



City of Fredericksburg, Virginia

City Council

AGENDA

Council Chambers

715 Princess Anne Street

Fredericksburg, Virginia 22401

Hon. Mary Katherine Greenlaw, Mayor
Hon. Charlie L. Frye, Jr., Vice-Mayor, Ward Four
Hon. Kerry P. Devine, At-Large
Hon. Matthew J. Kelly, At-Large
Hon. Jason N. Graham, Ward One
Hon. Jonathan A. Gerlach, Ward Two
Hon. Timothy P. Duffy, Ph.D., Ward Three

**CITY COUNCIL AND FREDERICKSBURG CITY PUBLIC SCHOOLS
JOINT MEETING AND PUBLIC HEARING
March 24, 2022
7:00 p.m.
Mary Katherine Greenlaw, Presiding**

Agenda

1. **Call To Order**
2. **Invocation**
Vice-Mayor Charlie L. Frye, Jr.
3. **Pledge Of Allegiance**
Councilor Jason N. Graham
4. **Roll Call**
5. **Presentations**
 - A. Introduction
 - B. General Overview Of The Project

C. Overview Of Interim Agreement

D. Financial Context

6. Public Hearing

Citizens who wish to participate in the public hearing remotely will be able to send their comments in writing by (1) U.S. Mail, (2) email to the Clerk of Council. Comments must be received at least one hour in advance of the meeting – for example, comments will be accepted until 4:30 p.m. on nights with a 5:30 work session. The plan is to read these comments out loud during the public hearing portion of the City Council meeting. The standard rules apply to public comments: the person must identify himself or herself by name and address, including zip code, limit his or her remarks to 5 minutes or less for those attending the meeting in person and 3 minutes for submitted letters (read aloud) and address a topic of City business. Decorum in the Council Chambers will be maintained. Comments that are not relevant to City business and behavior that is disruptive, such as applause, are inappropriate and out of order..

A. Resolution 22-___, Approving An Interim Agreement Between The Fredericksburg City Public Schools And First Choice, LLC

Documents:

[6A INTERIM AGREEMENT.PDF](#)

B. School Board Approval

7. Adjournment



MEMORANDUM

TO: Timothy J. Baroody, City Manager
FROM: Mark Whitley, Assistant City Manager
RE: Resolution Approving Interim Agreement
DATE: March 22, 2022 (for March 24, 2022 Special Meeting)

ISSUE

Shall the City Council approve the Interim Agreement between the Fredericksburg City Public Schools and First Choice, LLC for the construction of a middle school on land owned by the City in the Idlewild subdivision?

RECOMMENDATION

Staff recommends that City Council hear and consider public testimony this evening. After public testimony is complete, the resolution is available for City Council consideration. Pending Council consideration of public testimony, staff recommends approval of the interim agreement to advance this important project in the community.

BACKGROUND

The Interim Agreement between the Fredericksburg City Public Schools and First Choice, LLC, allows the development of 35% Design Development drawings for the proposed middle school in the Idlewild subdivision.

Project Update

The Interim Agreement was transmitted to City Council at the December 14, 2021 meeting in preparation for a public hearing that was originally scheduled for January 13, 2022.

That meeting was postponed in January to give the City Council time to consider a potential alternative: the 2300 Fall Hill Avenue Building. Moseley Architects, through the Fredericksburg City Public Schools and in partnership with the Economic Development Authority, conducted the feasibility study and identified several options for the future of the building, as well as test-fit the proposed middle school in Idlewild sharing space with an office building. A broader discussion of that study was held by City Council at a special worksession held March 16, 2022.

The public hearing for the Interim Agreement has now been re-advertised for March 24, 2022, and the Interim Agreement is available to you for approval afterwards. The School Board must also approve the agreement following Council's consent.

The memorandum of December 8, 2021, which was prepared for the December 14, 2021 meeting that transmitted the Interim Agreement to City Council, is attached to this memorandum and provides additional details on the Interim Agreement and its role in the process.

FISCAL IMPACT

The cost of the Interim Agreement is \$1.3 million.

Attachments: Memorandum Transmitting Interim Agreement
Resolution
Interim Agreement



MEMORANDUM

TO: Timothy J. Baroody, City Manager
FROM: Mark Whitley, Assistant City Manager; Kathleen Dooley, City Attorney
SUBJECT: Transmittal of Interim Agreement – New Middle School
DATE: December 8, 2021 (for the December 14, 2021 Council Meeting)

ISSUE

How should City Council approach its review of the draft Interim Agreement for a New Middle School, transmitted with this meeting agenda for public hearing in January 2022?

RECOMMENDATION

We recommend that City Council review the draft to confirm whether it advances the Council’s goals for this project at this stage.

No Council action is requested on December 14, 2021. Instead, per the PPEA Guidelines, this draft Interim Agreement has been posted for public comment, and City Council will hold a public hearing on the draft in January 2022.

DISCUSSION

The Interim Agreement has been drafted with the following goals in mind:

- To test and validate, or adjust, the City’s vision for this school as expressed in current planning, policy, and budget documents;
- To provide an opportunity for public information and input into the project,
- To facilitate cooperation between the City Council and School Board,
- To develop a clearer vision of the potential middle school product, and
- To develop a clearer potential cost for the new middle school project.

While the Interim Agreement is between the Fredericksburg City Public Schools and First Choice, these parties have invited City staff to have input into the agreement. We have accepted that invitation and sought to advance Council’s goals as we understand them.

- **Public-Private Educational Facilities and Infrastructure Act (PPEA):**

The City has used the design/build procurement process of the PPEA for major new public facility construction projects, such as:

- Lafayette Upper Elementary School and James Monroe High School (2004)
- Downtown parking garage (2004)
- New Police headquarters (2005)
- New Courthouse (2011)
- Walker-Grant Center (2015)

The benefits of the PPEA include the greater coordination and cost savings that result from the design/build paradigm. These benefits include the time and administrative effort required for the procurement process; higher quality design when the contractor has input from the beginning; lower overall costs. The PPEA's design-build project delivery system establishes single-point responsibility for design and construction, eliminating much of the risk of contractor claims for differing site conditions and defective specifications.

