

INTERIM AGREEMENT

This INTERIM AGREEMENT ("Agreement") is entered into this ___ day of _____, 2023 ("Effective Date") by and between PRINCE WILLIAM COUNTY ("County"), and MEB GENERAL CONTRACTORS, INC. ("Contractor").

RECITALS

WHEREAS, on July 1, 2022, the County revised the Prince William County Procurement Regulations including "Public-Private Education Facilities and Infrastructure Act of 2002 - Guidelines," establishing procedures for the development of public facilities through public-private partnerships ("Implementing Procedures"), which procedures satisfy the requirements of the PPEA (as defined below); and

WHEREAS, on February 21, 2022, the Contractor, submitted an Unsolicited PPEA Proposal (the "Conceptual Proposal") under the Public-Private Education Facilities and Infrastructure Act of 2002 (Title 56, Chapter 22.1 of the Code of Virginia of 1950, as amended (the "Virginia Code"), and such chapter hereinafter referred to as the "PPEA")) to provide certain design, permitting, development and construction services in connection with the development of a new indoor sports complex (as more fully described hereinafter, the "Project"); and

WHEREAS, on or about April 28, 2022, the County staff published a notice of receipt of the Contractor's Conceptual Proposal and invited for consideration competing proposals, to be submitted to the County on or before June 13, 2022; and

WHEREAS, zero (0) competing proposals were received by the County for conceptual stage consideration. Pursuant to the Implementing Procedures, the County subsequently posted notice of its decision to accept one (1) proposal for conceptual stage consideration on the County's website and made such conceptual stage proposals available for public inspection, and

WHEREAS, the County determined that, among other things, that it would be advantageous for the County to proceed with the Project using procedures for competitive negotiation, rather than sealed, competitive bids, given the probable scope and complexity of the Project; and the economic benefit from the Project that might otherwise not be available; and

WHEREAS, after reviewing the conceptual stage proposals, on or about January 17, 2023, the County selected one (1) proposal to advance to the detailed review stage in accordance with the Implementing Procedures, retaining the right to reject any proposal at any time for any reason; and

WHEREAS, on or about February 22, 2023, the Contractor submitted its detailed proposal (the "Detailed Proposal") to the County for detailed stage consideration; and

WHEREAS, after review of the Detailed Proposal, the County selected Contractor for negotiation of an interim agreement under the PPEA for the Project based upon Contractor's Conceptual Proposal, its Detailed Proposal, and upon the County's evaluations of those proposals.

For the purposes of this Agreement, MEB General Contractor, shall be the "Private Entity" as defined in the PPEA; and

WHEREAS, the Parties have negotiated this Agreement consistent with the PPEA, other applicable law, the Implementing Procedures, Contractor's Conceptual Proposal and Detailed Proposal, and discussions between representatives of the County and Contractor; and

WHEREAS, having considered this Agreement and other information, the County 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 Section 56-575.4(C) of the Virginia Code, and, accordingly, in accordance with § 56-575.17(B) and (C) held a public hearing on the proposals on October 10, 2023.

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:

I. SCOPE OF SERVICES.

- a. The Contractor shall provide professional architectural and engineering services and related services necessary for the design and development of a Prince William County Sports & Events Center, as set forth in the Conceptual and Detailed Proposal, including the following amenities:
 - i. Eight (8) Virginia High School League (VHSL) basketball hardwood courts, convertible to sixteen (16) volleyball courts, and other courts sports uses like pickleball, tennis, etc. as demand dictates.
 - ii. 200 meter, indoor track, and field venue with 3,500 fixed seats
 - iii. Tip and Roll bleachers for spectator seating
 - iv. Concessions
 - v. Multiple large multipurpose rooms
 - vi. Separate referee rooms with separate entrance
 - vii. First-aid and sports medicine area
 - viii. Lounge space
 - ix. Gym/Fitness Center
 - x. Storage
 - xi. Parking
 - xii. Staff office space
 - xiii. Bathrooms and changing areas

b. The size and amenities of the Project may differ based upon the Project location and related constraints. The Contractor shall provide the scope of services for the following one (1) site:

i. 13505 Telegraph Road, Woodbridge, VA 22192

c. The Scope of Services will include:

i. Site Analysis & Site Design Services

1. Prepare an engineering base sheet with readily available County GIS data to be supplemented by public utility information as supplied by Prince William County Service Authority (PWCSA).
2. Prepare a zoning analysis using the latest version of the County Zoning Ordinance and will identify any zoning actions if needed.
3. Prepare a concept geometric layout for the project, including the building footprint (as supplied by Clark Nexsen), main and secondary entrances, loading dock entrance, cross connection entrances (if needed), internal vehicular driveways and fire lanes, surface parking, ADA parking, and drop off areas at the main building entrance. The layout will include assumed locations for public utility mains and connections.
4. Prepare and provide a rough grading and drainage plan to include storm inlets and assumed storm pipe sizes. Preliminary stormwater management (quantity) and best management practices (quality) will be studied using VA Runoff Reduction spreadsheet. Preliminary locations and sizing of SWM & BMP facilities will be shown on the plan, which may include underground and at grade facilities.

