, the following items shall be addressed in each Commissioning Plan: (i) independent review of schematic design documents; (ii) independent review of construction documents; (iii) focused review of contractor submittals to verify compliance with requirements; (iv) an indexed systems manual; and (v) post-School Occupancy Readiness Date review of the School and Seasonal Fine Tuning Report.

7. EXCLUSIONS FROM COMMISSIONING PLANS

The following items shall not be included in any Commissioning Plans:

PGCPS telephone equipment that is not installed by Developer;

PGCPS active electronic information technology equipment that is not installed by Developer;

any other PGCPS provided equipment without Developer’s contractual involvement; and

PGCPS leased equipment such as copiers, fax machines, printers provided without Developer’s involvement.

8. COMMISSIONING ACTIVITIES DURING DESIGN

8.1. Design Responsibilities. The Independent Engineer is responsible for reviewing the design from a Commissioning perspective. The Independent Engineer may recommend changes to ensure compliance with the Contract Standards or to improve energy efficiency, operation and maintenance and equipment reliability to the Developer so that any necessary concept changes may be made by the Developer prior to, rather than after, installation; provided, however, that the Independent Engineer shall not be responsible for design concepts and criteria

that do not comply with the Contract Standards as such are the responsibility of Developer pursuant to the Agreement.

8.2. Scope of Review. The minimum scope of the Independent Engineer's review during the design phase shall be as set forth in Table 1 of the Independent Engineer Agreement. This review shall include reviewing design documents to facilitate effective Commissioning Tests and verifying that design documents adequately specify Commissioning, including testing requirements by equipment type. The design review scope set forth in Table 1 shall demonstrate the minimum scope to be set forth in each Commissioning Plan. The Independent Engineer Agreement is not intended to preclude additional review responsibilities of the Independent Engineer agreed upon by the Parties in the approved Commissioning Plans.

9. COMMISSIONING ACTIVITIES DURING CONSTRUCTION

9.1. Construction Responsibilities. During the course of construction activities throughout the Design-Build Period, the Commissioning goal shall be to assure the levels of quality required by the Contract Standards are satisfied. The Commissioning activities during construction shall be a well-orchestrated quality assurance process and shall be set forth in each Commissioning Plan, and shall include:

Installation and submittal review (pre-functional checklists)
start-up;
functional performance testing, and
training.

9.2. Construction Compliance with Contract Standards. The Independent Engineer shall review those items that are critical to the focus of the Commissioning process. This review shall allow the Independent Engineer to review the construction process for compliance with the Contract Standards. The Independent Engineer shall only comment to the extent that there is a perceived deviation from the Contract Standards, and all such comments shall be reviewed by Developer and PGCPS, who shall cooperate with each other and the Independent Engineer to ensure compliance with the Contract Standards.

9.3. Functional Performance Tests. Functional performance testing occurs after the components have been installed and the construction checklists have been completed. Functionally testing the systems of each School as a whole evaluates the ability of the components in a system to work together to achieve compliance with the Contract Standards. The functional performance tests are the most important aspect of the Commissioning process and system troubleshooting based upon such tests shall be a critical function of the Independent Engineer. If the Independent Engineer discovers equipment or systems that are not performing in accordance with the Contract Standards prior to School Occupancy Readiness, Developer shall correct and re-test such equipment or systems.

9.4. Operation of Security Systems. The parties acknowledge and agree as to the importance to PGCPs of assuring the operability and functionality of the security systems installed in the Schools. Accordingly, Developer shall notify PGCPs, in writing, when the commissioning of security systems relating to School security is complete and the systems are fully functional. Following such notice, Developer shall provide PGCPs staff a minimum of two weeks to become familiar with and to operate the security systems prior to the School Occupancy Readiness Date. Developer shall cooperate with PGCPs in training and scheduling for such two-week period.

10. PERFORMANCE OF COMMISSIONING TESTS

10.1. Notice and Execution of Tests. Under the direction of the Independent Engineer, appropriately qualified personnel of Developer shall implement all Commissioning Tests as set forth in each Commissioning Plan. Developer shall give a minimum of thirty (30) days' notice to, and shall invite PGCPs and the Independent Engineer to witness and to comment on each aspect of the Commissioning Tests up until all Commissioning Tests are fully complete (which includes all Commissioning Tests up until the end of the Commissioning Fine Tuning Period). Developer shall, together with such notice to PGCPs and the Independent Engineer, provide them with all information they may reasonably require in relation thereto, including, without limitation: (i) tests proposed; (ii) test methodology; and (iii) expected test results. In addition, PGCPs and the Independent Engineer shall be provided with full and reasonable access to all Commissioning activities to ensure they remain fully informed of the process.

10.2. Test Results. Within fifteen (15) Business Days following the last day of the Commissioning Tests performed pursuant to this Section 10, Developer shall provide PGCPs and the Independent Engineer with ten copies of a written Commissioning Test report setting forth the results of such Commissioning Tests, certified as true, complete, and correct by Developer and Developer's lead engineer.

10.3. Independent Engineer Not to Perform Tests. Without limiting the duties and responsibility of the Independent Engineer under the Independent Engineer Agreement, in its capacity as Commissioning agent, the Independent Engineer shall not perform any of the Commissioning Tests and any action of the Independent Engineer shall not absolve Developer from and of Developer's obligations under the Agreement.

11. COMMISSIONING TESTS DURING COMMISSIONING FINE TUNING PERIOD

11.1. Seasonal Fine Tuning Period Part of Commissioning Plan. For each School, the Commissioning Plan shall also provide for Commissioning Tests to demonstrate in the four heating and cooling seasons (or such earlier time as PGCPs may agree, in its reasonable discretion) following the School Occupancy Readiness Date: (i) full integration and automated control of all School systems through the School's automation system, under a full range of School population and seasonal loadings, including emergency conditions; and (ii) that Seasonal Fine Tuning will be carried out during the Commissioning Fine Tuning Period. At the end of each of the heating and cooling seasons after the School Occupancy Readiness Date for a School, Developer shall prepare for the School a Seasonal Fine Tuning Report for review and acceptance by the Independent

Engineer. Developer shall engage in Commissioning Tests during the Commissioning Fine Tuning Period and resubmit Seasonal Fine Tuning Reports if any Seasonal Fine Tuning Report does not demonstrate, to the satisfaction of the Independent Engineer, that the School and any of its systems meet the Contract Standards. Such Commissioning Tests and reports shall be repeated and re-submitted, respectively, until the Independent Engineer confirms that the School and its systems meet the Contract Standards applicable for such season, and in respect of the final Seasonal Fine Tuning Report, for all seasons during the Commissioning Fine Tuning Period.

11.2. Seasonal Fine Tuning Report. For each School, the final Seasonal Fine Tuning Report shall be certified as true, complete and correct by Developer and Developer's lead engineer and include at a minimum:

- (a) a statement that all systems have been completed and are performing in accordance with the Contract Standards;
- (b) a description of components and systems that exceed the Contract Standards;
- (c) a description of any components and systems that do not meet the Contract Standards and an explanation of why they do not;
- (d) a summary of all issues that have been resolved and that are unresolved and any recommendations for resolution;
- (e) post-School Occupancy Readiness Date activities and results including all deferred and seasonal testing results, test data reports and additional training documentation; and
- (f) lessons learned for continued efficient operation of the School during the Services Period.

12. OTHER COMMISSIONING ACTIVITIES

Other Commissioning activities to be performed by Developer for each School shall include but not be limited to:

- (a) the implementation of building orientation and information sessions for PGCPS Persons using the School after the School Occupancy Readiness Date;
- (b) the initiation of the facilities management help desk operation and orientation of appropriate PGCPS Persons, as described in Exhibit W (Services Requirements) of the Agreement, after the School Occupancy Readiness Date;
- (c) the review of Developer's emergency procedure and Safety Plan prior to the School Occupancy Readiness Date;

(d) prior to the School Occupancy Readiness Date, submit to PGCPs and the Independent Engineer for review relevant Project records including, but not limited to:

i. copies of all Governmental Approvals prior to the School Occupancy Readiness Date;

ii. a certified schedule of final School areas calculated in accordance with the Contract Standards;

iii. final Commissioning Test acceptance reports relating to Commissioning Tests conducted prior to the School Occupancy Readiness Date; and

iv. record drawings relating to security systems at the Project (including, without limitation, perimeter security, locking systems, camera and television security systems and related security systems);

(e) as soon as practicable after the completion of the Commissioning Fine Tuning Period, but no later than one-hundred (100) days after the Commissioning Fine Tuning Period, Developer shall submit to PGCPs and the Independent Engineer for review relevant Project records including, but not limited to:

i. acoustical performance test reports with normal occupant loads and School system operation, including emergency generator under load;

ii. vibration test reports and air balancing reports for the operating School;

iii. final Commissioning acceptance reports relating to the Commissioning Tests conducted during the Commissioning Fine Tuning Period; and

iv. all record drawings relating to the School.

EXHIBIT S
STAGING PLAN

[Note: Staging Plan provided in the Proposal will be attached as this exhibit.]

DRAFT

EXHIBIT T-1

**EDUCATIONAL SPECIFICATIONS FOR ADELPHI AREA MIDDLE SCHOOL,
DREW-FREEMAN MIDDLE SCHOOL, KENMOOR MIDDLE SCHOOL, AND
WALKER MILL MIDDLE SCHOOL**

DRAFT

EXHIBIT T-2

EDUCATIONAL SPECIFICATIONS FOR HYATTSVILLE MIDDLE SCHOOL

DRAFT

EXHIBIT T-3

EDUCATIONAL SPECIFICATIONS FOR SOUTHERN AREA K-8 SCHOOL

DRAFT

EXHIBIT T-4

PGCPS MASTER SPECIFICATIONS

DRAFT

EXHIBIT U
FINANCIAL MODEL AND RELATED INFORMATION

DRAFT

EXHIBIT V

CALCULATION AND PAYMENT OF REFINANCING GAINS

DRAFT

ARTICLE 1 DEFINITIONS

1.1 Definitions. In addition to the definitions set out in the Agreement, for the purposes of this Exhibit, the following terms have the following meanings:

“**Post-Refinancing Financial Model**” has the meaning set forth in Section 3.1(b) of this Exhibit.

“**Pre-Refinancing Financial Model**” has the meaning set forth in Section 3.1 (a) of this Exhibit.

“**Refinancing Gain**” has the meaning set forth in Section 3.2 of this Exhibit.

1.2 Section References in this Exhibit. All Section references in this Exhibit are to Sections of this Exhibit, except Section references explicitly made to Sections, Articles, or Exhibits of the Agreement.

ARTICLE 2 DATA AND PROJECTIONS REQUIRED FOR THE CALCULATION OF REFINANCING GAIN

2.1 Notification by Developer of Refinancing. Developer must notify PGCPs as soon as practicable of its interest in proceeding with a Refinancing and the proposed schedule for documenting and closing the proposed Refinancing.

2.2 Information for Developer to Provide. Developer shall provide the following information at least sixty (60) days in advance of the estimated Refinancing date:

- (a) The Financial Model;
- (b) Details of the actual timing and amounts of equity investment or subordinated debt by Unit Holders from the Effective Date to the estimated Refinancing date;
- (c) Details of the actual timing and amounts of Distributions to Unit Holders or any of their Affiliates from the Effective Date to the estimated Refinancing date;
- (d) Information on the actual cash flow of Developer from the Effective Date to the estimated Refinancing date, set out under the same headings as the Financial Model;
- (e) Macroeconomic, revenue, and cost projections from the estimated Refinancing date to the end of the Term, assuming the planned Refinancing does not occur;
- (f) Macroeconomic, revenue, and cost projections from the estimated Refinancing date to the end of the Term, assuming the planned Refinancing occurs; and

(g) Term sheet, draft Financing Documents and other relevant information on the terms of Refinancing.

2.3 Veracity of Information. Developer shall certify to PGCPS' that all Project information is, with the respect to items (a) through (d) of Section 2.2 of this Exhibit true and correct, and with respect to items (e) and (f) of Section 2.2 of this Exhibit, reasonable and the basis upon which new Financing Party will agree to participate in the planned Refinancing. When PGCPS and Developer are unable to agree on actual amounts and timing related to information provided under items (a) through (f) of Section 2.2 of this Exhibit, relevant projections from the current Financial Model shall be used.

ARTICLE 3 CALCULATION OF THE REFINANCING GAIN

3.1 Refinancing Financial Models. Developer shall provide the following information at least sixty (60) days in advance of the estimated Refinancing date:

(a) A pre-Refinancing Financial Model, which does not take into account the effects of the Refinancing ("**Pre-Refinancing Financial Model**"), as updated by Developer for the data provided under Section 2 of this Exhibit, and which projects the cash flow of Developer from the estimated Refinancing date to the end of the Term, including projected Distributions; and

(b) A post-Refinancing Financial Model, which fully takes into account the effects of the Refinancing including all costs incurred in connection with the Refinancing, but excluding the payment to PGCPS of its portion of the Refinancing Gain ("**Post-Refinancing Financial Model**"), as updated by Developer for the data provided under Section 2 of this Exhibit, and which projects the cash flow of Developer from the estimated Refinancing date to the end of the Term, including projected Distributions.

3.2 Refinancing Gain Calculation. With respect to any Refinancing other than an Exempt Refinancing (in respect of which the Refinancing Gain shall be deemed to be zero), the "**Refinancing Gain**" shall be an amount equal to the greater of zero and $[(A - B) - C]$ where:

A = the net present value of Distributions to be made from the estimated Refinancing Date to the end of the Term as projected in the Post-Refinancing Financial Model, discounted using the Base Case Equity IRR to the estimated date of the Refinancing;

B = the net present value of Distributions to be made from the estimated Refinancing date to the end of the Term as projected in the Pre-Refinancing Financial Model, discounted using the Base Case Equity IRR to the estimated date of the Refinancing; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Base Case Equity IRR.

ARTICLE 4
ADJUSTMENT TO RAISE THE PRE-REFINANCING EQUITY IRR TO THE BASE
CASE EQUITY IRR

If the Pre-Refinancing Equity IRR is lower than the Base Case Equity IRR, a calculation will be done to determine the Distribution amount which, if received by Unit Holders at the estimated Refinancing date, would increase the Pre-Refinancing Equity IRR to the Base Case Equity IRR. This Distribution amount will be deducted as factor C in Section 3.2 of this Exhibit.

ARTICLE 5
PAYMENT OF PGCPs' PORTION OF REFINANCING GAIN

PGCPS will receive payment of its portion of the Refinancing Gain as a reduction in the Availability Payment over all or a portion of the Term (such future Availability Payment reductions after the estimated Refinancing date shall be compounded annually using the Pre-Refinancing Equity IRR), on a schedule chosen by PGCPS, subject to the following provisions:

- (a) PGCPS will not receive its portion of the Refinancing Gain faster than the Unit Holders or Developer;
- (b) The payment method selected by PGCPS will not result in a breach by the borrower of the Senior Debt of any covenants established in the Senior Financing Agreements; and
- (c) Subject to clause (a) above, if the Refinancing involves raising new debt or otherwise increasing the amount of outstanding Senior Debt anticipated in any Contract Year of the Financial Model, PGCPS may, only to the extent that Unit Holders receive payment in a lump sum, elect to receive its portion as a lump sum payment concurrently with the close of the Refinancing.

ARTICLE 6
FINAL CALCULATION AND PAYMENT

Developer shall perform a final calculation of the Refinancing Gain and deliver the results to PGCPS at the close of the Refinancing.

EXHIBIT W
SERVICES REQUIREMENTS

DRAFT

1. ADMINISTRATION

1.1 Developer Services Period Representative(s). Prior to the Effective Date, Developer will designate in writing a person (the “**Services Period Representative**”) to be Developer’s single point of contact with respect to the Services Period and the Services. Developer’s Services Period Representative shall have full authority to act on behalf of and bind Developer with respect to the Services, except a Services Period Representative will not have the authority to execute or agree to any amendments or give any waivers of the Agreement. Developer may at any time and at its discretion by written notice to PGCPS change the person appointed as its Services Period Representative. If at any time PGCPS objects to the Services Period Representative, then Developer will give reasonable consideration to replacing the Services Period Representative with a person reasonably acceptable to PGCPS. All costs or expenses incurred by or with respect to Developer’s Services Period Representative will be for the account of Developer.

1.2 Liaison with the Project Management Unit

(a) Developer’s Services Period Representative will communicate and liaise with the representatives appointed from time to time by PGCPS to serve on the Project Management Unit regarding the day-to-day performance of the Services at the Schools, complaints, Help Desk requests, any Performance Failures occurring at the Schools, and the performance of the PGCPS Retained Responsibilities.

(b) Developer will be entitled to rely upon the communications of any such Project Management Unit representatives regarding the day-to-day performance of the Services at the Schools, complaints, status of repairs, Help Desk requests, any Performance Failures occurring at the Schools, and the performance of the PGCPS Retained Responsibilities; provided, however, that such reliance shall not derogate from the rights and obligations of PGCPS and Developer under the Agreement.

(c) PGCPS will provide Developer with a list of up to ten (10) individuals or positions (the “**Designated School Users**”) for each School who will be authorized to communicate and liaise with Developer’s Help Desk in relation to the Services as outlined in Appendix W-2 (Help Desk Services). PGCPS may revise the list of Designated School Users at any time by providing written notice to Developer.

1.3 Joint Technical Review

(a) At the end of each five-year period throughout the Services Period (the first such five-year period commencing on the earliest School Occupancy Readiness Date), Developer and PGCPS, supported by a mutually agreed upon and duly qualified independent inspector (an “**Independent Inspector**”) and such technical resources as are mutually deemed necessary, will conduct a joint technical review (the “**Joint Technical Review**”) of each of the Schools. The Joint Technical Review will assess the performance and effectiveness of both Scheduled Maintenance and life cycle works completed over the previous period and the work planned and scheduled for the upcoming five-year period in accordance with the Five Year Maintenance Plan, the Life Cycle Plan, and these Services Requirements. The cost of the Independent Inspector engaged to conduct the Joint Technical Review will be shared equally between Developer and PGCPS.

(b) The current condition standard for the Schools and the Sites for each Joint Technical Review will be based on the principle that each Maintained Element will be maintained in a condition which is consistent with due performance by Developer of its obligations under the Agreement, taking into account Reasonable Wear and Tear and the terms and conditions of the Agreement.

(c) During the final five years of the Services Period, the Joint Technical Review may be cancelled by written agreement of the Parties in lieu of performance of the inspection provisions of the Handback Requirements.

(d) The findings of the Joint Technical Review with respect to each School will be documented in a written report prepared by the Independent Inspector (the “**Schools Condition Report**”) that:

(1) will be provided by the Independent Inspector simultaneously to PGCPS and Developer;

(2) identifies the condition of each School and each Maintained Element; and

(3) identifies any deficiencies in the performance of the obligations of Developer under the Agreement with respect to the condition of each School and each Maintained Element to the Contract Standards, including the Services Requirements and the Life Cycle Plan.

(e) Within fifteen (15) Business Days of receipt of the Schools Condition Report, Developer will prepare and provide to PGCPS a remediation plan outlining Developer’s approach and proposed schedule for the rectification of any identified deficiencies through integration with the Five Year Maintenance Plan and the Life Cycle Plan.

(f) PGCPS and Developer will examine the findings of the Joint Technical Review and Developer’s remediation plans for the School(s) with deficiencies. PGCPS may, in its discretion, require the Independent Inspector to undertake a subsequent inspection of the remediation work completed by Developer and issue a revised Schools Condition Report. To the extent that the original Schools Condition Report identified the need for remediation work, the costs of any revised Schools Condition Report requested by PGCPS shall be paid by Developer.

1.4 PGCPS Not Responsible for the Services

PGCPS’ rights of review, acceptance, approval, or confirmation of compliance with respect to any aspect of the Services will be for PGCPS’ benefit only. No acceptance, approval, or confirmation of compliance by any PGCPS Person will in any way relieve Developer of its obligations for all aspects of the Services except as may be expressly set forth in the Agreement.

PGCPS’ responsibility for the performance of maintenance in the Schools is limited to the PGCPS Retained Responsibilities.

1.5 Issues by PGCPs Persons

Developer will promptly notify PGCPs of any conduct of PGCPs Persons using or visiting a School that will adversely affect Developer's ability to fulfill its obligations under the Agreement.

2. PGCPs RETAINED RESPONSIBILITIES

2.1 PGCPs Retained Responsibilities

PGCPs will retain the following identified responsibilities ("**PGCPs Retained Responsibilities**") related to the maintenance of the Schools:

(a) PGCPs will be responsible for performing cleaning services for the Schools in accordance with the Cleaning Standards (the "**Cleaning Services**").

(1) Not less than six (6) months prior to the first Scheduled School Occupancy Readiness Date, Developer will provide to PGCPs in writing the required minimum cleaning standards for all interior finishes that PGCPs will be responsible for cleaning as part of the PGCPs Retained Responsibilities, including acceptable procedures, techniques, frequencies, products, and equipment based on Good Industry Practice and manufacturers' recommendations. Such cleaning standards will be designed to maintain the life cycle integrity and performance of all cleaned elements. The cleaning standards will be agreed upon in writing by PGCPs and Developer prior to the first School Occupancy Readiness Date (as may be amended in writing by PGCPs and Developer, the "**Cleaning Standards**"). The Cleaning Standards shall be consistent with Level-3 of the most recent edition of *APPA Operational Guidelines for Educational Facilities: Custodial*.

(2) PGCPs will maintain or cause to be maintained records and cleaning logs for each School in sufficient detail to demonstrate performance of the Cleaning Services in accordance with the Cleaning Standards and any joint service protocols developed between the Parties. The cleaning records and logs will be included in the monthly Inspection Report as applicable in accordance with Section 2.3 (Inspection of PGCPs Retained Responsibilities).

(3) PGCPs' performance of the Cleaning Services in accordance with the Cleaning Standards will not relieve Developer of any of its life cycle obligations under the Agreement.

(b) PGCPs will be responsible for Decoration of the interior walls of the Schools and the day-to-day response to PGCPs Person needs with respect to the installation of Decoration fixtures.

(c) PGCPs will be responsible for ordinary waste management and recycling services at the Sites, such as emptying and cleaning trash and recycling containers provided for use by PGCPs Persons and keeping areas of the Sites used by PGCPs Persons free from garbage and debris. In accordance with item (c) of Section 2.2 (Interface of Certain Services by Developer with PGCPs Retained Responsibilities), Developer will be responsible for the removal of waste and recyclable material generated as a result of Developer's delivery of Services.

(d) PGCPs will be responsible for security and surveillance at the Schools; provided, however, that PGCPs shall have no responsibility for Developer's responsibilities with respect to security and surveillance systems set forth in item (d) of Section 2.2 (Interface of Certain Services by Developer with PGCPs Retained Responsibilities).

(e) PGCPs will be responsible for capital and space planning services related to the Schools.

(f) PGCPs will be responsible for material management and storage (excluding materials required by Developer to perform the Services) at the Schools.

(g) PGCPs will be responsible for IT and telephone systems at the School.

(h) PGCPs will provide or arrange the provision of all occupant support services that are necessary and incidental to any PGCPs Activities carried out at the Schools. Occupant support services include services such as arranging for seating, bleachers, the gymnasium stage, or desks, moving furniture, supplying teaching aids and equipment, and providing any other occupant requested services not within Developer's Services obligations.

(i) PGCPs will be responsible for snow plowing and clearing of snow from the Sites.

(j) PGCPs shall from time to time as required enter into contracts with Utility Companies and third party energy suppliers for the supply of Utilities (including gas, fuel, water, sewer and sanitary waste, electricity, including back-up and stand-by emergency power, stormwater, telephone, telecommunications, and internet) to the Schools, and PGCPs shall be responsible for any payments due to such Utility Companies and suppliers pursuant to such supply contracts.

(k) To the extent not otherwise covered in this Section 2.1 (PGCPs Retained Responsibilities), PGCPs shall retain the responsibilities allocated to PGCPs in Attachment 1 (Summary Matrix Identifying Maintenance Roles and Responsibilities) to Appendix W-1 (Facilities Maintenance) of this Exhibit.

2.2 Interface of Certain Services by Developer with PGCPs Retained Responsibilities

The following items are explicitly excluded from the PGCPs Retained Responsibilities and included within the Services to be performed by Developer:

(a) Developer shall develop the Cleaning Standards and collaborate with PGCPs throughout the Services Period to ensure PGCPs receives any necessary cleaning, custodial, or janitorial training (to be provided at least every two (2) years at each School) and cooperation from Developer to enable PGCPs to successfully perform the Cleaning Services in accordance with the Cleaning Standards.

(b) Developer will perform all minor wall repairs, including patching and painting. As part of the life cycle requirements during the Services Period, Developer will perform

repainting cycles of all interior painted wall finishes of each School every two (2) years for drywall surfaces that do not have protective coverings and every seven (7) years for all other surfaces. Repainting cycles will be coordinated with PGCPs to occur during a time period when interruption to PGCPs Persons can be minimized.

(c) Developer will be responsible for the management and disposal of all waste generated through or reasonably related to the delivery of the Services, including: construction materials and demolition debris; scrap metals, wood, and wooden items; lubricants, cleaners, chemicals, and other hazardous waste; filters and other disposable materials; and Developer furniture, electronics, and equipment.

(d) With respect to security and surveillance systems, Developer will:

(1) provide comprehensive training and retraining at least annually of designated PGCPs Persons in the operation of all security and surveillance systems, including system programming, access controls, locking devices, panic systems, cameras, monitors, equipment, and associated software installed at the Schools pursuant to the Agreement;

(2) continuously monitor, test, and troubleshoot the functionality of, and maintain, repair, and replace all security and surveillance systems in accordance with the original manufacturer's recommendations, Good Industry Practice, the Service Requirements, and the applicable Technical Requirements;

(3) update software and hardware systems periodically as required to maintain full system functionality, including compatibility and interoperability with other Building Systems and PGCPs and School systems; and

(4) Respond to all system faults in accordance with the Required Response Times and Rectification Periods set forth in Exhibit X-2 (Deductions) to the Agreement.

(e) Other than IT and telephone systems at the School, Developer shall be responsible for all other communications systems in accordance with the Service Requirements and applicable Technical Requirements.

2.3 Inspection of PGCPs Retained Responsibilities

Developer and PGCPs will jointly inspect each School at least once a month (each such period between Inspections referred to herein as an "**Inspection Period**"), with the first such period commencing one month after the first School Occupancy Readiness Date, to review PGCPs' performance of the PGCPs Retained Responsibilities in accordance with the standards set forth in Section 2.1 (PGCPs Retained Responsibilities) (each, an "**Inspection**"). The results of the Inspection shall be memorialized in a written report developed by PGCPs at its expense and signed by both Parties (each, an "**Inspection Report**"). The Inspection Report shall document any deficiencies in PGCPs' performance of the PGCPs Retained Responsibilities, and, to the extent any deficiencies are identified, the Inspection Report shall set forth a remediation plan or revisions to the standards applicable to the PGCPs Retained Responsibilities as the situation may require to remediate any identified deficiencies.

2.4 Developer Claims with Respect to PGCPs' Failure to Perform the PGCPs Retained Responsibilities

To the extent that (a) PGCPs fails to perform any of the PGCPs Retained Responsibilities in accordance with Good Industry Practice or any other standard expressly applicable to PGCPs under the Agreement; (b) such failure has a material and adverse effect on Developer's performance of, or the cost of providing, the Services; and (c) such failure either is (i) documented in an Inspection Report, or (ii) of such a nature that Developer could not have reasonably been expected to have documented it in an Inspection Report at the time the failure occurred, Developer shall be entitled to claim the occurrence of a Relief Event in accordance with Article 16 (Relief Events) of the Agreement.

3. PERFORMANCE OF SERVICES

3.1 Exclusion of PGCPs Retained Responsibilities

The PGCPs Retained Responsibilities identified in Section 2.1 (PGCPs Retained Responsibilities) are excluded from the Services.

3.2 Delivery of Services

Developer will at all times during the Services Period be responsible for delivery of the Services and will provide the Services in accordance with the:

- (a) requirements of the Agreement;
- (b) the specifications set forth in this Exhibit; and
- (c) all Plans then in effect.

3.3 Standards

During the Services Period, Developer will provide the Services:

- (a) in accordance with the requirements of the Agreement;
- (b) in accordance with the standards set forth in this Exhibit (including all appendices and attachments);
- (c) in compliance with Applicable Law;
- (d) in compliance with all jointly agreed upon service protocols;
- (e) in a manner designed to maintain the performance standards and design criteria set forth in the Technical Requirements;
- (f) in a manner based on sound technical and operational procedures in accordance with Good Industry Practice and all applicable standards and guidelines associated with Level-2 of the most recent edition of *APPA Operational Guidelines for Educational*

Facilities: Maintenance and APPA Operational Guidelines for Educational Facilities: Grounds;
and

(g) to the same standards that an experienced, prudent, and knowledgeable long-term owner of a comparable school in the State, taking into account the age and use of the comparable school, would employ.

If one or more of the foregoing standards is applicable to any particular Service, then the highest of such standards will apply to the extent the standards are mutually exclusive.

3.4 General Requirements

With respect to all Services:

(a) Developer will continuously perform the Services for each School from the School Occupancy Readiness Date to the Termination Date;

(b) the Performance Failures set forth in the Appendices to Exhibit X-2 (Deductions) of the Agreement reflect the minimum standards for performance of certain elements of the Services by Developer and do not limit the scope of the Services that Developer will provide;

(c) without limiting the requirements of the Agreement, including the provisions of each Appendix to this Exhibit, Developer will:

(1) provide high quality, efficient, innovative, and flexible Services at all times;

(2) manage delivery of the Services using a CMMS for the Schools that is approved in writing by PGCPs;

(3) provide a sufficient number of qualified, trained, and competent personnel (which in all cases includes employees or other personnel of any Developer Persons) with the skills necessary to perform the Services, including back-up provisions where required;

(4) manage matters and marshal resources as required to respond to emergencies and to provide a high level of ongoing service delivery;

(5) provide Services that are integrated and coordinated with the delivery of other services by PGCPs Persons;

(6) ensure a collaborative working relationship with all PGCPs Persons and the Schools;

(7) exercise competent supervision of the Services at all times;

(8) administer all insurance and warranty claims in connection with the provision of the Services at the Schools; and

(9) provide all quality assurance and quality monitoring relevant to the Services.