- **PPEA – institutional roles**

The new school project involves three institutional roles under the PPEA rubric:

1. The “responsible public entity” which will ultimately own the building. In this case, the Fredericksburg City Public Schools are the “responsible public entity.” The Virginia Constitution vests supervision of the schools in the local school board.¹
2. The “design-builder,” or First Choice Public-Private Partnership, selected by the Schools through a competitive RFQ/RFP process;
3. The “appropriating body,” which, in the case of public schools, is the City Council.

- **PPEA – “Interim Agreement”**

The PPEA permits the responsible public entity and the design/builder to enter into an “Interim Agreement” in order to provide for the phasing of a project. In this case, the proposal is to use an Interim Agreement for the 35% design phase (which can be extended to the 65% design phase) of the new middle school. The Interim Agreement provides a vehicle to advance the design of a project, with public input, in a case such as this – where the responsible public entity and appropriating body need a better-defined project – including design, function, expandability, and cost -- in order to make final decisions.

¹ Va. Const. Article VIII, Education, §7 School Boards.

- **Draft Interim Agreement:**

With that background, Council should consider whether the draft Interim Agreement advances City Council’s goals for this stage of the project. We have attempted to incorporate provisions with these goals in mind, as follows:

Goal: To test and validate, or adjust, the City’s vision for this school as expressed in current planning, policy, and budget documents.

The design-builder’s scope of services is defined in paragraph 1 and Appendix 1. The design-builder is hired to produce 35% Design Development drawings for a new middle school program as described in Appendix 1. Appendix 1 collects the City’s major policy and budget statements regarding this project, including the projected enrollment capacity², sustainability, financial, shared use, and Comprehensive Plan goals. Appendix 1 engages the Design-Builder to “work with the Owner and City to test and develop, harmonize, validate, or adjust” these stated goals through its design work; a commitment that is reinforced in paragraph 1 of the draft Interim Agreement (“The Design-Builder, Owner, and City will use the Schematic Design phase to test and validate or adjust the middle school program.”)

Goal: • To provide an opportunity for public information and input into the project.

Paragraph 1 of the draft Interim Agreement requires the design-builder to hold two public design workshops where members of the public will be allowed to view and make comments on the project. In addition, the design-builder commits to at least one public briefing for the School Board, which may include the Planning Commission and City Council, prior to the conclusion of the 35% Design Development drawings. First Choice expressed its own commitment to the importance of these meetings in its response to the Schools’ RFP.

- **Goal: To facilitate cooperation between the City Council and School Board.**

From our view, the draft Interim Agreement as a whole advances this goal. The School Board has welcomed the City’s input on the agreement and included provisions we requested, such as Appendix 1 and the request to “test, validate or adjust” this vision through the early design process. At least one formal joint public briefing is proposed, and the participation of the Planning Commission (an important partner in implementing the Comprehensive Plan) is also envisioned by this agreement.

- **Goal: To develop a clearer vision of the potential middle school product.**

In the City’s experience with the PPEA, the development of a conceptual and next-phase (35% design) vision for a project facilitates public comment and decision-making, by moving a proposal from an abstraction to a better-defined concept. People begin to get some of the

² Developed by the Weldon-Cooper Center in a July 2021 report.

answers to the questions that they are asking about the project – where will it be, what will it look like, what amenities will it feature, how will it work, and what will it cost? The advancement of design work produces a common “picture” for everyone to gather around, examine, and comment upon.

- **Goal: To develop a clearer potential cost for the new middle school project.**

One very important aspect of the draft Interim Agreement is the design-builder’s assignment to develop a “Construction Cost Limit” or “CCL” for the new middle school. The CCL is the maximum amount payable by the responsible public entity to the design-builder for the final design and construction of the project. It is a cap on the design-builder’s compensation, a “not to exceed” figure that is enforceable as a contract provision, payable to complete the final scope of work.

Advancing the design of this school, through a public input process, to the 35% design phase, should provide the design-builder the information it needs to propose an enforceable upper cost limit for the product. The ultimate cost of other City PPEA projects has come in at less than the CCL. At the 65% design phase, the design-builder is able to propose a “guaranteed maximum price,” based on the more refined plans for the project.

- **Next step:**

Under the City’s PPEA Guidelines, City Council will hold a public hearing on a date to-be-established in January. The draft Interim Agreement will be posted on the City’s website for public review until that time.

FISCAL IMPACT

The cost of the Interim Agreement is \$1.3 million.

Attachments: Draft Interim Agreement



March 24, 2022
Special Meeting
Resolution 22-

MOTION:

SECOND:

RE: Approving an Interim Agreement between the Fredericksburg City School Board and First Choice Public-Private Partners, LLC for the design of a new middle school

ACTION: APPROVED: Ayes: 0; Nays: 0

The Fredericksburg City School Board adopted Guidelines for Implementation of the Public-Private Educational Facilities and Infrastructure Act (“PPEA”) in May 2015. Consistent with these Guidelines, the School Board issued a Request for Qualifications for the construction of a new elementary/middle school in July 2021. It received four responses, including one from First Choice Public-Private Partners, LLC, dated July 16, 2021.

On or about July 27, 2021, the School Board issued a Request for Proposals for a design-build contract under the PPEA for the construction of a middle school. The School Board received three proposals, including one from First Choice Public-Private Partners, LLC dated September 8, 2021. The non-confidential portions of the proposals were posted on the School Board website and the School Board conducted a public hearing on the proposals as required by the PPEA. The School Board conducted a public hearing on the proposals on September 13, 2021. Following evaluation, the School Board voted on September 27, 2021 to select the Design-Builder for negotiation of an Interim Agreement for preliminary design of a middle school on the Idlewild site in the City (the “Project”).

The School Board and First Choice Public-Private Partners, LLC negotiated an Interim Agreement for the preliminary design of a new middle school on City-owned property located on Gateway Boulevard. The PPEA requires that City Council approve the Interim Agreement.

City Council posted the proposed Interim Agreement on the City website in December 2021, and held a public hearing on the Interim Agreement in a special joint meeting with the School Board on March 24, 2022, at which it heard presentations from the School Board, City staff, and the City’s financial advisor, in addition to public comment.

Upon consideration of the foregoing, the City Council hereby resolves that:

- The proposed Interim Agreement is in the public interest;
- The City Council approves the Interim Agreement in substantially the form submitted for public comment.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Clerk's Certificate

I certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Resolution No. 22-__, adopted at a meeting of the City Council held Date, 2022, at which a quorum was present and voted.