ii. Conceptual Design Services

1. Review and revise programming based on the Market Studies provided by Victus Advisors.
2. Updated conceptual floor plan to address programming reviews and specific site plan constraints. Rendered conceptual floor plan will be developed. One exterior perspective conceptual rendering per site will be developed.

3. A square foot breakout will be provided that matches the conceptual program and conceptual floor plan. This spreadsheet will be the base line for tracking program changes moving forward and aid in the development of conceptual construction cost estimates.
4. Develop conceptual civil and architectural construction drawings.

iii. Preconstruction Services

1. Updated conceptual cost estimate based upon updated conceptual civil and architectural designs.
2. Provide constructability, value engineering, and budget analysis services.
3. Provide updated preliminary project schedule based on new design and programming.
4. Provide description and narrative for the overall project and basis of cost estimate.

iv. Market Demand Research & Study

1. Update demographic/socioeconomic & sports tourism market analysis for new site.
2. Complete on-site interviews with local user groups as provided by the County in Exhibit A (two (2) days). Interviews can be grouped.
3. Complete as many additional telephone and video interviews with local user groups as necessary to reach all parties included in Exhibit A.
4. Complete telephone interviews with national and regional event organizers in consultation with the PWC Sports Tourism Manager.
5. Update program demand analysis & facility recommendations.
6. Update usage estimates & operating pro forma.
7. Update economic & fiscal impact analysis.
8. Submit/review draft report & present final report.

v. Operations and Development Services.

1. Attend all stakeholder, user groups, and event organizers on-site, telephone and video interviews conducted by Victus Advisors.
 2. Develop a projected facility schedule for weekday and weekend usage based on experience and information gathered from interviews.
 3. Provide consulting services to Victus Advisors on usage data, operating pro formas, program analysis, and facility recommendations.
 4. Provide consulting services to the design-build for facility design, layout, logistics, program, and operations based on previous venue experience and current market trends.
- vi. The Contractor shall complete this scope of services no later than March 15, 2024
- vii. During performance under this Agreement, the County's designated representative shall be Seth Hendler-Voss, Director of Parks and Recreation and the Contractor's designated representative shall be Trip Smith, Project Executive. Communications related to the Project shall be through these designated representatives; Copies of any notices or correspondence sent to the County shall also be sent to the Chief Procurement Officer, Shana N. Terry and Seth Hendler-Voss

II. COST OF SERVICES AND PAYMENT.

- a. In consideration of the provision of Services by the Contractor, the County shall pay to the Contractor the contract amount of Two Hundred Forty Eight Thousand, Eight Hundred Eight and 29/100 Dollars (\$248,829) (the "Contract Amount"). Breakdown of fees:

Interim Agreement - 13505 Telegraph Road, Woodbridge, VA 22192	
Preconstruction & Estimating	\$50,000
Design Services	\$62,879
Civil Design Services	\$41,000
Market Research & Study	\$63,950
Operations & Development Services	\$31,000
Total	\$248,829

- b. In addition to the contract amount for service, travel fees will be payable to Contractor at published GSA rates for the County. Estimated travel:
 - i. Trip 1 - Travel Costs (Airfare, Car, Hotel, Meals) for Two (2) Consultants – Two (2) Days.
 - ii. Trip 2 - Travel Costs (Airfare, Car, Hotel, Meals) for One (1) Consultant - One (1) Day.
 - iii. Trip 3 - Travel Costs (Airfare, Car, Hotel, Meals) for One (1) Consultant - One (1) Day. (Board of County Supervisors Updates)
 - iv. Other Project Costs - Software Access, Database Access, IMPLAN Multipliers, etc.
- c. The Contractor will submit invoices for payment to the County at the completion and acceptance of each phase and sub-phase, with each invoice being sent to Seth Hendler-Voss, Director of Parks and Recreation with a copy to Shana N. Terry, Chief Procurement Officer. The County shall not be required to pay more than \$248,829 in total invoices, not including travel expenses. The County shall have thirty (30) days following receipt of an invoice to review each invoice. No later than the tenth day following receipt of an invoice, the County shall notify the Contractor whether it approves or rejects the invoice in whole or in part, providing explanation for any portions rejected. The County shall then pay the approved part of the invoice within thirty (30) days following its provision of notice to the Contractor. If all or any part of the invoice is rejected, the Contractor shall promptly address the explanation provided by the County for such action and resubmit the part of the invoice, upon which the County's review cycle will start again.