3.5 Facilities Maintenance Services

In accordance with Section 11.1.1 (Delivery of Services) of the Agreement, Developer will perform, and the Services shall include, the Facilities Maintenance services described in Appendix W-1 (Facilities Maintenance).

3.6 Help Desk Services

In accordance with Section 11.1.1 (Delivery of Services) of the Agreement, Developer will perform, and the Services shall include, Developer will perform, and the Services shall include, the Help Desk Services described in Appendix W-2 (Help Desk Services).

3.7 Additional Services Necessary for Performance of the Services Requirements

Developer agrees that in addition to the services expressly described in this Exhibit and the Agreement, the Services shall include and Developer will provide all other ancillary and additional services as may be reasonably required to achieve the standards and specifications set forth in the Agreement.

3.8 School Use and Scheduling

During the Services Period, each School will be used for PGCPs Activities, including Ad Hoc School Use and Third Party and Community Use, as determined by PGCPs. PGCPs and Developer, each acting reasonably, will collaborate to minimize administrative processes and create a streamlined process for communicating with regard to School bookings and the potential impact of such bookings on the delivery of the Services.

(a) General School Use. On or before August 15 of each year during the Services Period and thereafter as updated from time to time, PGCPs will notify Developer of the planned normal usage for each School during the upcoming year, including daily routines at the Schools (including recess periods, breaks, lunch periods, and drop-off and pick-up times), an indication of holidays, professional development days, known examination periods, anticipated summer School use, and other educational uses. Developer will accommodate such normal usage in the performance of the Services, unless otherwise approved by PGCPs, acting reasonably.

(b) Scheduled Third Party and Community Use. On or before August 15, and updated on or before January 7 and June 1 of each year during the Services Period, PGCPs will notify Developer in writing of that year's scheduled Third Party and Community Use for each School, together with the nature of such use, the area(s) of the School that will be used, and the date(s) and time(s) for such use. Developer will accommodate such scheduled Third Party and Community Use in the performance of the Services, unless otherwise approved by PGCPs, acting reasonably.

(c) Unscheduled Third Party and Community Use

(1) Unscheduled Third Party and Community Use of a School, including changes to previously scheduled Third Party and Community Use, is anticipated to occur frequently. PGCPS will make all reasonable efforts to provide Developer with not less than forty-eight (48) hours' notice of such unscheduled Third Party and Community Use, together with the nature of such use, the area(s) of the School that will be used, and the date(s) and time(s) for such use.

(2) If Developer informs PGCPS as soon as possible but no later than twenty-four (24) hours after receiving the notice described in item (c)(1) above that the unscheduled Third Party and Community Use is expected to interfere with Scheduled Maintenance planned by Developer, then PGCPS will use all reasonable efforts to have the unscheduled Third Party and Community Use relocated to another area of the School such that it does not interfere with the Scheduled Maintenance planned by Developer. If such relocation is not reasonably practicable, or no interference with Scheduled Maintenance is expected, Developer will be required to accommodate such unscheduled Third Party and Community Use in the performance of the Services, unless otherwise approved by PGCPS, and provided Developer was given at least forty-eight (48) hours' prior notice of the unscheduled Third Party and Community Use. If Developer undertakes to accommodate unscheduled Third Party and Community Use for which less than forty-eight (48) hours' prior notice is provided to Developer, then Developer shall be entitled to claim the occurrence of a Relief Event in accordance with Article 16 (Relief Events) of the Agreement.

(d) Ad Hoc School Use

(1) For Ad Hoc School Use of a School, PGCPS will, or will cause the School to, make all reasonable efforts to provide Developer with not less than forty-eight (48) hours' notice of the days and times of such use together with the nature of the use and the area(s) of the School that will be used.

(2) If Developer informs PGCPS as soon as possible but no later than twenty-four (24) hours after receiving the notice described in item (d)(1) above that the Ad Hoc School Use is expected to interfere with Scheduled Maintenance planned by Developer, then PGCPS will use all reasonable efforts to have the Ad Hoc School Use relocated to another area of the School. If such relocation is not reasonably practicable, or no interference with Scheduled Maintenance is expected, Developer will be required to accommodate such Ad Hoc School Use in the performance of the Services, unless otherwise approved by PGCPS, and provided Developer was given at least forty-eight (48) hours' prior notice of the Ad Hoc Use. If Developer undertakes to accommodate Ad Hoc Use for which less than forty-eight (48) hours' prior notice is provided to Developer, then Developer shall be entitled to claim the occurrence of a Relief Event in accordance with Article 16 (Relief Events) of the Agreement.

(e) To help PGCPS manage unexpected School bookings, on or before the twentieth (20th) day of each month, Developer will provide PGCPS with a schedule of planned activities to be carried out by Developer at each School during the following month.

3.9 Scheduling of Services

The operating hours for the cafeterium, gymnasium, Athletic Fields, and health center for each School shall be from 6:30 A.M. to 10:00 P.M., Eastern time, on all days, and for all other areas of the Schools, from 6:30 A.M. to 5:00 P.M., Eastern time, on Business Days (as applicable based on the location of the relevant Functional Unit(s) or Event(s), the “**Operating Hours**”). In accordance with the schedules provided by PGCPS pursuant to this Exhibit, after a School Occupancy Readiness Date, Developer may carry out the Services during Operating Hours in respect of a particular Functional Unit or Event only as follows:

(a) responses to Emergency Events, Critical Events, or Performance Failures that have an “Urgent” priority classification may be undertaken by Developer, upon notice to PGCPS, at any time during Operating Hours, in the affected area of the School, whether occupied or not, provided that in doing so Developer does not compromise the health and safety of PGCPS Persons, in which case PGCPS and Developer shall coordinate to promptly remove PGCPS Persons from the affected area of the School so that the Event can be Rectified;

(b) responses to Routine Events and non-Urgent Performance Failures may be undertaken by Developer during Operating Hours in unoccupied areas of the School only, provided that in doing so (which may include passing through occupied areas to get to an unoccupied areas, where necessary), Developer does not unreasonably disrupt or impede any PGCPS Activities, including any Educational Activities, Educational Support Activities, Ad Hoc School Use, or Third Party and Community Use, carried out in occupied areas of the School or compromise the health and safety of PGCPS Persons; and

(c) Developer will employ safe work practices at all times and will coordinate and schedule the Services in accordance with the daily routines at the Schools in accordance with notifications received from PGCPS by Developer pursuant to Section 3.8 (School Use and Scheduling) of this Exhibit and restrict activities that may present a hazard or danger to PGCPS Persons.

Developer shall have the right, with advance notice to PGCPS, to perform any of the Services during non-Operating Hours.

PGCPS shall have the right to use any area of the Schools outside of the applicable Operating Hours provided Developer is given forty-eight (48) hours’ prior notice and such use does not disrupt any Developer activities planned or required to be performed in the impacted area(s) during the relevant time.

3.10 Cleared Persons

(a) Developer will comply with the requirements of Section 5.5 (Security Clearance and Site Access Protocol) of the Agreement and Exhibit O (Background Check Requirements) prior to granting access to the Sites to any Developer Persons. Developer will inform all Developer Persons of, and require compliance with, any additional policies provided by PGCPS to Developer with respect to Site access in accordance with Section 4.11 (Compliance with PGCPS Policies) of the Agreement.

(b) PGCPS, in its sole discretion, may determine what constitutes a satisfactory criminal records check and background check and may refuse access to any individual that it deems to be unacceptable in accordance with Exhibit O (Background Check Requirements).

(c) PGCPS' refusal to grant access to any individual on account of a criminal records check or background check will not relieve Developer of any of its obligations under the Agreement. Developer is solely responsible for any consequences, including without limitation additional costs or delays, arising from a refusal by PGCPS to grant access to the Schools under Exhibit O (Background Check Requirements) to the Agreement or Section 3.11(b) (Access Requirements) of this Exhibit.

(d) Any individual who satisfies all the requirements of Exhibit O (Background Check Requirements) and is not refused access under Exhibit O (Background Check Requirements) to the Agreement or Section 3.11(b) (Access Requirements) of this Exhibit is a **"Cleared Person"**.

(e) Unless PGCPS provides otherwise in writing, Developer will ensure that all individuals performing any work associated with the Services or the Project during the Services Period will be Cleared Persons.

(f) Developer will provide to PGCPS evidence as PGCPS may require that all Developer Persons entering any Site are Cleared Persons.

(g) Developer will advise PGCPS promptly upon Developer becoming aware of any individual who, subsequent to becoming a Cleared Person, becomes subject to a criminal record or child abuse or neglect complaint. Such individual shall be prohibited from accessing the Sites until PGCPS reconfirms such individual as a Cleared Person.

3.11 Access Requirements

(a) Except in the case of an Emergency Event, not less than three (3) Business Days prior to any Developer Person carrying out the Services (or conducting work associated with the Project) at any Site, Developer will provide PGCPS with a list of the names of all Cleared Persons approved by PGCPS who will be performing the Services (or conducting such work).

(b) Developer will ensure that all Cleared Persons performing the Services (or conducting such work) at any Site will:

- (1) report to that School's administration office before commencing any Services at the Site;
- (2) present picture identification, including without limitation name and employer's name;
- (3) be clean and neat of appearance and appropriately attired for a school setting;
- (4) sign any visitor registry required by the School;

(5) indicate the nature of the Services (or work) to be performed, location at the School where the Services (or work) will be performed, and the expected duration of the work; and

(6) sign out prior to leaving the School.

3.12 Conduct of Cleared Persons

(a) Developer will develop and implement a code of conduct for all Developer Persons working at the Schools that complies with Applicable Law and, at a minimum, addresses:

- (1) human rights, mutual respect, and workplace harassment;
- (2) privacy;
- (3) violence in the workplace;
- (4) employee dishonesty and fidelity;
- (5) standards of personal hygiene;
- (6) alcohol or drug impairment;
- (7) use of foul or offensive language, including ensuring that uniforms and work wear are free of badges or other accoutrements that express personal opinions inconsistent with PGCPs values or which others may find offensive; and
- (8) general comportment.

(b) Developer will require all Developer Persons working at the Sites to sign the code of conduct as a condition of their employment or engagement. PGCPs has the right, acting reasonably, to refuse access to the Sites to any individual whom PGCPs either deems unacceptable or who exhibits inappropriate behavior towards PGCPs Persons using or visiting a School. Developer will remove any such individual from the Schools immediately upon notification from PGCPs.

4. SERVICES PERIOD PLANS

4.1 Start-Up Plan

(a) Developer will prepare in consultation with the Design-Builder and the Services Provider an initial plan (“**Start-Up Plan**”) incorporating the following:

- (1) a schedule identifying the tasks to be completed prior to each School Occupancy Readiness Date and the targeted completion dates of such tasks such that Developer will be in a position to commence delivery of the Services for the Schools upon each School Occupancy Readiness Date;

(2) the Annual Service Plan covering the period from the start of the Services Period (commencing on the earliest School Occupancy Readiness Date) through the remainder of the current Contract Year;

(3) a preliminary Five Year Maintenance Plan (commencing on the earliest School Occupancy Readiness Date);

(4) the design or anticipated service life of Maintained Elements in each School and the initial Developer plans and strategies for life cycle replacement and/or refurbishment relating thereto, to be used as a basis for the Life Cycle Plan;

(5) a description of how the Schools will be assessed to determine Scheduled Maintenance and renewal work;

(6) a preliminary Environmental Management Plan;

(7) a detailed description of all elements of the Performance Monitoring Program and how such program will be implemented at the earliest School Occupancy Readiness Date; and

(8) a preliminary Services Quality Management Plan that indicates how Developer will establish and implement the QMS and monitor and measure its Services activities commencing on the first School Occupancy Readiness Date and provide metrics to track maintenance performance,

which Start-Up Plan must be reasonable having regard to the requirements of the Agreement and which will be developed and finalized as follows:

(b) PGCPs will, acting reasonably, make itself available to consult with Developer Persons in connection with the development of the Start-Up Plan;

(c) Developer will deliver to PGCPs:

(1) an outline for the Start-Up Plan no later than the date that is eighteen (18) months before the first Scheduled School Occupancy Readiness Date.

(2) A preliminary draft of the Start-Up Plan (based on the outline plan reviewed by PGCPs) no later than the date that is twelve (12) months before the first Scheduled School Occupancy Readiness Date.

(d) PGCPs will provide its comments, if any, on the preliminary draft of the Start-Up Plan to Developer within twenty (20) Business Days of receipt of the preliminary draft;

(e) Developer will deliver a revised draft of the Start-Up Plan to PGCPs not more than sixty (60) days after receiving PGCPs' comments on the preliminary draft of such Plan;

(f) PGCPs will, within fifteen (15) Business Days of receipt of the revised draft, advise Developer whether PGCPs accepts the Start-Up Plan, and if PGCPs does not accept

the Plan, PGCPs will provide its reasons for such non-acceptance in sufficient detail to allow Developer to address them;

(g) if PGCPs does not accept the Start-Up Plan, the Parties will, acting reasonably, diligently work together with a view to revising the Start-Up Plan to address PGCPs' reasons for non-acceptance; and

(h) if PGCPs has not accepted the Start-Up Plan by the date that is one-hundred and twenty (120) days before the first Scheduled School Occupancy Readiness Date, Developer may refer the dispute for resolution in accordance with Article 24 (Resolution of Disputes) of the Agreement to determine whether Developer's proposed Start-Up Plan is reasonable.

4.2 Annual Service Plans

Developer will establish and implement an annual service plan (the "**Annual Service Plan**") for the delivery of the Services in accordance with the terms of the Agreement and Good Industry Practice which will include:

(a) detailed operational policies, procedures, and practices for the Sites and the Services, including the methods by which Developer will deliver the Services such that they:

- (1) are consistent with the Agreement, this Exhibit, and its Appendices;
- (2) will not interfere in any material respect with and will be complementary to the delivery of educational and other related services and use of the Schools by PGCPs Persons; and
- (3) have regard for the needs and interests of all PGCPs Persons using or visiting a School;

(b) a detailed organizational and staffing plan for all employees of any Developer Person engaged to perform the obligations of Developer under the Agreement with respect to the Services, which plan will include:

- (1) provision of:
 - (A) sufficient and appropriately qualified, licensed, trained, experienced, and competent employees or Subcontractors with the skills necessary to perform the Services; and
 - (B) a designated site manager for each School or responsible delegates who will be contactable by PGCPs and one of whom will be available to be on Site within one hour's notice from PGCPs;

(2) policies and procedures with respect to:

- (A) occupational health and workplace safety, including:

- (i) a comprehensive health and safety manual and associated training program for all Developer Persons engaged in the delivery of the Services;
 - (ii) the provision of appropriate personal protective equipment;
 - (iii) first aid training;
 - (iv) use of all applicable equipment;
 - (v) notification of hazards or situations that may result in life safety or security issues in the Schools;
 - (vi) handling, storage, and use of chemicals, materials, and equipment; and
 - (vii) work notification and safe work permit system, including provisions for welding and other work at the Schools that may produce fumes, smoke, noise, or disruption to PGCPs Persons using or visiting a School;
- (B) confidentiality and privacy policies consistent with Developer's obligations under Section 22.7 (Protection of Information) of the Agreement;
- (c) details of any proposed amendments to the Performance Monitoring Program and the methods by which Developer will satisfy the reporting requirements described in Section 5 (Performance Monitoring and Reporting);
 - (d) identification of any new service delivery methods that should be considered for the Project and apprise PGCPs of their benefit;
 - (e) provision for the training and re-training of all PGCPs Persons designated by PGCPs, acting reasonably, as to the use and operation of the Help Desk, communication systems, and all other electronic monitoring systems and equipment provided by Developer;
 - (f) an auditable quality assurance control plan based on Good Industry Practice for the Services and all aspects of the Sites for which Developer is responsible under this Exhibit, including preparing, in conjunction with PGCPs, and implementing surveys to receive direct feedback from PGCPs Persons using or visiting a School regarding the delivery of the Services;
 - (g) a routine and a reactive pest management plan and program including the management of pest management contracts for the interior and exterior of the Schools;
 - (h) details of all:
 - (1) Facilities Maintenance undertaken during the previous year, including a summary of all Performance Failures and Unavailability Events incurred and corrective actions undertaken;

(2) Maintenance Access Times during which Developer plans to perform Facilities Maintenance for the upcoming year;

(3) Scheduled Maintenance plans for the upcoming year, including:

(A) the date and time when the work is scheduled to be performed;

(B) the location of the work to be undertaken;

(C) an identification of activities which may cause disruption to PGCPs Persons and the methods by which Developer will make appropriate accommodations to minimize such disruptions;

(D) a risk assessment, including with respect to security, health, and safety;

(E) a method statement in respect of any proposed work; and

(F) any changes proposed to Maintenance Access Times either by PGCPs or by Developer;

(i) a comprehensive scheduled maintenance program comprised of preventive and planned cyclical maintenance of all Maintained Elements planned, scheduled, controlled, and monitored utilizing the CMMS as set forth in Appendix W-1 (Facilities Maintenance);

(j) provision for undertaking:

(1) routine inspection and testing and servicing, in accordance with any Insurance Requirements, recommended manufacturers' guidance, and Good Industry Practice, of:

(A) Building Systems, including: Heating, Ventilation, and Air Conditioning (HVAC) systems, plumbing and water systems, boilers and related systems and components, elevators and conveying devices, mechanical systems, and electrical distribution systems;

(B) life safety and emergency systems, including but not limited to: uninterrupted power supplies (UPS), standby domestic pumps, fire alarms, firefighting equipment and suppression systems, emergency lighting systems and exit signs, and voice communication systems;

(C) security and surveillance systems, equipment, devices, and associated software, along with interconnections and/or interoperability with other Building Systems and PGCPs and School systems;

(D) specialized systems; and

(E) interior and exterior building finishes and fabric, including

but not limited to: floors, walls and ceiling coverings, paint, hardware, windows, doors, cladding, roofing systems, and other architectural and structural components;

- (2) testing for legionella and lead;
 - (3) testing, labeling, and recording of all portable appliances, including:
 - (A) testing and certifying all portable test equipment, pressure gauges, and recording equipment;
 - (B) testing and certifying all fixed instrumentation and taking the necessary action to repair, replace, and adjust such devices as required; and
 - (C) ensuring that all test equipment is itself tested and carrying the necessary valid certification; and
 - (4) commissioning and re-commissioning plans for all new School systems and equipment;
 - (k) an analysis of historical operating performance trends and identification of potential service adjustments required for improved delivery of the Services to PGCPs Persons using or visiting a School;
 - (l) comprehensive fire, emergency, disaster preparedness, post-disaster operational and contingency response plans for the Schools which are integrated and consistent with those of PGCPs, which will include:
 - (1) plans and procedures for:
 - (A) Developer's role in fire drills in conjunction with PGCPs and the relevant fire officials;
 - (B) Developer's role in the evacuation of areas of a School or the whole School in the event of fire, bomb threat, or other emergencies;
 - (C) Developer's role in a declared emergency;
 - (D) Developer's role during and after a natural disaster such as a flood or earthquake; and
 - (E) Developer's business contingency and service resumption plans;
- provided that PGCPs will have primary responsibility for developing emergency response plans and safety plans for the Schools that deal with PGCPs Activities and student health and safety;
- (2) training of all Developer staff with respect to fire safety;

(3) provision that all available Developer Persons will provide whatever assistance can safely be provided in response to an emergency including:

- (A) responding to a fire or other emergency alarm;
- (B) reporting blocked fire access routes to the Help Desk and PGCPs;
- (C) assisting PGCPs in limiting unauthorized access to the scene of a fire or other emergency;
- (D) assisting in the evacuation of the affected areas; and
- (E) liaising with external agencies, including the fire department as part of its response in relation to an incident;

(4) confirmation that:

(A) all emergency procedures and contingency plans including fire compartmentalization design, provision of escape routes, and provision of firefighting equipment and systems are compliant with the requirements of the Agreement; and

(B) the fire alarm systems are properly certified for the Schools;

(m) a comprehensive roads, grounds, and landscape maintenance plan for the Sites, including:

(1) general grounds maintenance and horticultural services of all improved areas including, tree and shrub maintenance, seasonal plantings, and weed and pest control;

(2) maintenance of hard landscaping and site infrastructure elements, such as exterior lighting, internal roadways, sidewalks, parking lots, drainage systems, and fencing; provided, however, that Developer is not responsible for maintenance or repair of any playground equipment that may be installed by PGCPs; and

(3) maintenance of general play areas for which Developer is responsible such as artificial turf fields, courts, and paved surfaces used for physical education;

(n) plans detailing procedures for responding to Unavailability Events and Performance Failures;

(o) protocols and procedures for cooperation with PGCPs Persons with respect to PGCPs Activities and programs and services at the Schools;

(p) a procedure to ensure regular liaison and communication between Developer's managers and supervisors and PGCPs to facilitate the delivery of the Services and to ensure Developer is made aware of the day-to-day specific requirements of the individual Schools;

(q) details of any proposals for changes to the manner in which Developer delivers the Services and the anticipated impact of those changes on PGCPs Persons using or visiting a School;

(r) an update of the Five Year Maintenance Plan (including the Life Cycle Plan), the Environmental Management Plan, and the Energy Management Plan for the Schools detailing the elements and schedule of each such plan to be implemented during the upcoming twelve (12) month period; and

(s) an update to the QMS and Services Quality Management Plan.

4.3 Five Year Maintenance Plans

Developer will establish and implement throughout the Services Period a rolling five year maintenance plan (the “**Five Year Maintenance Plan**”) addressing each School and the Maintained Elements based on Good Industry Practice which will include details and scheduling of planned, preventive, and replacement maintenance programs, including those set forth in the Life Cycle Plan, to be undertaken during that period.

4.4 Life Cycle Plan

Developer will establish and implement throughout the Services Period in conjunction with, and include as a component of, the Five Year Maintenance Plan, an asset life cycle and rehabilitation plan addressing each School (the “**Life Cycle Plan**”) for all Maintained Elements based on the Start-Up Plan and Good Industry Practice. Each Life Cycle Plan must, at a minimum:

- (a) account for the current condition of the Project;
- (b) include the methods and practices by which Developer will:
 - (1) ensure the long-term integrity and ongoing operational serviceability of the Schools;
 - (2) preserve the design and performance criteria set forth in the Services Requirements and applicable Technical Requirements;
 - (3) utilize operations and maintenance practices designed to reduce life cycle costs;
 - (4) ensure that on the Expiration Date all aspects of the Schools for which Developer is responsible are functional to the standard specified in the Handback Requirements;
 - (5) minimize, to the extent reasonably possible, disruption to PGCPs Activities, programs, and services at the Schools; and
 - (6) initiate emergency procurement to enable timely replacement and response to the unexpected failure of Maintained Elements of the Schools;

(c) include specific refurbishment and life cycle replacement strategies, key assumptions, and other provisions for all aspects of the Schools for which Developer is responsible, categorized by major components within the Maintained Elements; and

(d) include the life cycle and replacement of Maintained Elements with replacement equipment and components which meet or exceed the standards set forth in the Technical Requirements.

4.5 Environmental Management Plan

Developer will establish and implement throughout the Services Period an environmental management plan applicable to the Services (the “**Environmental Management Plan**”) for the Schools based on Good Industry Practice which will include Developer’s policies and procedures for:

(a) maintaining a safe environment through the use of processes, practices, materials, and products that avoid or minimize the production or disposal of Hazardous Materials and reporting and recording the use of any such materials and products;

(b) ensuring that the Services are integrated and performed in a careful and environmentally responsible fashion to minimize adverse effects on health and the environment;

(c) managing and minimizing air and wastewater emissions, including greenhouse gases, halocarbons, and other ozone depleting substances and reporting and recording all emissions to PGCPs;

(d) managing fuel storage tanks;

(e) implementing a proactive indoor air quality (IAQ) management program;

(f) testing for water quality and safety to confirm lead and other contaminants levels are below the lower of (i) 5ppb, or (ii) the levels permitted by Applicable Law;

(g) implementing a proactive mold growth and legionella prevention program;

(h) developing an environmental awareness program in conjunction with PGCPs;

(i) adhering to, updating, and maintaining as current the operational policies, procedures, and practices for the performance of the Services; and

(j) reporting to PGCPs on the development and implementation of all programs and procedures intending to reduce the environmental impact of the delivery of the Services.

4.6 Energy Management Plan

Developer will work with PGCPs to establish and implement throughout the Services Period an energy management plan applicable to the Services (the “**Energy Management Plan**”). The Energy Management Plan for the Schools will be based on Good Industry Practice and include Developer’s policies and procedures for:

- (a) ensuring full commitment to responsible energy management without comprising the working environment and safety of PGCPs Persons using or visiting a School;
- (b) understanding energy usage and identifying inefficient practices;
- (c) advising on means to reduce energy consumption;
- (d) advising on means of reducing energy costs, including advising on sound operating and maintenance practices and more efficient technology, equipment, or building systems as can be economically supported;
- (e) developing and promoting an energy awareness program for all staff in conjunction with PGCPs; and
- (f) meeting the Services Requirements.

4.7 Quality Management System and Plan

Developer will develop, implement, and maintain, throughout the Services Period, a QMS applicable to the Services and Services Quality Management Plan. The QMS will include:

- (a) the requirements and principles of Good Industry Practice and all other applicable standards specified in this Exhibit;
- (b) all Plans;
- (c) the operation, maintenance, and life cycle renewal of the Schools in accordance with the requirements of this Exhibit and the Agreement;
- (d) the delivery of all Services;
- (e) the standards reflected in any Performance Failures defined in Exhibit X-2 (Deductions) of the Agreement; and
- (f) quality issues or non-conformances related to the Services that may be reasonably identified by PGCPs or the Schools from time to time.

4.8 Submission of Plans to PGCPs

Developer will work cooperatively with PGCPs in the preparation of all Plans and Plan amendments at all times, and by no later than:

(a) the dates set forth in Section 4.1 (Start-Up Plan), Developer will submit to PGCPs outlines and drafts of the Start-Up Plan; and

(b) by April 1 of each year during the Services Period, Developer will submit to PGCPs the Annual Service Plan for the next Contract Year.

PGCPs will review each Plan and Plan amendment submitted by Developer (including by not limited to the Start-Up Plan and Annual Service Plan), and PGCPs may, but will not be obligated to, provide comments to Developer within sixty (60) days of receipt (or such shorter period as may be specified in this Exhibit) proposing changes to such Plans that PGCPs considers desirable or necessary. Developer will have due regard for any comments which PGCPs may have in relation to any of such Plans and will attend such meetings as PGCPs may reasonably require in order to discuss PGCPs' comments and proposals provided that:

(c) it will remain Developer's responsibility to ensure that its obligations in relation to the Sites and the Services are carried out in accordance with the Agreement; and

(d) no comments or lack of comments will impose any liability on PGCPs or in any way relieve Developer of its obligations under the Agreement.

4.9 Failure to Prepare Plans

Any failure of Developer to prepare and submit to PGCPs any Plan in accordance with this Article 4 (Services Period Plans) will entitle PGCPs to make a Deduction in the manner set forth in Exhibit X-2 (Deductions) of the Agreement.

4.10 Amendment of Plans

Developer will follow the review procedure described in Section 4.8 (Submission of Plans to PGCPs) prior to amending or updating any Plan; provided, however, that Developer also may seek PGCPs' prior-approval, which will not be unreasonably withheld, to adjust or deviate from an existing Life Cycle Plan or Scheduled Maintenance Plan requirement, where it would be beneficial to PGCPs for Developer to do so.

4.11 PGCPs Comments

The following will apply to changes to Plans proposed by PGCPs:

(a) comments provided by PGCPs proposing changes to Plans submitted to PGCPs by Developer under the review described in Section 4.8 (Submission of Plans to PGCPs) of this Exhibit are not Relief Events and will be completed at Developer's cost (except to the extent that any such requested change would constitute a material change to the Agreement, in which case the terms of Section 15.6 (Services Changes) of the Agreement will apply and such change will not be implemented except under a Services Change Certificate issued by PGCPs); and

(b) if and to the extent PGCPs requires an amendment to any of the Plans that PGCPs has previously reviewed and commented on (other than an amendment required to bring the Services into conformity with the Services Requirements), then such amendment will be

treated as a Services Change and the terms of Section 15.6 (Services Changes) of the Agreement will apply.

5. PERFORMANCE MONITORING AND REPORTING

5.1 Developer Performance Monitoring

Developer will at all times during the Services Period have in place a Performance Monitoring Program pursuant to which Developer will monitor the delivery of the Services and which will, at all times, permit PGCPS to access all performance monitoring systems in real time as a component of determining whether or not Developer has delivered the Services in accordance with the applicable performance requirements. No records shall be deleted without specific written consent by PGCPS. The “**Performance Monitoring Program**” will include monitoring the following:

(a) all electronically recorded or written data, information, or communications made in respect of the Services and all aspects of the Schools for which Developer is responsible under this Exhibit, including:

(1) such data, information, or communications made to or generated by the BMS, the CMMS, the Help Desk, and any other information system used by Developer in connection with the Sites and the Services;

(2) trending reports from the CMMS with respect to Vandalism and repair of Vandalism; and

(3) trend logs from the BMS;

(b) all other Developer self-monitoring and reporting, including:

(1) records of compliance with the Required Response Times and the Rectifications Periods;

(2) records of all Demand Requisitions through the Help Desk, including those Demand Requisitions reported to or identified by Developer separately from the Help Desk, with the intent that the Help Desk will produce a complete record of all Demand Requisitions;

(3) tracking of any failure to comply with these Services Requirements, including failures to comply with any Applicable Law and any other service quality issues identified through Developer’s quality monitoring program, included in the then current Annual Service Plan; and

(4) all reports in Developer’s possession or otherwise available to Developer made by or to any Governmental Authority with respect to the Schools or the Services.