Tonya B. Lacey, MMC
Clerk of Council

INTERIM AGREEMENT

THIS INTERIM AGREEMENT (this “Agreement”) is entered into as of _____ 2021 between **THE SCHOOL BOARD OF THE CITY OF FREDERICKSBURG, VIRGINIA** (“the “Owner” or “School Board”), a political subdivision of the Commonwealth of Virginia, and **FIRST CHOICE PUBLIC-PRIVATE PARTNERS, LLC** (“the Design-Builder”). The Owner and the Design-Builder are referred to individually as a “Party” and collectively as “the Parties”.

Recitals

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

2. On June 24, 2021, the School Board issued a Request for Qualifications (#202105-001). It received four responses (qualifications), including one from the Design-Builder dated July 16, 2021. On or about July 27, 2021, the School Board issued a Request for Proposals (#202107-001) for a design-build contract under the PPEA for the construction of a middle school. The School Board received three proposals, including one from the Design-Builder dated September 8, 2021. The non-confidential portions of the proposals were posted on the School Board website and the School Board conducted a public hearing on the proposals as required by the PPEA. The School Board conducted a public hearing on the proposals on September 13, 2021. Following evaluation, the School Board voted on September 27, 2021 to select the Design-Builder for negotiation of an Interim Agreement for preliminary design of a middle school on the Idlewild site in the City (the “Project”).

3. The School Board has determined that, among other considerations, it would be advantageous to proceed with the Project using procedures for

competitive negotiation, rather than using sealed, competitive bids, given the probable scope, complexity and urgency of the Project; the merits of risk-sharing and the potential for added value; and the economic benefit from the Project that might otherwise not be available.

4. The Parties have negotiated this Interim Agreement consistent with the PPEA, other applicable law, the PPEA Guidelines, Design-Builder's proposal, and discussions between representatives of the School Board and Design-Builder.
5. The Parties acknowledge and agree that this Agreement will function as the Interim Agreement for purposes of this Project.
6. Having considered this Agreement and other information, the Owner has determined that the Project to be designed and constructed pursuant to this Agreement serves the public purpose of the PPEA under the criteria of Va. Code Section 56-575.4(C) and posted this Agreement for public inspection in accordance with the PPEA and the PPEA Guidelines.
7. In accordance with Va. Code Section 56-575.16 (5), and the City's 2021 PPEA Guidelines, the City Council of the City of Fredericksburg held a public hearing on [date] and adopted Resolution 22-___, approving the School Board's entering into this Agreement.

NOW, THEREFORE, in consideration of the Recitals set forth above, and good and valuable consideration as set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SCOPE OF SERVICES.

The Design-Builder agrees to provide, or cause to be provided, professional architectural and engineering services and related services as described in its Proposal, which is incorporated herein as if fully set forth, necessary to develop 35% Design Development drawings for a new middle school to be located on the Idlewild tracts of property owned by the City (GPIN 7768-89-4502, GPIN 7769-80-8080 and GPIN 7769-80-

7409)(“Site”), and to arrive at a contract cost limit (CCL) for the construction of the school (“Services”). The new middle school program is described in more detail in Appendix 1. The Parties anticipate the recombination of the above-referenced three GPIN-identified parcels to maximize the urban character of the school and preserve viable acreage for other potential uses as determined by City Council.

Design-Builder will submit 10% Schematic Design Drawings to the Owner for approval before doing additional design. The Design-Builder agrees to meet with the City’s Technical Review Committee and the Owner before the Schematic Design submission to determine any necessary approvals from the City for planning and land use.

At an appropriate point, as determined by the Owner, the Design-Builder commits to holding at least two meetings with the Owner’s internal design committee and two public design workshops where members of the public will be allowed to view and make comments on the Project. In addition, the Design-Builder commits to at least one public briefing for the School Board, which may include the Planning Commission and City Council, prior to conclusion of the 35% Design Development drawings. The Design-Builder, Owner, and City will use the Schematic Design phase to test and validate or adjust the middle school program.

The 35% Design Development submission shall include details regarding structural and mechanical, electrical and plumbing (MEP) components of the design, and a cost estimate consistent with the Association for the Advancement of Cost Engineering (AACE) practices to permit the Owner’s evaluation of the proposed design and cost.

Stephen Halsey, AIA, REFP, Design Managing Principal and Vice President of Moseley Architects, will lead the planning and design effort for the Project. If Mr. Halsey is or becomes unavailable to provide such leadership, Design-Builder shall assign another Managing Principal acceptable to Owner.

The Scope of Work includes an environmental analysis (geotechnical survey), traffic engineering analysis, and a boundary line survey of the Site.

2. COST.

In consideration of the provision of Services by the Design-Builder, the Owner shall pay to the Design-Builder the total amount of One Million Three Hundred Thousand (\$1,300,000) (the "Contract Amount").

Each invoice shall be accompanied by a schedule of values for the work that is subject of the invoice. The Owner shall pay approved invoices within thirty (30) days.

If funds are sufficient and the Parties agree, this Interim Agreement may be amended to include the development of 65% Design Documents.

3. TERM AND TERMINATION.

This Agreement shall commence on the Effective Date first written above and shall continue until terminated pursuant to the terms of this Agreement. The Design-Builder estimates that the 35% Design Development documents will be completed within 90 days after the date of this Agreement. **THE TIME TO COMPLETE DESIGN OF THE PROJECT IS OF THE ESSENCE.**

This Agreement may be terminated immediately in the event of substantial failure or default of the Design-Builder or the Owner to perform in accordance with the terms hereof through no fault of its own.

Upon fourteen days' written notice to the Design-Builder, the Owner may, for its convenience and without cause, elect to terminate the Agreement. In such event, the Owner shall pay the Design-Builder for all work properly performed by the Design-Builder in accordance with the Agreement within thirty (30) days following the date of the notice.

4. COMPREHENSIVE AGREEMENT

Should the parties both conclude that the Project is feasible, the Parties may proceed to negotiate a Comprehensive Agreement under the PPEA to address the completion of design, construction and commissioning of the Project without further procurement. The Owner's participation in negotiation of a Comprehensive Agreement, however, shall not constitute an obligation of or commitment by the Owner to execute such Comprehensive Agreement and may be granted, denied or conditioned in Owner's sole discretion. A final Comprehensive Agreement would also need approval by City Council in addition to approval by the School Board.