III. TERM AND TERMINATION.

- a. This Agreement shall commence on the Effective Date first written above and shall continue until terminated pursuant to the terms of this Agreement.
- b. This Agreement may be terminated in the event of substantial failure or default of the other party to perform in accordance with the terms hereof through no fault of its own.
- c. Upon thirty (30) days written notice to the Contractor, the County may, for its convenience and without cause, elect to terminate the Agreement, in accordance with Sec XXIX below.

IV. COMPREHENSIVE AGREEMENT

- a. Should the parties both conclude that the Project is feasible, it is their intention to negotiate a comprehensive agreement under the PPEA which shall address the

completion of design, construction, and commissioning of the Project. County staff and the Contractor will begin work on the framework of the comprehensive agreement during performance of the Services under this Agreement. County staff's participation in negotiation of a comprehensive agreement shall not constitute an obligation of or commitment by the County to execute such comprehensive agreement prior to Board of County Supervisors' approval and appropriation of any funds, which approval may be granted, denied, or conditioned in its sole discretion, retaining the right to reject any proposal at any time for any reason. The comprehensive agreement will address all issues necessary to completion of design, construction, and commissioning of the Project.

V. STANDARD OF CARE

- a. The Contractor 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 Contractor's best work. Additionally, the Contractor represents and warrants that all persons performing any work on the Project under this 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 Agreement.

VI. REPRESENTATIONS AND WARRANTIES.

- a. The County hereby represents and warrants to the Contractor as follows:
 - i. The County is operating under the laws of the Commonwealth of Virginia and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement.
 - ii. Each person executing this Agreement on behalf of the County is duly authorized to execute each such document on behalf of the County.
 - iii. Neither the execution and delivery by the County of this Agreement and any other documents executed concurrently herewith to which the County is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.
 - iv. There is no action, suit, proceeding, investigation or litigation pending and served on the County as of the date of this Agreement which challenges the County's authority to execute, deliver or perform, or the validity or enforceability of this Agreement and the other related documents to which

the County is a party, or which challenges the authority of the County official executing this Agreement or the other related documents, and the County has disclosed to the Contractor any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the County is aware.

- v. Subject to Board of County Supervisors' appropriation, the County has sufficient funds to make the full payment to the Contractor.

b. The Contractor hereby represents and warrants to County as follows:

- i. The Contractor represents that MEB does business in Virginia and in signing this Agreement as well as such comprehensive agreement as may be entered into between the parties, has full power and authority to bind itself to the terms thereof.
- ii. The Contractor has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under this Agreement and the other related documents to which the Contractor is a party.
- iii. Each person executing this Agreement or any other related document on behalf of the Contractor has been or will at such time be duly authorized to execute each such document on behalf of the Contractor.
- iv. Neither the execution and delivery by the Contractor of this Agreement and the other related documents to which the Contractor is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or a violation of the governing instruments of the Contractor or any other agreements or instruments to which it is a party or by which it is bound.
- v. There is no action, suit, proceedings, investigation or litigation pending and served on the Contractor which challenges the Contractor's authority to execute, deliver or perform, or the validity or enforceability of this Agreement and the other related documents to which the Contractor is a party, or which challenges the authority of the Contractor official executing this Agreement or the other related documents; and the Contractor has disclosed to the County any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Contractor is aware.
- vi. The Contractor is in material compliance with all laws, regulations, and ordinances applicable to the Contractor or its activities in connection with this Agreement and the other related documents.

- vii. The Contractor is a financially viable and capable entity and fully able to perform its obligations under this Agreement.

VII. CHANGES IN THE WORK

- a. Consistent with the Services the Contractor has agreed to provide as set forth in this Agreement, the Contractor shall address timely comments received from the County pertaining to the facility design, at no additional cost to the County. If the County by a written order make changes to the scope of services that causes an increase or decrease in the cost or time required for the performance, then an equitable adjustment shall be made in the price and/or the delivery scheduled by mutual agreement of the Parties. No changes in the scope of services will be made without an executed Change Order.