5.2 Periodic Reporting

Developer will prepare and deliver to PGCPs a performance monitoring report (the “**Performance Monitoring Report**”) within five (5) Business Days after the end of each Quarter during the Services Period. Each Performance Monitoring Report will include the following information for the preceding Quarter:

- (a) all monitoring which has been performed pursuant to the Performance Monitoring Program and a summary of all findings;
- (b) a summary of each Demand Requisition received by the Help Desk, including the applicable Required Response Time and Rectification Period, and Developer’s Actual Response Time;
- (c) a summary of all incidents of Vandalism;
- (d) a summary of all Unavailability Events and Performance Failures, including Developer’s Actual Response Time and Rectification Period in respect of each;
- (e) a summary and calculations of all adjustments to the relevant Availability Payment and details of the root cause or causes of each Deduction, including a separate accounting of all costs and additional charges related to Vandalism in accordance with Section 20.8.4 (Reporting) of the Agreement;
- (f) all statistical data required for any state or federal reports or returns reasonably required by PGCPs;
- (g) a summary of all life safety actions and statutory testing, such as fire extinguisher inspections, generator testing, and sprinkler testing conducted during the relevant Quarter;
- (h) a summary detailing the implementation of the Annual Service Plan then in effect, including a summary of:
 - (1) the staffing plan, including details of personnel changes, training, and methods statements;
 - (2) all Scheduled Maintenance, statutory testing, and planned shutdowns implemented during the relevant Quarter and planned for the next Quarter, including schedules and methods statements;
 - (3) all Demand Maintenance performed during the relevant Quarter; and
 - (4) the delivery of all other Services;
- (i) a summary of Developer’s activities with respect to, and in furtherance of, the Community Engagement and Outreach Plan; and

(j) a copy of any reports required by a Governmental Authority in respect of the failure of any Maintained Element.

5.3 PGCPs Inspection and Audit

Developer will ensure that systems and controls required by the Agreement, and acceptable to PGCPs, acting reasonably, are in place to safeguard property, Confidential Information, cash and commodities, and that appropriate records of such systems and controls are kept and available for inspection by PGCPs. Developer will, on reasonable notice from PGCPs:

(a) permit PGCPs to access, review, and audit all records, information, and reports maintained by Developer, including all Performance Monitoring Reports and other reports generated by the Performance Monitoring Program, including the methods and equipment used to calculate or determine the information therein;

(b) ensure that the Performance Monitoring Program stores information and generates reports such that they are capable of, and readily available for, audit; and

(c) facilitate and assist PGCPs with any audit or inspection of the Schools, the Services, or the Performance Monitoring Program undertaken by PGCPs.

5.4 Reporting Failures

Any failure of Developer to prepare and submit to PGCPs a Performance Monitoring Report in accordance with this Exhibit will entitle PGCPs to make a Deduction in the manner set forth in Exhibit X-2 (Deductions) to the Agreement.

5.5 Reporting Errors

Matters reported incorrectly or any failure to refer to any Unavailability Event or Performance Failure in any Performance Monitoring Report will entitle PGCPs to make a Deduction in the manner set forth in Exhibit X-2 (Deductions) to the Agreement.

5.6 Parties to Advise of Reporting Errors

If at any time either PGCPs or Developer becomes aware of a Reporting Error, the Party who discovers the error will immediately advise the other Party of its nature and, if possible, its effect.

5.7 Increased Monitoring

PGCPs may increase its monitoring of the performance by Developer of the Services in the circumstances described in Exhibit X-2 (Deductions) of the Agreement.

5.8 Replacement of Non-Performing Services Provider or Subcontractor

PGCPs may require Developer to replace a non-performing Services Provider or Subcontractor in the circumstances described in Exhibit X-2 (Deductions) of the Agreement.

5.9 PGCPS' Right of Access

Without in any way limiting Developer's exclusive responsibility for the Services, PGCPS (either itself or by engaging others) may at all times during the Services Period, without notice, access, audit, and inspect the Sites and Developer's records of delivery of the Services so as to confirm:

- (a) the performance by Developer of its obligations under the Agreement; and
- (b) that the Sites are being maintained in accordance with the terms of the Agreement, provided that:
 - (1) PGCPS does not unreasonably interfere with the performance by Developer of its obligations under the Agreement; and
 - (2) PGCPS complies with Developer's safety and security policies, provided that Developer has delivered written copies of such policies to PGCPS and such policies do not unreasonably impair or limit PGCPS' ability to access all aspects of the Sites.

5.10 PGCPS Satisfaction System

(a) No fewer than one hundred and twenty (120) days prior to the first Scheduled School Occupancy Readiness Date, Developer will submit to PGCPS Developer's proposed system for assessment of designated PGCPS Persons' satisfaction with Developer's provision of the Services (the "**PGCPS Satisfaction System**"). Developer's proposed PGCPS Satisfaction System will:

- (1) include two separate survey tools organized as follows:
 - (i) a short survey for each Demand Requisition to be completed by the Designated School Users;
 - (ii) a quarterly survey to be completed by up to ten (10) respondents per School, which shall include the School principal, School building manager, the PGCPS P3 director, and other PGCPS designees;
- (2) for each short survey for each Demand Requisition that measures the performance of Developer for each work order:
 - (i) utilize the same scale as described below in item (a)(6) of Section 5.10 (PGCPS Satisfaction System); and
 - (ii) become a permanent entry into the CMMS history database;
- (3) for the quarterly survey, include a breakdown of each element of the Services to be surveyed (i.e., for each School: general building condition, security, building and plant equipment, emergency response, asset management, general maintenance, facility condition, environmental controls, communication, cooperation, management of personnel and Developer

Persons, responsiveness, reporting, invoicing, relationship management, and realization of PGCPs priorities) (each, a “**Surveyed Element**”);

(4) for the quarterly survey, specifically identify any questions designed to elicit information only (“**Informational Questions**”), and all questions to which the rated provisions of this section will apply (“**Rated Questions**”), provided that, no more than forty percent (40%) of the questions on a survey may be Informational Questions;

(5) include the weighting to be applied to each Surveyed Element and to each subcomponent comprising the Surveyed Element;

(6) provide for each Rated Question to be measured using the following scale;

1 = Unacceptable	4 = Good
2 = Poor	5 = Outstanding
3 = Average	N/A = Don't Know/Unable to Answer

(7) provide for each Informational Question to be answered using either the same scale as set forth above in item (a)(6) of Section 5.10(a)(6) (PGCPS Satisfaction System), narrative responses, or a combination of both.

(b) No fewer than ninety (90) days prior to the first Scheduled School Occupancy Readiness Date, Developer will submit a finalized draft of the PGCPS Satisfaction System to PGCPS for PGCPS’ review, comment, and approval.

(1) Developer will implement the reviewed PGCPS Satisfaction System by no later than the first School Occupancy Readiness Date and will thereafter deliver the required survey to those PGCPS Persons designated by PGCPS, acting reasonably, every three (3) months in accordance with the requirements of the PGCPS Satisfaction System.

(2) Following completion of each survey of designated PGCPS Persons, Developer will document the survey results in a written report, including a detailed breakdown of all satisfaction ratings on each Surveyed Element and a consolidated list of all narrative comments (each, a “**PGCPS Satisfaction Report**”). For the purpose of this Section, Developer’s satisfaction rating in respect of a Surveyed Element will be the weighted average of all scores received in respect of the relevant Surveyed Element.

(c) Within thirty (30) days of completion of each survey, Developer will deliver to PGCPS a copy of the PGCPS Satisfaction Report, together with details of Developer’s proposed remedial plan if required in accordance with item (d) of Section 5.10 (PGCPS Satisfaction System) of this Exhibit.

(d) For each Surveyed Element and Demand Requisition survey in respect of which:

(1) Developer’s average satisfaction rating is 3.5 or greater, no remedial action will be required; and

(2) Developer's satisfaction rating is below 3.5, Developer will prepare a plan, acceptable to PGCPs, to promptly address and improve its performance of the relevant Services.

(e) At least once every five (5) years throughout the Term, Developer will review and propose revisions to the PGCPs Satisfaction System to:

(1) ensure that it at all times constitutes a meaningful and informative tool for assessment of PGCPs Persons' satisfaction with Developer's provision of the Services; and

(2) address any deficiencies or other weaknesses in the PGCPs Satisfaction System which are identified by Developer, PGCPs, or the survey respondents.

(f) Developer will submit all proposed PGCPs Satisfaction System revisions to PGCPs for review, comment, and approval.

6. COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM

6.1 Supply of CMMS

Prior to the first Scheduled Project Readiness Date, Developer will supply and install a CMMS that will have, as its users, Developer Persons engaged in the delivery of the Services and designated PGCPs Persons.

(a) In addition to the number of CMMS user licenses required by Developer for performance of the Services, Developer will provide a minimum of ten (10) concurrent user licenses to PGCPs, which licenses will be sufficient to permit PGCPs Persons to obtain full "read only" access, including continuous access to reporting as provided in this Exhibit, at all times throughout the Services Period, to all nonfinancial CMMS data and other CMMS information related to the operation and maintenance of the Project.

(b) Developer will ensure that all information regarding the CMMS is at all times correct and current and will provide updated information regarding the CMMS to PGCPs on a timely basis. Developer will ensure that all information regarding the CMMS which it provides to PGCPs is sufficient and appropriate to enable PGCPs to train and orient designated PGCPs Persons with respect to the use and operation of the CMMS.

(c) Once the CMMS is established, Developer will be required to maintain the CMMS so as to accurately reflect all existing Maintained Elements.

6.2 Functionality Requirements

The CMMS will, at a minimum:

(a) be a comprehensive maintenance work management solution for planned and unplanned activities including Scheduled Maintenance, schedule management, resource optimization, inventory planning, asset management, monitoring and costing, long and short-term

planning, report creation and management, warranty tracking, and Performance Failure tracking, including Deductions;

(b) use an industry standard database which, at all times, remains compatible with and provides ease of data migration on at least a quarterly basis to the SchoolDude system or any other area enterprise computerized maintenance management system that becomes available to PGCPS in the future; provided, however, that Direct Losses associated with a PGCPS request for migration to or compatibility with a system other than SchoolDude may be claimed by Developer as a Compensation Event;

(c) have application functionality that does not occur at the database level;

(d) operate on a performance-based internet browser program that is compatible with PGCPS' operating system, as it may be replaced from time to time;

(e) not require any personal computer client software;

(f) have the capability to trace duplicate work requests and work orders;

(g) have the capability to track and report Actual Response Times and Rectification Periods;

(h) have the capability to track Vandalism as a separate category and report it separately;

(i) track work orders for Services;

(j) retain all records for the length of the Services Period in the database;

(k) track all activities performed by any Developer Persons with respect to the Services;

(l) employ appropriate security, data protection, and access protocols, all in accordance with Good Industry Practice; and

(m) receive, acknowledge, and track Demand Requisitions via email.

6.3 Developer Services

(a) Developer will:

(1) load each building element, component systems, and piece of equipment that will be planned, scheduled, controlled and monitored on to the CMMS with the information described in subsection (a) of Section 2.2 (Scheduled Maintenance) of Appendix W-1 (Facilities Maintenance);

(2) perform all CMMS Maintenance, administration, and support and provide initial and annual refresher training (or on an as needed basis, as determined by PGCPS,

acting reasonably) to designated Developer Persons and PGCPs Persons with respect to the use and operation of the CMMS;

(3) be responsible for all CMMS hardware and software, hardware and software installations, upgrades, repairs, annual maintenance service agreements, updates, and for maintaining all system and associated equipment;

(4) maintain all nameplate data for every piece of equipment in the CMMS and ensure that every piece of equipment has a unique identifier code;

(5) provide PGCPs with customized CMMS reports on request;

(6) affix a CMMS integrated identifier sticker with barcode on each piece of equipment, and ensure that identifier and barcode information will be printed on each service ticket and work order; and

(7) use wireless mobile devices to read barcodes or radio frequency identification in performing routes or rounds, observations, inspections, and maintenance. Developer will provide wireless mobile devices that will record work status, materials, time and attendance, failure codes, tools, and comments at a minimum, and have the capability to create new service tickets and work orders on demand, and capture signatures for completed tasks.

(b) Data created and captured in the wireless mobile devices must be capable of being wirelessly transmitted in a secure manner to the CMMS. Developer is responsible for all equipment and costs associated with wireless mobile devices. In addition to the number of wireless devices required by Developer for performance of the Services, Developer will supply and maintain ten (10) additional wireless mobile devices for PGCPs Persons.

APPENDIX W-1
FACILITIES MAINTENANCE

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1. SERVICES

1.1 General Requirements

In addition to the specifications and standards set forth in Exhibit W (Services Requirements), the Services shall include and Developer shall perform the Facility Maintenance services described in this Appendix W-1 (Facilities Maintenance):

(a) Perform the roles and responsibilities assigned to Developer set forth in the Agreement, Exhibit W (Services Requirements), and Attachment 1 (Summary Matrix Identifying Maintenance Roles and Responsibilities) to this Appendix;

(b) deliver Facilities Maintenance services in accordance with this Appendix so that each of the Maintained Elements and Building Systems:

- (1) is properly and safely maintained in accordance with all Plans;
- (2) remains functional, operationally sound, and of good appearance;
- (3) performs in accordance with its respective design criteria and standards as set forth in the Technical Requirements; and

(c) ensure the Services are delivered utilizing risk assessment and safe work management systems which are consistent with Good Industry Practice and Developer's policies and procedures for occupational health and workplace safety designed to ensure the comfort and safety of all PGCPS Persons.

1.2 Interpretation

Where the term "free from" is used in this Appendix W-1 (Facilities Maintenance), the requirement will be to ensure that the equipment, component, or finish is maintained in accordance with Good Industry Practice for similar facilities and that any accumulation of the characteristics referenced for a particular element does not cause any health or safety incidents or events.

2. FACILITIES MAINTENANCE REQUIREMENTS

2.1 Annual Service Plan

Developer will develop, in accordance with Section 4.1 (Start-Up Plan) and Section 4.2 (Annual Service Plan) of Exhibit W (Services Requirements), and implement as part of the Annual Service Plan, appropriate policies, procedures, practices, schedules, and a self-monitoring inspection and reporting system in respect of the delivery of the Facilities Maintenance services to PGCPS.

2.2 Scheduled Maintenance

Developer will, as part of its Annual Service Plan, establish and implement, for each School, a preventive and reliability-based scheduled maintenance plan and program (the “**Scheduled Maintenance Plan**”) that accommodates the PGPCPS Activities, including Ad Hoc School Use and Third Party and Community Use. The Scheduled Maintenance Plan shall be comprised of inspections and scheduled cyclical preventive maintenance of all Maintained Elements, to be planned, scheduled, controlled, and monitored utilizing the CMMS, and shall include:

- (a) For each Maintained Element (as appropriate):
 - (1) hierarchical based component identification;
 - (2) description (including make, model, serial number, and capacity);
 - (3) location;
 - (4) priority classification;
 - (5) unique identification code;
 - (6) maintenance job plan description, including:
 - (i) detailed maintenance procedures;
 - (ii) warranty requirements;
 - (iii) parts and consumables;
 - (iv) regulatory and statutory requirements;
 - (v) special instructions; and
 - (vi) safety precautions
 - (7) frequency;
 - (8) scheduled dates and hours;
 - (9) maintenance history, including planned and unplanned;
 - (10) provider (staff or contractor) of the service;
 - (11) status;

(12) notes, including inspection observations, recommendations, and comments;

(b) identification of activities which may cause disruption to PGCPS Persons using or visiting a School and the methods by which Developer will make appropriate accommodations to minimize such disruptions;

(c) a risk assessment;

(d) provisions for undertaking routine inspection and testing and servicing, in accordance with any Insurance Requirements, recommended manufacturers' guidance, and Good Industry Practice, of:

(1) all Building Systems, including: Heating, Ventilation, and Air Conditioning (HVAC) systems, plumbing and water systems, boilers, and related systems and components, elevators/lifting devices, mechanical systems, lighting, and electrical distribution systems;

(2) life safety and emergency systems, including but not limited to: standby generators and associated transfer switches, standby domestic pumps, fire alarms, firefighting equipment and suppression systems, security systems and devices, emergency lighting systems, exit signs, and voice communication systems;

(3) interior and exterior building finishes and fabric, including but not limited to: floors, walls, and ceiling coverings, paint, hardware, windows, doors, cladding, roofing systems, and other architectural and structural components;

(4) all exterior improvements; and

(5) all other Maintained Elements.

(e) plans for ensuring completion of one hundred percent (100%) of all Scheduled Maintenance on life safety and emergency systems and of all statutory or regulatory testing and maintenance and a minimum of eighty-five percent (85%) of all other Scheduled Maintenance within the times planned in the Annual Service Plan, with any deferred Scheduled Maintenance to be completed within the following month;

(f) a summary of all Scheduled Maintenance, system failures, and corrective actions for each School in each Performance Monitoring Report for the relevant period; and

(g) such data as may be required by PGCPS for input into an asset management software tool.

2.3 Demand Maintenance

Developer will respond to all Demand Requisitions providing comprehensive and effective Demand Maintenance by way of the Help Desk. All Demand Maintenance will be carried out in accordance with the Agreement and the applicable Required Response Times and Rectification Periods set forth in Exhibit X-2 (Deductions) of the Agreement. Subject to Article 16 (Relief Events) of the Agreement, PGCPS will be entitled to take Deductions in accordance with Section 11.4 (Unavailability Events and Performance Failures) of the Agreement. Developer will include in each Performance Monitoring Report for the relevant period a summary of all Demand Requisitions and corrective actions as set forth in Section 5 (Performance Monitoring and Reporting) of Exhibit W (Services Requirements).

2.4 Maintenance Times

Subject to of Section 3.8 (School Use and Scheduling) and Section 3.9 (Scheduling of Services) of Exhibit W (Services Requirements), Developer will perform Facilities Maintenance during the relevant Maintenance Access Times and will:

(a) perform Scheduled Maintenance during the periods agreed in the Annual Service Plan then in effect and will give PGCPS ten (10) days' notice before commencing any such Scheduled Maintenance; and

(b) undertake and complete Demand Maintenance within the relevant Required Response Time and Rectification Period set forth in Exhibit X-2 (Deductions) of the Agreement.

2.5 Rescheduling of Maintenance

In accordance with the provisions of Section 3.8 (School Use and Scheduling) and Section 3.9 (Scheduling of Services) of Exhibit W (Services Requirements), if PGCPS, acting reasonably, determines that the times at which Developer proposes to perform Facilities Maintenance will cause material disruption to the operations of PGCPS or other PGCPS Persons using or visiting a School (including Third Party and Community Use and Ad Hoc School Use), PGCPS may give notice to Developer not to carry out such Facilities Maintenance until such time as PGCPS and Developer, each acting reasonably, agree on an alternate time. If applicable, upon such agreement, any Required Response Time and Rectification Period (as set forth in Exhibit X-2) related to such Facilities Maintenance will be adjusted accordingly.

2.6 Elevators

Developer will:

(a) operate and maintain all elevators and related equipment at the speeds and in accordance with the elevator design specifications set forth in the Technical Requirements;

- (b) dispatch its personnel promptly to respond to all elevator faults, alarms, or telephone calls from an elevator and initiate the required action to rectify faults;
- (c) ensure Developer Persons are properly trained and certified in safe procedures and practices for the release of trapped elevator occupants;
- (d) release trapped elevator occupants within thirty (30) minutes of notification to the Help Desk;
- (e) undertake Scheduled Maintenance of elevators and elevating devices and related equipment such that downtime is minimized; and
- (f) include in each Performance Monitoring Report for the relevant period a summary of any elevator failures and corrective actions.

2.7 Building Management System

Developer will:

- (a) operate the BMS to allow for the control and monitoring of the operation of the Building Systems in accordance with the design and performance criteria set forth in the Technical Requirements;
- (b) operate the BMS to allow for the monitoring of the operation of the Schools and the Facilities Maintenance services from a single location within each School and remotely through internet connections accessible to PGCPs;
- (c) monitor, control, indicate alarms, and provide trending information for all BMS connected sensors and control points; and
- (d) include with each Performance Monitoring Report and provide PGCPs with continuous direct access (other than during such reasonable periods as the BMS may be undergoing Scheduled Maintenance or emergency maintenance) to the following information generated by the BMS during the relevant period:
 - (1) critical incident and system failures;
 - (2) daily, weekly, and periodic status reports;
 - (3) exception reports by element status;
 - (4) trend log data;
 - (5) time of occurrence, Response, and Rectification; and

- (6) such other information as PGCPS may reasonably require.

2.8 Utilities Management

Developer will:

- (a) secure and maintain all connections to Utility services to appropriate specifications and adequate capacity to supply and satisfy the requirements of the Schools under all anticipated operating conditions;

- (b) undertake all testing, cleaning, and maintenance as required by the applicable Utility Company (and in accordance with such Utility Company's specifications);

- (c) maintain the integrity of supply of all Utilities and continuously manage the distribution of Utilities within the Schools efficiently, economically, and with due regard to current principles of sustainable technology, energy conservation, and management procedures;

- (d) maintain appropriate records in relation to all permits, including, but not limited to:

- (1) ensuring all test certificates, information, documentation, and other records (including those relating to any aspects of safety or statutory compliance) are maintained accurately, updated appropriately, correct for the current supply requirements, and available for inspection by PGCPS and any Governmental Authorities; and

- (2) preparing and supplying all information reasonably required by PGCPS in relation to the use and consumption of Utilities, including all statistical records which may be required by any Governmental Authority;

- (e) notify PGCPS of all scheduled interruptions to any Utility of which Developer should be reasonably aware that may have an impact on the Schools; and

- (f) operate and maintain the BMS and all Building Systems in an efficient manner designed to minimize consumption of Utilities and manage conservation and reduction initiatives.

For clarity, Developer will be responsible only for Utility services from the point of delivery by the relevant Utility.

2.9 Maintenance of Energy Consuming Building Systems

Developer will:

- (a) maintain all energy-consuming Building Systems, including all boilers, so that each such system operates efficiently; and

(b) conduct regular efficiency testing of all such systems in accordance with Good Industry Practice, and, without limitation, no less than once per heating season for the boilers (at start-up of the season), and will include the results of such testing in each applicable Performance Monitoring Report.

2.10 Maintenance Equipment and Supplies

Developer will provide, maintain, clean, and replace as required all equipment, supplies, apparatus, and consumable items (including any consumable items required for the operation of Maintained Elements) required to deliver the Facilities Maintenance services, including scaffolding, mobile elevating, or lifting devices, tackle, machinery, tools, or other equipment; provided, however, Developer will not be responsible for providing supplies or consumables for any PGCPs Retained Responsibilities.

2.11 Pest Control Services

Developer will:

(a) provide a comprehensive preventative, reactive, and on-call pest control service for the exterior elements of the Schools and Sites for all pests, including insects, rodents, and birds, using personnel who are fully trained, qualified, and able to provide high quality professional and practical advice;

(b) notify PGCPs immediately of any pest/vermin infestation;

(c) undertake all work in a safe manner with minimal interference with School operations and with minimal risk in terms of safety, hygiene, and damage to the Schools or the PGCPs Persons using or visiting a School;

(d) provide safe, tamper resistant, and efficient methods of catching, destroying, and safely disposing of pests, adopting safe and humane procedures in all instances;

(e) if non-chemical forms of pest control are ineffective, use chemical treatment and specific chemicals consented to in writing by PGCPs, provided that no chemicals will be used which may come into contact with PGCPs Persons using or visiting a School;

(f) ensure the use of any permitted chemicals, including pesticides, is strictly controlled and monitored;

(g) maintain all records of the use of any permitted chemicals and advise PGCPs in advance of the type of chemicals it intends to use; and

(h) include in its Performance Monitoring Report to PGCPs a complete overview on pest control activity during the previous period and identifying future action which will include the following:

- (1) identification of any pest/vermin infestation;
- (2) details of the locations and areas inspected and treated and the product names and product number of the pesticide used if applicable;
- (3) the number, type, and location of infestations reported;
- (4) any evidence of any pest and any belief that any infestation is associated with any other premises (whether or not PGCPS-owned) that may affect the Schools; and
- (5) a description of recommended preventative measures to minimize re-infestation.

2.12 Roads, Grounds, and Landscape Maintenance

Developer will:

(a) provide maintenance for all roads, grounds, Athletic Fields, and landscaping at the Schools and Sites (excluding the PGCPS Retained Responsibilities set forth in subsection (c) of Section 2.1 (PGCPS Retained Responsibilities) of Exhibit W (Services Requirements)), including:

(1) maintenance of irrigation systems, exterior lighting, and parking receptacles, internal roadways, parking and drop-off areas, walkways and pathways, tarmac play areas, basketball courts, concrete site furniture pads, exterior learning areas, fencing, Developer installed site furniture and recreational equipment (excluding any playground equipment installed by PGCPS), safety surfacing, and any drainage associated with safety surfacing;

(2) full horticulture services, including:

(A) tree maintenance and pruning provided by a certified arborist;

(B) lawn edging and weeding;

(C) planting bed maintenance, including mulch;

(D) planting, including shrubs, trees, and perennials;

(E) effective irrigation procedures; and

(F) repair of damage and winter kill, including replacement if necessary;

(b) ensure all external areas of the Schools are sound, safe, tidy, and maintained in accordance with roles and responsibilities assigned to Developer in Attachment 1 (Summary Matrix Identifying Maintenance Roles and Responsibilities) to this Appendix W-1 (Facilities Maintenance); and

(c) assist PGCPs Persons in the coordination of installation of play structures, apparatus, and site furniture supplied by community groups and other PGCPs Persons; provided, however, that Developer shall be entitled to claim any Direct Losses associated with such assistance as a Compensation Event.

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ATTACHMENT 1

SUMMARY MATRIX IDENTIFYING MAINTENANCE ROLES AND RESPONSIBILITIES

The following matrix provides a summary of the maintenance roles and responsibilities of the Parties in the performance of the Project. The responsibilities assigned to Developer and PGCPs in the matrix set forth minimum expectations for the performance of certain elements of the Services and do not limit the scope of the Services that Developer will provide.

In the event of a conflict between the terms and conditions of this matrix with the Agreement, the body of Exhibit W (Services Requirements), or any other exhibit, the order of precedence shall be as follows: (a) Agreement terms and conditions; (b) the body of Exhibit W (Services Requirements); (c) all other exhibits attached to this Agreement; and (d) the below matrix. All Maintained Elements, including without limitation the elements outlined below, will at all times be functional, operational, maintained, repaired, and refreshed in accordance with all applicable Technical Requirements, Applicable Law, and Good Industry Practices.