5. STANDARD OF CARE

The Design-Builder agrees that the standard of care for all professional design services performed under this Agreement shall be the care and skill ordinarily used by members of the design profession in the Commonwealth of Virginia practicing on similar projects at the time and that the work, at a minimum shall be consistent with the Design-Builder's best work. Additionally, the Design-Builder represents and warrants that all persons performing any work on the Project under this Interim Agreement shall be licensed and in good standing with any applicable regulatory agency for the full duration of their work on the Project under this Interim Agreement.

6. OWNERSHIP OF WORK PRODUCT.

Unique elements of designs contained in the Drawings and Specifications, including electronic copies of them, furnished by the Design-Builder to the Owner under this Agreement and the copyrights thereto ("Work Product") shall become the property of the Owner upon payment for such items and all amounts due hereunder for the Work. Owner may use the Work Product in connection with Owner's occupancy and use of the Project, including for maintenance and repairs, future renovations and expansions, and for any other purpose the Owner deems appropriate. Such Work Product is not intended or expected to be suitable for use on other projects. Owner shall not provide Work Product to any other entity for use on other projects, subject to State law, except for renovations or expansions to this Project. Such use of Work Product by Owner or any other person to whom the Owner has furnished such Work Product shall be at the user's sole risk of liability and without liability or legal exposure

to Design-Builder, designer, or any of their subcontractors, consultants, or officers or employees.

7. CONTRACTUAL CLAIMS

The Parties shall first endeavor to resolve any disputes, claims and other matters in question between the Parties. Contractual claims or disputes by Design-Builder against the Owner shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that Design-Builder shall give the Owner written notice of its intention to file a claim or dispute within fifteen (15) days after the occurrence upon which the claim or dispute shall be based. Any written notice of Design-Builder's intention to file such a claim or dispute shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. If Design-Builder fails to make its claim or dispute or fails to give notice of its intention to do so as provided herein, then such claim or dispute shall be deemed forfeited.

The Owner's decision on contractual claims shall be final and conclusive unless the Design-Builder appeals within six months of the date of the final decision on the claim by instituting legal action in the Circuit Court of the City of Fredericksburg, Virginia.

8. INSURANCE

The Design-Builder will maintain a general liability policy with \$1,000,000 combined single limits. Coverage is to be on an occurrence basis with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. The endorsement must be issued by the insurance company.

The Design-Builder will maintain workers' compensation coverage in compliance with the laws of the Commonwealth of Virginia. The coverage must have statutory limits and be with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. As an alternative, it is acceptable for the Design-Builder to be insured by a group self insurance association that is licensed by the Virginia Bureau of Insurance. The Design-Builder will also carry employers' liability insurance with a limit of at least \$100,000 bodily injury by accident/\$500,000 bodily injury by disease policy limit/\$100,000 bodily injury by disease each employee.

The Design-Builder will maintain automobile liability insurance with limits of at least \$1,000,000. The coverage is to be written with a symbol "1". The insurer must be licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better.

The Design-Builder will maintain professional liability insurance with a limit of at least \$1,000,000. It is preferred that the coverage be on an occurrence basis. If the policy is on a *claims made* basis, this should be noted. If the Design-Builder has professional liability insurance on a *claims made* basis, agreement must be made that coverage will be maintained for at least three years beyond the expiration date of the policy in force at the time of this contract. Coverage is to be with a company licensed to conduct business in the Commonwealth of Virginia and have an A. M. Best rating of A- or better.

With all policies listed above, the insurer or agent of the insurer must issue a certificate of insurance to show evidence of coverage and provide copies of applicable policies along with applicable endorsements, including but not limited to an endorsement listing the Owner and City as additional insured. All wording limiting the insurer responsibility to notify the Owner of any cancellation or non-renewal of the coverage must be removed.

9. INDEPENDENT CONTRACTOR.

The Parties understand and agree that the Design-Builder, in performing its obligations under this Interim Agreement, shall be deemed an independent contractor and not an agent, employee or partner of the Owner.

10. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. The additional contractual terms set forth in Appendix 2 shall be incorporated herein as if fully set forth. To the extent there is any conflict in the terms of this Agreement and the standard contractual terms set forth in Appendix 2, the standard contractual terms set forth in Appendix 2 shall prevail.

11. COUNTERPARTS.

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

12. ENTIRE AGREEMENT.

This Agreement contains the entire agreement of the Parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the Parties that this Agreement alone sets forth the terms on which the Parties have mutually agreed.

13. CONDITIONS PRECEDENT.

It shall be a condition precedent to this Agreement's effectiveness that it first be approved by the School Board of the City of Fredericksburg as evidenced by the signature of its Superintendent on behalf of the School Board on the signature page hereof.

IN WITNESS WHEREOF the undersigned have executed this Interim Agreement on the dates set forth beside their respective signatures.

THE FREDERICKSBURG CITY SCHOOL BOARD, VIRGINIA

By: _____

Title: Superintendent

FIRSTCHOICE PUBLIC-PRIVATE PARTNERS, LLC

By: _____

Title:

Approved as to form: _____

School Board Attorney _____

Appendix 1 – New Middle School Program

The Design-Builder will work with the Owner and City to test and develop, harmonize, validate, or adjust the following goals through the design work:

Projected enrollment capacity:

The new middle school will be developed on the Site with a core capacity (e.g. hallways, gym, and cafeteria) for 1100 students and an initial seating capacity for 950 students.

Sustainability:

In Resolution 21-41, adopted May 25, 2021, “Support for Construction of a New School,” City Council requested that the School Board utilize a design that provides for best practices in renewable energy and efficiency in large buildings, consistent with the City Council’s vision for a 100% renewable energy future.

Financial:

The City’s FY2022 Capital Improvements Plan includes a planning figure of \$40M in FY23 for the new school project. The City’s debt payment obligations reduce significantly in FY2031 when it retires the debt for James Monroe High School and Lafayette Upper Elementary School.

In Resolution 21-41, City Council set a financial target of at least \$6 million in available cash balances, either from School Board funds or City funds, to offset future bond issues for this project.

Shared use:

In Resolution 21-41, City Council also requested that the School Board utilize a design that provides for easy access by the community for certain portions of the building during non-school hours, as appropriate and in accordance with the School’s community-use policies. In addition, the City often uses public schools as polling places, which may be a desirable future use of the new middle school.

