

**COMPREHENSIVE
AGREEMENT**

Between

APPOMATTOX COUNTY

And

JAMERSON-LEWIS CONSTRUCTION, INC.

For Additions and Renovations to the 1892 former Appomattox County Courthouse to include 1,220 SF of Building Additions and 2,700 SF of Building Renovations. Additions will provide an Entry Vestibule, Egress Stair, Two-story Elevator, and Utility Space. Renovations will include all new HVAC, Electrical and Plumbing Systems; new Finishes; and Accessories to adapt the space into a new Board of Supervisors Meeting Room.

(November 3rd, 2023)

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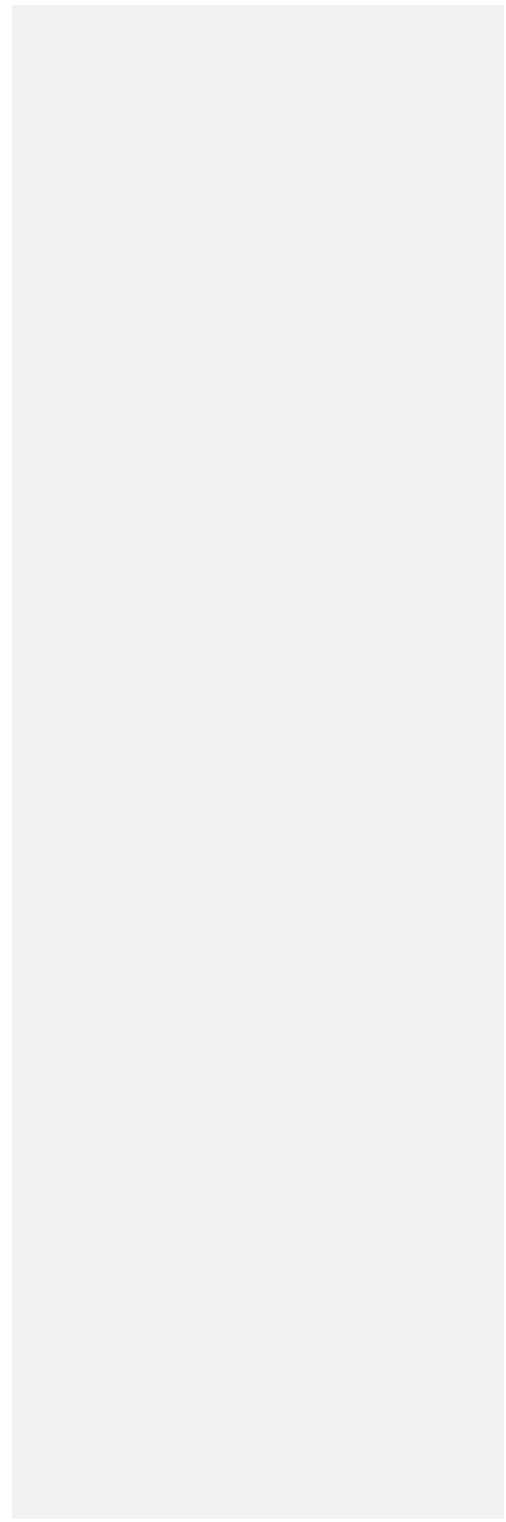
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THIS COMPREHENSIVE AGREEMENT ("Agreement") is entered into effective as of this third day of November 2023 (the "Effective Date"), by and between: **APPOMATTOX COUNTY** ("Owner"), and **JAMERSON-LEWIS CONSTRUCTION, INC.** ("JLC"), a Virginia corporation ("**Operator**") of 1306 Stephenson Avenue, Lynchburg, Virginia 24501, a [STATE] corporation (" "), as guarantors of the performance of Operator.

Recitals:

R-1. On October 15, 2018, the Owner adopted procedures to implement the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 ("PPEA"), Va. Code 56-575.1, et seq., as amended.

R-2. The Owner subsequently released a Request for Proposals (RFP) on April 26, 2023, to solicit proposals for the Renovation and Adaptive Reuse of the 1890's Appomattox County Courthouse, a qualifying project (the "Project") pursuant to the PPEA.

R-3. The owner received one conceptual-phase proposal in response to the RFP and eventually invited the proposer to submit a detailed-phase proposal, which the proposer did. The Operator, as defined above, was this proposer.

R-4. The Owner determined in writing that proceeding with the procurement using competitive negotiation procedures was likely to be advantageous to the Owner and the public based upon probable scope, complexity, or urgency of the Project; risk sharing and added value to the Project; and economic benefit from the Project that would not otherwise be available if other procurement methods were employed.

R-5. The Owner subsequently conducted negotiations with the Operator, arriving at the terms and conditions of a proposed comprehensive agreement. Based upon the proposer's proposal, presentations and the negotiations, the Owner determined that the Project is a qualifying project that serves the public purpose of the PPEA under the criteria of Va. Code § 56-575.4(C) and would be in the public interest to pursue.

