

CHANGE ORDER NO. 5

This **CHANGE ORDER NO. 5** (“Change Order”), dated **June 30, 2021**, for identification purposes, but effective the last date signed below, by and between the following parties, concerning changes to the Comprehensive Agreement and associated contract documents related to the Project identified below.

OWNER:

School Board of the City of Harrisonburg, Virginia
One Court Square
Harrisonburg VA 22801

DESIGN-BUILDER:

Nielsen Builders, Inc.
3588 Early Road
Harrisonburg, VA 22801

Class A License No. 2701002224
Commercial Building / Residential Building
License Expiration Date – December 31, 2022
(subject to renewal)

PROJECT:

New Second Harrisonburg High School

In consideration of the mutual covenants and obligations contained herein, and for the reasons stated in the recitals set forth below, Owner and Design-Builder (also referred to as “Contractor”) agree to change, modify, and amend the Comprehensive Agreement and other contract documents as set forth below.

WHEREAS, pursuant to Section 11.10 of the Comprehensive Agreement, Design-Builder acknowledged and agreed that “it shall perform no work which would result in exceeding the amount appropriated for [the Comprehensive Agreement] unless Harrisonburg City Council has given its express consent under Virginia Code § 22.1-91;” and

WHEREAS, the City Council of the City of Harrisonburg, Virginia (“Harrisonburg City Council”) appropriated to Owner a portion of the funds to cover initial construction costs of the Project so that work could begin on the Project without having to wait for appropriations of the full amount needed for the Comprehensive Agreement, such latter appropriations having been intended to be funded through issuance of municipal bonds; and

WHEREAS, in accordance with Virginia Code § 22.1-91, Harrisonburg City Council also gave its express consent to Owner to proceed with the Project prior to the full amount being appropriated for the Comprehensive Agreement; and

WHEREAS, due to the on-going pandemic caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), commonly referred to as the “coronavirus,” and the economic impacts resulting therefrom to municipalities across the United States, including the City of Harrisonburg, Virginia, Harrisonburg City Council deemed it prudent to delay issuance of bonds that were intended to finance construction of the Project; and

WHEREAS, due to the delay in issuance of bonds that were intended to finance construction of the Project, work on the Project was suspended pursuant to Change Order No. 4 that was executed by Owner and Design-Builder and approved by Harrisonburg City Council; and

WHEREAS, Harrisonburg City Council anticipates that within the next 90-120 days it may pursue issuance of municipal bonds intended to finance the Project; and

WHEREAS, Owner and Design-Builder are entering into this Change Order so as modify and amend the Comprehensive Agreement and other contract documents to address termination of the work suspension and equitable adjustments to the Contract Price, the Substantial Completion Date, and the Final Completion Date warranted due to the work suspension.

NOW, THEREFORE, Owner and Design-Builder agree as follows:

1. Termination of Work Suspension. Effective **July 14, 2021 at 7:00 a.m.**, the work suspension that went into effect on **April 30, 2020** at 5:00 p.m. pursuant to Change Order No. 4 will terminate and Design-Builder will re-commence its work on the Project.

2. Equitable Adjustment of Contract Price. Pursuant to Section 6.1 of the Comprehensive Agreement, the Contract Price is \$83,905,369.50. Owner elected to proceed with the Road Improvement Addendum to the Comprehensive Agreement, which increased the Contract Price from \$83,905,369.50 to \$88,837,662.00. Owner and Design-Builder executed Change Order Nos. 1, 2, and 3 that increased the Contract Price by \$143,699.60, \$295,722.49, and \$367,626.60 (after applying \$580,000.00 credit for rock in Route 11 improvements that was re-allocated from the Road Improvement Addendum), respectively, the foregoing additional charges concerning excavation and removal of rock from the Project site. Change Order Nos. 1, 2, and 3 have a combined total price of \$807,048.69. Change Order No. 4 included charges for stabilizing and maintaining the Project site during suspension of work addressed in that change order. The projected total cost for stabilizing and maintaining the Project Site through the date that the work suspension is lifted by this Change Order No. 5 is \$461,985.26. Accordingly, prior to execution of this Change Order No. 5, the Contract Price, as adjusted by Change Order Nos. 1 through 4, is **\$90,292,598.77**. This Change Order No. 5 shall further equitably adjust the Contract Price, as contemplated under Change Order No. 4 due to the work suspension, by **\$7,765,334.00**. The basis for the increase, which is primarily due to an increase in costs of materials, is set forth in a letter dated May 4, 2021 from Design-Builder to Owner, a copy of the foregoing letter, marked **Exhibit A**, being attached

to this Change Order No. 5 and incorporated into this Change Order No. 5 by reference. With the foregoing additional costs, the Adjusted Contract Price is \$98,057,932.77 upon execution of this Change Order No. 5.

3. Current Contract Balance. As of the date of this Change Order No. 5, the total amount billed to Owner by Design-Builder toward the Adjusted Contract Price, in addition to those amounts billed under the Interim Agreement as noted in the Comprehensive Agreement (\$3,335,206.00), is \$8,714,395.10. Through the date of this Change Order No. 5, Owner has paid \$ \$8,681,947.10 (invoices issued in May and June 2021 have not been paid as of the date of this Change Order No. 5), leaving a balance owed on the Adjusted Contract Price of \$89,375,985.67, and a remaining amount to be billed of \$89,343,537.67.

4. Current Retainage. As of the date of this Change Order No. 5, Owner is not holding any retainage, all retainage having been released pursuant to and in accordance with Change Order No. 4.