VIII. OWNERSHIP OF PLANS

- a. Upon payment of fees due to the Contractor for Scope of Services that have been performed under this Agreement, all drawings, specifications and other documents and data furnished by the Contractor to the County under this Agreement (collectively, the "Work Product") are deemed to be instruments of service, in which the Contractor hereby agrees to transfer and assign to the County all right, title and interest, including but not limited to all copyrights, and further to obtain similar transfers and assignments to the County from all of the Contractor's consultants who produce such Work Product for the Project. This irrevocable transfer and assignment includes but is not limited to Work Product in paper and electronic forms, and all Work Product for the Project that have been or will be prepared or created by or on behalf of the Contractor for the Project, and including all rights in and to the copyright throughout the world and any renewals or extensions thereof, as well as any and all derivations, modifications, changes, translations, revisions, elaborations, adaptations or transformations of the Work Product. This provision shall not relieve the Contractor from, or modify the Contractor's sole responsibility for, any and all liability for all of its work under the Agreement. It is understood and agreed that all Work Product prepared by or on behalf of the Contractor for this Project will be applicable only in respect to the Project. The Work Product is not intended or represented to be suitable for use or reuse by the County or others for a material extension of the Project or on any other project. The County has the right, itself or by and through other design professionals, to modify the Work Product prepared by the Contractor for use in connection with the Project or for any other use whatsoever. Any such modification of the Work Product shall relieve the Contractor and its design professional consultants for the responsibilities under the standard of care for the modified structures, or structures affected by such modifications. The Contractor shall ensure that its consultants agree in writing to the transfer and assignment of all ownership rights in the Work Product produced by the consultants for the Contractor that the Contractor has agreed to provide to the County in this Agreement.

- b. The County acknowledges that the Contractor or its consultants may have developed materials prior to entering into this Agreement, and may own other patent, trade secret and proprietary rights in techniques and concepts that were not conceived or first produced by the Contractor in connection with this Project (collectively "Contractor Intellectual Property"). Contractor Intellectual Property is proprietary to the Contractor and shall remain the Contractor's exclusive property. The Contractor shall clearly and specifically identify to County all Contractor Intellectual Property. The entire body of Scope of Work deliverables shall not be designated 'confidential' and the Contractor must reasonably differentiate between the proprietary and non-proprietary information contained therein. Upon timely receipt of a request that designated portions of the deliverables shall be protected from disclosure as confidential and proprietary, the County shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial information of the Contractor and permitted under the Virginia Freedom of Information Act. The County will send the private entity a written determination of the nature and scope of the protection. The Contractor hereby grants to the County a perpetual, royalty free, paid-up, irrevocable, non-exclusive, transferable, sub-licensable license to Contractor's Intellectual Property to the extent it is incorporated in any Work Product delivered to the County by the Contractor hereunder, but such license shall be limited solely to use in the construction of the Project and at the locations as described in this Agreement. Submission or distribution of any Work Product to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Contractor and the Contractor's consultants.

- c. The Contractor shall not disclose or release, without the County's prior written consent, any data, documents, records, and other information, whether in electronic or tangible format, related to this Agreement to anyone who is not a party to this Agreement except (i) to a County-approved subcontractor on this Agreement; (ii) to a federal or state government department or agency, when required under federal or state law or regulation; or (iii) when expressly required by a court or administrative order. If the Contractor discloses or releases any data, documents, records, and other information, whether in electronic or tangible format, related to this Agreement to a federal or state government department or agency, or as required by a court or administrative order, it shall promptly notify the County prior to doing so in order to provide the County with an opportunity, but not the obligation, to object or intervene in the matter.

IX. INDEMNIFICATIONS

- a. The Contractor shall indemnify, defend at its own expense, and hold harmless the Board of County Supervisors of Prince William County, Virginia, and their officers, agents, employees, and volunteers, from any and all injuries, damages, and losses however or by whomever sustained, including cost of investigation, all reasonable

attorney's fees, and the cost of appeals arising out of any such claims or suits, to the extent caused by any and all acts, errors, and omissions of the Contractor, including its agents, subcontractor, employees, and volunteers, in connection with this Contract.