ELEMENT	RESPONSIBILITY	PGCPS	DEVELOPER
Routine Custodial	1. Sweeping and cleaning of floors and walls	✓	
Site Improvements and Infrastructure (excluding any playground equipment installed by PGCPs)	1. Free from graffiti and/or Vandalism		✓
	2. Accessible for PGCPs Persons with visual or mobility impairments		✓
	3. All external furniture and hard landscaping features maintained in accordance with the Services Requirements, excluding grounds maintenance at main entrances and walkways that lead to them		✓
	4. Waste bins emptied as necessary	✓	
	5. Irrigation and exterior lighting systems functional and maintained in accordance with the Services Requirements		✓
	6. Fences, walls, and gates are safe, structurally sound, and secure		✓
	7. Playground equipment, athletics fields, and recreation areas installed by Developer are safe, and maintained	✓	
Roadways, sidewalks and parking lots within the Project Site	1. Repair all pits, chips, pop-outs scaling or other surface defects that can be identified or classified as spalls;		✓
	2. On roadways used for vehicular traffic, repair pavement cracks greater than one half (1/2) of an inch		✓

ELEMENT	RESPONSIBILITY	PGCPS	DEVELOPER
	by properly sealing to prevent water and debris from entering the pavement structure and subbase		
	3. Grind and/or profile pavement to maintain a substantially smooth and safe driving surface		✓
	4. Maintain and renew roadways to enable proper sheet flow away from the center line and avoid standing water		✓
	5. Ensure that all pavement striping and markings are well defined, clear, legible and reflective		✓
	6. Repair and replace pavement markings, reflective pavement that is non-functioning, broken, missing or obstructed, as applicable markings, prismatic reflectors, and roadside delineators that are broken or faded		✓
	7. Maintain parking lot lane striping to include, as required by the Services Requirements and applicable Technical Requirements, parking spaces for visitors, permitted parking, accessible parking, carpools, vanpools, car shares, low-emission, and natural gas vehicles.		✓
	8. Maintain surface parking lots to ensure pavement is stable and durable, free from defects including rutting raveling, shoving, bleeding, depressions, potholes, cracks, settlements, heaving, weathering, fatigue or loss of traction		✓
	9. Ensure that all repairs, temporary or permanent, to parking areas restore the integrity of the pavement so that it can withstand traffic loading		✓
	10. Maintain and renew parking lots to avoid standing water;		✓
	11. Monitor and repair concrete sidewalk heaving, skateboard protection and trip hazards, potholes and pavement cracks of more than one-quarter of an inch. Adherence to ADA accessibility requirements for these areas shall be required at all times.		✓

ELEMENT	RESPONSIBILITY	PGCPS	DEVELOPER
	<i>Snow and Ice Removal</i>		
	1. Application and re-application, as required, of anti-skid and/or ice melting products to all paved and concrete areas, including without limitation roadways, sidewalks, emergency routes, and parking areas	✓	
	2. Snow plowing and clearing of snow from the Schools	✓	
	3. Reasonable temporary snow dumping on sites in areas that do not impede fire lanes, pedestrian or vehicle traffic or restrict availability of visitor or staff parking or removal of snow from the Sites	✓	
HVAC Equipment and Systems includes all Facility chillers, boilers,	1. HVAC Equipment and Systems Preventive Maintenance and Repair to include all A/C units, exhaust systems, fan coil units, fresh air and return air systems, air compressors, pumps, VAV boxes, VFD's, air handlers, thermostats, piping distribution, pressure valves, fire dampers, cooling towers, and associated mechanical equipment.		✓
	2. Operate, maintain, and renew HVAC equipment and systems in accordance with and to ensure the Areas served by the systems comply with the Services Requirements and applicable Technical Requirements, Master Specifications and applicable standards including 62, ASHRAE Standard 55 and addendums to the standards		✓
	3. Operate maintain and renew HVAC equipment and systems to provide continuous operations with no controllable interruptions that affect Facilities Activities and to support Core Times		✓
	4. Ensure that interior Areas maintain an interior temperature of: a) For occupied areas: 72 degrees in heating mode and 76 degrees in cooling mode. With boundaries of 68 degree minimum in heating mode and 78 degree maximum in cooling mode. b) Unoccupied areas shall maintain a minimum temperature of 64 degrees c) Humidity in all areas shall be between 30% and 60%		✓

ELEMENT	RESPONSIBILITY	PGCPS	DEVELOPER
	5. Ensure flexibility to allow Area set points to be adjusted during the Term as agreed to by Developer and the PGCPS (Refer to driftpoint standards in PGCPS Master Specification Section 23 0923)		✓
	6. HVAC water testing and treatment per PGCPS Master Specifications Section 23 2500		✓
	7. Air distribution system balancing		✓
	8. Control system and building Energy Management Systems EMS operation and repair		✓
	9. All ventilation systems will function as intended without undue noise or vibration		✓
	10. Air changes and ventilation levels in accordance with Good Industry Practice		✓
	11. Ductwork, fittings, and pipework are securely fastened to their intended points of anchorage		✓
	12. Ensure that kitchen hoods are cleaned and maintained as necessary to prevent the accumulation of grease and are in compliance with applicable law		✓
	13. No persistent or unreasonable leakages of water (or other heating/cooling medium) or air from ventilation systems		✓
	14. Secured to authorized access only		✓
	15. Free from corrosion, erosion, and organic growth		✓
	16. Test for bacteria, legionella and like contaminants on an ASHRAE approved frequency		✓
	17. Ductwork will be maintained so as to ensure efficient flow of air through the HVAC system. Developer will submit details of its plan for verification of ductwork cleanliness and performance, including method and frequency of verification, to PGCPS concurrently with the first Annual Service Plan		✓
Plumbing Systems (includes systems such as water pumps, municipal/private well	1. Operate, maintain and renew the plumbing system and equipment to ensure continuous operations		✓
	2. Interior plumbing repairs (restrooms, water heaters, kitchens, etc.)		✓

ELEMENT	RESPONSIBILITY	PGCPS	DEVELOPER	
water lines, sewer lines, fire plumbing systems, irrigation systems, back flow preventers, roof drains, storm drains, cafeteria grease traps and drains, condensate pumps, sump pumps, ejector pits, grease traps, water softeners and the systems supporting pumps, drains, piping, risers, valves, faucets, toilets, together with associated fixtures and associated Infrastructure within Project Site and the Facilities)	3. Repair or replacement of installed restroom fixtures		✓	
	4. Exterior plumbing as it connects to interior systems (hose bibs, etc.)		✓	
	5. Repair of broken/leaking water lines		✓	
	6. Initial response to drain clogs (e.g., manual plunging)	✓		
	7. Clearing of grease traps and drain clogs unresolved by plunging		✓	
	8. Ensure proper operation/maintenance of sewage ejection systems		✓	
	9. Deliver water at the temperatures to meet code requirements and flow rates as required to serve the School needs without undue noise and vibration		✓	
	10. Taps, valves, and other related fittings and fixtures function as intended		✓	
	11. Pipework and fittings fastened securely to their intended points of anchorage		✓	
	12. No persistent drips or leaks of water from pipework, taps, valves, fixtures, and/or fittings		✓	
	13. Ensure landscape irrigation systems function as designed		✓	
	Sanitary and Other Drainage Systems	1. Systems function as intended, without undue noise and vibration		✓
		2. Provide a safe and comfortable environment (no emission of trapped gases, etc.)		✓
3. All pipework and fittings are fastened securely to their intended points of anchorage			✓	
4. No leakage of waste and/or foul water and/or rain water			✓	
5. Gutters, drains, and stormwater systems are free from litter, leaves, weeds, and extraneous material			✓	
Electrical Maintenance and Repair	1. Maintain and renew electrical distribution systems in accordance with Best Management Practices, but not less than recommended by the National Fire Protection Agency and applicable Law for the maintenance of electrical systems		✓	

ELEMENT	RESPONSIBILITY	PGCPS	DEVELOPER
	2. Maintain and renew backup equipment such as UPS systems, UPS batteries, switchgear and generators to ensure a continuous supply of power. Ensure backup systems have a forty-eight (48) hour supply of fuel at all times (Refer to PGCPS Master Specification Section 27 0500)		✓
	3. Ensure that all emergency lighting systems function as intended during power outage conditions		✓
	4. Document electrical circuit changes and updated local panel directories. Developer shall also install labels on all newly installed circuits		✓
	5. General interior electrical repair (lighting switches, receptacles, etc.)		✓
	6. Repair or adjustment of interior electric locking hardware, buzzers, etc.		✓
	7. Inspection and repair of electrical sub-panels and the replacement of circuit breakers		✓
	8. General electrical testing and inspection		✓
	9. Weatherproof where appropriate		✓
	10. Maintain function as intended without undue noise or vibration; wiring, fittings, fixtures, controls, and safety devices are properly housed and fastened securely to their intended point of anchorage and labeled		✓
	11. Lightning conductor should be complete, isolated, and comply with Industry Standards		✓
	12. MICC cable protective coatings intact		✓
	13. Maintain and replace light switches and light bulbs		✓
Fixtures and Fittings	1. Maintain all fixtures and fittings at a level that operates safely and as intended, without making undue noise and without including observable stains on hinges, locks, catches, and handles, and without binding, rubbing, or catching in any way		✓
	2. Maintain fixtures and fittings free from all but minor surface blemishes and wear and tear		✓
	3. Ensure luminescent strips, signs, notices, and warning signs where appropriate are intact, legible, and illuminated where appropriate		✓

ELEMENT	RESPONSIBILITY	PGCPS	DEVELOPER
	4. Maintain fixtures and furniture free from corrosion		✓
Interior Repair and Maintenance	1. Maintain and renew all architectural finishes, including paint, wall covering, carpet, tile, or hardware, or other elements associated with walls, ceilings, hard and soft floors, raised floors, or doors, as the case may be, to ensure safety is not compromised and the finishes retain a uniform, clean appearance, finishing quality and coloration		✓
	2. Repair and adjustment of interior doors and door hardware		✓
	3. Repair and adjustment of window hardware		✓
	4. Repair, adjustment, and replacement of interior locks and hardware		✓
	5. Patch and paint small wall repairs as required		✓
	6. Re-attach or replace floor coverings to ensure fully fixed to the floor and so as not to cause a health or safety hazard		✓
	7. Ensure the floor/floor covering is free from tears, scoring, cracks, or any other damage that is unsightly and/or could cause a health or safety hazard		✓
	8. Maintain floor coverings/surfaces in such a way as to provide a suitable uniform surface, with minimal resistance, for wheelchairs and any other wheeled vehicles in use in the Schools		✓
	9. Replace defective or stained ceiling tiles		✓
	10. Repair, adjustment, or replacement of installed restroom hardware		✓
	11. Maintain floors and buildings free from structural cracks and/or deflection		✓
	12. Maintain buildings free from undue damage and of cosmetic appearance in accordance with APPA 2 standards.		✓
	13. Repair, adjustment or replacement of installed cabinet hardware		✓
	14. Maintain buildings free from all hazardous materials		✓

ELEMENT	RESPONSIBILITY	PGCPS	DEVELOPER
Decorative Finishes (excluding Decorations as set forth in Section 2.1(b) of Exhibit W)	1. Ensure decorative finishes are complete according to their specification and maintained in a state of good cosmetic appearance at all times		✓
	2. Ensure decorative finishes are free from all but minor surface blemishes or undue wear and tear		✓
	3. Ensure decorative finishes are free from cracks, or any other surface degradation inconsistent with a building maintained in accordance with Good Industry Practice		✓
	4. Complete repainting of interior walls performed in accordance with the Services Requirements		✓
Cafeteria and Kitchen	1. Maintenance, repair and replacement of all cafeteria/kitchen equipment to include hand sinks, walk in cooler/freezer, cooler refrigeration system, freezer refrigeration system, prep sink, floor trough, tilting skillet, combination oven, convection ovens, counter for service with cashier's stand, pot washing sink, refrigerated display merchandisers, pass-thru heated cabinets, pass-thru refrigerators, reach in refrigerators, milk coolers, condiment counters, railings		✓
Property Inspections	1. Perform routine walk-throughs of each School, making minor repairs as found and ensuring a safe environment		✓
	2. Perform outside inspection of each School, making minor repairs to equipment and egress areas		✓
Roof Inspection / Maintenance	1. Maintain and renew all roofing systems and exterior Building surfaces, including all drainage and gutter systems to ensure there are no leaks or seepage, and to plan for inclement weather conditions		✓
	2. Maintain and renew all roof, skylight and other roofing elements including annual load testing of roof davits and anchor systems		✓
	3. Perform general roof inspection during each property inspection, ensuring that roofing materials and associated components are intact		✓
	4. Report to PGCPS any level of identified damage determined to be beyond assigned technician capability		✓

ELEMENT	RESPONSIBILITY	PGCPS	DEVELOPER
	5. Clear the roof of debris and clean all roof storm and overflow drains so they are free to flow with no obstructions present		✓
	6. Perform repairs to the roof or flashing to prevent ongoing degradation		✓
	7. Perform emergency repairs to the roof to stop leaks until permanent repairs can be affected		✓
Building Exterior/Windows/Doors	1. External window surfaces cleaned a minimum of once a year to maintain a debris free, clear, and clean appearance		✓
	2. Fix gaps and cracks in all Building exterior walls, retaining walls, apertures and roofing to prevent water seepage into Buildings or foundations and to match the existing surface coloration, quality and finish		✓
	3. Keep buildings free from damp penetration, staining, spalling, debris, moss growth, and animal droppings		✓
	4. Ensure chimney stacks/flues are structurally sound and secure, and flue is free from blockages/excess soot		✓
	5. Inspect structural elements for rust, rot or other deterioration, particularly in staircases, roofs and load bearing elements		✓
	6. Maintain and renew all exterior enclosure elements, including but not limited to exterior walls, panels, windows and cladding		✓
	7. Cleaning of Building exteriors shall occur at least once every thirty-six (36) months		✓
	8. Maintaining and renew all doors and entrances		✓
	9. Maintaining signage on the Schools, so that signage can be clearly read, is substantially free from debris, and is not cracked or bent		✓
Grounds, and Landscape Maintenance as set forth in Section 2.12(a) of Appendix W)	<i>Trees, Shrubs, and Hedges:</i>		
	1. Maintain all trees, shrub, plantings and hedges in accordance with the requirements contained in Section 32 0120 of the Master Specifications		✓
	2. Trimmed, pruned, and/or cut to maintain healthy growth		✓

ELEMENT	RESPONSIBILITY	PGCPS	DEVELOPER	
	3. Free from dead or dying branches		✓	
	4. Free from litter	✓		
	5. Free from disease and/or infestation		✓	
	6. Replace as and when necessary to ensure mature landscaping at Handback which is consistent with the original design		✓	
	<i>Grassed Areas:</i>			
	1. Initial growth of turf required from Developer by the Project to be delivered in uniform appearance with no dead patches		✓	
	2. Of uniform appearance with no dead patches	✓		
	3. Edges trimmed	✓		
	4. Free from infestation		✓	
	5. Free from fallen leaves, weeds and excrement	✓		
	6. Irrigated turf maintained to a uniform length between 40 and 60 mm	✓		
	7. Non-irrigated turf maintained to a uniform length between 50 and 75 mm	✓		
	8. Irrigation systems functional and maintained in accordance with the Services Requirements		✓	
Electrical Distribution System and Emergency Power	1. Ratings clearly marked		✓	
	2. Fuse elements or circuit breaker mechanisms in working order		✓	
	3. Contacts and connections clean and mechanically tight		✓	
	4. No overheating during normal operating loads		✓	
	5. Secure to authorized access only		✓	
	6. Recording instruments operational where necessary		✓	
	7. All bus connectors torqued to manufacturer recommendations		✓	
	8. Lock out procedures provided		✓	
	9. All cables mega tested as required		✓	
	10. All loads balanced on each phase		✓	
	11. All protective relaying properly coordinated		✓	

ELEMENT	RESPONSIBILITY	PGCPS	DEVELOPER
	12. All breakers, switchgear, and transformers tested and cleaned on a regular scheduled basis		✓
	13. Identification notices posted where necessary		✓
Fire Fighting Equipment	1. Fire extinguishers and other firefighting equipment maintained in accordance with relevant codes and standards		✓
	2. Sound, secure, and fixed to their intended point of anchorage		✓
	3. Fully operational within manufacturer's recommendations		✓
	4. Hydrants, sprinklers, and hoses at correct operating pressure and capacity		✓
	5. Pipework free from corrosion, leaks, and drips		✓
Communications Systems	1. Telephones and IT equipment maintained in accordance with all relevant codes and standards	✓	
	2. All other communication systems (e.g., intercom system) and data transmission installations and security systems to comply with relevant codes and standards (e.g., Good Industry Practice) and be fully operational within manufacturer's recommendations		✓
Pest Control	1. Furnish all supervision, labor, materials and equipment necessary to accomplish the monitoring, reduction, trapping and eradication of pests within the interior and exterior of all Facilities		✓
	2. Provide all Integrated Pest Control Management Services in accordance with the Services Requirements, National Pest Control Association, EPA, OSHA and USDA and other relevant agencies.		✓
Elevators	1. Maintain and renew all elevator and vertical transportation systems to ensure continuous operations		✓
	2. Perform all testing routines as required by Governmental Entities		✓
	3. Perform periodic cleaning of elevator pits;		✓
	4. Obtain and properly display permits/certificates		✓

ELEMENT	RESPONSIBILITY	PGCPS	DEVELOPER
	5. Ensure all elevator and vertical transportation systems operate as intended when placed on backup power systems		✓
	6. Ensure all elevator cab emergency communications and notification systems and escalator emergency power off switches are operational at all times;		✓
	7. Ensure any elevator cab-top hoisting shall be done by the direct supervision and control of a certified elevator technician		✓
	8. Ensure any entrapments shall be resolved under the direct supervision and control of a certified elevator technician and/or fire department personnel		✓
Athletic Fields and Courts	<i>Basketball/Volleyball Courts</i>		
	1. Ensure basketball and volleyball courts are in playable condition, with no grade change or unevenness of more than one (1) inch in any eight (8) feet		✓
	2. Ensure equipment, including poles, backboard, rim, and nets, are in working order and good condition		✓
	3. Monitor and repair court base for heaving and trip hazards, repairing, cracks or other irregularities of more than one half(½) inch		✓
	<i>Fields: Competition Area</i>		
	Developer shall maintain and renew all elements required to support the Fields: Competition Area, including entry and exit points, benches, shade structures, restrooms (if applicable), fencing and lighting.		✓
	Maintenance and renewal of artificial turf fields		✓
	Maintenance of natural grass fields extending to ten (10) feet around the perimeter of the fields (or less if dictated by site design)	✓	

APPENDIX W-2

HELP DESK SERVICES

1. SERVICES

1.1. General Requirements

In addition to the standards and specifications set forth in Exhibit W (Services Requirements), Developer will deliver the Help Desk Services:

(a) twenty-four (24) hours per day, three hundred and sixty-five(six) (365)(6) days per year, with provision of back-up plans to ensure continuity of service; and

(b) such that the Help Desk functions as the central communications hub for service requests for all Services and management of the Schools including receiving, logging, and responding appropriately to telephone, facsimile, e-mail, and other communications and liaising with Designated School Users on the progress and status of work.

1.2. Help Desk Services

In connection with the operation of the Help Desk, Developer will:

(a) provide for Designated School Users to submit Demand Requisitions by telephone, electronic mail, and other electronic means;

(b) provide a local or toll-free telephone number to access the Help Desk;

(c) make the initial determination, categorization, and classification of each and every Demand Requisition and Event using the classification protocol outlined in Exhibit X-2 (Deductions) of the Agreement;

(d) answer each Demand Requisitions or other request received through the Help Desk:

(1) if made by telephone, eighty percent (80%) of calls will be answered within thirty (30) seconds during Operating Hours and within thirty (30) minutes during non-Operating Hours by a live English-speaking Help Desk operator;

(A) calls related to Emergency Events or Performance Failures that have an "Urgent" priority classification will be addressed immediately and not put on hold;

(B) calls related to Critical Events may be put on hold for a maximum of one (1) minute during periods of high call volume with an option for the call initiator to leave a voice message for call back. All voice messages related to Critical Events will be responded to within five (5) minutes; and

(C) calls related to Routine Events or Performance Failures that have a “High” or “Low” priority classification may be put on hold for a maximum of one (1) minute during periods of high call volume with an option for the call initiator to leave a message for call back. All messages related to these types of Events will be responded to within thirty (30) minutes; and

(2) if made by electronic mail or by other electronic means,

(A) eighty percent (80%) of requests related to Emergency or Critical Events or Performance Failures that have an “Urgent” priority classification will receive an electronic mail or other electronic response within fifteen (15) minutes of receipt at the Help Desk during Operating Hours and within thirty (30) minutes of receipt at the Help Desk during non-Operating Hours; and

(B) eighty percent (80%) of requests related to Routine Events or Performance Failures that have a “High” or “Low” priority classification will receive an electronic mail or other electronic response within thirty (30) minutes of receipt at the Help Desk during Operating Hours and within thirty (30) minutes into the Operating Hours of the next day for requests received at the Help Desk during non-Operating Hours; and

(e) monitor and track Help Desk statistics and provide a monthly report, as part of the Performance Monitoring Report, to PGcps including:

- (1) daily call volumes;
- (2) records of telephone and electronic Actual Response Times;
- (3) average initial call response times and number of calls not responded to within thirty (30) seconds;
- (4) number of calls put on hold, average hold times, number of calls put on hold for longer than one (1) minute, and number of abandoned calls; and
- (5) number of electronic or voice messages not responded to within the applicable times set forth in Section 1.2(d)(1) and Section 1.2(d)(2);

(f) record and notify PGcps of:

- (1) all Performance Failures and Unavailability Events promptly if such failures or events will have a material impact on the use of the Schools by PGcps Persons and otherwise in accordance with Section 5.2 (Periodic Reporting) of Exhibit W (Services Requirements);
- (2) accidents or emergencies promptly after occurrence; and

(3) complaints or compliments and other comments received from Designated School Users in connection with the Services promptly following receipt;

(g) monitor the BMS and the CMMS, including the monitoring of alarms, equipment alarms, emergency and security systems, and immediately notify PGCPS of any activated alarms in accordance with the Annual Service Plan;

(h) create, update, and deliver to PGCPS and Designated School Users, Help Desk user instructions as and when required;

(i) provide Help Desk user training to PGCPS and Designated School Users as and when required;

(j) maintain a daily electronic log of all Demand Requisitions received through the Help Desk including:

(1) Help Desk operator's name to whom the inquiry was made or the automated electronic system which generated the report;

(2) the name of the Designated School User;

(3) date and time;

(4) location;

(5) nature of the Demand Requisitions received;

(6) service required;

(7) Performance Failure classification (*i.e.*, Urgent, High, Low);

(8) unique request reference identifier;

(9) date and time request passed to the appropriate person for response;

(10) action taken and by whom;

(11) the Required Response Time and time to Rectify the subject matter of such request;

(12) Actual Response Times and Rectification times; and

(13) any required follow-up actions;

- (k) not amend, delete, or alter any details recorded by the Help Desk, after inclusion of such details in a Performance Monitoring Report submitted to PGCPS, unless approved by PGCPS and the following information is recorded and maintained:
 - (1) the exact nature and impact of the amendment;
 - (2) the reason for the amendment; and
 - (3) by whom the amendment was authorized;
- (l) ensure that in the event of emergencies, the Help Desk will raise the alarm, reporting the incident to internal and external authorities and log the details;
- (m) maintain confidentiality; and
- (n) track all non-conformances with respect to the Services within the Services Quality Management Plan.

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EXHIBIT X-1
PAYMENT CALCULATION

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EXHIBIT X-1

PAYMENT CALCULATIONS

1. DEFINITIONS

In addition to the definition set out in the Agreement, for the purposes of this Exhibit, the following terms have the following meanings:

“**Carry Over**” means the amount of any NA Credit in excess of the Availability Payment Credit Cap for the relevant Billing Period together with any preexisting Carry Over still outstanding

“**School Availability Payment**” means, for each School, the sum of the School Capital Charge and the School Services Charge, which shall be an amount that is unadjusted with respect to Carry Over and Net Adjustments.

“**School Capital Charge**” means, for each School, the amount shown in the Capital Charge column in Table 1, which shall be escalated by [____]%¹ on July 1 of each Contract Year. The School Capital Charge shall be a pro rata share of the Capital Charge based on the square footage of all Schools and shall be calculated by dividing the square footage of the School, as defined in Section 5.1 (Schools) of the Agreement, by the sum of the square footage of all Schools, and multiplying that amount by the total Capital Charge.

“**School Services Charge**” means, for each School, the amount shown in the Services Charge column in Table 1, which shall be Index-Linked. The School Services Charge shall be a pro rata share of the Services Charge based on the square footage of all Schools and shall be calculated by dividing the square footage of the School, as defined in Section 5.1 (Schools) of the Agreement, by the sum of the square footage of all Schools, and multiplying that amount by the total Services Charge for all Schools.

“**Table 1**”² means the following amounts stated in \$2020:

School	School Capital Charge (\$2020)	School Services Charge (\$2020)
Adelphi Area Middle School		
Drew-Freeman Middle School		
Hyattsville Middle School		
Kenmoor Middle School		
Southern Area K-8 School		
Walker Mill Middle School		
Total Capital / Services Charge (\$2020)		

¹ Insert from Proposal.

² To be completed at Financial Close.

“Table 2”³ means the following School Capital Charge payment schedule, which, for clarity, will not be changed (including, without exception, due to a Relief Event or Developer’s failure to achieve the Scheduled School Occupancy Date):

Contract Year	Adelphi Area Middle School Capital Charge	Drew-Freeman Middle School Capital Charge	Hyattsville Middle School Capital Charge	Kenmoor Middle School Capital Charge	Southern Area K-8 School Capital Charge	Walker Mill Middle School Capital Charge
July 1, 2023 to June 30, 2024						
July 1, 2024 to June 30, 2025						
July 1, 2025 to June 30, 2026						
July 1, 2026 to June 30, 2027						
July 1, 2027 to June 30, 2028						
July 1, 2028 to June 30, 2029						
July 1, 2029 to June 30, 2030						
July 1, 2030 to June 30, 2031						
July 1, 2031 to June 30, 2032						
July 1, 2032 to June 30, 2033						
July 1, 2033 to June 30, 2034						
July 1, 2034 to June 30, 2035						
July 1, 2035 to June 30, 2036						
July 1, 2036 to June 30, 2037						
July 1, 2037 to June 30, 2038						
July 1, 2038 to June 30, 2039						

³ To be completed at Financial Close. Chart template to be updated to reflect the Term in the Proposal.

Contract Year	Adelphi Area Middle School Capital Charge	Drew-Freeman Middle School Capital Charge	Hyattsville Middle School Capital Charge	Kenmoor Middle School Capital Charge	Southern Area K-8 School Capital Charge	Walker Mill Middle School Capital Charge
July 1, 2039 to June 30, 2040						
July 1, 2040 to June 30, 2041						
July 1, 2041 to June 30, 2042						
July 1, 2042 to June 30, 2043						
July 1, 2043 to June 30, 2044						
July 1, 2044 to June 30, 2045						
July 1, 2045 to June 30, 2046						
July 1, 2046 to June 30, 2047						
July 1, 2047 to June 30, 2048						
July 1, 2048 to June 30, 2049						
July 1, 2049 to June 30, 2050						
July 1, 2050 to June 30, 2051						
July 1, 2051 to June 30, 2052						
July 1, 2052 to June 30, 2053						
July 1, 2053 to June 30, 2054						
July 1, 2054 to June 30, 2055						
July 1, 2055 to June 30, 2056						
July 1, 2056 to June 30, 2057						
July 1, 2057 to June 30, 2058						

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2. AVAILABILITY PAYMENTS

The Availability Payment (AP) for each Billing Period in which Developer is entitled to receive APs under the Agreement shall be calculated using the following formula:

$$AP_{bp,y} = \left(\sum SAP_{bp,y} \right) - CO_{bp,y} \pm NA_{q-1,y}$$

where:

- (a) $SAP_{bp,y}$ = for a School with a School Occupancy Readiness Date that has occurred prior to or during the applicable Billing Period, the School Availability Payment for the applicable Billing Period is calculated as:

$$SAP_{bp,y} = SCC_{bp,y} + SSC_{bp,y}$$

where:

$SCC_{bp,y}$ = the School Capital Charge for the applicable Billing Period calculated as:

$$SCC_{bp,y} = \left(\frac{d_{bp,y}}{d_y} \right) \times SCC_y$$

where:

- (i) $d_{bp,y}$ = the number of days in the applicable Billing Period;
- (ii) d_y = the number of days in the applicable Contract Year (y);
- (iii) SCC_y = the School Capital Charge for the applicable Contract Year

where:

$SSC_{bp,y}$ = School Services Charge for the applicable Billing Period calculated as:

$$SSC_{bp,y} = \left(\frac{d_{bp,y}}{d_y} \right) \times SSC_y$$

where:

- (i) $d_{bp,y}$ = the number of days in the applicable Billing Period;
- (ii) d_y = the number of days in the applicable Contract Year (y);
- (iii) SSC_y = the School Services Charge for the Applicable Contract Year
- (b) $CO_{bp,y}$ = the Carry Over for the applicable Billing Period;

(c) $NA_{q-1,y}$ = for Billing Periods where Net Adjustments can be applied, the quarterly Net Adjustments for the Quarter (q-1) calculated as:

$$NA_{q-1,y} = DC_{q-1,y} \pm EI_{q-1,y}$$

where:

- (i) $DC_{q-1,y}$ = for Billing Periods where Deductions can be applied, the quarterly Deductions Credit for the Quarter (q-1) calculated in accordance with Exhibit X-2 (Deductions);
- (ii) $EI_{q-1,y}$ = for Billing Periods where Extraordinary Item(s) can be applied, the accrued Extraordinary Item(s) for the Quarter (q-1) calculated in accordance with the Agreement.

In the event that the Expiration Date occurs after the date in which the last School Capital Charge payment is owed in accordance with Table 2, PGCPS shall pay Developer no additional School Capital Charge payments for the School, but Developer shall be entitled to School Services Charges from the date after the last School Capital Charge payment for a School is owed until the Expiration Date.

3. RELIEF PAYMENT CALCULATION

To the extent Developer is entitled to receive a Relief Payment for a School in accordance with Section 14.11 (Relief Payment) of the Agreement, Developer shall be paid the Relief Payment calculated using the following formula:

$$SRP_{bp,y} = \left(\frac{d_{bp,y}}{d_y} \right) \times SCC_y$$

where:

- (i) $d_{bp,y}$ = the number of days in the applicable Billing Period;
- (ii) d_y = the number of days in the applicable Contract Year (y);
- (iii) SCC_y = the School Capital Charge in the applicable Contract Year

4. DELAY PAYMENT CALCULATION

To the extent Developer is entitled to receive a Delay Payment for a School in accordance with Section 14.12 (Delay Payment) of the Agreement, Developer shall be paid the Delay Payment calculated using the following formula:

$$SDP_{bp,y} = \left(\frac{d_{bp,y}}{d_y} \right) \times SCC_y$$

where:

- (i) $d_{bp,y}$ = the number of days in the applicable Billing Period;
- (ii) d_y = the number of days in the applicable Contract Year (y);
- (iii) SCC_y = the School Capital Charge in the applicable Contract Year

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EXHIBIT X-2

DEDUCTIONS

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ARTICLE 1 DEFINITIONS; REFERENCES

1.1. Definitions. In addition to the definitions set out in the Agreement, for the purposes of this Exhibit, the following terms have the following meanings:

“Accessibility Condition” means a state or condition of the relevant Functional Unit or the means of access to it which allows all persons who are entitled to enter, occupy, use, or access the relevant Functional Unit to do so safely and conveniently.

“Actual Response Time” means the shorter of (a) the actual time that elapses from the Reported Event Time to the time at which Developer Responds to the Event, or (b) expiration of the Required Response Time allowed for such Event; provided, however, that (c) the Actual Response Time for (i) any High or Low priority Performance Failure or any Critical Event or Routine Event shall be deemed to occur at 7:00 A.M. Eastern time of the next Business Day if the Actual Response Time would otherwise occur during non-Operating Hours, or (ii) any Event that occurs in an occupied area of the School during Operating Hours and for which PGCPS does not permit Developer to Respond to the Event in accordance with Section 3.9 (Scheduling of Services) of Exhibit W (Services Requirements), shall be deemed to occur at the shorter of (a) or (b) above as calculated from the time the impacted area becomes unoccupied.

“Bedding-In Period” has the meaning set forth in Section 2.1 (Entitlement to Make Deductions) of this Exhibit.

“Availability Condition” means (a) an Accessibility Condition, (b) a Safety Condition, (c) a Use Condition, or (d) an Operational Condition.

“Contractor Termination Notice” has the meaning set forth in Section 12.2 (Replacement of Non-Performing Services Provider or Subcontractor) of this Exhibit.

“Critical Event” means an Unavailability Event which (a) is a Use Impediment; (b) results in a material breach of Applicable Law; (c) results in noncompliance with an Availability Condition for any Functional Unit assigned a “Highest” priority classification in Table 1 of Appendix X-1 (Unavailability Deductions) (unless such Event is an Emergency Event); or (d) may reasonably be expected, if not corrected within the next twenty-four (24) hours, to cause material physical or environmental damage to the relevant School, Functional Unit, or Maintained Element or to deteriorate into an Event described in subsections (a), (b) or (c) of this definition.

“Emergency Event” means an Unavailability Event which (a) presents a clear and present threat to human life, safety, or security; (b) results in Total Unavailability of one or more Schools; or (c) may reasonably be expected, if not corrected within the next twenty-four (24) hours, to deteriorate into an Event described in subsections (a) or (b) of this definition.

“Event” means an incident or state of affairs leading to a Performance Failure or Unavailability Event or both.

“Field Maintenance Person” means an appropriately trained and skilled field maintenance person available for the performance of required Facilities Maintenance services.

“**Functional Unit**” means a room or space, including an outdoor space and field, which is specified as such in Appendix X-1 (Unavailability Deductions) to this Exhibit.

“**Gross Floor Area**” of a School means the sum of the floor areas of the School included within the outside face of the exterior walls for all stories that have floor surfaces.

“**Longstop Return Date**” has the meaning set forth in Section 9.10 (Longstop Return Date) of this Exhibit.

“**Operating Hours**” has the meaning set out in Section 3.9 (Scheduling of Services) of Exhibit W (Services Requirements).