City's Comprehensive Plan:

Per the City's Comprehensive Plan, the design should be consistent with the traditional urban design of the community and make pedestrian access easy for neighborhood residents. The main façade should face onto Idlewild Boulevard and present a civic front to the main road with a significant pedestrian zone to enter school from a public entry plaza. Playgrounds and playfields should be adjacent to the neighborhood and integrated into the larger woodland park with minimal tree clearing. The playgrounds and playfields at this school should be an asset to the community in the non-school hours and every effort should be made to create community availability.

Access from Gateway Boulevard should ensure through-movements and reduce congestion into Idlewild neighborhoods. School parking should be a shared facility with the Downman House (as described in the Comprehensive Plan.)

The goal for the construction of the new school is fourfold:

1. Good urban design fronting on Idlewild Boulevard across from Hampton Street and blending into the network of sidewalks;
2. Ensure the school building and its accompanying recreational facilities are an integrated asset and are open to use by the neighborhood;
3. Primary vehicular access will come from Gateway Boulevard, with minimal effect on the neighborhood;
4. Share facilities for parking and access with the Idlewild (Downman) house event venue and open space.

Height: One to three stories

Parking: Parking should be minimized. Accessed within the bus drop-off and used as a buffer between the school and I-95. Create a minimally disruptive, forested-lane loop road up to the Downman House to allow parking along its length.

Transitions: Transitions should be considered to buffer existing homes that back up to the school yard and playing fields.

APPENDIX 2

SCHOOL BOARD OF FREDERICKSBURG, VIRGINIA STANDARD TERMS AND CONDITIONS

1. **General Provisions**

1.1 Unless otherwise agreed to in a writing signed by the Superintendent for Fredericksburg City Public Schools (FCPS) and approved as to form by the attorney for Fredericksburg City Public Schools, these Standard Terms and Conditions apply to and govern all purchases, regardless of the type of goods or services purchased, between the School Board for Fredericksburg, Virginia (the "Board") and (the "Contractor").

2. **Definitions**

2.1 "Solicitation" means the vehicle by which the Board solicited pricing, and if applicable other terms, by which it could acquire goods or services from Contractor, regardless of whether the vehicle was an Invitation for Bids, Request for Proposals, Request for Quotes, telephone quotes or any other means permissible under the Fredericksburg City Code, Board policy, or Virginia law.

2.2 "Contract Documents" means all documents that constitute any legal and binding agreement between the Contractor/Bidder and the Board, including these Standard Terms and Conditions.

2.3 "Contract Period" means the time period from the time that Contractor first becomes legally bound to provide goods or services to the Board in response to a Solicitation until all of Contractor's contractual obligations to the Board, arising out of the Solicitation, cease.

2.4 "Obligations" means any and all legal obligations of Contractor under any Contract Documents.

3. **Laws of the Commonwealth**

3.1 The Contract Documents shall be governed in all respects whether as to validity, construction, performance, or otherwise by the laws of the Commonwealth of Virginia

and the Fredericksburg City Code. Contractor represents and warrants to the Board that:

During the Contract Period, it will comply and conform with the provisions of the Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, and the Virginia Human Rights Act, as amended, where applicable;

It does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in, or otherwise violate the provisions of, the Immigration Reform and Control Act of 1986; and,

Will comply with all federal, state and local laws and regulations applicable to the performance of the services procured.

4. School Board Policies

4.1 In every contract of over \$10,000, the Contractor agrees during the Contract Period that Contractor:

Will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor;

Will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

Will state that the Contractor is an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of the Contractor to perform under the Contract Documents. All notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section; and,

Will include the provisions of the foregoing subparagraphs in every subcontract or purchase order exceeding \$10,000 issued by Contractor in order to fulfill its obligations,

so that the provisions will be binding upon each subcontractor or vendor employed by Contractor.

4.2 In every contract of over \$10,000, the Contractor agrees during the Contract Period the Contractor shall:

Provide a drug-free workplace for its employees;

b.) Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in its workplace and specify the actions which will be taken against any employee for a violation;

c.) State in all of its solicitations or advertisements for employees that the Contractor maintains a drug-free workplace; and

d.) Include the provisions of this sub-paragraph in every subcontract or purchase order of over \$10,000, so that said provisions shall be binding upon each subcontractor or subvendor.

e.) For purposes of this sub-paragraph, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor under a solicitation and in accordance with the Virginia Public Procurement Act and/or the Fredericksburg City Code.

f.) In addition to the provisions contained in sub-paragraph c pertaining to drug-free workplaces, the Contractor shall comply with the federal Drug Free Workplace Act.

4.3 Pursuant to Section 2.2-4343.1 of the Code of Virginia and applicable Board policy, in all solicitations, contracts, and purchase orders, the Board does not discriminate against faith-based organizations.

a.) "Faith-based Organization" means a religious organization that is or applies to be a Contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

b.) If Contractor is a faith-based organization, then Contractor shall give to each individual who applies for or receives goods, services, or disbursements provided pursuant to this Agreement the following notice in bold-face type:

NOTICE

Neither the Board's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form.

4.4 Pursuant to Section 2.2-4311.2 of the Code of Virginia, if Contractor/Bidder is authorized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, Contractor/Bidder shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law.

5. Certifications

5.1 The Contractor certifies that Contractor's response to the Solicitation:

Has been prepared without prior participation, understanding, agreement, or connection with any corporation, firm or other person that is also submitting a bid in response to the same solicitation;

Is in all respects fair, without misrepresentations of fact, and free from collusion or fraud;

Is in full compliance with the Virginia Conflicts of Interest Act;

Is or is intended to be competitive and free from any collusion with any person, firm or corporation; and,

Has been prepared without the benefit of being provided information not available to the general public, or other potential bidders, such as insider information known to Board employees or other sources which may have gained such information from interaction with Board employees;

5.2 The Contractor has not offered or received any kickback from any other bidder or contractor, supplier, manufacturer, or subcontractor in connection with the bid on this Solicitation. A kickback is defined as an inducement for the award of a contract, subcontract, or order, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, no person shall demand or receive any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract;

5.3 The Contractor is not a party to nor has he participated in nor is obligated or otherwise bound by agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning bids, prices, terms or conditions upon which the contract resulting from the acceptance of his bid proposal is to be performed;

5.4 The Contractor understands that collusive bidding is a violation of the Virginia Governmental Frauds Act and federal Law, and can result in fines, prison sentences, and civil damage awards and agrees to abide by all conditions of this Invitation for Bids; and

5.5 Neither Contractor, Contractor's subcontractors, nor any person acting on Contractor's behalf, have conferred, or will confer, on any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

6. Warranties

6.1 The Contractor represents and warrants that it has the requisite experience, skills, capabilities, and manpower to perform the Obligations in a good and workmanlike fashion, that it is a legal business entity chartered or authorized to do business in Virginia having all necessary licenses required by law, that the person signing any of the

Contract Documents has been fully authorized to do so, and his signature will legally bind the Contractor to perform its Obligations. Any goods or services furnished by the Contractor under the Contract Documents shall be covered by the most favorable warranties provided by the Contractor to any customer.