- b. To the extent permitted by Virginia law, the Contractor shall defend any action or proceeding brought against the County based on any claim that the Work Product, or any part thereof, or the operation or use of the Work Product or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. The County shall give prompt written notice to the Contractor of any such action or proceeding and will reasonably provide authority, information, and assistance in the defense of same. The Contractor shall indemnify and hold harmless the County from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against the County or the Contractor in any such action or proceeding. The Contractor agrees to keep the County informed of all developments in the defense of such actions. If the County is enjoined from the operation or use of the Work Product, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, the Contractor shall at its sole expense take reasonable steps to procure the right to operate or use the Work Product. If the Contractor cannot so procure such right within a reasonable time, Contractor shall promptly, at the Contractor's option and at the Contractor's expense, (i) modify the Work Product so as to avoid infringement of any such patent or copyright or (ii) replace said Work Product with Work Product that does not infringe or violate any such patent or copyright. These provisions shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by the County and not offered or recommended by Contractor to the County or (ii) arising from modifications to the Work Product by the County or its agents after acceptance of the Work Product.
- c. Contractor acknowledges that the County is a public entity Provided that the County is not in breach of its contractual obligation to make payments to the Contractor for the Services performed, the Contractor shall indemnify, defend and hold harmless the County from any claims or mechanic's liens brought against the County or against the Project as a result of the failure of the Contractor, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Services. Within three (3) days of receiving written notice from the County that such a claim or mechanic's lien has been filed, the Contractor shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If the Contractor fails to do so, the County will have the right to discharge the claim or lien and hold the Contractor liable for costs and expenses incurred, including attorneys' fees.
- d. To the fullest extent permitted by laws and regulations, the Contractor shall indemnify, defend at its own expense, and hold harmless the County and its officers,

employees, agents, consultants and subcontractor from and against all liability, claims, costs, losses, and damages (direct and indirect, and including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the Contractor's, or any Subcontractor's, Design Consultant's or any individual or entity directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, negligent or willful acts or omissions in the performance of the Services or this Agreement, provided that any such liability, claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than to the Work itself), including the loss of use resulting therefrom, except to the extent such injury, sickness, disease, death or property damage or destruction is caused solely by the negligence or willful misconduct of the County or any third party not a Subcontractor, Supplier or other individual or entity for whose acts the Contractor is liable.

- e. If an employee of the Contractor, Design Consultant, Subcontractor, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against the County, its officers, employees, volunteers, or agents, the Contractor's indemnity obligation set forth above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for the Contractor, Design Consultant, Subcontractor, or other entity under any employee benefit acts, including workers' compensation or disability acts.

X. CLAIMS/DISPUTE RESOLUTION

- a. **Dispute Avoidance:** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, the Contractor and the County each commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner so as to try to avoid unnecessary losses, delays and disruptions to the Work. The Contractor shall continue to perform the work required under the Agreement and the County shall continue to satisfy its payment obligations to the Contractor, pending the final resolution of any dispute or disagreement between the Contractor and the County.
- b. **Initial Claim:** In accordance with Virginia Code § 2.2-4363, this provision shall be followed for consideration and handling of all claims by the Contractor under this contract. Virginia Code § 2.2-4365 is not applicable to this contract, and under no circumstances is this paragraph to be construed as an administrative appeals procedure governed by Virginia Code § 2.2-4365.
- c. **Notice of the intent to submit a claim** setting forth the basis for any claim shall be submitted in writing within ten (10) business days after the occurrence of the event giving rise to the claim, or within ten (10) business days of discovering the

condition giving rise to the claim, whichever is later. In no event shall any claim arising out of this contract be filed after the submission of the request for final payment by the contractor.

- d. Claims by the Contractor with respect to this contract shall be submitted in writing in the first instance for consideration by the Contract Administrator. The decision of the Contract Administrator shall be rendered in writing within forty-five (45) calendar days from the receipt of the claim from the contractor. The decision of the Contract Administrator shall be final on behalf of the County unless the contractor submits the claim to the Chief Procurement Officer within thirty (30) calendar days of the Contract Administrator's decision.
- e. If the contractor is not satisfied with the decision of the Contract Administrator, the contractor may file a formal dispute with regards to the claim with the Prince William County Chief Procurement Officer, which claim shall be received within thirty (30) calendar days of the date of decision of the Contract Administrator.
- f. The Chief Procurement Officer shall provide a written decision on the claim to the contractor within forty-five (45) calendar days of the receipt of the claim from the contractor. The decision of the Chief Procurement Officer shall be final on behalf of Prince William County unless the contractor submits the claim to the County Executive within thirty (30) calendar days of the date of the Chief Procurement Officer's decision. The contractor may submit the claim to the County Executive by mailing or otherwise furnishing the Chief Procurement Officer a copy of the claim and a request for the County Executive's determination.
- g. The County Executive's decision on the claim shall be rendered in writing to the contractor within forty-five (45) calendar days of the Chief Procurement Officer's receipt of the request from the contractor, and shall be final and binding on behalf of Prince William County, unless the contractor submits the claim for determination by the Board of County Supervisors by mailing or otherwise furnishing the head of Procurement Services a copy of the claim, along with a request for determination by the Board within thirty (30) calendar days of the County Executive's decision. The Board shall consider the claim and render a decision on the claim in writing within forty-five (45) calendar days of the date on which the Board hears the claim in open meeting. The Board's procedure in considering claims under this contract shall be the same as that for other decisions of the Board on claims made under Virginia Code § 15.2-1245, et seq. The decision of the Board shall be final.
- h. Should any decision-maker designated under this procedure fail to make a decision on a claim within the time period specified, then the claim is deemed to have been denied by the decision maker.
- i. Pending a final determination of a claim, the contractor shall proceed diligently with the performance of the work under the contract.