“**Operational Condition**” means a state or condition of the relevant Functional Unit which is operational, functional, and fit for its intended use or purpose, as further described in the Services Requirements and applicable portions of the Technical Requirements.

“**Performance Failure**” means any failure by Developer as set forth in Table 1 of Appendix X-2 (Performance Failure Deductions).

“**Performance Failure Deduction**” means a Deduction which may be made in respect of a Performance Failure that is not Rectified prior to the expiration of an applicable Rectification Period, if any. “Performance Failure Deductions” are set forth in Tables 1a-1c of Appendix X-2 (Performance Failure Deductions).

“**Permanent Repair**” means Rectification carried out pursuant to Article 8 (Rectification Plans and Temporary Repairs) of this Exhibit.

“**Permanent Repair Deadline**” has the meaning set out in Section 8.2 (Rectification Plan Proposal) of this Exhibit.

“**Recording Frequency**” means the frequency with which a Performance Failure is evaluated, as set out in Table 1 of Appendix X-2 (Performance Failure Deductions).

“**Rectification**” means making good an Event, other than by a Temporary Repair, so that the subject matter of such Event complies with the levels of service and performance of the Services required pursuant to the Agreement. “Rectification” shall, without prejudice to the generality of the foregoing, include (a) restoring all functional capability affected by the Event; and (b) ensuring that any affected Functional Unit is returned to the Availability Condition existing immediately prior to the occurrence of the Event. “**Rectify**” and “**Rectified**” will be construed accordingly.

“**Rectification Period**” means the period of time, if any, within which Rectification of the relevant Unavailability Event or Performance Failure must be completed, as specified in Appendix X-1 (Unavailability Deductions) or Appendix X-2 (Performance Failure Deductions) of this Exhibit. A “Rectification Period” is calculated from the end of the Actual Response Time in accordance with Section 7.2 (Calculation of Rectification Periods) of this Exhibit. There shall be multiple “Rectification Periods” of identical length for each Event until the Event has been Rectified.

“Rectification Plan” has the meaning set out in Section 8.1 (Right to Submit a Rectification Plan Proposal) of this Exhibit.

“Rectification Plan Proposal” has the meaning set out in Section 8.2 (Rectification Plan Proposal) of this Exhibit.

“Reported Event Time” means the time at which an event is reported to the Help Desk by either Developer or PGCPs.

“Reporting Error” has the meaning set forth in Section 11.3 (Reporting Errors) of this Exhibit.

“Reporting Failure” has the meaning set forth in Section 11.2 (Reporting Failures) of this Exhibit.

“Required Response Time” means the period of time following a Demand Requisition or other electronic report or recording by the BMS during which Developer must respond, each as indicated in Section 6.3 (Required Response Time for Unavailability Events) and Section 6.4 (Required Response Time for Performance Failures) of this Exhibit.

“Respond” and **“Response”** mean: (a) with respect to all Events except those classified as Routine Events, the appropriate Field Maintenance Person attending the location of the Event, making the location, and all affected locations safe, in accordance with Good Industry Practice; and (b) with respect to Routine Events, either the foregoing or an electronic response from the Help Desk confirming the details of the Event.

“Return Date” has the meaning set forth in Section 9.3 (Notice Requirements) of this Exhibit.

“Routine Event” means an Unavailability Event, which is not an Emergency Event or a Critical Event.

“Safety Condition” means a state or condition of the relevant Functional Unit which allows School Users, who can reasonably be expected from time to time, to safely enter, leave, occupy, and use such Functional Unit.

“Temporary Alternative Accommodation Notice” has the meaning set forth in Section 9.1 (Developer Option to Provide) of this Exhibit.

“Temporary Availability Condition” has the meaning set out in Section 8.2 (Rectification Plan Proposal) of this Exhibit.

“Temporary Repair” means, in respect of the occurrence of an Unavailability Event, works of a temporary nature that do not constitute Rectification.

“Temporary Repair Deadline” has the meaning set out in Section 8.2 (Rectification Plan Proposal) of this Exhibit.

“Total Unavailability” occurs, in respect of each School, when any of the following occurs

and PGCPS, acting reasonably and in good faith, has not approved a mitigation plan put forward by Developer in accordance with Article 8 (Rectification Plans and Temporary Repairs) or Article 9 (Temporary Alternative Accommodation) of this Exhibit or as otherwise proposed by the Developer:

(a) Functional Units identified in Appendix X-1 (Unavailability Deductions) representing at least twenty-five percent (25%) of the Gross Floor Area of a School are Unavailable at the same time, and the Rectification Period has expired with respect to each such Unavailable Functional Unit;

(b) fifty percent (50%) or more of the student toilets or adult toilets in a School are Unavailable at the same time, and the Rectification Period has expired with respect to each such toilet;

(c) any of the required fire exits are not accessible, and the Rectification Period has expired with respect to each Event that caused such lack of access; and/or

(d) any of the following experiences a failure lasting more than four (4) consecutive hours after being reported to the Help Desk by either Developer or PGCPS:

- (1) the fire alarm system;
- (2) the sprinkler system;
- (3) the servers in the server room due to an Unavailability Event in the server room;
- (4) the central heating and/or cooling system that results in not meeting the temperature set points outlined in Exhibit W (Services Requirements) in at least twenty-five percent (25%) of the Gross Floor Area of a School at the same time; or
- (5) fifteen percent (15%) of the security cameras.

“Unavailable” or **“Unavailability”** means, with respect to a Functional Unit, that such Functional Unit is in a state or condition that does not comply with the Availability Condition.

“Unavailability Deduction” means a Deduction which may be made in respect of an Unavailability Event that is not Rectified prior to the expiration of the applicable Rectification Period. “Unavailability Deductions” are set forth in Appendix X-1 (Unavailability Deductions) to this Exhibit.

“Unavailability Event” means an incident or state of affairs which causes one or more Functional Units to be Unavailable.

“Use Condition” means a state or condition of the relevant Functional Unit which satisfies the functional requirements for the proper use and enjoyment of a Functional Unit relating to (a) temperature; (b) humidity; (c) air quality; (d) lighting; and (e) power (essential and non-essential), as the same are further described in the Educational Specifications and Exhibit W (Services Requirements).

“Use Impediment” means any incident or state of affairs that restricts or impedes the PGCPS Activities or otherwise directly impedes the normal school functions and activities.

1.2. Section References in this Exhibit. All Section references in this Exhibit are to Sections of this Exhibit, except Section references explicitly made to Sections, Articles, or Exhibits of the Agreement or Appendices of this Exhibit.

ARTICLE 2 DEDUCTIONS FROM AVAILABILITY PAYMENTS

2.1 Entitlement to Make Deductions

No Deductions may be made in respect of any Unavailability Events or Performance Failures associated with the relevant School during the thirty (30) day or ninety (90) day calendar period, respectively, following each School Occupancy Readiness Date (“**Bedding-In Period**”).

If at any time after the applicable Bedding-In Period for a School, an Unavailability Event or a Performance Failure occurs, PGCPS will be entitled to make Deductions in accordance with this Exhibit in respect of any such Unavailability Event or Performance Failure from the Availability Payment. Deductions will accrue during each Billing Period in accordance with this Exhibit and will be deducted from the Availability Payment on a Quarterly basis subject to Section 14.4.3.1 (Limit on Monthly Services Charge Adjustments) of the Agreement.

No Deductions shall be assessed in respect of any Functional Unit that is Unavailable due to Scheduled Maintenance occurring during the period scheduled for that work. For clarity, if Scheduled Maintenance work continues beyond the period scheduled for such work, Deductions may begin to accrue upon the expiration of the scheduled period.

2.2 Deductions Multiplier for Persistent Underperformance

Subject to Section 14.4.3.1 (Limit on Monthly Services Charge Adjustments) of the Agreement:

(a) If, during the six immediately preceding Billing Periods, Developer has incurred Deductions in excess of \$50,000 (Index-Linked) in the aggregate, the quarterly Deductions to be applied in the current Billing Period shall be multiplied by two (2x) immediately prior to being applied to the Availability Payment.

(b) For purposes of this Section, when calculating the amount of Deductions incurred in preceding Billing Periods, neither (i) Deductions for Total Unavailability nor (ii) Deductions applied pursuant to Section 5.4 (LEED Deductions) shall be included in such calculation.

2.3 Relief Events

To the extent that an Unavailability Event or Performance Failure is caused by a Relief Event (as provided in Section 16.4 (Performance Relief Available Upon Occurrence of a Relief Event) of the Agreement), PGCPS will not be entitled to assess a Deduction.

2.4 Classification of Event

The classification of an Event as a particular Performance Failure or a particular Unavailability Event as well as the classification of each Unavailability Event as an Emergency Event, Critical Event, or Routine Event will be made by Developer at the time at which the

occurrence of the Event is reported to the Help Desk. If an Event can properly be classified as both a Performance Failure and an Unavailability Event at the time it is reported (subject to [Section 5.2](#) (Unavailability as Sole Cause of Performance Failure Deductions) below), it will be classified as the Event that has the highest potential Deduction applicable to it. An Event which is incorrectly classified may be re-classified prior to said Event being reported in the Performance Monitoring Report without the approval of, but with notification to, PGCPS and after such Event is reported in a Performance Monitoring Report, only with the approval of PGCPS, acting reasonably. If such an Event is re-classified, the appropriate Deduction (if applicable) will be made, and any Deduction incorrectly applied will be withdrawn.

2.5 Performance Failure Becoming Unavailability Event

A Performance Failure may become or lead to an Unavailability Event if circumstances change or the Performance Failure continues. In such a circumstance, when the Functional Unit becomes Unavailable, the Performance Failure will have ended (without prejudice to the Performance Failure Deductions that have accrued to that point), and an Unavailability Event will commence. The Required Response Time for such Unavailability Event sentence shall be zero minutes. The Rectification Period for such Unavailability Event shall be deemed to have begun with the last completed Rectification Period of the related Performance Failure, or if there is no completed Rectification Period, the first Rectification Period of such Unavailability Event shall be deemed to be the lesser of the length of the balance of the uncompleted Rectification Period of the related Performance Failure or the Rectification Period of the Unavailability Event.

2.6 Other PGCPS Remedies

The right of PGCPS to impose Deductions is without prejudice to other PGCPS remedies provided in the Agreement, including pursuant to [Section 11.4.2](#) (Additional Developer Obligations) and [Section 19.1](#) (Default by Developer) of the Agreement.

ARTICLE 3 UNAVAILABILITY DEDUCTIONS

3.1 Deductions for Unavailability Events

In respect of each Unavailability Event, there shall be one Deduction per Functional Unit that is Unavailable for each Rectification Period after the first Rectification Period that the Functional Unit continues to be Unavailable, in accordance with [Appendix X-1](#) (Unavailability Deductions).

3.2 Unavailable But Used

If any Functional Unit is Unavailable but PGCPS, at its discretion, continues to use such Functional Unit for its intended use or purpose, the Deduction for such Functional Unit that would otherwise be applied shall be multiplied by fifty percent (50%).

ARTICLE 4
SPECIAL DEDUCTIONS FOR MAJOR OR PROLONGED
UNAVAILABILITY EVENTS

4.1 Total Unavailability

Notwithstanding any other provision of this Exhibit (including Section 3.2 (Unavailable But Used)), if Total Unavailability for any School occurs, the only Unavailability Deduction that shall apply is a Deduction of \$4,000 (Index-Linked) to be applied (1) upon the commencement of Total Unavailability, and (2) at the expiration of each subsequent four-hour interval that the Total Unavailability persists during Operating Hours.

4.2 Deductions for Ongoing Unavailability Events

Where the Unavailability Event continues beyond three (3) consecutive Rectification Periods (including the first Rectification Period), and Developer has failed to Rectify that Unavailability Event, the Unavailability Deduction for the fourth and each subsequent Unavailability Deduction, calculated in accordance with Appendix X-1 (Unavailability Deductions), shall be multiplied by two (2x).

ARTICLE 5
PERFORMANCE FAILURE DEDUCTIONS

5.1 Deductions for Performance Failures

The amount of the Deduction in respect of a Performance Failure for any Billing Period will be as follows:

(a) where a Performance Failure has a Rectification Period, one Deduction per failure for each Rectification Period that the Performance Failure persists following the first Rectification Period, in accordance with Table 1a of Appendix X-2 (Performance Failure Deductions); and

(b) where a Performance Failure has no Rectification Period, one Deduction per Recording Frequency, in accordance with Table 1b and Table 1c of Appendix X-2 (Performance Failure Deductions), as applicable.

5.2 Unavailability as Sole Cause of Performance Failure Deductions

No Performance Failure Deduction will be made if the Performance Failure to which it relates arises solely as a result of the Unavailability of the Functional Unit in which Services were to be provided.

5.3 Multiple Unavailability Events with the Same Root Cause

If the root cause of a series of Unavailability Events is substantially the same, whether or not Developer Rectifies any or all of the Events within the applicable Rectification Period, a Deduction of \$1,000 (Index-Linked) in addition to any other Unavailability Deduction imposed under this Exhibit, will apply per Event on the occurrence of any of the following:

(a) The third such Event in a single day (having occurred in one School) and on the occurrence of each subsequent such Event following the third such Event (having occurred in one School) on the same day; and

(b) The fourth such Event (having occurred in one School) in a rolling consecutive seven-day period and on the occurrence of each subsequent such Event (having occurred in one School) in that seven-day period.

5.4 LEED Deduction

If, at the end of the LEED Cure Period, the Independent Engineer determines that a School still does not satisfy the LEED Requirements, a one-time Deduction of Fifty Thousand Dollars (\$50,000) will be imposed for each applicable School. Every day thereafter until the Independent Engineer determines that a School has satisfied the LEED Requirements, there shall be a Deduction of One Thousand Dollars (\$1,000) per day per School up to a maximum aggregate for such daily Deductions, per School, of One Hundred Thousand Dollars (\$100,000).

ARTICLE 6 RESPONSE TIME

6.1 Help Desk and Maintenance Personnel Responses to an Event

The Parties acknowledge that the Help Desk may be automated or may be staffed by administrative staff not charged with the responsibility for Rectifying reported Events, and the responsibility for Rectification will rest with Developer's appropriately trained and skilled Field Maintenance Persons. The Help Desk shall promptly inform the Field Maintenance Person on duty at the time the Event is reported to the Help Desk that an Event has been reported. The Field Maintenance Person shall promptly acknowledge to the Help Desk that he or she has received the report and will Respond to the Event.

6.2 Calculation of Required Response Times

The Required Response Time for the Field Maintenance Person to Respond to a reported Event shall be measured from the Reported Event Time. Required Response Times shall accumulate on a 24-hour basis.

6.3 Required Response Time for Unavailability Events

The Required Response Time for Unavailability Events shall be as follows unless otherwise agreed to by the Parties in accordance with Section 2.5 (Rescheduling of Maintenance) of Appendix W-1 to Exhibit W (Services Requirements):

Unavailability Event Classification	Required Response Time
Emergency Event	30 minutes
Critical Event	60 minutes
Routine Event	120 minutes

6.4 Required Response Time for Performance Failures

Unless otherwise stipulated in the Agreement or agreed to in accordance with Section 2.5 (Rescheduling of Maintenance) of Appendix W-1 to Exhibit W (Services Requirements), the Required Response Time for Performance Failures shall be as follows:

Performance Failure Priority Classification	Required Response Time
Urgent	30 minutes
High	60 minutes
Low	120 minutes

ARTICLE 7 RECTIFICATION PERIODS

7.1 No Rectification Period

In the event of a Performance Failure for which there is no Rectification Period stipulated in the Agreement (as indicated in Table 1 to Appendix X-2 (Performance Failure Deductions)), PGCPs will make the applicable Performance Failure Deduction, in accordance with Section 5.1(b) (Deductions for Performance Failures) of this Exhibit, immediately upon occurrence of the Performance Failure.

7.2 Calculation of Rectification Periods

(a) Rectification Periods for all Critical Events, all Routine Events, and Performance Failures that have “High” or “Low” priority classification as indicated in Table 1 to Appendix X-2 (Performance Failure Deductions) shall begin at the end of the Actual Response Time and accumulate only during Operating Hours.

(b) Rectification Periods for Emergency Events and Performance Failures that have an “Urgent” priority classification as indicated in Table 1 of Appendix X-2 (Performance Failure Deductions) shall begin at the end of the Actual Response Time and accumulate on a 24-hour basis.

7.3 First Rectification Period

If (a) a Performance Failure or an Unavailability Event occurs for which there is a Rectification Period (other than a deemed Unavailability Event due to the Total Unavailability of any School), and (b) Developer Rectifies the Performance Failure or Unavailability Event within the first Rectification Period, no Deduction will be made for such Performance Failure or Unavailability Event.

7.4 Subsequent Rectification Periods

For any Performance Failure or Unavailability Event described in Section 7.3 (First Rectification Period) which is not Rectified by the end of the first Rectification Period, a Deduction shall be applied at the start of the second Rectification Period, and an additional Deduction shall

be applied at the start of each subsequent Rectification Period until the Performance Failure or Unavailability Event is Rectified.

ARTICLE 8 RECTIFICATION PLANS AND TEMPORARY REPAIRS

8.1 Right to Submit a Rectification Plan Proposal

If Developer is unable to Rectify an Unavailability Event within the applicable Rectification Period due to the need for specialized materials or personnel that are not required by the Agreement to be immediately available at the applicable School and are not, and cannot reasonably be expected to be, available at such School, then Developer shall have the right to propose a rectification plan (each, a **“Rectification Plan”**) in accordance with the terms of this Article.

8.2 Rectification Plan Proposal

Any Rectification Plan proposed by Developer (the **“Rectification Plan Proposal”**) shall be consistent with Good Industry Practice and include, at a minimum:

- (a) a Temporary Repair, if needed, including the period within which to complete the Temporary Repair (the **“Temporary Repair Deadline”**);
- (b) a temporary modification to the Availability Condition for the relevant Functional Unit until the Permanent Repair is completed (the **“Temporary Availability Condition”**);
- (c) the Permanent Repair; and
- (d) the period within which to complete the Permanent Repair (the **“Permanent Repair Deadline”**).

Developer may not carry out such Rectification Plan until the Rectification Plan Proposal is approved in writing by PGCPs in accordance with Section 8.3 (Rectification Plan Considerations and Approvals); however, consistent with Developer’s obligations under the Agreement, Developer shall take all reasonable and necessary measures to ensure the affected area remains safe and to mitigate further damage while Developer is preparing and PGCPs is reviewing the Rectification Plan Proposal.

Developer shall notify PGCPs as soon as practicable, and in any event within two (2) hours, following its Response to an Event of its intention to submit a Rectification Plan Proposal. Where a Rectification Plan Proposal is submitted to PGCPs, the beginning of the first Rectification Period for the relevant Unavailability Event shall be deemed to be the start of the second Rectification Period that would have otherwise accrued for such Event, subject to the potential for such Rectification Period to be suspended in accordance with Section 8.3 (Rectification Plan Considerations and Approvals). For clarity, in the event that Developer submits a Rectification Plan Proposal to PGCPs after the end of the first Rectification Period otherwise applicable for the relevant Unavailability Event, PGCPs will still consider such proposal in accordance with this Article but shall have the right to claim Deductions for any subsequent Rectification Periods that begin before the Rectification Plan Proposal is submitted.

8.3 Rectification Plan Considerations and Approvals

Upon receipt of a Rectification Plan Proposal:

(a) Within two (2) hours of receipt of a Rectification Plan Proposal related to an Emergency Event, Critical Event, or Performance Failure with an “Urgent” priority classification, or within twenty-four (24) hours of receipt of a Rectification Plan Proposal related to a Routine Event or non-Urgent Performance Failure, PGCPs will notify Developer in writing of its approval or rejection of the Rectification Plan Proposal, to be decided in PGCPs’ sole discretion, acting reasonably.

(b) The Rectification Period for the relevant Unavailability Event shall not run during the time between when PGCPs receives a Rectification Plan Proposal and Developer receives PGCPs’ decision approving or rejecting the Rectification Plan Proposal; provided, however, that in the event that PGCPs rejects a Rectification Plan Proposal on the basis that, in PGCPs’s sole discretion, acting reasonably, Developer did not have the right to make the Rectification Plan Proposal under Section 8.1 (Right to Submit a Rectification Plan Proposal), the Rectification Periods for the relevant Event shall accrue as though no Rectification Plan Proposal was made to PGCPs.

(c) Developer may revise the Rectification Plan Proposal and resubmit such proposal to PGCPs as a new Rectification Plan Proposal pursuant to this Article.

8.4 Rectification Plan Performance

Upon PGCPs’ approval of a Rectification Plan,

(a) The Availability Condition for the relevant Functional Unit will be modified to be the Temporary Availability Condition included in the Rectification Plan; and

(b) if either the Temporary Repair (if applicable) or the Permanent Repair is not completed by the relevant deadline, the Temporary Availability Condition will cease to be the Availability Condition, and PGCPs shall be entitled to make all applicable Unavailability Deductions with effect from such cessation.

Except as expressly provided, nothing in this Article 8 (Rectification Plans and Temporary Repairs) will limit PGCPs’s entitlement to Deductions within the applicable Rectification Periods.

ARTICLE 9 TEMPORARY ALTERNATIVE ACCOMMODATION

9.1 Developer Option to Provide

If an Unavailability Event occurs, Developer may offer PGCPs Temporary Alternative Accommodation by notice (the “**Temporary Alternative Accommodation Notice**”) to PGCPs.

9.2 Accommodation Requirements

The Temporary Alternative Accommodation must:

- (a) comply with the Availability Condition for the Functional Units affected by the Unavailability Event for which the Temporary Alternative Accommodation is offered;
- (b) be a temporary alternative having regard to the facts and the circumstances in existence;
- (c) be upon terms which are not materially different from the terms upon which PGCPs occupied the affected Functional Unit;
- (d) unless PGCPs otherwise agrees, be an accommodation that Developer is not already obligated to provide to PGCPs;
- (e) be supplied with the Services to the standards set out in Exhibit W (Services Requirements) which Developer would under normal circumstances be providing within the Unavailable Functional Unit;
- (f) not involve PGCPs incurring any additional cost or charges in respect of the Temporary Alternative Accommodation, including the reasonable costs of any relocation to and from the Temporary Alternative Accommodation; and
- (g) be in reasonable proximity to the School, be reasonably accessible by public and private transport, and have adequate parking.

9.3 Notice Requirements

The Temporary Alternative Accommodation Notice must:

- (a) describe the Temporary Alternative Accommodation;
- (b) invite PGCPs to inspect the Temporary Alternative Accommodation and give PGCPs reasonable notice of a time and a date when it may do so;
- (c) set out Developer's proposals regarding the timing and coordination of relocation to the Temporary Alternative Accommodation;
- (d) specify the date (which must be agreed by PGCPs before the submission of the written notice) by which Developer reasonably expects PGCPs to be able to relocate back to the applicable Functional Unit (the "**Return Date**"); and
- (e) describe the terms upon which PGCPs will be entitled to occupy such Temporary Alternative Accommodation, including the proposed division of such accommodation into Functional Units and the weighting to be attributed to them for the purposes of the operation of this Exhibit.

9.4 Acceptance by PGCPs

PGCPs may, in its sole discretion, refuse or accept any proposed Temporary Alternative Accommodation. If PGCPs wishes to inspect the Temporary Alternative Accommodation, PGCPs will do so within seven (7) days of receipt of the Temporary Alternative Accommodation

Notice. PGCPS will notify Developer in writing of its acceptance or refusal of the proposed Temporary Alternative Accommodation within twenty-four (24) hours of its inspection or, if PGCPS has elected not to inspect, within seven (7) days of receipt of the Temporary Alternative Accommodation Notice.

9.5 Effect of Acceptance

If PGCPS accepts the offer of Temporary Alternative Accommodation:

(a) which is not within the School then, without affecting PGCPS' remedial rights under the Agreement, PGCPS will not be entitled to vacate the Temporary Alternative Accommodation until the earlier of the Return Date and the date on which PGCPS is entitled and able to return to and use the Functional Unit in accordance with the agreed program for return and re-commissioning referred to in Section 9.8 (Return to Functional Unit) of this Exhibit; and

(b) which is within the School and PGCPS subsequently needs such Temporary Alternative Accommodation in connection with needs that were not anticipated at the time PGCPS agreed to occupy the space, then PGCPS will be entitled to vacate the Temporary Alternative Accommodation.

9.6 Additional PGCPS Costs

Except in the case where the Temporary Alternative Accommodation is required as a direct result of a Relief Event, Developer will pay for any additional reasonable and direct costs and expenses incurred by PGCPS in respect of Temporary Alternative Accommodation, including reasonable relocation costs to and from the Temporary Alternative Accommodation.

9.7 Deduction

If PGCPS accepts Developer's offer of Temporary Alternative Accommodation, no further Deductions will be made in respect of a Functional Unit vacated by PGCPS while the Temporary Alternative Accommodation replacing that Functional Unit is being used by PGCPS. PGCPS will be entitled to make Deductions in respect of any Performance Failure or Unavailability Event which occurs in the Temporary Alternative Accommodation as if the Temporary Alternative Accommodation was the Functional Unit which it replaced and any Deduction in respect of an Unavailability Event will be calculated using the Unavailability Deduction amounts attributed to such Functional Unit.

9.8 Return to Functional Unit

When Developer has completed the required works to enable PGCPS to return to the Functional Unit, PGCPS will confirm that the Availability Condition is met for the Functional Unit, and PGCPS and Developer will agree to a relocation program to return to the Functional Unit and any necessary period for re-commissioning.

9.9 Failure to Complete Works

If PGCPs has accepted the proposed Temporary Alternative Accommodation and Developer fails to complete the works to enable PGCPs to return to the relevant Functional Unit on the Return Date:

(a) the Temporary Alternative Accommodation will be deemed to be Unavailable with effect from the Return Date until the date on which the Unavailability Event has been Rectified, and PGCPs is able to resume its use of the Functional Unit; and

(b) PGCPs may, in its absolute discretion, vacate the Temporary Alternative Accommodation at any time after the Return Date or remain in occupation, and in the latter circumstance a fifty percent (50%) reduction will apply with respect to the Unavailability Deduction.

9.10 Longstop Return Date

PGCPs will specify a date (the “**Longstop Return Date**”), being a date no earlier than sixty (60) days after the Return Date, or as may be extended by PGCPs at Developers’ request, if 60 days is commercially unreasonable, by which the Rectification must be completed and if Developer fails to complete the Rectification of the Functional Unit for which the Temporary Alternative Accommodation is a replacement by the Longstop Return Date:

(a) PGCPs may (without prejudice to its rights under the Agreement, including Developer Default, or any other express rights of PGCPs under the Agreement) take such steps as it considers to be appropriate (either itself or by engaging others to take such steps) to restore the Functional Unit to a condition that satisfies in all respects the requirements of the Agreement; and

(b) Developer will reimburse PGCPs for all reasonable direct costs and expenses incurred by PGCPs in relation to taking the steps, or engaging others to take the steps, referred to in subsection (a) of this Section 9.10 (Longstop Return Date), and PGCPs will be entitled to deduct any such amount from any amounts payable to Developer under the Agreement.

ARTICLE 10 REVIEW OF FUNCTIONAL UNITS AND DEDUCTIONS

10.1 Initiation of Review

The identification of Functional Units, Performance Failures, Required Response Times, Rectification Periods, and the amount of Deductions for each category of Performance Failure and for Unavailability Events will be reviewed by PGCPs and Developer at any time if requested by either Party, but in any event will be reviewed at the following times, unless otherwise agreed by the Parties:

(a) at such time as the design phase has been completed in all material respects in accordance with Exhibit Q (Design-Build Quality Management Plan);

(b) following the School Occupancy Readiness Date for each School;

- (c) following the Project Readiness Date, at least once every three (3) years throughout the Term;
- (d) in connection with any Services Changes under Article 15 (Project Changes and Additions) of the Agreement; and
- (e) in the circumstances relating to Relief Events.

PGCPS and Developer will act reasonably and diligently in carrying out the review, which will not exceed thirty (30) days without the agreement of both Parties. For the avoidance of doubt, the Parties intend that any changes made as a result of such a review will not alter the overall risk profile of the relevant Services or the likely magnitude of Deductions.

10.2 Results of Review

PGCPS and Developer may, in respect of each matter that is the subject of the review, either:

- (a) agree that the status of the relevant matter will continue to apply unchanged for the following Contract Year; or
- (b) agree to adjustments to the relevant matter to take effect in the following Contract Year, which such adjustments shall be memorialized in writing as an amendment to this Exhibit.

If the Parties agree on any changes, each in their sole discretion, such changes shall be memorialized in a written amendment signed by both Parties. If the Parties do not execute such an amendment within thirty (30) days after completion of the review, then no changes shall be made. For the avoidance of doubt, if any changes that are agreed alter the overall risk profile of the relevant Service, the matter will be deemed a Services Change subject to the provisions of Section 15.6 (Services Changes) of the Agreement.

10.3 Effective Time of Adjustments

Any adjustment pursuant to a review will be effective at the date set forth in the amendment described in Section 10.2 (Results of Review) of this Exhibit.

ARTICLE 11 FAILURE BY DEVELOPER TO MONITOR OR REPORT

11.1 Performance Monitoring Report

The quarterly Performance Monitoring Reports produced by Developer for any Quarter in accordance with Section 5.2 (Periodic Reporting) of Exhibit W (Services Requirements) will be the initial source of the information regarding the performance of the Services for the relevant Billing Periods for the purposes of calculating the relevant Deductions.

11.2 Reporting Failures

Any failure of Developer to prepare and submit to PGCPs a Performance Monitoring Report in accordance with Exhibit W (Services Requirements) (a “**Reporting Failure**”) will be deemed to be a Low level Performance Failure on the first day each Performance Monitoring Report is due and not submitted, in accordance with Item 24 of Table 1 of Appendix X-2 (Performance Failure Deductions) to this Exhibit, and an additional High level Performance Failure each day thereafter until submitted, in accordance with Item 25 of Table 1 of Appendix X-2 (Performance Failure Deductions) to this Exhibit.