6.2 Contractor warrants to the Board that all materials and equipment furnished shall be new, unless otherwise specified, and that Contractor's Work shall be of good quality, free from faults and defects and in strict conformance with the Contract Documents. All materials and work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty shall be in addition to, and not in limitation of, any other warranty or remedy required by law or by the Contract Documents. If the Contract does not state a specific warranty period, the Contractor warrants Contractor's Work for a period of one (1) year from the date of Substantial Completion of the entire Project. In no event shall Contractor's warranty period be less than or terminate earlier than any warranty provision specified in the Contract.

6.3 The Contractor agrees that if warranties set forth in the Contract Documents are in any respect breached, the Contractor will pay to the Board the full contract price agreed to by the Board to be paid for the supplies, materials, equipment or services furnished under the bid or proposal. These rights and remedies are in addition to and do not limit those rights and remedies otherwise available to the Board.

7. Modifications, Additions or Changes

7.1 Modifications, additions or changes to these terms and conditions may not be made except in writing and agreed to by the Board. No fixed priced contract may be increased by more than twenty-five (25) percent of the amount of the Contract or \$50,000, whichever is greater, without the approval of the Board. The amount of any contract may not be increased for any purpose without adequate consideration provided to the Board.

8. Procurement Code

8.1 Solicitations are subject to applicable School Board policy, which is hereby incorporated into this Contract in its entirety. ANY SOLICITATION OR CONTRACT DOCUMENTS THAT ARE ISSUED, REQUESTED OR EXECUTED IN VIOLATION OF

FREDERICKSBURG CITY SCHOOL BOARD POLICY, OR VIRGINIA LAW ARE VOID AB INTIO, AND OF NO EFFECT, REGARDLESS OF WHETHER ANY PURCHASE HAS BEEN MADE UNDER THE CONTRACT DOCUMENTS AND IRRESPECTIVE OF THE AMOUNT OR LENGTH OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT DOCUMENTS.

9. Bid Acceptance Period

9.1 Any bid in response to a solicitation shall be valid for 60 days. At the end of the 60 days, the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time, it remains in effect until an award is made or the solicitation is cancelled.

10. Indemnification

10.1 The Contractor agrees to indemnify, defend and hold harmless the Board and its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by (i) the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor (ii) any services of any kind or nature provided by the Contractor or (iii) Contractor's performance of its Obligations, provided that such liability is not attributable to the sole negligence on the part of the Board.

11. Assignment

11.1 Neither the Obligations nor the Contract Documents may be assigned, sublet, or transferred, in whole or in part, without the written consent of the Board.

12. Audit

12.1 The Contractor hereby agrees to retain all books, records, and other documents relative to Contractor's Obligations and the Contract Documents for five (5) years after final payment or after all other pending matters are closed, whichever is longer. The Board and its authorized agents, state auditors, the grantor of the funds to the Board, the Comptroller of Virginia or of the United States, or any of their duly authorized representatives shall have access to any such books, documents, papers and records of the Contractor for the purpose of making audits, examinations, excerpts or transcriptions.

13. Ownership of Documents

13.1 Any reports, studies, photographs, negatives, or other documents prepared by Contractor in the performance of its Obligations shall be remitted to the Board by the Contractor, without demand therefore, upon the earliest of (i) completion of its Obligations (ii) completion of the Contract Period or (iii) termination, cancellation or expiration of the Contract Documents. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of the Obligations without the prior written consent of the Board. The Board shall own the intellectual property rights to all materials produced under this Agreement.

14. Payment and Performance Bond

14.1 If Contractor's Obligations include construction, the amount of which exceeds \$500,000, the Contractor shall furnish to the Board the bonds required under applicable Virginia law and Board policy, and shall otherwise fully comply with the requirements of such sections of the Virginia Code and policy. The Board reserves the right to require payment and/or performance bonds in the amount of the Obligations for any other projects, goods or services, whether or not required by such sections of the Virginia Code or policy.

15. Required Payment

15.1 The Contractor covenants and agrees that it shall take one of the two following actions within seven (7) days after receipt of any amounts paid to the Contractor by the School Board for work performed by a subcontractor under the Contract:

pay any subcontractor for its proportionate share of the total payment received from the Board attributable to the work under the Contract performed by such subcontractor, or

notify the Board and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason therefore.

15.2 Contractor agrees to provide its federal employer identification number or social security number, as applicable, as a condition precedent to the Board being required to make any payment to the Contractor under the Contract Documents.

15.3. Contractor agrees to pay interest at the legal rate or such other rate as may be agreed to in writing by the subcontractor and the Contractor on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the Board for work performed by the subcontractor in furtherance of Contractor meeting its Obligations to the Board, except for amounts withheld pursuant to subparagraph 15.1(b) above.

15.4 Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

15.5 Contractor agrees to include in its contracts with any and all subcontractors the requirements of 15.1(a) and 15.1(b) above and a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

15.6 Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause above shall not be construed to be an obligation of the Board. No contract modification shall be made for the purpose of providing reimbursement for the interest charge. Any cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

16. Liability Coverage

16.1 Unless otherwise expressly excepted in the Solicitation documents prepared by the Board, the Contractor shall take out and maintain during the Contract Period such bodily injury, liability and property damage liability insurance as shall protect it and the Board from claims for damages for personal injury, including death, as well as from claims for property damage, which could arise from Contractor's performance of its Obligations. Such insurance shall at least have the coverages and be in the amounts set forth in section 19 "Insurance and Bond Requirements" set forth below and shall name the "School Board of Fredericksburg, Virginia" as an additional insured. Such insurance must be issued by a company admitted to do business within the Commonwealth of Virginia and with at least an AM Best rating of A-. Within 10 days after Contractor is

awarded a contract in response to a Solicitation, and in no event later than the first day on which Contractor provides goods or services to the Board, the Contractor shall provide the Board with a certificate of insurance showing such insurance to be in force and providing that the insurer shall give the Board at least 30 days' notice prior to cancellation or other termination of such insurance.