- j. In accordance with the provisions of Virginia Code § 2.2-4363, full compliance with this procedure set forth in the provision shall be a precondition to the filing of any legal action by the contractor against the County or its Board of County Supervisors arising out of or related to this contract.
- k. Litigation: Whenever a party disagrees with the other party's final decision on a claim or dispute arising under or related to this Agreement, its sole right of appeal shall be by filing, within six (6) months of date of the other party's final decision, litigation in either the Circuit Court of the County of Prince William, Virginia or the United States District Court for the Eastern District of Virginia, and may pursue all available appeals from such courts. These two courts shall have exclusive and binding jurisdiction and venue over any and all claims arising under this Agreement.
- l. Voluntary Mediation: Prior to filing litigation, the parties may first endeavor to resolve any disputes or claims between them through direct negotiations.
- m. Injunctive Relief: Nothing in this Agreement shall prevent a party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of the County of Prince William, Virginia if circumstances so warrant.
- n. Consequential Damages: notwithstanding anything herein to the contrary, neither the County nor the contractor shall be entitled to special, indirect, incidental or consequential losses or damages, whether arising under any legal, imagined or real circumstance arising in contract, warranty, tort negligence, fraud, willful misconduct, strict liability or any other permissible theory for any claim, including, by way of illustration but not limitation, losses of use, profits, business, reputation or financing from the other party to this agreement.

XI. ANNUAL APPROPRIATION.

- a. The financial obligations of the County contained in this Agreement are subject to annual appropriation.

XII. FILING WITH AUDITOR OF PUBLIC ACCOUNTS.

- a. Within thirty (30) days after the date of this Agreement, the County shall submit a copy of this Agreement to the Auditor of Public Accounts, to the extent required by Section 56-575.9(F) or Section 56-575.18 of the Code of Virginia.

XIII. FINANCIAL STATEMENTS.

- a. The Contractor agrees to provide the County with copies of their complete and current financial statements on an annual basis. The Contractor hereby designates

such financial statements as confidential proprietary information exempt from release under the Virginia Freedom of Information Act.

XIV. INSURANCE.

- a. The Contractor will maintain a general liability policy of \$1,000,000 with a \$2,000,000 general aggregate. 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- V111 or better. The insurer must list Prince William County as an additional insured. The endorsement must be issued by the insurance company. A notation on the certificate of insurance is not sufficient.
- b. The Contractor 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.
- c. The insurer must have an A. M. Best rating of A- or better. As an alternative, it is acceptable for the Contractor to be insured by a group self-insurance association that is licensed by the Virginia Bureau of Insurance. The Contractor will also carry employers liability insurance with a limit of at least One-Hundred Thousand Dollars (\$100,000) bodily injury by accident/Five-Hundred Thousand Dollars (\$500,000) bodily injury by disease policy limit/One-Hundred Thousand Dollars (\$100,000) bodily injury by disease each employee.
- d. The Contractor will maintain automobile liability insurance with limits of at least One Million Dollars (\$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- V111 or better.
- e. The Contractor will maintain professional liability insurance with a limit of at least One Million Dollars (\$1,000,000) with a Two Million Dollar \$2,000,000 aggregate. The coverage shall be on an occurrence basis. If the Contractor has professional liability insurance on a claims made basis, agreement must be made that coverage will be maintained for at least five (5) 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- V111 or better. Prince William County should be listed as an additional insured on the policy. The endorsement must be issued by the insurance company. A notation on the certificate of insurance is not sufficient.
- f. 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 additional insured endorsements. All wording limiting the insurer responsibility

to notify Prince William County of any cancellation or non-renewal of the coverage must be removed.

XV. NONDISCRIMINATION.

- a. The Contractor covenants and agrees that during the performance of this Agreement:
 - i. The Contractor shall conduct its activities in connection with the Project in compliance with all requirements imposed pursuant to Title 2.2, Chapter 42, Sections 4200 et seq. of the Code of Virginia; Sections 2.2-4310 and 2.2-4311 of the Code of Virginia; Titles VI and VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; and all applicable rules and regulations.
 - ii. The 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - iii. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that it is an equal opportunity employer.
 - iv. 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 15.
 - v. The Contractor will include the provisions of the foregoing subsections (1), (2) and (3) in every subcontract or purchase order of over Ten-Thousand Dollars (\$10,000), so that the provisions will be binding upon each subcontractor or vendor.