11.3 Reporting Errors

If Developer fails in any Performance Monitoring Report to accurately report or timely and accurately report an Event (each of which, a “**Reporting Error**”):

(a) such failure will be deemed to be a new Medium level Performance Failure, in accordance with Item 26 of Table 1 of Appendix X-2 (Performance Failure Deductions) to this Exhibit, for each Event that has been misreported. The relevant Deduction for the new Medium level Performance Failure will be made in addition to the Deductions that would have been made had there been no failure to monitor or report;

(b) PGCPs will be entitled to make Deductions in respect of any Performance Failures or Unavailability Events in the manner prescribed in this Exhibit, and the Performance Monitoring Report(s) and invoice(s) with respect to all Billing Periods affected by such failure will be restated to include any such Deductions; and

(c) To the extent the amount paid to Developer for the affected Billing Periods exceeds the amount in the restated invoices for such Billing Periods, such amount shall be carried forward as an adjustment to the Availability Payment for the subsequent Billing Period.

11.4 Misconduct

If PGCPs’s inspection or investigation of records reveals, on the part of any Developer Person, that a Reporting Error was caused by:

- (a) fraudulent action or inaction;
- (b) deliberate misrepresentation; or
- (c) gross misconduct or incompetence,

then, in accordance with Item 27 of Table 1 of Appendix X-2 (Performance Failure Deductions) to this Exhibit, a new High level Performance Failure will be deemed to have occurred for each Event that has been misreported. The relevant Deduction for the new High level Performance Failure will be made in addition to the Deductions that would have been made had there been no misreporting.

ARTICLE 12
THRESHOLDS FOR INCREASED MONITORING AND REPLACEMENT OF
NON-PERFORMING CONTRACTORS

12.1 Increased Monitoring

If:

- (a) Developer has accrued Deductions in any three (3) consecutive Billing Periods that amount to ten percent (10%) or more of the Services Charges for each such Billing Period; or
- (b) a Reporting Error of a similar nature occurs on more than three occasions during any four (4) consecutive Quarters.

PGCPS may increase its monitoring of the performance by Developer under the Agreement and carry out any inspections and audits which PGCPS reasonably requires for a period of up to ninety (90) days; provided, however, that Reporting Errors caused by a clerical or other administrative error will not result in increased monitoring, but Developer will undertake necessary corrective action to the Performance Monitoring Program upon approval from PGCPS. Developer will reimburse PGCPS for all reasonable and substantiated costs and expenses incurred by PGCPS in carrying out such additional monitoring, inspections, and audits within five (5) Business Days after PGCPS delivers an invoice to Developer for such amounts. PGCPS will also require Developer to provide and implement a remedial plan to address the failures giving rise to such Deductions.

12.2 Replacement of Non-Performing Services Provider or Subcontractor

(a) If Developer has accrued Deductions in any six (6) consecutive Billing Periods that amount to fifteen percent (15%) or more of the Services Charges for each such Billing Period, PGCPS may, by notice to Developer (a “**Contractor Termination Notice**”), require Developer to cause:

- (1) the termination of the Subcontract of the Subcontractor or Subcontractors, if any, delivering the Service which gave rise to such Deductions; or
- (2) if the Service which gave rise to such Deductions is being provided directly by the Services Provider, the termination of the Services Provider’s engagement to provide such Service.

Within ninety (90) days of receipt of the Contractor Termination Notice, Developer will cause a replacement of such Subcontractor or Subcontractors or the Services Provider (in respect of such Services) as the case may be, in accordance with the Agreement.

12.3 Calculations

For purposes of Section 12.1 (Increased Monitoring) and Section 12.2 (Replacement of Non-Performing Services Provider or Subcontractor), when calculating the amount of Deductions incurred in the applicable Billing Periods, neither (i) Deductions for Total Unavailability nor (ii) LEED Deductions applied pursuant to Section 5.4 (LEED Deductions) shall be included in such calculation.

APPENDIX X-1

UNAVAILABILITY DEDUCTIONS

Unavailability Deductions shall be determined in accordance with this Appendix X-1 (Unavailability Deductions) and may be imposed by PGCPs in accordance with this Exhibit.

Table 1 lists and defines the Functional Units which may become Unavailable. Each Functional Unit is identified in Table 1. Table 1 also indicates the priority classification of each Functional Unit (low, high, or highest). The priority classification of each Functional Unit reflects the degree to which each Functional Unit is central to the primary mission and purpose of the Project and thus results in more severe deductions for higher priority Functional Units.

Table 2, when read with Table 1, establishes the appropriate Deduction for each Unavailability Event.

Table 1 - Functional Unit Priority Classification

Functional Unit Number	Category	Subcategory	Name / Description	No. of Units						Priority Classification
				Adelphi Area MS	Drew-Freeman MS	Hyattsville MS	Kenmoor MS	Southern Area K-8	Walker Mill MS	
1.0 ACADEMIC CODE										
1.1	Academic Core	Learning	Academic Classroom/ Studios (Middle Grades)	38	38	36	38	38	38	Highest
1.2	Academic Core	Learning	Pre-Kindergarten	-	-	-	-	4	-	-
1.3	Academic Core	Learning	Kindergarten	-	-	-	-	5	-	-
1.4	Academic Core	Learning	Primary (Grades 1-3)	-	-	-	-	15	-	-
1.5	Academic Core	Learning	Intermediate (Grades 4-5)	-	-	-	-	10	-	-
1.6	Academic Core	Learning	Collaborative Learning Areas (informal)	3	3	3	3	6	3	Low
1.7	Academic Core	Learning	Outdoor Learning Areas (patios, porches, green roofs)	3	3	3	3	6	3	Low
1.8	Academic Core	Learning	Science Classroom/ Lab	9	9	9	9	9	9	Highest

Functional Unit Number	Category	Subcategory	Name / Description	No. of Units						Priority Classification
				Adelphi Area MS	Drew-Freeman MS	Hyattsville MS	Kenmoor MS	Southern Area K-8	Walker Mill MS	
1.9	Academic Core	Learning	Science Prep	3	3	3	3	3	3	
1.10	Academic Core	Learning	Small Gr Instruction/Resource Rooms	6	6		6	12	6	High
1.11	Academic Core	Learning	Special Needs Classroom/ Studios	3	4	4	4	6	3	Highest
1.12	Academic Core	Learning	Speech/OT/PT Room	1	1	1	1	1	1	Highest
1.13	Academic Core	Learning	STEAM	1	1	1	1	2	1	Highest
1.14	Academic Core	Support	Student Services Offices	6	6	6	6	10	6	High
1.15	Academic Core	Support	Teacher Support Rooms	3	3	3	3	5	3	Low
1.16	Academic Core	Support	Technology Storage	3	3	3	3	3	3	Low
1.17	Academic Core	Support	Server Room	1	1	1	1	1	1	Highest
1.18	Academic Core	Support	Large Group Restroom	1	1	1	1	1	1	Highest
2.0 ADMINISTRATIVE										
2.1	Administrative	Support	Lobby (Main)	1	1	1	1	1	1	High
2.2	Administrative	Support	Reception/ Waiting Area	1	1	1	1	1	1	High
2.3	Administrative	Administrative	Principal's Office	1	1	1	1	1	1	High
2.4	Administrative	Administrative	Administrative Assistant's Office	1	1	1	1	1	1	Highest
2.5	Administrative	Support	Administrative Workroom	1	1	1	1	1	1	High
2.6	Administrative	Administrative	Business Manager's Office	1	1	1	1	1	1	Low
2.7	Administrative	Support	Conference Room	1	1	1	1	2	1	Low
2.8	Administrative	Support	Mail Room	1	1	1	1	1	1	High
2.9	Administrative	Support	Security Center/ Command Room	1	1	1	1	1	1	Highest

Functional Unit Number	Category	Subcategory	Name / Description	No. of Units						Priority Classification
				Adelphi Area MS	Drew-Freeman MS	Hyattsville MS	Kenmoor MS	Southern Area K-8	Walker Mill MS	
2.10	Administrative	Support	Staff Break Room	1	1	1	1	2	1	Low
2.11	Administrative	Support	Supply (General)/ Administrative Storage	1	1	1	1	2	1	Low
2.12	Administrative	Support	Text Book Room	1	1	1	1	2	1	Low
2.13	Administrative	Support	Toilet (Adult)	1	1	1	1	3	1	Highest
2.14	Administrative	Support	Assistant Principal Suite	-	-	-	-	2	-	High
2.15	Administrative	Support	Student Services Reception	-	-	-	-	1	-	Low
2.16	Administrative	Support	Parking	2	2	2	2	2	2	High
2.16	Administrative	Support	Student Services Office	-	-	-	-	7	-	
2.17	Administrative	Support	Student Services Conference Room	-	-	-	-	1	-	
2.18	Administrative	Support	Records Storage	-	-	-	-	1	-	Highest
2.19	Administrative	Support	Family Center/Parent Resource PTA Storage	-	-	-	-	1	-	
2.20	Administrative	Support	After School Storage	-	-	-	-	1	-	Low
3.0 GUIDANCE/STUDENT SERVICES										
3.1	Guidance/ Student Services	Administrative	Guidance/ Student Services Suite	1				-	1	High
3.2	Guidance/ Student Services	Support	Reception/ Welcome Center	1	1	1	1	-	1	Low
3.3	Guidance/ Student Services	Learning	Conference/Testing Rooms	1	1	1	1	-	1	High
3.4	Guidance/ Student Services	Administrative	Guidance Offices	6	6	6	6	-	6	High
3.5	Guidance/ Student	Support	Parent Resource Center	1	1	1	1	-	1	Low

Functional Unit Number	Category	Subcategory	Name / Description	No. of Units						Priority Classification
				Adelphi Area MS	Drew-Freeman MS	Hyattsville MS	Kenmoor MS	Southern Area K-8	Walker Mill MS	
	Services									
3.6	Guidance/ Student Services	Support	Records Storage	1	1	1	1	-	1	Low
3.7	Guidance/ Student Services	Toilet	Toilet (Adult)	1	1	1	1	-	1	Highest
4.0 HEALTH SUITE										
4.1	Health Suite	Health	Health Suite	1				1	1	Highest
4.2	Health Suite	Health Administrative	Reception/ Waiting Area	1	1	1	1	1	1	High
4.3	Health Suite	Health	Cot Rooms	2	2	2	2	3	2	High
4.4	Health Suite	Health	Exam Room/ Treatment Area	1	1	1	1	1	1	Highest
4.5	Health Suite	Health Support	Office	1	1	1	1	2	1	High
4.6	Health Suite	Support	Storage	1	1	1	1	1	1	Low
4.7	Health Suite	Toilet	Toilet	2	2	2	2	3	2	Highest
5.0 MAINTENANCE & CUSTODIAL										
5.1	Maintenance and Custodial	Support	Receiving and storage	1	1	1	1	1	1	Low
5.2	Maintenance and Custodial	Maintenance Administrative	Custodial Office	1	1	1	1	2	1	Low
5.3	Maintenance and Custodial	Support	Custodial Closet and Storage	4	4	4	4	4	4	Low
5.4	Maintenance and Custodial	Toilet	Toilet/Shower/Lockers	2	2	2	2	2	2	Highest
6.0 MEDIA CENTER										
6.1	Media Center	Media Center	Media Commons Independent and on-line learning	1	1	1	1	1	1	High
6.2	Media Center	Media Center	Primary Reading and Storytelling Library	-	-	-	-	1	-	-
6.3	Media Center	Support	Equipment Storage	1	1	1	1	1	1	Low

Functional Unit Number	Category	Subcategory	Name / Description	No. of Units						Priority Classification
				Adelphi Area MS	Drew-Freeman MS	Hyattsville MS	Kenmoor MS	Southern Area K-8	Walker Mill MS	
6.4	Media Center	Support	Head End Room	1	1	1	1	1	1	High
6.5	Media Center	Digital Media Arts Suite	Production Multi-media Studio	1	1	1	1	1	1	High
6.6	Media Center	Digital Media Arts Suite	Control Room	1	1	1	1	1	1	High
6.7	Media Center	Digital Media Arts Suite	Editing/learning studio	-		1		1	1	High
6.8	Media Center	Digital Media Arts Suite	Innovation Lab	1	1	1	1	1	1	High
6.9	Media Center	Toilet	Toilet (Staff)	1	1	1	1	2	1	Highest
6.10	Media Center	Support	Workroom/Office	1	1	1	1	1	1	Low
7.0 PERFORMING ARTS										
7.1	Performing Arts	General Music	General Music Room w/Storage	-	-	-	-	2	-	-
7.2	Performing Arts	General Music	Band/ General Music	1	1	1	1	1	1	High
7.3	Performing Arts	General Music	Orchestra/Guitar	1	1	1	1		1	High
7.4	Performing Arts	General Music	Choral/ Keyboard	1	1	1	1	1	1	High
7.5	Performing Arts	General Music	Choral Storage	1	1	1	1	1	1	Low
7.6	Performing Arts	General Music	Instrument Storage	1	1	2	1	1	1	Low
7.7	Performing Arts	General Music	Practice Rooms	2	2	2	2	2	2	High
7.8	Performing Arts	Stage	Stage Sound and Light Control Room	1	1	1	1	1	1	High
7.9	Performing Arts	Stage Support	Stage Storage	1	1	1	1	1	1	Low
7.10	Performing Arts	Stage Support	Drama Lab and small performance space/ storage/office	-						Low
7.11	Performing Arts	Dance	Dance Studio (Arts elective) Office	1	1	1	1	1	1	Low

Functional Unit Number	Category	Subcategory	Name / Description	No. of Units						Priority Classification
				Adelphi Area MS	Drew-Freeman MS	Hyattsville MS	Kenmoor MS	Southern Area K-8	Walker Mill MS	
7.12	Performing Arts	Support	Bathrooms w/Changing Area	2	2	2	2	2	2	Highest
7.13	Performing Arts	Support	Office	1	1	1	1	1	1	Low
7.14	Performing Arts	Dance	Dance Studio	1	1	1	1	1	1	Low
8.0 PHYSICAL EDUCATION & ATHLETICS										
8.1	Physical Education	Indoor	Lobby	1	1	1	1	1	1	Low
8.2	Physical Education	Indoor	Gymnasium Bleacher Seating	1	1	1	1	1	1	High
8.3	Physical Education	Indoor	Auxiliary Gym	-	-	-	-	1	-	High
8.4	Physical Education	Indoor	Wellness Lab	1	1	1	1	1	1	High
8.5	Physical Education	Indoor	Laundry	1	1	1	1	1	1	Low
8.6	Physical Education	Indoor	Offices (Department)	3	3	2	3	3	3	Low
8.7	Physical Education	Indoor	P.E. Locker Rooms/Showers	2	2	2	2	2	2	Highest
8.8	Physical Education	Indoor	Storage	3	3	3	3	3	3	Low
8.9	Athletics	Outdoor	Basketball Court	4	4	4	4		4	High
8.10	Athletics	Outdoor	Athletic Multipurpose Field	1	1	1	1	1	1	High
8.10	Athletics	Outdoor Support	Exterior Grounds Equipment Storage	1	1	1	1	1	1	Low
8.11	Athletics	Outdoor	Athletics Fields	1	2	1	1	2	2	High
8.12	Athletics	Outdoor	Outdoor Learning Spaces	1	1	1	1	1	2	Low
8.13	Athletics	Outdoor Support	Structured Play Area – Primary Grades	-	-	-	-	1	-	High

Functional Unit Number	Category	Subcategory	Name / Description	No. of Units						Priority Classification
				Adelphi Area MS	Drew-Freeman MS	Hyattsville MS	Kenmoor MS	Southern Area K-8	Walker Mill MS	
8.14	Athletics	Outdoor Support	Protected Preschool Play Area	-	-	-	-	1	-	High
8.10	Physical Education	Indoor	PE / Gym	2	2	2	2	2	2	High
9.0 STUDENT DINING & FOOD SERVICE										
9.1	Student Dining	Cafeteria	Cafeteria/Commons	1	1	1	1	1	1	Highest
9.2	Student Dining	Cafeteria	Chair Storage	1	1	1	1	1	1	Low
9.3	Food Service	Food Prep	Kitchen	1	1	1	1	1	1	Highest
9.4	Food Service	Support	Serving Area	1	1	1	1	1	1	Highest
9.5	Food Service	Support	Office	1	1	1	1	2	1	Low
9.6	Food Service	Support	Receiving/Maintenance Closet	1	1	1	1	1	1	Low
9.7	Student Dining	Toilet	Toilet/Shower/Locker area	2	2	2	2	2	2	Highest
10.0 VISUAL ARTS										
10.1	Visual Arts	Arts	Multi-Purpose Arts Studios	2	2	2	2	3	2	High
10.2	Visual Arts	Arts	Kiln Room	1	1	1	1	1	1	Low
10.3	Visual Arts	Support	Storage	2	2	2	2	3	2	Low
11.0 BUILDING SUPPORT										
11.1	Building Support	Misc.	Public entrance vestibule	1	1	1	1	2	1	Highest
11.2	Building Support	Misc.	Public elevator	1	1	1	1	2	1	Highest
11.3	Building Support	Misc.	Queuing	1	1		1	2	1	Low
11.4	Building Support	Misc.	Security Screening	1	1	1	1	2	1	High
11.5	Building Support	Misc.	Security Office Storage	1	1	1	1	1	1	Low

Functional Unit Number	Category	Subcategory	Name / Description	No. of Units						Priority Classification
				Adelphi Area MS	Drew-Freeman MS	Hyattsville MS	Kenmoor MS	Southern Area K-8	Walker Mill MS	
11.6	Building Support	Misc.	Telecom closet	1	1	1	1	2	1	High
11.7	Building Support	Misc.	Electrical closet							High
11.8	Building Support	Misc.	Security closet							High
12.0 GENERIC LANGUAGE FOR ALL REGIONAL SPECIAL EDUCATION PROGRAMS										
12.1	Regional Program	Learning	Classrooms	3	3	3	3	6	4	High
12.2	Regional Program	Learning	Classrooms w/Toilet	-	1	1	1	2	-	High
12.3	Regional Program	Support	Toilet/Changing Rooms	3	2	2	2	-	-	High
12.4	Regional Program	Learning	Sensory Room	-	1	1	1	2		High
12.5	Regional Program	Learning	Student Support	-	-	-	-	-	1	High
12.6	Regional Program	Learning	Independent Support	-	1	1	1	2	2	High
12.7	Regional Program	Support	OT/PT	1	1	-	-	-	-	High
12.8	Regional Program	Learning	Life Skills Lab w/Laundry	1	-	-	-	-	-	High
12.9	Regional Program	Support	Office	2	1	1	1	2	3	High
12.10	Regional Program	Support	Conference Room	1	1	1	1	2	1	High
12.11	Regional Program	Support	Teacher Support	1	-	-	-	-	-	High
12.12	Regional Program	Support	Program Transition Room	-	-	-	-	-	1	High
13.0 WELLNESS HEALTH CENTER SPACE REQUIREMENTS										
13.1	Wellness Center	Support	Reception/Waiting Area	1	1	1	1	1	1	High

Functional Unit Number	Category	Subcategory	Name / Description	No. of Units						Priority Classification
				Adelphi Area MS	Drew-Freeman MS	Hyattsville MS	Kenmoor MS	Southern Area K-8	Walker Mill MS	
13.2	Wellness Center	Support	Exam Rooms #1	1	1	1	1	1	1	High
13.3	Wellness Center	Support	Exam and Dental #2	1	1	1	1	1	1	High
13.4	Wellness Center	Support	Lab/Charting Area	1	1	1	1	1	1	High
13.5	Wellness Center	Support	Provider Offices	2	2	2	2	2	2	High
13.6	Wellness Center	Support	Mental Health Conference Room	1	1	1	1	1	1	High
13.7	Wellness Center	Support	Storage	2	2	2	2	2	2	High
13.8	Wellness Center	Support	Toilet	2	2	2	2	2	2	High

Table 2 - Deductions for Unavailability Events

Unavailability Event Classification	Functional Unit Priority Classification	Required Response Time	Length of Rectification Period (Hours)	Unavailability Deduction per Rectification Period
Emergency Event	Highest	30 minutes	4	\$675
	High	30 minutes	4	\$500
	Low	30 minutes	4	\$300
Critical Event	Highest	60 minutes	4	\$400
	High	60 minutes	4	\$300
	Low	60 minutes	8	\$200
Routine Event	Highest	120 minutes	24	\$300
	High	120 minutes	48	\$200
	Low	120 minutes	72	\$100

APPENDIX X-2

PERFORMANCE FAILURE DEDUCTIONS

Performance Failure Deductions not otherwise set forth in the Agreement shall be determined in accordance with this Appendix X-2 (Performance Failure Deductions) and may be imposed by PGCPS in accordance with this Exhibit.

Table 1 defines certain Performance Failures. Each Performance Failure is summarized in the Table. Table 1 also (a) indicates the priority classification of each Performance Failure (low, high, or urgent); (b) indicates whether or not Rectification of the Performance Failure is allowable before PGCPS may impose a Performance Failure Deduction; (c) indicates the second table to reference in Appendix X-2 (Performance Failure Deductions) for calculating Deductions; and (d) establishes the point at which a Performance Failure is determined (the Recording Frequency): annually (A), semi-annually (S), quarterly (Q), monthly (M), or per occurrence (PO).

Table 1 - Performance Failures

	Performance Failure	Priority Classification	Is Rectification Allowed?	Deduction Calculation Table	Recording Frequency
1	A failure to comply with the Handback Work Plan described in <u>Section 25.2.2</u> (Handback Survey) of the Agreement.	High	Yes	1a	PO
2	A failure to meet the Required Response Time for at least 90% of the aggregate Unavailability Events that occurred in the previous quarter.	High	No	1c	Q
3	A failure to meet the Required Response Time for at least 90% of the aggregate Performance Failures that occurred in the previous quarter.	Medium	No	1c	Q
4	A failure, not more specifically described elsewhere in this Appendix, to carry out Demand Maintenance related to Emergency Events in accordance with the Agreement.	Urgent	Yes	1a	PO
5	A failure, not more specifically described elsewhere in this Appendix, to carry out Demand Maintenance related to Critical Events in accordance with the Agreement.	High	Yes	1a	PO

	Performance Failure	Priority Classification	Is Rectification Allowed?	Deduction Calculation Table	Recording Frequency
6	A failure, not more specifically described elsewhere in this Appendix, to carry out Demand Maintenance related to Routine Events in accordance with the Agreement.	Low	Yes	1a	PO
7	Failure to comply with minimum Educational Specifications with regard to building materials and supplies.	High	Yes	1a	PO
8	Failure to remove any obstruction or remedy any other issue that inhibits emergency vehicle access or impedes access and egress to and from the Schools for vehicles or pedestrians.	High	Yes	1a	PO
9	Failure to keep any camera free from visual obstructions caused by trees, shrubs, or hedges.	High	Yes	1a	PO
10	A failure to Rectify Vandalism.	High	Yes	1a	PO
11	Failure of any fire alarm or sensor.	Urgent	Yes	1a	PO
12	Failure of any alarm relating to the server room, including but not limited to any temperature and moisture alarms.	Urgent	Yes	1a	PO
13	Failure to provide pest control services performed in accordance with Section 2.11 (Pest Control Services) of <u>Appendix W-1</u> .	High	Yes	1a	PO
14	Failure to have elevators be available, in aggregate, during 95% of the Operating Hours.	N/a	No	1c	M
15	Failure by Developer to free any occupant trapped in an elevator within 30 minutes of the Help Desk being informed of such mechanical failure.	High	No	1b	PO
16	Failure to maintain an adequate continuous supply of all Utilities 365(6) days per year, 24 hours a day	Urgent	Yes	1a	PO

	Performance Failure	Priority Classification	Is Rectification Allowed?	Deduction Calculation Table	Recording Frequency
	(excluding disruptions in service caused by a Utility company).				
17	Failure of Developer to provide notice, within thirty (30) minutes of receiving notice, to PGCPS of any scheduled interruptions to any Utility supply.	High	No	1b	PO
18	Failure to comply with the Life Cycle Plan as such plan may be revised with PGCPS' approval, which will not be unreasonably withheld, in accordance with the Agreement.	High	Yes	1a	PO
19	Failure to comply with the Environmental Management Plan as such plan may be revised with PGCPS approval in accordance with the Agreement.	High	Yes	1a	PO
20	Failure of the cellular distribution antenna or distributed antenna system, such that there is not adequate coverage in each School or first responder radio coverage in each School.	Urgent	Yes	1a	PO
21	Failure of the internet distribution or Wi-Fi antenna system, such that there is not adequate internet coverage in the School (except for disruptions in service caused by an Internet Service Provider).	Urgent	Yes	1a	PO
22	Failure to ensure that all hazard notices and safety signs are maintained, recorded, located, and displayed correctly, and fully serviceable.	High	Yes	1a	PO
23	Failure to answer 80% of Help Desk calls within 30 seconds during Operating Hours or, if outside of Operating Hours, failure to answer 80% of Help Desk calls within 30 minutes.	N/a	No	1c	M

	Performance Failure	Priority Classification	Is Rectification Allowed?	Deduction Calculation Table	Recording Frequency
24	For Emergency or Critical Events or “Urgent” Performance Failures, failure to answer 80% of emails or CMMS entries to the Help Desk within 15 minutes during Operating Hours or 30 minutes outside of Operating Hours. For Routine Events or “High” or “Low” Performance Failures, failure to answer 80% of emails or CMMS entries to the Help Desk within 30 minutes during Operating Hours or, if outside of Operating Hours, within 30 minutes into the Operating Hours of the next day.	N/a	No	1c	M
25	Each Reporting Failure (as further described in <u>Section 11.2</u> of this Exhibit X).	Low	No	1a	PO
26	Each day a Reporting Failure (as further described in <u>Section 11.2</u> of this Exhibit X) continues beyond the first twenty-four (24) hours.	High	No	1c	PO
27	Each Reporting Error, as further described in <u>Section 11.3</u> of Exhibit X, for any reason other than one described in <u>Section 11.4</u> (Misconduct) of Exhibit X.	Low	No	1b	PO
28	Each Reporting Error due to fraudulent action or inaction; deliberate misrepresentation, or gross misconduct or incompetence by Developer, as further described in <u>Section 11.4</u> (Misconduct) of Exhibit X.	High	No	1b	PO
29	Each failure other than a Reporting Failure to meet the required reporting and quality monitoring requirements as described in Exhibit W (Services Requirements) and <u>Article 18</u> (Reporting Requirements) of the Agreement.	High	Yes	1a	PO

	Performance Failure	Priority Classification	Is Rectification Allowed?	Deduction Calculation Table	Recording Frequency
30	Failure to maintain accurate and current CMMS records, equipment histories, and reports relative to Scheduled Maintenance and make such records (reflecting the full length of the Term) available for review by PGCPs at all times.	High	Yes	1a	PO
31	Failure to make records and information accessible to PGCPs in accordance with the Agreement, including access to the Performance Monitoring Program, the BMS, the CMMS, and all Help Desk and MBE/CBB contracting records.	High	Yes	1a	PO
32	Failure of Developer to comply with all testing and reporting requirements under all applicable PGCPs Policies, all applicable policies of insurance, and Applicable Law.	High	Yes	1a	PO
33	Each failure to prepare and submit to PGCPs any Plan in accordance with <u>Section 4</u> of Exhibit W within twenty-four (24) hours of the deadline for submitting such Plan.	Low	No	1b	PO
34	Each failure to prepare and submit to PGCPs any Plan (other than those described in Section 3.1 of <u>Exhibit W</u>) in accordance with <u>Section 3</u> of Exhibit W within forty-eight (48) hours of the deadline for submitting such Plan.	High	No	1b	PO
35	Each day Developer fails to submit to PGCPs a Plan (other than those described in Section 3.1 of <u>Exhibit W</u>) in accordance with <u>Section 3</u> of Exhibit W after the first forty-eight (48) hours following the deadline for submitting such Plan.	High	No	1b	PO
36	Failure to carry out 100% of Scheduled Maintenance on life safety and emergency systems	n/a	No	1c	M

	Performance Failure	Priority Classification	Is Rectification Allowed?	Deduction Calculation Table	Recording Frequency
	within the times scheduled in the Annual Service Plan and provide associated CMMS records to PGCPS.				
37	Failure to carry out a minimum of 85% of all other Scheduled Maintenance within the times scheduled in the Annual Service Plan and provide associated CMMS records to PGCPS.	n/a	No	1c	M
38	Failure to perform 100% of deferred Scheduled Maintenance to be completed within the month following its scheduled date and provide associated CMMS records to PGCPS.	n/a	No	1c	M
39	Failure to perform 100% of the statutory and regulatory requirements within the times scheduled in the Annual Service Plan.	n/a	No	1c	M
40	Failure to perform Facilities Maintenance at the times permitted in Section 2.4 and Section 2.5 of <u>Appendix W-1</u> .	High	No	1b	PO
41	Each failure of gas boilers to be maintained at a 98% or greater combustion efficiency rating level from base level to be determined in accordance with Good Industry Practice from commissioning data during years 1 to 5 of the Operating Period and years 1 to 5 following replacement or major refurbishment of the boilers.	N/A	No	1c	A
42	Each failure of gas boilers to be maintained at a 96% or greater combustion efficiency rating level from base level to be determined in accordance with Good Industry Practice from commissioning data during years 6 to 10 of the Operating	N/A	No	1c	A

	Performance Failure	Priority Classification	Is Rectification Allowed?	Deduction Calculation Table	Recording Frequency
	Period and years 6 to 10 following replacement or major refurbishment of the boilers.				
43	Each failure of gas boilers to be maintained at a 93% or greater combustion efficiency rating level from base level to be determined in accordance with Good Industry Practice from commissioning data after year 10 of the Operating Period or after year 10 following replacement or major refurbishment of the boilers	N/A	No	1c	A
44	Each breach of Applicable Law in carrying out Rectification or works of Temporary Repair. See <u>Section 2.7</u> of this Exhibit.	High	No	1b	PO
45	A failure to ensure that each Developer Person engaged in the delivery of the Services at all times complies with all Contract Standards, including those related to security clearances; personal identification, licensure and access control; physical and other searches of persons and property; control and detection of contraband; safety; key control; and tool control.	High	Yes	1a	PO
46	A failure to ensure that each Developer Person engaged in the delivery of the Services is at all times properly and adequately notified, trained and instructed with regard to all relevant health and safety standards associated with the Services to be performed and the rules, policies and procedures established by Developer concerning health and safety at work; all applicable fire precautions, procedures and contingency plans; and handling and usage of	High	Yes	1a	PO

	Performance Failure	Priority Classification	Is Rectification Allowed?	Deduction Calculation Table	Recording Frequency
	chemicals, including pesticides, herbicides and fertilizers, and other Hazardous Materials applicable to the Services to be performed.				
47	A failure to ensure that each Developer Person engaged in the delivery of the Services complies with MOSHA.	High	Yes	1a	PO
48	Failure by Developer to provide annual training to PGCPs staff of building operational requirements.	High	Yes	1a	PO

Table 1a - Performance Failures for which Rectification is Allowed

Performance Failure Priority Classification	Required Response Time	Length of Rectification Period (Hours)	Deduction per Rectification Period (Index-Linked)
Urgent	30 minutes	4	\$500
High	60 minutes	4	\$400
Low	120 minutes	48	\$150

Table 1b - Performance Failures for which Rectification is Not Allowed

Performance Failure Priority Classification	Deduction per Performance Failure (Index-Linked)
Urgent	\$500
High	\$400
Low	\$150

Table 1c – Performance Failures Measured with a Percentage Performance Metric

Performance Failure Recording Frequency	Deduction (Index-Linked)
Annually	\$1,000 per percentage point above the percentage required in the Performance Failure
Semi-Annually	\$650 per percentage point above the percentage required in the Performance Failure
Monthly	\$550 per percentage point above the percentage required in the Performance Failure

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EXHIBIT Y

HANDBACK USEFUL LIFE REQUIREMENTS

Developer will perform the Services in such a manner that on the Expiration Date, the remaining useful life of the following Project Components shall be:

Project Component	Minimum Remaining Useful Life
Basic Structure	30 years
Building Envelope	10 years
Interior Finishes and Millwork	5 years
Security/Audio Visual	5 years
High Voltage Distribution and Secondary Distribution Equipment	15 years
Emergency Electrical System	15 years
Emergency Power Source	5 years
Roads and Walkways	10 years
Plumbing System	5 years
Fire Suppression System	5 years
Communication System	5 years
Heating Ventilation and Air Conditioning System	15 years
Conveying Equipment	5 years
Building Management System	5 years

EXHIBIT Z

CALCULATION OF TERMINATION COMPENSATION

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EXHIBIT Z

CALCULATION OF TERMINATION COMPENSATION

The compensation payable by PGCPs to Developer upon termination of the Agreement following the Effective Date and prior to the Expiration Date is set forth in this Exhibit Z (Calculation of Termination Compensation). Prior to the Effective Date, Developer shall be entitled to compensation upon the termination of the Agreement only to the extent provided in Section 6.10 (Effect of Termination Prior to the Effective Date) of the Agreement. PGCPs, in its sole and absolute discretion, shall pay Termination Compensation to Developer either as a lump sum payment or as Recurring Termination Payments as further described in this Exhibit Z (Calculation of Termination Compensation).