17. Loss or Damage in Transit

17.1 Delivery by a Contractor to a common carrier does not constitute delivery to the Board. Any claim for loss or damage incurred during delivery shall be between the Contractor and the carrier. The Board accepts title only when goods are received regardless of the F.O.B. point noted in the Solicitation or the Contract Documents. FCPS will note all apparent damages in transit on the freight bill and notify the Contractor. Discovery of concealed damages or loss will be reported by FCPS to the carrier and the Contractor within 15 days of receipt and prior to removal from the point of delivery if possible. The Contractor shall make immediate replacement of the damaged or lost merchandise or be in default of the Contract Documents. It shall be the Contractor's responsibility to file a claim against the carrier. If damage is to a small quantity, with the approval of FCPS, the Contractor may deduct the amount of damage or loss from his or her invoice to FCPS in lieu of replacement.

18. Freight

18.1 By signing any response to a Solicitation the bidder certifies that the bid price(s) offered for F.O.B. destination include only the actual freight charges at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Freight charges are, therefore, established for each individual purchase. If a requirement is bid F.O.B. origin, the Contractor shall prepay the charges and add the amount to the invoice. A copy of the freight bill should be attached to all invoices that include freight charges. In a solicitation specifying F.O.B. origin the Board will consider freight cost in the evaluation of bids.

19. Insurance and Bond Requirements

19.1 The Contractor shall maintain the following insurance to protect it from claims that could arise from performance of the Obligations, including claims (i) under the Workmen's Compensation Act (ii) for personal injury, including death, and (iii) for

damage to property, regardless of whether such claims arise out of Contractor's actions or inactions, or those of Contractor's subcontractor or other persons directly or indirectly employed by either of them:

Worker's Compensation and Employer's Liability. Contractor shall procure and maintain Worker's Compensation and Employer's Liability Insurance covering all of its employees in conformance with the laws of any state, district or territory of the United States of America in which work towards meeting Contractor's Obligations are to be performed. Such insurance shall not have a limit of liability less than the following:

- a) Bodily Injury by accident, \$500,000 for each accident;
- b) Bodily Injury by disease, \$500,000 policy limit;
- c) Bodily Injury by disease, \$500,000 for each employee.

Commercial General Liability Insurance. This coverage shall include contractual liability, underground hazard, explosion and collapse, hazard, property damage, independent Contractor, and personal injury insurance in support of section 10 of this Agreement entitled "Indemnification". This policy shall be endorsed to include the Board as an additional insured during the Contract Period and shall state that this insurance is primary insurance as regards any other insurance carried by the Board. Contractor shall procure and maintain Public Liability Insurance in an amount not less than:

- a) \$1,000,000 for each occurrence involving bodily injury;
- b) \$1,000,000 for each occurrence involving property damage;
- c) \$2,000,000 aggregate limits.

Comprehensive Automobile Liability. Contractor shall procure and maintain Comprehensive Automobile Liability Insurance covering all automobiles, trucks, tractors, trailers, or other automobile equipment, whether owned, not owned, or hired by the Contractor, with the following limits:

- a) \$1,000,000 for each occurrence involving personal injury;
- b) \$1,000,000 for each occurrence involving property damage;
- c) \$2,000,000 aggregate limits.

The Contractor shall purchase and maintain insurance coverage in a sufficient amount to cover all potential claims on his tools, equipment and machinery.

19.2 The Board reserves the right to require insurance of any Contractor in greater amounts provided notice of such requirements is stated in the Solicitation.

19.3 All insurance policies required under this paragraph, or otherwise required by the Solicitation or Contract Documents, shall include a clause waiving any and all subrogation rights against the Board.

19.4 Insurance policies shall provide for notification to the Board of non-payment of any premium and shall give the Board the right to make the premium payment thereunder within a reasonable time, if the insurance policy is in danger of lapsing during the Contract Period. Any premium payments made by the Board shall be deducted from amounts due Contractor under the Contract.

20. Compliance With Laws

20.1 All work performed shall be in accordance with all local, state and federal codes, laws and regulations, including but not limited to: Virginia Conflict of Interest Act, Virginia Fair Employment Contracting Act, Virginia Freedom of Information Act, Virginia Prompt Payment Act, the Virginia Public Procurement Act, and Board policies.

21. No Waiver

21.1 Any failure of the Board to demand rigid adherence to one or more of the terms of the Contract Documents, on one or more occasions, shall not be construed as a waiver nor deprive the Board of the right to insist upon strict compliance with the terms of the Contract Documents. Moreover, it is the Board's position and Contractor hereby agrees that the legal theories of Implied Waiver, Statute of Limitation, Estoppel, and Laches do not apply as defenses that the Contractor may assert in any action by the Board. Any waiver of a term of this Agreement, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

22. Termination and Cancellation

22.1 The Board shall have the unilateral right to terminate any contract with Contractor for default on the terms of that contract, or any other contract between the Contractor and the Board.

22.2 The Board has the unilateral right to cancel and terminate any contract with Contractor, in whole or in part, without penalty, merely out of convenience, and shall require no breach of contract by Contractor as a condition of termination. This right of termination for convenience may be exercised at the sole unconditional discretion of the Board. If a contract is terminated in whole or in part for the convenience of the Board, the Contractor shall be paid the contracted price for the service or goods actually provided or rendered up to the date of the termination of the respective contract, but shall not be paid any other fees or lost profits.

22.3 Any contract cancellation notice shall not relieve the Contractor of the obligation to perform on all outstanding orders issued prior to the effective date of cancellation.

23. Availability of Funds

23.1 It is understood and agreed between the parties herein that the Board shall be bound hereunder only to the extent of the funds available and duly appropriated or which may hereafter become available and duly appropriated for the purpose of fulfilling the Board's Obligations with respect to the Contract Documents.

24. Billing, Method of Payment and Offset Rights

24.1 Billing shall be done monthly based on the contracted rate bid by the Contractor and submitted to the Fredericksburg Public Schools' Finance Department. The Board will remit payment within 30 days of receipt of a correct invoice. Incorrect invoices shall be subject to correction and/or rejection by the Fredericksburg Public Schools' Finance Department.