XVI. DRUG-FREE WORKPLACE.

- a. During the performance of this Agreement, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the

Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over Ten-Thousand Dollars (\$10,000), so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this Section 16, "drug-free workplace" means a site for the performance of work done in connection with this Agreement where the employees of the Contractor are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

- b. The Contractor shall also establish, maintain, and enforce policies which prohibit the following acts by all the Contractor, subcontractor, and supplier personnel at the Project:
 - i. The manufacture, distribution, dispensation, possession, or use of alcohol, marijuana, or other drugs, except possession and medically prescribed use of prescription drugs.
 - ii. The impairment of judgment or physical abilities due to the use of alcohol, marijuana, or other drugs, including impairment from prescription drugs.

XVII. ILLEGAL ALIENS.

- a. The Contractor does not and shall not during the performance of this Agreement knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

XVIII. INDEPENDENT CONTRACTOR.

- a. The parties understand and agree that the Contractor, in performing its obligations under this Agreement, shall be deemed an independent contractor and not an agent, employee or partner of the County.

XIX. GOVERNING LAW AND VENUE.

- a. This Agreement shall be governed by and construed in accordance with the Constitution and laws of the Commonwealth of Virginia. Any legal action related to or arising under this Agreement shall be filed and heard in the state courts of Prince William County, Virginia.

XX. CONTRACT DOCUMENTS.

- a. In addition to the Attachments previously referenced, the following documents are incorporated by reference into and made an integral part of this Agreement:
 - i. Contractor's Proposal dated February 21, 2022.
 - ii. Contractor's Detailed Proposal dated February 22, 2023.

XXI. CONDITIONS PRECEDENT AND SUBSEQUENT TO AGREEMENT'S EFFECTIVENESS.

- a. It shall be a condition precedent to this Agreement's effectiveness that it first be approved by the Prince William County Board of County Supervisors as evidenced by the signature of the Director of Parks and Recreation behalf of the Owner on the signature pages hereof; and (ii) it shall be executed in full with all exhibits attached by the County and Contractor on or before November 30, 2023.

XXII. COUNTERPARTS.

- a. 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.

XXIII. EQUAL OPPORTUNITY.

- a. Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by EO 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

XXIV. COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964.

Contractor and any subcontractor, or the successor, transferee, or assignee of contractor or any subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31

C.F.R. Part 22, which are herein incorporated by reference and made a part of this contract. Title VI also provides protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d et seq., as implemented

by Treasury's Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this contract.

XXV. CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- c. The Contractor agrees to report each violation of the Clean Air Act and the Water Pollution Control Act to the Prince William County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- d. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

XXVI. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any applicable implementing regulations.

XXVII. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352, AS AMENDED.

Contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Contractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

XXVIII. SUSPENSION AND DEBARMENT.

(A) This contract is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such, the Contractor is required to verify that none of Contractor's principals (defined at 2 CFR § 180.995) or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).

(B) The Contractor must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the Prince William County. If it is later determined that the contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(C) The Contractor agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

XXIX. TERMINATION FOR CONVENIENCE.

The parties agree that the Owner may terminate this Contract, or any work or delivery required hereunder, from time-to-time either in whole or in part, whenever the County Executive of Prince William County shall determine that such termination is in the best interest of the Owner.

Termination, in whole or in part, shall be affected by delivery of a Notice of Termination signed by the County Executive or designee, mailed, or delivered to the Contractor, and specifically setting forth the effective date of termination.

Upon receipt of such Notice, the Contractor shall:

1. Cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice;
2. Place no further orders with any Subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice;
3. Terminate all subcontracts except those made with respect to Contract performance not subject to the Notice;
4. Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Head of Procurement Services of Prince William County; and
5. Use its best efforts to mitigate any damages which may be sustained by him as a consequence of termination under this clause.

After complying with the foregoing provisions, the Contractor shall submit a termination claim, in no event later than six months after the effective date of their termination, unless an extension is granted by the Head of Procurement Services.

The Chief Procurement Officer, with the approval of the Owner's signatory to this Contract, shall pay from the using department's budget, reasonable costs of termination, including a reasonable amount for overhead and profit on services delivered or completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the services not delivered, or those services not provided. This Contract shall be amended accordingly, and the Contractor shall be paid the agreed upon amount.