5. Revised Draw Schedule. Due to the increase in the Contract Price and changes to the Project schedule caused by the suspension of work on the Project, Owner and Design-Builder agree to replace the Draw Schedule, marked **Exhibit 7**, that is attached to the Comprehensive Agreement, with the Draw Schedule, marked **Exhibit 7 (Revised June 2021)**, that is attached to this Change Order No. 5 and incorporated into this Change Order No. 5 by reference. With respect to invoices issued by Design-Builder in August 2021 (generally encompassing work through the end of July 2021, less retainage) and September 2021 (generally encompassing work through the end of August 2021, less retainage), Design-Builder agrees that payment Owner may pay those invoices on or before Monday, November 1, 2021.

6. Equitable Adjustment of Substantial Completion and Final Completion Dates. The Substantial Completion date, which is **June 15, 2022**, in Section 5.2.1 of the Comprehensive Agreement, is hereby equitably adjusted to **December 31, 2023**, such equitable adjustment having taken into consideration the length of the work suspension and other relevant factors. The deadline for a Certificate of Occupancy, which is **August 1, 2022**, in Section 5.2.1 of the Comprehensive Agreement, shall also be equitably adjusted to **February 16, 2024**, which also takes into consideration the actual length of the work suspension and other relevant factors. The deadline for a Certificate of Temporary Occupancy for the school building shall be **December 31, 2023**, which also takes into consideration the actual length of the work suspension and other relevant factors.

7. Revised Project Schedule. Within thirty (30) days following execution of this Change Order No. 5, Design-Builder will provide to Owner a revised Project Schedule that revises the Project Schedule previously submitted by Design-Builder to Owner under Section 5.2.2 of the Comprehensive Agreement.

8. Liquidated Damages. Given that the Substantial Completion date will now occur in the middle of the academic year, the Parties hereby agree that no Liquidated Damages shall accrue or be enforced prior to June 1, 2024. In the event that the Substantial Completion date is extended beyond June 1, 2024 due to equitable adjustments allowed under the Comprehensive Agreement, then no Liquidated Damages shall accrue or be enforced prior to the equitably adjusted Substantial Completion Date.

Section 8.2 of the General Conditions of Contract is amended as follows:

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Times for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Times include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions (excluding rock), Hazardous Conditions, Delays in receiving Materials and Supplies through no fault of Design-Builder, and Force Majeure Events.

8.2.3.6 The Project is further delayed due to delays in the City obtaining funding, via bond issuance or otherwise.

9. Early Completion Bonus. If Substantial Completion is attained on or before the scheduled Substantial Completion Date, as outlined in Section 5.2.1 of the Comprehensive Agreement as amended herein (hereinafter referred to as the "Bonus Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 7.3 hereof an early completion bonus of Two Thousand Dollars (**\$2,000.00**) per day for each day that Substantial Completion is attained earlier than the Bonus Date, limited to a total amount of \$120,000.00 (such amount being part of Owner's Contingency identified in the soft costs on the Guaranteed Maximum Pricing Summary referenced in the following article). The Parties acknowledge their mutual desire for Early Completion Milestone Dates that may move up the Substantial Completion Date to more than sixty (60) days prior to the adjusted Substantial Completion Date in this Change Order No. 5 (December 31, 2023), with corresponding Early Completion Milestone Bonuses, correlated to dates affixed by the Owner within its 2023/2024 Academic Calendar. The Parties acknowledge and agree that said Early Completion Milestone Dates will require acceleration in consultation with the Project Subcontractors and be dependent upon winter weather conditions. Therefore, the Parties acknowledge and agree that Early Completion Milestone Dates and corresponding Bonuses will be determined by future Change Order.

10. Optional Allowance for Certain Materials. Within the \$7,765,334.00 equitable price adjustment contained in this Change Order No. 5 are price adjustment for asphalt, cold formed metal framing, and copper. The adjustment for these three items totaled \$704,876.00 from the original price used in determining the original Contract Price. Owner shall have the option of having these three items converted to allowances for the total amounts shown below. To exercise the option for any one or more of the items,

Owner shall notify Design-Builder in writing on or before August 1, 2021 of the items it desires to convert to an allowance. In the event that the option is exercised, the items for which it is exercised shall be added to the Allowance Schedule referenced in Section 6.6 of the Comprehensive Agreement.

	Original Price	CO#5 Adjustment	Total
Asphalt	\$900,000.00	\$97,740.00	\$997,740.00
Cold Formed			
Metal Framing	\$527,645.00	\$319,179.00	\$846,824.00
Copper	<u>\$310,256.00</u>	<u>\$287,957.00</u>	<u>\$598,213.00</u>
	\$1,737,901.00	\$704,876.00	\$2,442,777.00

11. Appropriations. Owner and Design-Builder acknowledge that Harrisonburg City Council has not yet appropriated to Owner all of the funds needed for the Project. Pursuant to and in accordance with Virginia Code § 22.1-91, Harrisonburg City Council, by its approval set forth below, gives its express consent to Owner to proceed with the Project prior to the full amount being appropriated for the Comprehensive Agreement.

12. Comprehensive Agreement Remains in Force. The terms of this Change Order shall supersede and control when there exists a conflict between the terms of this Change Order and the original terms of the Comprehensive Agreement, including all other contract documents associated therewith. The Comprehensive Agreement shall otherwise remain in full force and effect.

WITNESS the following signatures:

OWNER:

DESIGN-BUILDER:

**School Board of City of Harrisonburg,
Virginia**

Nielsen Builders, Inc.

By: _____
Kristen Loflin
Its: Chair

By: _____
Tony E. Biller
Its: President

Date: _____

Date: _____

APPROVED:

City Council of the City of Harrisonburg, Virginia

By: _____
Deanna R. Reed
Its: Mayor

Date: _____