R-6. The Owner has selected the Operator for entry into a comprehensive agreement for the Project, and the Owner and Operator now wish to enter into this Comprehensive Agreement for the Project.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants hereinafter contained, and subject to the conditions herein set forth, the parties hereby covenant, agree, and bind themselves as follows:

ARTICLE I

DEFINITIONS

The following definitions apply to this Agreement:

- 1.1. **Architect - Engineer ("A-E")** means Operator's design professional Person responsible for the architectural and engineering services for the Project, including, without limitation, its design. Operator has proposed its A-E for the Project in its proposals to the Owner, and Operator shall use this A-E for the Project unless the Owner approves otherwise in writing.
- 1.2. **Change** means any addition to, deletion from, or modification of the Project or the Services that is made in accordance with the provisions of this Agreement. A Change may be made by a written Change Order if Owner and Operator agree as to adjustments to the CCL or GMP, as applicable, and schedule, or unilaterally by the Owner by a written Change Directive, with any adjustments to the CCL or GMP, as applicable, and schedule, to be determined subsequently pursuant to Article XVII of this Agreement.
- 1.3. **Change Directive** means a written order by the Owner, specifically identified as a Change Directive, directing a Change.
- 1.4. **Change Order** means a Change made by a written agreement in which the Owner and Operator have indicated agreement as to the Change and adjustments to price and schedule due to the Change and have evidenced their agreement by executing the written agreement.
- 1.5. **Codes and Standards** means all local, state and federal regulations, ordinances, codes, laws, or requirements applicable to the Project, including, without limitation, the Virginia Uniform Statewide Building Code.
- 1.6. **Contract Cost Limit ("CCL")** means the initial limit established at the time of execution of this Agreement on total amounts payable to the Operator under this Agreement absent a Change pursuant to this Agreement.
- 1.7. **Contract Documents** means the following listed in their order of precedence:
 - (a) Any written modifications to this Comprehensive Agreement made in accordance with this Comprehensive Agreement;
 - (b) This Comprehensive Agreement, including all exhibits thereto;
 - (c) Any written Change Orders made in accordance with this Agreement;
 - (d) Any written Change Directives issued in accordance with this Agreement;
 - (e) The Construction Documents, which are the final Plans and Specifications that are approved by the Owner, Architect, and Operator;
 - (f) Plans and Specifications that are approved by the Owner, A-E, and Operator.
 - (g) Documents incorporated by reference by this Agreement;
 - (h) Operator's Detailed-Phase Proposal; and
 - (i) Operator's Conceptual-Phase Proposal.
- 1.8. **Contractor or Prime Construction Contractor** means the entity to which the Operator subcontracts the construction work portion of its responsibilities under the Agreement. If Operator acts itself as the prime contractor for construction work on the Project, then Contractor or Prime Construction Contractor means the Operator. Operator has proposed its Contractor for the Project in its proposals to the Owner, and Operator shall use this Contractor for the Project unless the Owner approves otherwise in writing.
- 1.9. **Day** means a calendar day, and "days" mean calendar days, unless the contrary is expressly indicated.
- 1.10. **Draw Schedule** means the schedule attached hereto as Exhibit D to be used as a basis for payment of the Fixed Fees component of payments to Operator, setting forth the anticipated completion date of the various components of the Project and the value assigned to those different components.
- 1.11. **Fixed Fees** mean the amounts payable to the Operator as specified in Section 5.4 for the Services in addition to Reimbursable Costs.
- 1.12. **Final Completion of Work, Final Completion or final completion** means completion in conformance with this Agreement, the Construction Documents, and other Contract Documents of all of the work required by this Agreement, including without limitation, punch list items, but not including warranty items.
- 1.13. **Guaranteed Maximum Price ("GMP")** means the amount less than the CCL established following design as the maximum amount payable to the Operator absent a Change.
- 1.14. **Land** means the real property described in Exhibit A hereto.
- 1.15. **Operator** means Jamerson-Lewis Construction, Inc.
- 1.16. **Owner** means Appomattox County Board of Supervisors. The parties understand that the plan of finance for the Project may call for use of lease revenue bonds, with the Land to be leased through a ground lease to finance construction of the Project and with the lease of completed facilities back to the Owner. Despite the plan of finance, the Owner shall nonetheless be considered the Owner for purposes of this Agreement because it will be the ultimate user of the facilities and because the parties contemplate that the lessor of any ground lease will delegate or assign its duties during construction as nominal owner of the new facilities to the Owner.
- 1.17. **Owner's Representative** means that individual designated by the Owner in writing to perform the functions of Owner's Representative specified in this Agreement.
- 1.18. **Person** means any individual, partnership, joint venture, association, joint-stock company, corporation, limited liability company, trust, unincorporated organization, government or any agency or political subdivision thereof.
- 1.19. **Plans and Specifications** mean the surveys, plans and specifications that Operator causes to be prepared for the Project that are approved by the Owner, A-E, and Operator.
- 1.20. **Project** means Additions and Renovations to the 1892 former Appomattox County Courthouse to include 1,220 SF of Building Additions and 2,700 SF of Building Renovations. Additions will provide an Entry Vestibule, Egress Stair, Two-story Elevator, and Utility Space. Renovations will include all new HVAC, Electrical and Plumbing Systems; new Finishes; and Accessories to adapt the space into a new Board of Supervisors Meeting Room (hereinafter collectively referred to as the "Project"). The Project shall be designed and constructed by Operator on the Land in accordance with the Construction Documents and the terms of this Agreement, and any related upgrades ordered by Change or Change Order.