In the event that the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this clause, the Head of Procurement Services shall pay to the Contractor the amounts determined as follows, without duplicating any amount which may have already been paid under the preceding paragraph of this clause:

1. With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:
 - a. Cost of the work performed;
 - b. The cost of settling and paying any reasonable claims as provided in subparagraph 4 above; and
 - c. A sum as overhead and profit on (a) determined by the Head of Procurement Services to be fair and reasonable.
2. The total sum to be paid shall not exceed the Contract price, as reduced by the amount of payments otherwise made, and as further reduced by the Contract price of services not terminated.

In the event that the Contractor is not satisfied with any payments which the Head of Procurement Services shall determine to be due under this clause, the Contractor may seek remedy to the Board of County Supervisors in accordance with the "Claims/Disputes" clause of this Contract.

The Contractor shall include similar provisions in any subcontract and shall specifically include a requirement that Subcontractors make all reasonable efforts to mitigate damages which may be suffered. Failure to include such provisions shall bar the Contractor from any recovery from the Owner whatsoever of loss or damage sustained by a Subcontractor as a consequence of termination for convenience.

XXX. ACCESS TO RECORDS.

- A. The Contractor agrees to provide the Prince William County, the U.S. Department of Treasury, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means or to copy excerpts and transcriptions as reasonably needed and agrees to cooperate with all such requests.
- B. The Contractor agrees to provide the Treasury Department or authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- C. No language in this contract is intended to prohibit audits or internal reviews by the Treasury Department or the Comptroller General of the United States.

XXXI. TERMINATION FOR DEFAULT.

Either party may terminate the Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein.

XXXII. TERMINATION FOR CAUSE.

The Owner may terminate the Contract if the Contractor:

1. Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials, equipment;
2. Fails to make payment to Subcontractors for materials or labor in accordance Subcontractor payment provision included herein;
3. Persistently disregards laws, ordinances, or rules, regulation or orders of a public authority having jurisdiction; or
4. Otherwise, guilty of substantial breach of a provision of the Contract Documents.

(Signatures Appear on Following Pages – Remainder of Page Intentionally Left Blank)

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

MEB GENERAL CONTRACTORS, INC.

BY: _____

MARK OLMSTEAD, VICE PRESIDENT

COMMONWEALTH OF VIRGINIA;
County of Prince William, to-wit:

I, the undersigned Notary Public, hereby certify that Mark Olmstead, Vice President, whose name is signed to the foregoing Agreement, appeared, and acknowledged the same before me this ____ day of _____, 2023.

NOTARY PUBLIC

My Commission expires: _____

Registration No.: _____

BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA

BY: _____
SETH HENDLER-VOSS
Department of Parks and Recreation Director, its
authorized agent pursuant to Board of County
Supervisors Resolution No. _____

COMMONWEALTH OF VIRGINIA;
County of Prince William, to-wit:

I, the undersigned Notary Public, hereby certify that SETH HENDLER-VOSS, Department of Parks and Recreation Director and authorized agent of the Board of County Supervisors of Prince William County, Virginia, whose name is signed to the foregoing Agreement, appeared and acknowledged the same before me this ____ day of _____, 2023.

NOTARY PUBLIC

My Commission expires: _____

Notary Registration No.: _____

APPROVED AS TO FORM
COUNTY ATTORNEY'S OFFICE

County Attorney

Date

EXHIBIT A

Sports Stakeholders (contact information to be provided by the County):

All PWC High School Principals, Athletic Directors, and coaches

All PWC private High Schools, AD's and coaches

PWC Director of Student Activities Management

Dale City Lighting Track Club

Cedar Run Track Club

Potomac Panther PWC Track Club

VA Pride

Kids Run This Town

703 United Youth Football League

EPW Basketball Association

Gainesville Basketball

Gainesville Youth Lacrosse

Gainesville-Haymarket Youth Football

Manassas Volleyball League

Major Impact Volleyball Club

American Volleyball Club

Battle Volleyball Club

Manassas Youth Football League

NVSC Soccer Club

Prince William Lacrosse Club

Prince William Soccer, Inc.

Universal Soccer League

Virginia Soccer Association

Woodbridge Soccer Club

Northern Virginia Senior Olympics

Woodbridge Pickleball

Legends Sports

FC North Soccer
Team Voltage AAU Basketball
PWC Special Olympics
PWC Pole Vaulting
NOVA Cheer
Afghan Sports Federation
Lake Ridge Sports Club
AAU – Above All Odds
AAU – Bayou Elite Sports
AAU – Elite Drive
AAU – Generation of Ballers
AAU – Hoop Life Sports
AAU – II The Next Level
AAU – Team Sauce
AAU – Team Voltage
AAU – PW Bulldogs
AAU – Nova United
AAU – Virginia Grizzlies
AAU – Virginia Hokies
Others as deemed necessary by the County