

CHANGE ORDER NO. 4

This **CHANGE ORDER NO. 4** (“Change Order”), dated **April 21, 2020**, 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, 2020
(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 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 deems it prudent to delay issuance of bonds that were intended to finance construction of the Project; and

WHEREAS, the full extent of the anticipated delay in funding for the appropriations needed to complete construction of the Project is unknown at this time, but the delay is expected to be up to a year, possibly longer; 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 the aforementioned appropriation delay.

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

1. Work Suspension. Effective **April 30, 2020** at 5:00 p.m., which is hereinafter referred to as the “Suspension Date,” Design-Builder shall suspend all work on the Project except for the following work: (i) any work Design-Builder may perform for which it is not seeking compensation, including repairs to any work for which payment is made through the Suspension Date; and (ii) any work required to stabilize the Project site until such time as the suspension is lifted, such stabilization work to be paid for by Owner as set forth in this Change Order. The work suspension shall stay in effect until such time as additional funds are appropriated to commence work on the Project; provided, however, that if the suspension is not lifted on or before **April 30, 2021**, either party may terminate the Comprehensive Agreement in accordance with its terms.

2. Site Stabilization. The parties acknowledge that the work suspension may not be lifted prior to the time that site stabilization will be required under applicable permits, federal and state statutes and regulations, and local ordinances (collectively “stabilization laws”). In such event, Design-Builder agrees to stabilize the Project site in accordance with stabilization laws. Site stabilization shall begin when required by applicable stabilization laws. Design-Builder agrees to consult with authorities that enforce applicable stabilization laws to determine the date that site stabilization must begin.

3. Payment for Site Stabilization. In the event that site stabilization is required during the work suspension, Owner shall pay Design-Builder for stabilizing and maintaining the site based on the itemization of anticipated charges set forth on **Exhibit A** that is attached hereto and incorporated herein by reference. After the site is initially stabilized, Owner reserves the right to take over subsequent maintenance of the site, including any regrading and/or reseeding that may be required, as well as any testing or other requirements of the applicable permits. In the event that the suspension is lifted on a date that results in Design-Builder's site stabilization maintenance work occurring for a partial month, or in the event that Owner takes over the maintenance work during the middle of the month, payment owed to Design-Builder shall be made on a pro rata basis for work completed.

4. Partial Release of Retainage. Owner agrees that amounts retained or to be retained through the Suspension Date shall be released to Design-Builder. Those amounts are as follows:

Payment Application 1 – \$110,272.00
Payment Application 2 – \$91,418.00
Payment Application 3 – \$76,327.00
Payment Application 4 – \$120,776.00

Payment Application 4 has not yet been made and the retainage is a projected amount. Retainage on Payment Application 4 is being waived by Owner. Retainage on the first three payment applications in the total amount of **\$278,017.00** will be released by Owner to Design-Builder.

5. Payment for Work Completed Through Suspension Date. Design-Builder shall include in its next Payment Application, which is anticipated to be Payment Application 4, all costs and expenses incurred through the Suspension Date, such amount estimated to be **\$2,600,000.00**.

6. Substantial Completion and Final Completion. The Substantial Completion date, which is **June 15, 2022**, in Section 5.2.1 of the Comprehensive Agreement, shall be equitably adjusted, taking into consideration the actual 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, taking into consideration the actual length of the work suspension and other relevant factors.

7. Contract Price. The Contract Price, which is a combined Guaranteed Maximum Price of **\$88,837,662.50** pursuant to Section 6.1 of the Comprehensive Agreement (**\$83,905,369.50**) and the Road Improvements Addendum to the Comprehensive Agreement (**\$4,932,293.00**), will be equitably adjusted, taking into consideration the actual length of the work suspension and other relevant factors. Relevant factors to be considered in making an equitable adjustment of the Contract Price include without limitation the following:

a. Potential costs to close out existing payment and performance bonds and reissue such bonds upon lifting of the work suspension.

b. Potential costs in reapplying for permits that may expire during the work suspension.

c. Potential costs related to compliance with changes in federal and state statutes and regulations and local ordinances, including building codes, that may occur during the work suspension.

d. Potential changes in labor and material costs.

e. Remobilization costs.

f. Increased costs to perform work due to timing of the work, such as work that may be more costly to complete during winter months.

8. 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: _____
Andrew Kohen

By: _____
Tony E. Biller

Its: Chair

Its: President

Date: _____

Date: _____

APPROVED:

City Council of the City of Harrisonburg, Virginia

By: _____
Deanna R. Reed

Its: Mayor

Date: _____