1. DEFINITIONS AND SECTION REFERENCES

1.1 Definitions. In addition to the definitions set out in the Agreement, for the purposes of this Exhibit Z (Calculation of Termination Compensation), the following terms have the following meanings:

“**Committed Investment**” means the amount of Equity Contributions invested in the Project, together with the principal amount of the Junior Debt.

“**Contingent Funding Liabilities**” means direct or indirect liabilities or contingent liabilities, if any, of the Unit Holders in respect of financial obligations owed to Developer, to the general partner of Developer, to any party under the Junior Debt or the Senior Lenders under the Senior Financing Agreements, such as, for example, the amount a Unit Holder has agreed to contribute to Developer, promissory notes, obligations to fund reserve accounts, guarantees, letters of credit in respect of deferred equity, subordinated debt, or equity bridge loans.

“**Cost to Complete**” means in respect of any termination of the Agreement that occurs on or prior to the Project Readiness Date, all Losses that PGCPs determines PGCPs is reasonably likely to incur as a direct result of the termination of the Agreement, including (without double-counting):

(a) those external, out-of-pocket costs that PGCPs reasonably projects that PGCPs will incur in carrying out any process to request proposals from any parties interested in entering into a contract with PGCPs to achieve Project Readiness, including all costs related to the preparation of bidding documentation, evaluation of proposals, and negotiation and execution of relevant contracts; *plus*

(b) those costs (internal and external) reasonably projected to be incurred by PGCPs in relation to:

(i) remediation of any defective Design-Build Work; and

(ii) rectification or cure of any breach of the Agreement by Developer; *plus*

(c) costs that PGCPs reasonably projects that PGCPs will incur in achieving Project Readiness; *plus*

(d) any other Losses that PGCPs would, but for the termination of the Agreement, not have incurred prior to the achievement of Project Readiness, which may include costs associated with the use of temporary facilities (swing space), busing, the termination, and changes in the scope of the Design-Build Work that are approved or have been authorized to proceed in accordance with the Agreement; *minus*

(e) any Insurance Proceeds available to PGCPs for the purpose of achieving Project Readiness.

“Design-Build Work Value” means an amount equal to the Design-Build Agreement Price, as such price may have been amended through a Change Order, minus the Cost to Complete.

“Employee Information” means written details related to employees employed by Developer or any of the Project Contractors or Subcontractors whose work (or any part of it) is work undertaken for the purposes of the Project, including:

- (a) the staffing plan and total number of such employees;
- (b) the employment costs for such employees;
- (c) the amount or severance payable to such employees used in the calculation of any Employee Payment and all relevant information used in determining such amounts; and
- (d) any other information that PGCPs may reasonably require in relation to the calculation of Employee Payments.

“Employee Payment” means any liability that has been reasonably incurred by Developer arising as a result of termination of the Agreement under collective bargaining agreements, employment agreements, or under any other agreements with employees of Developer, including severance (whether accrued or not), vacation pay and sick pay accrued, but excluding any Distribution.

“Non-Financial Termination Costs” means the amount payable by PGCPs to Developer for Developer’s non-financial costs resulting from the termination of the Agreement prior to the Expiration Date, as calculated in Section 2.4 (Non-Financial Termination Costs Calculation) and Section 3.4 (Non-Financial Termination Costs Calculation.).

“Outstanding Committed Investment” means (i) the amount, if any, by which the Junior Debt exceeds the amount of all Distributions made in respect of Junior Debt, plus (ii) the amount, if any, by which the amount of Equity Contributions exceeds the amount of Distributions made by Developer to its Unit Holders in respect of equity capital.

“Project Contractor Breakage Costs” means the amount payable by Developer to a Project Contractor under the terms of a Project Contract as a direct result of the termination of the Agreement, but reduced (without duplication) to the extent that:

(a) Developer, a Project Contractor, or any Subcontractor fails to take all reasonable steps to mitigate such amount;

(b) such amount relates to any agreements or arrangements entered into by Developer, a Project Contractor, or a Subcontractor other than in the ordinary course of business and on commercial arm's length terms;

(c) such amount is a Distribution; and

(d) such amount includes any loss of overhead or profit of the Services Provider or its Subcontractors relating to any period or costs after the Termination Date (except to the extent they are properly included in any reasonable commercial breakage fee set forth in the applicable Project Contract or Subcontract).

“Recurring Termination Payment” means any payment of Termination Compensation calculated in accordance with this Exhibit Z (Calculation of Termination Compensation) that, in PGCPs' sole and absolute discretion, shall be made over time rather than as a single lump sum payment after determination of the Termination Date.

“Recurring Termination Payment Distributions” means the sum of: (i) the Distributions described in clauses (a) and (b) of the definition thereof, plus (ii) payments in respect of fees, principal, and interest on Junior Debt (but excluding breakage costs).

“Recurring Termination Payment Schedule” has the meaning set forth in Section 6 (Recurring Termination Payments).

“Termination Compensation Due Date” means one hundred and fifty (150) days after Developer's satisfaction of its obligations under Section 19.13 (Consequences of Termination or Reversion) of the Agreement, unless PGCPs elects to make Recurring Termination Payments.

“Termination Compensation Lump Sum Payoff Date” means up to thirty (30) days after PGCPs gives notice to Developer of its election, after previously electing to make Recurring Termination Payments, to pay any remaining Termination Compensation owed to Developer in a lump sum payment pursuant to Section 2.5 (PGCPs Option for Termination Compensation Lump Sum Payoff), Section 3.5 (PGCPs Option for Termination Compensation Lump Sum Payoff), or Section 4.6 (PGCPs Option for Termination Compensation Lump Sum Payoff).

“Termination Deductions Amount” means any accrued monthly Deductions that, as of the Termination Date, have not been taken into account in the calculation of any payment actually made to Developer by PGCPs prior to the Termination Date.

1.2 Section References in this Exhibit. All Section references in this Exhibit Z (Calculation of Termination Compensation) are to Sections of this Exhibit Z (Calculation of Termination Compensation), except Section references explicitly made to Sections, Articles, or Exhibits of the Agreement.

2. TERMINATION BY PGCPs FOR CONVENIENCE, BY DEVELOPER FOR PGCPs DEFAULT, OR BY COURT RULING

2.1 Lump Sum Termination Compensation Calculation. If PGCPs elects to pay the Termination Compensation as a lump sum and (i) PGCPs terminates the Agreement as a Termination for Convenience pursuant to Section 19.8 (Termination for Convenience by PGCPs) of the Agreement, (ii) Developer terminates the Agreement due to a PGCPs Default pursuant to Section 19.7 (Developer Remedies Upon PGCPs Default) of the Agreement, or (iii) the Agreement terminates due to a Termination by Court Ruling pursuant to Section 19.11 (Termination by Court Ruling) of the Agreement, PGCPs will pay to Developer, on the Termination Compensation Due Date, Termination Compensation equal to the aggregate, without duplication, of:

(a) the Senior Debt as of the Termination Date with per diem interest on amounts falling within subsection (a) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until and including the Termination Compensation Due Date;

(b) Employee Payments and Project Contractor Breakage Costs;

(c) any accrued but unpaid amounts owing and payable by PGCPs to Developer under the Agreement;

(d) any Insurance Receivables, if and to the extent Developer has assigned them to PGCPs;

(e) an amount which when taken together with Distributions made on or before the Termination Date, including Distributions paid on or in respect of Units and fees, principal, interest, and breakage costs paid or repaid on Junior Debt taking account of the actual timing of all such Distributions, gives a nominal internal rate of return on the Committed Investment equal to the Base Case Equity IRR; and

(f) the greater of: (i) \$0; or (ii) the Handback Retainage Account balance minus an amount equal to the cost of the remaining Handback Work;

Less, to the extent it is a positive amount, the aggregate amount of (without double counting):

(g) Insurance Receivables payable to Developer on or after the Termination Date;

(h) the aggregate of all credit balances on any bank accounts held by or on behalf of Developer on the Termination Date that are secured in favor of the Senior Lenders;

(i) the value of any amounts due and payable from third parties (but only when received from third parties), but excluding any claims under a Project Contract or claims against other third parties which have not been determined or have been determined but not yet paid, provided that in such case Developer will assign any such rights and claims under the Project Contracts or claims against other third parties to PGCPs and give PGCPs reasonable assistance in prosecuting such claims;

(j) to the extent not taken into account in calculating the amount under (e) above, the amount of any Contingent Funding Liabilities that are triggered as a result of or in relation to a termination of the Agreement;

(k) the market value of any other assets and rights of Developer (other than those transferred to PGCPs pursuant to the Agreement), less liabilities of Developer properly incurred in carrying out its obligations under the Agreement as at the Termination Compensation Due Date to the extent realized before the Termination Compensation Due Date, provided that no account will be taken of any liabilities and obligations of Developer arising out of:

(i) agreements or arrangements entered into by Developer to the extent that such agreements or arrangements were not entered into in connection with Developer's obligations in relation to the Project; or

(ii) agreements or arrangements entered into by Developer to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms;

(l) any amounts, including hedging Termination Compensations and other breakage costs, payable by the Senior Lenders to Developer as a result of a prepayment under the Senior Financing Agreements;

(m) any amounts received by the Senior Lenders (or on their behalf) on or after the Termination Date and before the Termination Compensation Due Date as a result of enforcing any other rights or security the Senior Lenders may have under the Senior Financing Agreements in respect of Senior Debt (net of the reasonable and proper costs incurred in such enforcement); and

(n) any other amounts that PGCPs is entitled to set-off or deduct under the Agreement.

To the extent that the assets and rights referred to in item (j) of this Section are not realized and applied pursuant to that Section, Developer will on payment of the amount due under this assign such assets and rights to PGCPs.

2.2 Notice to PGCPs. As soon as practicable, but no later than one hundred and twenty (120) days, after (i) PGCPs terminates the Agreement as a Termination for Convenience pursuant to Section 19.8 (Termination for Convenience by PGCPs) of the Agreement, (ii) Developer terminates the Agreement due to a PGCPs Default pursuant to Section 19.7 (Developer Remedies Upon PGCPs Default) of the Agreement, or (iii) the Agreement terminates due to a Termination by Court Ruling pursuant to Section 19.11 (Termination by Court Ruling) of the Agreement, Developer will, acting reasonably, notify PGCPs of the Termination Compensation as of an estimated Termination Compensation Due Date and include in such notice the information required by Section 19.14.1 (Termination Compensation Claim) of the Agreement, details and calculations of each component thereof, including a revised and up-to-date Financial Model and certificates from the Senior Lenders as to the amounts owed to them. Developer will provide to PGCPs all such documents and information as may be reasonably required by PGCPs to confirm the amount of the Termination Compensation, including Employee Information.

2.3 Recurring Termination Payments Calculation. If PGcps elects to pay the Termination Compensation as Recurring Termination Payments and (i) PGcps terminates the Agreement as a Termination for Convenience pursuant to Section 19.8 (Termination for Convenience by PGcps) of the Agreement, (ii) Developer terminates the Agreement due to a PGcps Default pursuant to Section 19.7 (Developer Remedies Upon PGcps Default) of the Agreement, or (iii) the Agreement terminates due to a Termination by Court Ruling pursuant to Section 19.11 (Termination by Court Ruling) of the Agreement, PGcps will pay to Developer, in accordance with the Recurring Termination Payment Schedule, an amount in each year that includes the following elements, together with any amounts owed pursuant to Section 2.4 (Non-Financial Termination Costs Calculation) below:

(a) the amount of Senior Debt (excluding Senior Debt Breakage Amounts) repayment that would be payable for the applicable year based on the outstanding amount of Senior Debt, calculated assuming the same financing terms and profile in the Senior Financing Agreements and the Financial Model; *plus*

(b) the amount of Recurring Termination Payment Distributions that are anticipated in the Financial Model to be paid on the Committed Investment in the applicable year between the Termination Date and final period of the Recurring Termination Payment Schedule. However, such payments shall not result in any Unit Holder receiving a return on Committed Investment exceeding the Base Case Equity IRR.

2.4 Non-Financial Termination Costs Calculation. In addition, if PGcps has elected to pay Termination Compensation as Recurring Termination Payments, a calculation of the Non-Financial Termination Costs will be made as of the Termination Date, and PGcps will elect, in its sole and absolute discretion, to pay any positive amount as either a lump sum payment or as installments over time as described below in Section 6 (a negative amount would be payable by the Developer as an offset against the first Recurring Termination Payment):

(a) the sum of the items described in Sections 2.1(b), 2.1(c), 2.1(d), and 2.1(f) above; *minus*

(b) the sum of the items described in Sections 2.1(g), 2.1(h), 2.1(i), 2.1(k), and 2.1(n) above.

2.5 PGcps Option for Termination Compensation Lump Sum Payoff. PGcps may, at any time after commencing Recurring Termination Payments, in its sole and absolute discretion, choose to pay any remaining Termination Compensation owed to Developer in a lump sum payment upon notice given to Developer no less than thirty (30) days' prior to the Termination Compensation Lump Sum Payoff Date. PGcps will pay to Developer Termination Compensation as follows:

(a) the Senior Debt as of the notice date with per diem interest on amounts falling within subsection (a) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the notice date until and including the Termination Compensation Lump Sum Payoff Date; *plus*

(b) the amounts calculated and anticipated to be paid pursuant to Section 2.3(b) between the payment date identified in the notice provided to Developer from PGCPs and the last anticipated payment as shown on the Recurring Termination Payment Schedule, each amount discounted back at the Base Case Equity IRR, with the discounting in each case to be from the date on which it is shown to be payable in the Financial Model to the Termination Compensation Lump Sum Payoff Date. However, such payment shall not result in any Unit Holder receiving a return on Committed Investment exceeding the Base Case Equity IRR; *plus*

(c) any outstanding amount of Non-Financial Termination Costs.

3. TERMINATION DUE TO EXTENDED RELIEF EVENT OR AN INSURANCE UNAVAILABILITY EVENT

3.1 Lump Sum Termination Compensation Calculation. If (a) Developer or PGCPs terminates the Agreement due to an Extended Relief Event pursuant to Section 19.9 (Termination Due to Extended Relief Event) of the Agreement, or (b) PGCPs terminates this Agreement due to an Insurance Unavailability Event pursuant to Section 19.10 (Termination Due to an Insurance Unavailability Event) of the Agreement, PGCPs will pay to Developer, on the Termination Compensation Due Date, Termination Compensation equal to the aggregate of:

(a) the Senior Debt as of the Termination Date with per diem interest on amounts falling within subsection (a) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until (and including) the Termination Compensation Due Date;

(b) any accrued but unpaid amounts owing and payable by PGCPs to Developer under the Agreement;

(c) the amount, if any, by which the Junior Debt exceeds the amount of all Distributions made in respect of Junior Debt;

(d) the amount, if any, by which the amount of capital contributed to Developer by the Unit Holders exceeds the amount of Distributions made by Developer to its Unit Holders;

(e) Employee Payments and Project Contractor Breakage Costs; and

(f) the greater of: (i) \$0; or (ii) the Handback Retainage Account balance minus an amount equal to the cost of the remaining Handback Work;

Less:

(g) Insurance Receivables payable to Developer on or after the Termination Date;

(h) the aggregate of all credit balances on any bank accounts held by or on behalf of Developer on the Termination Date that are secured in favor of the Senior Lenders;

(i) the amount of any Distributions made other than those referred to in items (c) and (d) of this Section; and

(j) any other amounts that PGCPS is entitled to set-off or deduct under the Agreement.

3.2 Notice to PGCPS. As soon as practicable, but not later than one hundred and twenty (120) days after termination of the Agreement as contemplated by this Section 3 (Termination Due to Extended Relief Event or an Insurance Unavailability Event), Developer will, acting reasonably, notify PGCPS of the Termination Compensation as of an estimated Termination Compensation Due Date and include in such notice the information required by Section 19.14.1 (Termination Compensation Claim) of the Agreement, the details and calculations of each component thereof, include certificates from the Senior Lenders as to the amounts owed to them, and provide to PGCPS all such documents and information reasonably required by PGCPS to confirm the amount of the Termination Compensation, including Employee Information.

3.3 Recurring Termination Payments Calculation. If PGCPS elects to pay the Termination Compensation as Recurring Termination Payments and (a) Developer or PGCPS terminates the Agreement due to an Extended Relief Event pursuant to Section 19.7 (Termination Due to Extended Relief Event) of the Agreement, or (b) PGCPS terminates this Agreement due to an Insurance Unavailability Event pursuant to Section 19.8 (Termination Due to an Insurance Unavailability Event) of the Agreement, PGCPS will pay to Developer, in accordance with the Recurring Termination Payment Schedule, an amount in each year that includes the following elements, together with any amounts owed pursuant to Section 3.4 (Non-Financial Termination Costs Calculation) below:

(a) the amount of Senior Debt (excluding Senior Debt Breakage Amounts) repayment that would be payable for the applicable year based on the outstanding amount of Senior Debt, calculated assuming the same financing terms and profile in the Senior Financing Agreements and the Financial Model; *plus*

(b) the amount of Recurring Termination Payment Distributions that are anticipated in the Financial Model to be paid on the Committed Investment in the applicable year; however, this payment will only be made up to the point that total Recurring Termination Payment Distributions, when added to any amounts actually received by the Unit Holders from Developer prior to the commencement of the Recurring Termination Payments as Distributions described in clauses (i) and (ii) of the definition thereof along with payments in respect of fees, principal, interest (but excluding breakage costs) on Junior Debt, equal the amount of the Committed Investment. Thereafter, there will be no further payments pursuant to this subsection (b). For clarity, the final payment pursuant to this subsection (b) may be a portion of the Distribution amount as shown in the Financial Model for that applicable period.

In addition, the balance of Outstanding Committed Investment as of the Termination Date shall bear interest from the later of the Termination Date or the date that is five (5) days after PGCPS receives the statements and documentation set forth in Section 6 (Recurring Termination Payments), until the Outstanding Committed Investment amount is paid in full by means of payments as described in this Section, at an annual rate equal to the Base Case Equity IRR. Such interest shall be included in the Recurring Termination Payment Schedule.

3.4 Non-Financial Termination Costs Calculation. In addition, if PGCPs has elected to pay Termination Compensation as Recurring Termination Payments, a calculation of the Non-Financial Termination Costs will be made as of the Termination Date, and PGCPs will elect, in its sole and absolute discretion, to pay any positive amount as either a lump sum payment or as installments over time as described below in Section 6 (Recurring Termination Payment) (a negative amount would be payable by Developer as an offset against the first Recurring Termination Payment):

- (a) The sum of the items described in Sections 3.1(b), 3.1(e), and 3.1(f) above; minus
- (b) The sum of the items described in Sections 3.1(h), 3.1(i), and 3.1(k) above.

3.5 PGCPs Option for Termination Compensation Lump Sum Payoff. PGCPs may, at any time after commencing Recurring Termination Payments, in its sole and absolute discretion, choose to pay any remaining Termination Compensation owed to Developer in a lump sum payment upon notice given to Developer no less than thirty (30) days' prior to the Termination Compensation Lump Sum Payoff Date. PGCPs will pay to Developer Termination Compensation as follows:

- (a) the Senior Debt as of the notice date with per diem interest on amounts falling within subsection (a) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the notice date until and including the Termination Compensation Lump Sum Payoff Date; *plus*
- (b) the amount, if any, of Outstanding Committed Investment as of the payment date identified in the notice provided to Developer from PGCPs; *plus*
- (c) any outstanding amount of Non-Financial Termination Costs.

4. TERMINATION DUE TO DEVELOPER DEFAULT

4.1 Lump Sum Termination Compensation Calculation Prior to the Project Readiness Date. If PGCPs terminates the Agreement prior to the Project Readiness Date due to a Developer Default pursuant to Section 19.4 (Remedies by PGCPs Upon Developer Default) of the Agreement, PGCPs will pay to Developer, on the Termination Compensation Due Date, Termination Compensation equal to:

- (a) The lower of:
 - (i) the Design-Build Work Value; or
 - (ii) eighty percent (80%) of the Senior Debt.

Less:

- (b) Insurance Receivables payable to Developer on or after the Termination Date;

(c) the aggregate of all credit balances on any bank accounts held by or on behalf of Developer on the Termination Date that are secured in favor of the Senior Lenders;

(d) eighty percent (80%) of the Senior Debt Breakage Amounts payable or credited to Developer that arise as a result of the early termination of the Agreement on the Termination Date; and

(e) any other amounts due and owing to PGCPS pursuant to the Agreement.

4.2 Lump Sum Termination Compensation Calculation After the Project Readiness Date. If PGCPS terminates the Agreement after the Project Readiness Date due to a Developer Default pursuant to Section 19.4 (Remedies by PGCPS Upon Developer Default) of the Agreement, PGCPS will pay to Developer, on the Termination Compensation Due Date, Termination Compensation equal to:

(a) eighty percent (80%) of the Senior Debt, less

(b) any Termination Deductions Amount and any other amounts due and owing to PGCPS pursuant to the Agreement.

4.3 Notice to PGCPS. As soon as practicable, but not later than one hundred and twenty (120) days after termination of the Agreement as contemplated by this Section 4 (Termination Due to Developer Default), Developer will, acting reasonably, notify PGCPS of the Termination Compensation as of an estimated Termination Compensation Due Date and include in such notice the information required by Section 19.14.1 (Termination Compensation Claim) of the Agreement, the details and calculations of each component thereof, include certificates from the Senior Lenders as to the amounts owed to them, and provide to PGCPS all such documents and information reasonably required by PGCPS to confirm the amount of the Termination Compensation, including Employee Information.

4.4 Recurring Termination Payments Calculation Prior to the Project Readiness Date. If PGCPS elects to pay the Termination Compensation as Recurring Termination Payments and PGCPS terminates the Agreement prior to the Project Readiness Date due to a Developer Default pursuant to Section 19.4 (Remedies by PGCPS Upon Developer Default) of the Agreement, PGCPS will pay to Developer, in accordance with the Recurring Termination Payment Schedule, an amount in each year that includes the following elements:

(a) The lower of:

(i) (X), which shall be calculated as the Design-Build Work Value, minus:

(a) Insurance Receivables payable to Developer on or after the Termination Date;

(b) the aggregate of all credit balances on any bank accounts held by or on behalf of Developer on the Termination Date that are secured in favor of the Senior Lenders;

(c) eighty percent (80%) of the Senior Debt Breakage Amounts payable or credited to Developer that arise as a result of the early termination of the Agreement on the Termination Date; and

(d) any other amounts due and owing to PGCPS pursuant to the Agreement; or

(ii) (Y), which shall be calculated as eighty percent (80%) of the Senior Debt (excluding Senior Debt Breakage Amounts), minus:

(a) Insurance Receivables payable to Developer on or after the Termination Date;

(b) the aggregate of all credit balances on any bank accounts held by or on behalf of Developer on the Termination Date that are secured in favor of the Senior Lenders;

(c) eighty percent (80%) of the Senior Debt Breakage Amounts payable or credited to Developer that arise as a result of the early termination of the Agreement on the Termination Date; and

(d) any other amounts due and owing to PGCPS pursuant to the Agreement.

If (X) is the lower amount, the Recurring Termination Payment Schedule will be determined in accordance with either (a) or (b) below. If (Y) is the lower amount, the Recurring Termination Payment Schedule will be determined according to (c) below.

(a) If (X) is greater than the amount of Senior Debt outstanding (excluding Senior Debt Breakage Amounts), then the annual payment will equal (i) the repayment of the outstanding amount of Senior Debt (excluding Senior Debt Breakage Amounts) that would be payable for the applicable year, calculated assuming the same financing terms and profile in the Funding Agreements and the Financial Model, *plus* (ii) the amount of the Recurring Termination Payment Distributions anticipated in the Financial Model to be paid on Committed Investment for the applicable year, until the amounts paid under this subsection (a)(ii) equals the amount calculated as: ((X) less the Senior Debt outstanding (excluding Senior Debt Breakage Amounts)). For clarity, the final payment in respect of Distributions under this subsection (a)(ii) may be a portion of the Distribution amount as shown in the Financial Model for that applicable period.

In addition, with respect to payments in subsection (a)(ii) above, the balance of the unpaid amount of Recurring Termination Payment Distributions owed in respect of the total calculated amount as of the Termination Date ((X) less the Senior Debt outstanding (excluding Senior Debt Breakage Amounts)) shall bear interest from the later of the Termination Date or the date that is five (5) days after PGCPS receives the statements and documentation set forth in Section 6 (Recurring Termination Payments), until paid in full at an annual rate equal to the Base Case Equity IRR. Such interest shall be included in the Recurring Termination Payment Schedule.

Notwithstanding the calculation set forth in (a)(ii) above, including the interest payable thereon, the total annual amount payable shall not be greater in any year than the Availability Payment for

that year, calculated in accordance with Exhibit X-1 (Payment Calculations) of the Agreement, and therefore the amounts in (a)(ii) shall be sized accordingly as necessary as part of the Recurring Termination Payment Schedule.

(b) If (X) is less than or equal to the amount of Senior Debt outstanding (excluding Senior Debt Breakage Amounts), then the annual payment will equal the amount that would be payable for the applicable year on (X) amount of Senior Debt, calculated assuming the same financing terms and profile in the Funding Agreements and the Financial Model.

(c) The amount of Senior Debt repayment that would be payable for the applicable year based (Y) amount of Senior Debt, calculated assuming the same financing terms and profile in the Funding Agreements and the Financial Model.

4.5 Recurring Termination Payments Calculation After the Project Readiness Date. If PGPCS elects to pay the Termination Compensation as Recurring Termination Payments and PGPCS terminates the Agreement after the Project Readiness Date due to a Developer Default pursuant to Section 19.4 (Remedies by PGPCS Upon Developer Default) of the Agreement, PGPCS will pay to Developer, in accordance with the Recurring Termination Payment Schedule, an amount in each year that includes the following elements:

(a) An amount (Y), calculated as eighty percent (80%) of the Senior Debt (excluding Senior Debt Breakage Amounts) minus any Termination Deductions Amount and any other amounts due and owing to PGPCS pursuant to the Agreement.

The Recurring Termination Payment Schedule will be determined as follows:

(b) The annual payment will equal the amount of Senior Debt repayment that would be payable for the applicable year based on (Y) amount of Senior Debt, calculated assuming the same financing terms and profile in the Funding Agreements and the Financial Model.

4.6 PGPCS Option for Termination Compensation Lump Sum Payoff. PGPCS may, at any time after commencing Recurring Termination Payments, in its sole and absolute discretion, choose to pay any remaining Termination Compensation owed to Developer in a lump sum payment upon notice given to Developer no less than thirty (30) days' prior to the Termination Compensation Lump Sum Payoff Date. PGPCS will pay to Developer Termination Compensation in the amount of the unpaid balance of the Termination Compensation owed under Section 4.4 (Recurring Termination Payments Calculation Before the Project Readiness Date) or Section 4.5 (Recurring Termination Payments Calculation After the Project Readiness Date), as applicable, plus Senior Debt Breakage Amounts resulting from the lump sum payment to be made in accordance with this Section 4.6 (PGPCS Option for Termination Compensation Lump Sum Payoff), as of the payment date identified in the notice provided to Developer from PGPCS.

5. ADJUSTMENTS AND DISPUTES

5.1 Tax Gross Up of Termination Compensation. If any Termination Amount payable by PGPCS to Developer pursuant to this Exhibit Z (Calculation of Termination Compensation) is subject to any Tax under Applicable Law, then PGPCS shall pay Developer such additional amount as PGPCS reasonably determines will put Developer in the same after-tax

position as it would have been in had the payment not been subject to such Tax, taking into account any relief, allowances, deductions, or credits in respect of any such Tax (whether by choice or not) which may be available to Developer to reduce such Tax to which the payment is subject.