24.2 Contractor agrees that the Board has the unilateral right to offset any bill submitted to Board by Contractor, or any payment owed to Contractor by the Board, by any amount due to the Board from Contractor pursuant to the Contract Documents, or any other agreement, contract or transaction between Board and Contractor.

25. Tax Exemption

25.1 The School Board of Fredericksburg, Virginia, as a political subdivision of the Commonwealth of Virginia, is exempt from any Federal excise tax and Virginia sales and use tax.

26. Work Site Damages

26.1 Any damages, including damage to finished surfaces, resulting from Contractor's performance of its Obligations shall be repaired to the satisfaction of the Board at the Contractor's expense.

27. Choice of Law

27.1 To ensure uniformity of the enforcement of the Contract Documents, and irrespective of the fact that either of the parties now is, or may become, a resident of a different state, this Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to their principles of conflicts of law.

28. Forum Selection

28.1 The parties hereby submit to the personal jurisdiction of, and venue in, the General District or Circuit Court of Fredericksburg, Virginia for resolution of any and all claims, causes of action or disputes between Contractor and the Board. Contractor agrees that service by registered mail to the address set forth in Paragraph 31.1 of these Standard Terms and Conditions shall constitute sufficient service of process for any such action.

29. Severability

29.1 If any provision of any one, or all of the Contract Documents is held to be illegal, invalid, or unenforceable, or is found to be against public policy for any reason, such provision shall be fully severable and the remainder of the Contract Documents shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of the Contract Documents, and the remaining provisions of the Contract Documents shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance.

30. Attorneys' Fees

30.1 Should the Board employ an attorney to either (i) institute and maintain a suit against Contractor arising out of the Contract Documents or Contractor's Obligations (ii) assist in enforcing or defending any of the Board's rights under the Contract Documents (iii) protect the Board's interest in any matter arising under a contract with Contractor (iv) collect damages for the breach of a contract or any other amounts owed to the Board; or (v) recover on a surety bond given by the Contractor, then the Board shall be entitled to recover its attorneys' fees, costs, charges, and expenses expended or incurred therein from the Contractor if the Board prevails in court.

31. Notices

31.1 All requests, notices and other communications required or permitted to be given under the Contract Documents shall be in writing. Delivery of a notice shall be deemed to have been made when such notice is either:

duly mailed by first-class mail, postage prepaid, return receipt requested, or any comparable or superior postal or air courier service then in effect; or transmitted by hand delivery, telegram, telex, telecopy or facsimile transmission, to the party entitled to receive the same at the address indicated below or at such other address as such party shall have specified by written notice to the other party. Notices to the Board shall be sent to:

Superintendent of Schools
Fredericksburg Public Schools
210 Ferdinand Street
Fredericksburg, Virginia 22401

With a copy to:

Bradford A. King, Esq.
Sands Anderson, P.C.
P.O. Box 1998
Richmond, VA 23218-1998

32. Contractual Claims Procedure

32.1 Contractual claims or disputes by Contractor against the Board, whether for money or other relief, except for claims or disputes exempted by law from the procedure set forth herein, shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that Contractor shall give the Board written notice of its intention to file a claim or dispute within fifteen (15) days after the occurrence upon which the claim or dispute shall be based. Any written notice of Contractor's intention to file such a claim or dispute need not detail the amount of the claim, but shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. Whether or not Contractor files such written notice, Contractor shall proceed with the work as directed. If Contractor fails to make its claim or dispute, or fails to give notice of its intention to do so as provided herein, then such claim or dispute shall be deemed forfeited.

32.2 The Board, upon receipt of a detailed claim, may at any time render its decision and shall render such decision within one hundred twenty (120) days of final payment. Each such decision rendered shall be forwarded to the Contractor by written notice.

32.3 If the Contractor disagrees with the decision of the Board concerning any pending claim, the Contractor shall promptly notify the Board by written notice that the Contractor is proceeding with the work under protest. Any claim not resolved, whether by failure of the Contractor to accept the decision of the Board or under a written notice of Contractor's intention to file a claim or a detailed claim not acted upon by the Board, shall be specifically exempt by the Contractor from payment request, whether progress or final. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

32.4 The Board's decision on contractual claims shall be final and conclusive unless the Contractor appeals within six months of the date of the final decision on the claim by instituting legal action in the appropriate court.

33. Correction of Defective Work

33.1 Contractor shall promptly replace or correct any work or materials which Board rejects as failing to conform to the requirements of the Contract Documents. If Contractor does not do so within a reasonable time, Board shall have the right to replace or correct the defective work or materials and Contractor shall be liable to the Board for the cost thereof. If, in the opinion of Board, it is not expedient to correct or

replace all or any part of rejected work or materials, then Board, at its option, may deduct from the payment due, or to become due, to Contractor such amounts as, in Board's judgment, will represent the higher of: (i) the difference between the fair value of the rejected work and materials and the value thereof, if the work had complied with the Contract Documents; or (ii) the cost of correction.

34. No Crimes Against Children

34.1 Contractor acknowledges that the implementation of the Contract Documents requires Contractor, Contractor's employees or other persons that will provide services under this Contract to have direct contact with Fredericksburg Public Schools students. Therefore, Contractor hereby certifies that neither Contractor, Contractor's employees nor any person that will provide services under the Contract Documents who will have direct contact with students on school property during regular school hours or during school-sponsored activities have been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child.

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

34.3 The Contractor shall execute and deliver to the Board upon execution of the Contract Documents the CERTIFICATION OF NO CRIMES AGAINST CHILDREN attached hereto as Attachment A.

34.4 Tobacco and Tobacco Products: The Fredericksburg School Board has designated all of its buildings and grounds tobacco free areas. Smoking or use of tobacco products is forbidden at all times.

ATTACHMENT A

CERTIFICATION OF NO CRIMES AGAINST CHILDREN

Contractor acknowledges that the implementation of this Contract requires Contractor, Contractor's employees or other persons that will provide services under this Contract to have direct contact with **Fredericksburg Public Schools** students. Therefore, Contractor hereby certifies that neither Contractor, Contractor's employees nor any person that will provide services under this Contract who will have direct contact with students on school property during regular school hours or during school-sponsored activities have been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child.

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

Have you, your employees, or any person who will have direct contact with students under this contract been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child?

† NO

† YES (please explain) _____

-

-

Contractor

Date

By: _____

Print: _____

Title: _____