5.2 Time Related Adjustments. It is understood that the calculations of the Termination Compensation pursuant to Section 2 (Termination by PGCPs for Convenience, By Developer for PGCPs Default, or By Court Ruling), Section 3 (Termination Due to Extended Relief Event or an Insurance Unavailability Event), and Section 4 (Termination for Developer Default) of this Exhibit Z (Calculation of Termination Compensation) are as of an estimated Termination Compensation Due Date, and that such estimated date may not be the actual Termination Compensation Due Date for reasons including the existence of a Dispute. The Parties will act reasonably in adjusting the amount of each such Termination Compensation to reflect the actual Termination Compensation Due Date.

5.3 Certification of Senior Debt. PGCPs will be entitled to rely on one or more certificates of officers of the Senior Lenders or their agent as conclusive evidence of the amount of the Senior Debt. The receipt of this amount by Developer, the Senior Lenders, or their agent will discharge PGCPs' obligation to pay any portion of compensation due to Developer that is attributable to the Senior Debt.

5.4 Full Settlement. Any and all amounts paid by PGCPs to Developer or Developer to PGCPs under this Exhibit Z (Calculation of Termination Compensation) or any agreement or determination that PGCPs has no obligations to make any payment to Developer under this Exhibit Z (Calculation of Termination Compensation) will be in full and final settlement of each Party's rights and claims against each other for termination of the Agreement and any Project Contract, whether under contract, tort, restitution, or otherwise, but without prejudice to:

(a) any antecedent liability of either Party to the other that arose prior to the date of termination of the Agreement (but not from the termination itself) to the extent such liability has not already been taken into account in determining the Termination Compensation; and

(b) any liability of either Party to the other that may arise after the date of termination of the Agreement (but not from the termination itself), including, liabilities arising under the provisions of the Agreement which are intended by Section 19.21 (Survival) of the Agreement to survive termination, to the extent any such liability has not already been taken into account in determining the Termination Compensation.

Developer agrees that the applicable Termination Compensation provided for in this Exhibit Z (Calculation of Termination Compensation) shall fully and adequately compensate Developer for all costs, foregone potential profits, and any charges of any kind whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition, and other similar wind-down costs, attributable to the termination of Developer's right to perform the Agreement.

5.5 Disputes. If PGCPs does not agree with Developer's determination of the Termination Compensation under Section 2 (Termination by PGCPs for Convenience, By Developer for PGCPs Default, or By Court Ruling), Section 3 (Termination Due to Extended

Relief Event or an Insurance Unavailability Event), or Section 4 (Termination for Developer Default), PGCPs may, within twenty (20) days of the notice referred to in Section 2.2 (Notice to PGCPs), Section 3.2 (Notice to PGCPs), or Section 4.3 (Notice to PGCPs), as the case may be, refer the matter for resolution in accordance with Article 24 (Resolution of Disputes) of the Agreement. If either Party does not refer the matter for resolution in accordance with Article 24 (Resolution of Disputes) of the Agreement within the periods provided for in this Section, such Party will be deemed to have agreed to the amount of the applicable determination of the Termination Compensation as of the estimated Termination Compensation Due Date.

6. RECURRING TERMINATION PAYMENTS

6.1 Recurring Termination Payment Notice. If PGCPs elects to pay Termination Compensation as Recurring Termination Payments, PGCPs shall notify Developer of this election in a Notice delivered to Developer within twenty (20) days after Developer provides its required notice in accordance with Section 2.2 (Notice to PGCPs), Section 3.2 (Notice to PGCPs), or Section 4.3 (Notice to PGCPs).

6.2 Recurring Termination Payment Schedule. Within thirty (30) days of receiving PGCPs' notice electing to make Recurring Termination Payments, Developer will develop and submit to PGCPs a schedule (the "**Recurring Termination Payment Schedule**") for approval by PGCPs, along with documentation reasonably required by PGCPs to support the amounts in the schedule and a certification that such amounts are true and correct. The Recurring Termination Payment Schedule shall set forth annual payment amounts for each year starting in the year in which the Termination Event occurs (using a pro-rata amount for the first year of Recurring Termination Payments, taking into account the portion of Availability Payments used to repay Senior Debt and Distributions that have already been made in that year, if applicable) and ending the year in which the Expiration Date would have occurred had the Termination not occurred. Subsequent to delivery of the Recurring Termination Payment Schedule, PGCPs and Developer will review the Financial Model to confirm the amounts payable as set forth in the Recurring Termination Payment Schedule. PGCPs shall approve the Recurring Termination Payment Schedule within twenty (20) days of reviewing the Financial Model with Developer.

6.3 Recurring Termination Payments Commencement. The Recurring Termination Payments shall commence on the date that the next Availability Payment would have been due, had the Termination not occurred. For clarity, no Recurring Termination Payments shall be made prior to July 15, 2023. If the Recurring Termination Payment Schedule has not yet been approved by PGCPs at the time the first Recurring Termination Payment is due, a Recurring Termination Payment will be made in an amount equal to the Availability Payment that would have been due had the Termination Event not occurred. This payment process will continue until the Recurring Termination Payment Schedule has been approved by PGCPs. The next Recurring Termination Payment made after the Recurring Termination Payment Schedule has been approved by PGCPs will include a true-up to account for any overpayment that was made to Developer in the prior Recurring Termination Payments.

6.4 Non-Financial Termination Costs. If PGCPs elects to pay the Non-Financial Termination Costs as a lump sum payment, this payment will be included in the first Recurring Termination Payment to be made after the Recurring Termination Payment Schedule is approved.

If PGCPS elects to pay the Non-Financial Termination Costs in installments, the amounts will be determined and sized as part of the Recurring Termination Payment Schedule approved by PGCPS, ensuring that the total payment to Developer in any given year is equal to the Availability Payment for that year, as calculated in accordance with Exhibit X-1 (Payment Calculations) of the Agreement, until the Non-Financial Termination Costs are paid in full.

If paid as a lump sum payment, the Non-Financial Termination Costs shall bear interest from the later of the Termination Date or the date that is five (5) days after PGCPS receives (i) the statements and documentation set forth in Section 2.4 (Non-Financial Termination Costs Calculation) and Section 3.4 (Non-Financial Termination Costs Calculation), and (ii) confirmation of the amounts payable as set forth in Section 2.4 (Non-Financial Termination Costs Calculation) and Section 3.4 (Non-Financial Termination Costs Calculation), until the date that the lump sum payment is made at the Overdue Rate.

If the Non-Financial Termination Costs are paid in installments, such outstanding amounts shall bear interest from the later of the Termination Date or the date that is five (5) days after PGCPS receives (i) the statements and documentation set forth in Section 2.4 (Non-Financial Termination Costs Calculation) and Section 3.4 (Non-Financial Termination Costs Calculation), and (ii) confirmation of the amounts payable as set forth in Section 2.4 (Non-Financial Termination Costs Calculation) and Section 3.4 (Non-Financial Termination Costs Calculation) above, until the Non-Financial Termination Costs are paid in full, at the Overdue Rate.

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EXHIBIT AA
WAGE DETERMINATION

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EXHIBIT BB
REQUIRED SUBCONTRACTORS

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EXHIBIT CC

REQUIRED INSURANCE

1. DESIGN-BUILD PERIOD INSURANCE

1.1 Builder's Risk Insurance.

(a) **Policy Requirements.** Builder's all-risk construction insurance policy, covering all Design-Build Work at the Sites, while in transit, and at any temporary off-site locations, including, but not limited to, Site preparation; demolition; removal; off-site disposal; all materials, supplies, machinery, fixtures, and equipment intended to become a pertinent part of the Project or for permanent use in the Project or incidental to the construction; all temporary structures at the Sites that are to be used in or incidental to the fabrication, erection, testing, or completion of the Project to the extent the cost thereof is included in the Design-Build Work while on or about a Site awaiting or during construction. Each builder's risk policy or policies:

- (1) shall be maintained until the Project Readiness Date;
- (2) shall be in an amount not less than the Full Insurable Value on a replacement cost basis (as defined in Section 3.1 (Full Insurable Value Defined));
- (3) shall be written on an all risk basis, including coverage for the perils of fire, extended coverage, theft, vandalism, malicious mischief, collapse, earth movement, equipment breakdown, flood, water damage, collapse and terrorism, and subject to agreement sublimits of not less than \$25,000,000 for flood and \$100,000,000 for earth movement coverages;
- (4) shall specifically cover consequential loss or damage arising from faulty workmanship or materials;
- (5) shall include coverage for delay costs, including the loss of revenue, loss of investment income, continued payment of debt service, and the costs of Project redesign if a covered loss ensues as a result of design error, subject to a \$30,00,000 sublimit; and
- (6) may include deductibles or self-insured retentions, but such deductible or self-insured retention shall not be a recoverable cost under the Agreement.

(b) **Named Insureds.** The named insureds for the builder's risk policy shall be Developer, the Design-Builder, and the Subcontractors.

(c) **Additional Named Insured.** The additional named insured for the builder's risk policy shall be PGPCS.

(d) **Additional Insureds.** The additional insureds for the builder's risk policy shall be the Services Provider and the Senior Lenders.

(e) **First Loss Payee.** The first loss payee shall be the Senior Lenders, as their interests may appear.

1.2 Professional Liability Insurance.

(a) **Policy Requirements.** A project specific professional liability errors and omissions insurance policy, which policy shall:

- (1) be in an amount not less than \$10,000,000 per claim and in the aggregate;
- (2) be on a “claims-made” basis;
- (3) have an extended reporting or discovery “tail” period, or be renewed for a period, of not less than ten (10) years after the Effective Date; and
- (4) shall have a retroactive date effective before the commencement of any design.

The practice professional liability policy of the primary design professional shall be specifically in excess of the project-specific professional liability errors and omissions policy. The primary design professional shall maintain its practice policy until the statute of repose expires in an amount not less than \$10,000,000. Such practice policy shall not include any exclusionary language relating to design-build joint ventures or partnerships or both.

(b) **Named Insureds.** All entities providing professional design services shall be named insureds.

(c) **Indemnified Parties.** Developer and the Design-Builder shall be indemnified parties.

1.3 Commercial General Liability Insurance.

(a) **Policy Requirements.** A project specific commercial general liability insurance policy, written on an occurrence basis and covering liabilities arising out of the construction of the Project, including by independent contractors, products, and completed operations, personal and advertising liability, and liability assumed under an insured contract to be identified to the insurer and endorsed on the policy, and (unless covered under separate professional liability insurance) professional services provided in connection with the construction of the Project. The policy shall not contain exclusions for property damage from explosion, collapse, or underground hazard, or inadvertent construction defects. The products and completed operations liability coverage shall be maintained for a period of not less than ten (10) years following the Project Readiness Date or the Termination Date, whichever occurs first. The

insurance shall apply separately for each insured against whom a claim is made or a lawsuit is brought, subject only to the insurance policy limits. The insurance policy shall:

(1) have minimum limits of \$5,000,000 combined single limit each occurrence, \$5,000,000 combined single limit aggregate for products/completed operations, and \$5,000,000 combined single limit aggregate for other than products/completed operations, and property damage coverage with minimum limits of \$5,000,000 per occurrence; if work involves excavation or blasting, coverage for explosion, collapse, and underground hazards (“XCU”) shall also be included; and

(2) be maintained throughout the Term until ninety (90) days after the Project Readiness Date.

(b) **Named Insureds.** The named insureds shall be Developer and the Design-Builder.

(c) **Additional Named Insured.** The additional named insured shall be PGCPs. The additional named insured status afforded to PGCPs shall apply to premises, ongoing operations, and completed operations, on a primary basis.

(d) **Additional Insureds.** The additional insureds shall be the Senior Lenders and the Services Provider.

1.4 Business Auto Liability Insurance.

(a) **Policy Requirements.** A business auto liability insurance policy with limits of liability of not less than \$1,000,000 combined single limit per accident, which requirement may be met by any combination of primary and excess coverage so long as the excess is written on a “follow form” basis. The insurance must cover liability arising from the ownership, maintenance, or use of any auto, including owned, leased, rented, hired, or non-owned autos, assigned to or used in connection with the construction of the Project. Developer must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall include coverage Form MCS-90 endorsement.

(b) **Named Insureds.** The named insureds shall be Developer, the Design-Builder, and the Services Provider.

(c) **Additional Insureds.** Except to the extent they are named insureds on a Required Insurance policy, Developer, Design-Builder, PGCPs, Senior Lenders, and Services Provider shall be additional insureds.

1.5 Workers’ Compensation and Employers’ Liability Insurance.

(a) **Policy Requirements.** Workers' compensation as required by Applicable Law, and employers' liability insurance having coverage limits of \$1,000,000 for each accident, \$1,000,000 for disease (each employee), and \$1,000,000 for disease (policy limit), and shall include appropriate coverage under the United States Longshore and Harbor Workers Compensation Act. The minimum limits may be satisfied with a combination of primary employers' liability and excess liability insurance.

(b) **Named Insureds.** The named insureds shall be Developer, Design-Builder, and Services Provider.

(c) **Waiver of Right of Recovery.** The waiver of right of recovery (subrogation) shall be to the benefit of PGPCS.

1.6 Umbrella Excess Liability Insurance.

(a) **Policy Requirements.** A project specific umbrella excess liability or excess liability insurance policy with minimum limits of \$25,000,000 combined single limit each occurrence, \$25,000,000 combined single limit aggregate for products/completed operations, and \$25,000,000 combined single limit aggregate for other than products/completed operations and auto liability. This insurance shall include commercial general liability, business auto liability, and employers' liability coverages as required above on the applicable schedule of underlying insurance. The insurance shall afford insured status to all individuals and entities required to be insureds on underlying insurance, to the same extent, as the underlying insurance.

(b) **Named Insureds.** The named insureds shall be Developer and Design-Builder.

(c) **Additional Named Insured.** The additional named insured shall be PGPCS.

(d) **Additional Insureds.** The additional insureds shall be the Senior Lenders and the Services Provider.

1.7 Contractor Pollution Liability Insurance.

(a) **Policy Requirements.** A project specific contractor pollution liability insurance policy written on an occurrence form with limits of not less than \$10,000,000 and a \$10,000,000 project aggregate limit, covering liability due to pollution conditions caused by or exacerbated by construction activities, including (i) removal, storage, transport, and disposal of hazardous waste and contaminated soil, and (ii) asbestos abatement. The policy should also include coverage for bodily injury, and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it

be gradual or sudden and accidental. If the policy is provided on a “claims made” form, Developer shall cause the Design-Builder to continue such coverage, either through policy renewals or purchase of an extended reporting or discovery period, if such coverage is achievable, for not less than three (3) years following the Project Readiness Date.

(b) **Named Insureds.** The named insureds shall be Developer, the Design-Builder, and the Subcontractors.

(c) **Additional Insureds.** The additional insureds shall be PGCPs and the Senior Lenders.

1.8 Pollution Legal Liability Insurance.

(a) **Policy Requirements.** Pollution legal liability provided on a “claims made” form with limits of not less than \$10,000,000 and a \$10,000,000 project aggregate limit, covering third-party bodily injury and property damage, remediation costs for pollution conditions, and first party property damage. Developer shall continue such coverage, either through policy renewals or purchase of an extended discovery period, if such coverage is available, for not less than three (3) years following the Project Readiness Date.

(b) **Named Insureds.** The named insureds shall be Developer, the Design-Builder, and the Subcontractors.

(c) **Additional Named Insured.** The additional named insured shall be PGCPs Persons.

(d) **Additional Insured.** The additional insured shall be the Senior Lenders.

1.9 Sexual Molestation Insurance.

(a) **Policy Requirements.** A sexual molestation insurance policy with limits of not less than \$1,000,000 per occurrence and a \$2,000,000 project aggregate limit.

(b) **Named Insureds.** The named insureds shall be Developer, the Design-Builder, and the Subcontractors.

(c) **Additional Insureds.** The additional insureds shall be PGCPs and the Senior Lenders.

1.10 Crime Coverage Insurance.

(a) **Policy Requirements.** A crime coverage insurance policy with limits of not less than \$500,000 per occurrence, including coverage for all Developer Persons. Employee

definition should include any former or retired natural person employee of any Developer Person retained.

(b) **Named Insureds.** The named insureds shall be Developer, the Design-Builder, and the Subcontractors.

(c) **Additional Insureds.** The additional insureds shall be PGCPs and the Senior Lenders.

2. SERVICES PERIOD INSURANCE

2.1 Property Insurance.

(a) **Policy Requirements.** All risk property insurance on an agreed amount basis (not subject to coinsurance) for the Full Insurable Value insuring all buildings, improvements, and equipment that are built or placed on a Site, and including:

(1) coverage for business income including rental value and extra expense insurance;

(2) coverage for the perils of theft, vandalism, and terrorism;

(3) coverage for the perils of flood, water damage, and earth movement, with each occurrence and aggregate sublimits of not less than \$25,000,000 for flood and \$100,000,000 for earth movement; and

(4) ordinance or law coverage with no sublimit for the undamaged portion of the building and not less than \$10,000,000 for demolition and increased cost to repair or replacement.

(b) **Named Insureds.** The named insureds shall be Developer, the Design-Builder, and the Services Provider.

(c) **Additional Named Insured.** The additional named insured shall be PGCPs.

(d) **First Loss Payee.** The first loss payee shall be the Senior Lenders, as their interests may appear.

2.2 Equipment Breakdown.

(a) **Policy Requirements.** Equipment breakdown insurance with limits of liability of not less than \$10,000,000 per loss, insuring covered equipment that are in use or connected and ready for use and are located on a Site, and including coverage for business income including rental value, extra expense, and expediting expense.

(b) **Named Insureds.** The named insureds shall be Developer, the Design-Builder, and the Services Provider.

(c) **Additional Named Insured.** The additional named insured shall be PGCPs.

(d) **First Loss Payee.** The first loss payee shall be the Senior Lenders, as their interests may appear.

2.3 Business Income, Extra Expense, and Losses from Prevention of Access.

(a) **Policy Requirements.** The business income including rental value insurance required by Section 2.1 (Property Insurance) and Section 2.2 (Equipment Breakdown) shall be provided with limits of liability in such amounts as are necessary to fully compensate the Named Insureds for direct loss of income and earnings resulting from or attributable to any of the perils required to be insured against under the policies referred to in Section 2.1 (Property Insurance) and Section 2.2 (Equipment Breakdown), including losses resulting from interference with or prevention of access to a Site or the Project, in each case in whole or in part, as a result of such perils or for any other reason. Coverage shall include:

- (1) interruption by civil or military authority for not less than thirty (30) days;
- (2) ingress and egress coverage for not less than thirty (30) days;
- (3) ordinance or law increased period of indemnity; and
- (4) Utility service interruption with a sublimit of not less than \$5,000,000.

(b) **Named Insureds.** The named insureds shall be Developer, the Design-Builder, and the Services Provider.

(c) **First Loss Payee.** The first loss payee shall be the Senior Lenders, as their interests may appear.

2.4 Commercial General Liability Insurance.

(a) **Policy Requirements.** Commercial general liability insuring against liability of Developer and the Services Provider with respect to the Project or arising out of the Services, written on an occurrence basis and covering liabilities arising out of premises, operation, independent contractors, products, and completed operations, personal and advertising liability, and liability assumed under an insured contract (including the tort liability of another assumed in

a business contract). The insurance shall apply separately for each insured against whom a claim is made or a lawsuit is brought, subject only to the insurance policy limits of liability. The insurance shall have minimum limits of \$5,000,000 combined single limit each occurrence, \$5,000,000 combined single limit aggregate for products/completed operations, and \$10,000,000 combined single limit per location aggregate for other than products/completed operations.

(b) **Named Insureds.** The named insureds shall be Developer and the Services Provider.

(c) **Additional Named Insured.** The additional insured shall be PGCPs. The additional insured status afforded to PGCPs shall apply both ongoing operations and completed operations on a primary basis.

(d) **Additional Insureds.** The additional insureds shall be the Senior Lenders.

2.5 Business Auto Liability Insurance.

(a) **Policy Requirements.** A business auto liability insurance policy with limits of liability of not less than \$1,000,000 per accident, which requirement may be met by any combination of primary and excess coverage so long as the excess is written on a “follow form” basis. The insurance must cover liability arising from the ownership, maintenance, or use of any auto, including owned, leased, rented, hired, or non-owned autos, assigned to or used in connection with the construction of the Project. Developer must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall include coverage Form MCS-90 endorsement.

(b) **Named Insureds.** The named insureds shall be Developer, the Design-Builder, and the Services Provider.

(c) **Additional Insureds.** PGCPs and Senior Lenders.

2.6 Workers’ Compensation and Employers’ Liability Insurance.

(a) **Policy Requirements.** Workers’ compensation with statutory benefits as required under State law, and employers’ liability insurance having coverage limits of \$1,000,000 for each accident, \$1,000,000 for disease (each employee), and \$1,000,000 for disease (policy limit), and shall include appropriate coverage under the United States Longshore and Harbor Workers Compensation Act. The minimum limits may be satisfied with a combination of primary employers’ liability and excess liability insurance.

(b) **Named Insureds.** The named insureds shall be Developer and the Services Provider, separately if not combinable.

(c) **Waiver of Right of Recovery.** The waiver of right of recovery (subrogation) shall be to the benefit of PGCPs.

2.7 Umbrella Excess Liability Insurance.

(a) **Policy Requirements.** Umbrella excess liability or excess liability insurance with minimum limits of \$25,000,000 combined single limit each occurrence, \$25,000,000 combined single limit aggregate for products/completed operations, and \$25,000,000 combined single limit aggregate for other than products/completed operations and auto liability. This insurance shall include commercial general liability, business auto liability, and employers' liability coverages as required above on the applicable schedule of underlying insurance. The insurance shall afford insured status to all individuals and entities required to be insureds on underlying insurance, to the same extent, as the underlying insurance.

(b) **Named Insureds.** The named insureds shall be Developer and the Services Provider.

(c) **Additional Insureds.** The additional insureds shall be PGCPs and the Senior Lenders.

2.8 Pollution Legal Liability Insurance.

(a) **Policy Requirements.** Pollution legal liability for a building owner having coverage for any one occurrence or claim of not less than \$10,000,000 and a \$10,000,000 project aggregate limit, covering third-party bodily injury and property damage, remediation costs for pollution conditions, first party property damage, and defense costs.

(b) **Named Insureds.** The named insureds shall be Developer, the Design-Builder, the Services Provider.

(c) **Additional Named Insured.** The additional named insured shall be PGCPs Persons.

(d) **Additional Insureds.** The additional insureds shall be the Senior Lenders.

2.9 Directors and Officers Insurance.

(a) **Policy Requirements.** Directors and officers legal liability and corporate indemnification insurance having coverage for any one occurrence or claim of not less than \$10,000,000.

(b) **Named Insured.** The named insured shall be Developer.

2.10 Employee Dishonesty Insurance.

(a) **Policy Requirements.** Employee theft (crime) insurance against the fraudulent/dishonest acts of employees of Developer and Services Provider, including additional coverage for inside the premises – theft of money and securities and outside the premises, money orders, and counterfeit paper currency, forgery, or alteration, computer fraud and funds transfer fraud, expenses incurred to establish amount of covered loss, and credit, debit, or charge card forgery with coverage for any one occurrence or claim of not less than \$10,000,000. The coverage shall include clients coverage and loss resulting from impersonation fraud (social engineering).

(b) **First Loss Payee.** The first loss payee shall be the Senior Lenders.

(c) **Additional Insureds.** The additional insureds shall be PGCPs and the Senior Lenders.

2.11 Crime Coverage Insurance.

(a) **Policy Requirements.** A crime coverage insurance policy with limits of not less than \$500,000 per occurrence, including coverage for all Developer Persons. Employee definition should include any former or retired natural person employee of any Developer Person retained.

(b) **Named Insureds.** The named insureds shall be Developer, the Design-Builder, and the Subcontractors.

(c) **Additional Insureds.** The additional insureds shall be PGCPs and the Senior Lenders.

3. FULL INSURABLE VALUE

3.1 **Full Insurable Value Defined.** For the purposes of this Exhibit CC (Insurance Requirements), “**Full Insurable Value**” of any building, improvement, equipment, or other property shall be determined on a replacement cost valuation by Developer, acting reasonably, at the time the insurance is initially taken out and recalculated thereafter at least once every twelve (12) months, and Developer shall promptly notify PGCPs in writing of each such determination, provided that PGCPs may at any time (but not more frequently than once in any twelve (12) month period), by written notice to Developer, require the Full Insurable Value of any building, improvement, equipment, or other property to be redetermined on a replacement cost basis by an independent qualified appraiser designated by Developer’s insurance agent/broker and approved by PGCPs and the property insurance company. Developer shall cause such redetermination to be made promptly and the results of such redetermination communicated in writing to Developer and PGCPs.

3.2 **Adequacy of Contemplated Insurance.** In addition to the determination of “Full Insurable Value”, as part of the periodic review contemplated in the preceding paragraph

of this Section 3 (Full Insurable Value), Developer shall determine whether the policies set out in Section 2 (Services Period Insurance) and the limits of such policies are adequate for the Project, and Developer shall promptly notify PGCPs in writing of each such determination, provided that PGCPs may at any time (but not more frequently than once in any twelve (12) month period), by written notice to Developer, require the policies or the limits of such policies be redetermined, in the manner described in the preceding paragraph. Developer shall cause such redetermination to be made promptly and the results of such redetermination communicated in writing to Developer and to PGCPs. The Services Charge shall be adjusted to reflect the reduced or increased cost of any PGCPs-directed insurance redetermination. By requiring the insurance and insurance limits herein, PGCPs does not represent that coverage and limits will necessarily be adequate to protect Developer, the Design-BUILDER, the Services Provider, or any Subcontractor.

4. GENERAL POLICY REQUIREMENTS

4.1 Policy Requirements. Each policy of insurance required under this Exhibit CC (Required Insurance) shall:

(a) be written on a project or location specific basis (other than those policies referenced in Section 1.4 (Business Auto Liability Insurance), Section 1.5 (Workers' Compensation and Employers' Liability Insurance), Section 2.5 (Business Auto Liability Insurance), and Section 2.6 (Workers' Compensation and Employers' Liability Insurance));

(b) be issued by a by Qualified Insurer;

(c) be in a form approved by PGCPs, such approval not to be unreasonably withheld;

(d) be non-contributing with and shall apply only as primary and not excess to any other insurance, self-insurance, or other risk financing program available to PGCPs;

(e) contain an undertaking by the insurers to notify PGCPs and the Senior Lenders in writing not less than thirty (30) days before any material change, cancellation, or termination; and

(f) where PGCPs is an additional named or additional insured, insure all PGCPs Persons.

4.2 Waiver of Insurance Requirements. If Developer, the Design-BUILDER, the Services Provider, or any Subcontractor does not fulfill all requirements of Required Insurance, they shall forward a written request to PGCPs for a waiver of the requirement(s) not met or request PGCPs' consideration of alternate insurance coverage or self-insurance arrangements. Failure to seek or obtain PGCPs' waiver shall constitute a material breach

of this Agreement. If PGCPs denies the request, Developer, the Design-Builder, the Services Provider, or any Subcontractor must comply with the requirements as specified in the Agreement and this Exhibit CC (Required Insurance). Failure of PGCPs to obtain copies of the policies or other evidence of full compliance with the Insurance Requirements or failure of PGCPs to identify a deficiency in the policies or evidence provided shall not be construed as a waiver of any obligation to maintain the Required Insurance.

- 4.3 PGCPs Acceptance of Insurance.** No acceptance or approval of any insurance by PGCPs shall be construed as relieving or excusing any other party, or their surety, or its bonds, from any liability or obligation imposed upon any of them by the provisions of the Agreement. Nothing herein shall be construed as permitted Developer, the Design-Builder, the Services Provider, or any Subcontractor to allow the insurance coverage required by the Agreement to lapse.
- 4.4 Subcontractors.** Developer shall require all Subcontractors to maintain during the Term commercial general liability insurance, business auto liability insurance, and workers' compensation and employers' liability insurance to the same extent required of Developer, the Design-Builder, and the Services Provider, except as otherwise agreed to by PGCPs pursuant to Section 4.2 (Waiver of Insurance Requirements). Subcontractors' certificates of insurance shall be provided to PGCPs immediately upon request.
- 4.5 Deductibles.** Any policy deductibles or retentions of \$10,000 or greater shall be disclosed to PGCPs by Developer, the Design-Builder, and the Services Provider and are subject to PGCPs' written approval. Any deductible or retention amounts elected by Developer, the Design-Builder, the Services Provider, or any Subcontractors or imposed by Developer's, the Design-Builder's, the Services Provider's or any Subcontractor's insurers shall be the sole responsibility of the party with the deductible or retention and are not chargeable as expenses.
- 4.6 Required Insurance Issued on a "Claims Made" Basis.** If any Required Insurance purchased by Developer, the Design-Builder, the Services Provider, or any Subcontractor has been issued on a "claims made" basis, the purchaser of such claims made coverage must comply with the following additional conditions. The limits of liability and the extensions to be included remain the same. Developer, the Design-Builder, the Services Manager, or any Subcontractor must either:

(a) Agree to provide binders to PGCPs evidencing the above coverages for a minimum period of three (3) years after termination, unless a longer period is specified above. Such binders shall evidence a retroactive date no later than the beginning of work or services under the Agreement; or

(b) Purchase an extended (minimum three (3) years) reporting period endorsement (unless a longer period is specified above) for each such "claims made" policy in

force as of the date of termination and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance and a copy of the endorsement itself. Such certificates and copy of the endorsement shall evidence a retroactive date no later than the beginning of work or services under this Agreement.

5. EVIDENCE OF INSURANCE

Upon the issue of a policy of insurance, and otherwise upon request of PGCPS, Developer shall deliver to PGCPS and to the Services Provider (to the extent of coverage under which it is an additional named insured or additional insured) a copy of the policy of insurance. Developer, acting reasonably, may redact proprietary information from the copy of the policies delivered to PGCPS. Upon request by PGCPS, Developer shall deliver proof of payment of premiums for insurance, a binder, or both required to be effected pursuant to this Exhibit CC (Required Insurance). No review or approval of any insurance certificate or insurance policy by PGCPS shall derogate from or diminish PGCPS' rights under the Agreement.

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