- 1.21. **Project Schedule** means the schedule for construction of the Project, which, in its initial version, is set forth in Exhibit E attached hereto.
- 1.22. **Punch List Items** means a list of items of work to be completed and deficiencies to be corrected, identified by the Owner's Representative or A-E, that do not affect the attainment of Substantial Completion. If the Owner's Representative and A-E do not agree as to an item or items, any such items not agreed upon shall be considered a punch list item until a contrary determination is made pursuant to Article XVII of this Agreement. Such items must be complete before Final Completion can take place.
- 1.23. **Reimbursable Costs** mean the amounts payable to the Operator as specified in Section 5.3 for the Services in addition to the Fixed Fees.
- 1.24. **Requisition** means an application for payment in the form attached as Exhibit F.
- 1.25. **Scope of Work** means all the work for the Project to be provided by Operator within the CCL and GMP, except as modified by any Change.
- 1.26. **Services** means all pre-construction and development services and all architectural and engineering design, procurement and construction services related to the Project furnished by Operator, including, without limitation, all labor, services, materials and facilities, and all other things that are required to provide for the development of the site and the design, construction and equipping of the Project.
- 1.27. **Substantial Completion** means the date determined by inspection by the Owner's Representative and A-E that construction of the Project is so sufficiently complete in accordance with the Construction Documents, including occupancy permit, that it may be utilized for its intended use, including that the Project is ready to accept move-in by the Owner and all life/safety items are operational.

ARTICLE II

GENERAL DESCRIPTION, TERM OF AGREEMENT, AND OPERATOR'S STATUS AS INDEPENDENT CONTRACTOR

2.1. GENERAL DESCRIPTION.

Under this Agreement, Operator will be providing to the Owner, site design and development services, design services, and construction services for the Project. Operator will be providing these services as a design-builder. Operator generally will be compensated its Reimbursable Costs plus Fixed Fees subject to the terms of this Agreement but will be responsible for ensuring that the total cost of the Project to Owner does not exceed the Contract Cost Limit ("CCL") established by this Agreement. Pursuant to this Agreement, Operator will develop a design in order to arrive at a Guaranteed Maximum Price (GMP) for the Project that will not exceed the CCL except to the extent adjusted pursuant to this Agreement. Operator will be responsible for completing the Project so that payments by Owner will not exceed the GMP, as adjusted by this Agreement, even if the costs to Operator do so exceed the GMP. Savings below the GMP will be divided between the Owner and Operator in accordance with the terms of this Agreement. Because this is a design-build project, Owner makes no warranty to Operator, express or implied, regarding any design for the Project. Rather Operator and its A-E warrant that all design and design services meet the highest standard of care in Virginia for the applicable design professional providing such design or services.

2.2. TERM OF AGREEMENT.

This Agreement begins on the Effective Date indicated at the beginning of the Agreement, which is the date of approval by the Appomattox County Board of Supervisors of this Agreement, and continues until its termination pursuant to Article XVIII or until all obligations under this Agreement have been performed.

2.3. INDEPENDENT CONTRACTOR.

For all purposes hereunder, Operator is an independent contractor and shall not be deemed an agent, employee or partner of the Owner.

2.4. SUBCONTRACTORS.

Operator may subcontract any portion of the Services to be performed hereunder, but Operator shall not thereby be relieved of any of its obligations set forth herein. Operator may subcontract the construction work to a contractor ("Contractor" or "Prime Construction Contractor"). Operator shall use the Prime Construction Contractor proposed in its proposals unless the Owner, in its sole discretion, approves otherwise in writing. Operator shall furnish to the Owner's Representative for its information not later than ten (10) days before the date scheduled for issuance of the notice to proceed with construction, a list of all Persons being considered to be subcontractors to the Prime Construction Contractor. The Owner's Representative shall, within five business (5) days of receipt of this list, notify Operator in writing if it has any objection to any such subcontractor. A failure to notify Operator within this five-day period shall not waive the right of the Owner's Representative to later object to any proposed subcontractor for cause. The receipt of such list shall not require the Owner's Representative to investigate the qualifications of any listed subcontractor. Prior to performing any Work on the Project, the Contractor and subcontractors shall provide copies of their current licenses to the Owner's Representative.

ARTICLE III

THE WORK

3.1. WORK/SPECIFICATIONS.

- a. The Operator shall furnish the necessary personnel, material, equipment, services, and facilities (except as otherwise specified) to perform the Project in a workmanlike manner and within the Project Schedule.
- b. The Owner shall have the right to add to the Scope of Work to be performed under this Agreement, including, without limitation, work to be performed at the Land or other Owner facilities, and Operator agrees to perform such work, subject to issuance of a Change Directive or a Change Order for such work. Operator agrees to promptly meet and confer with the Owner regarding added scope of work proposed by Owner.

3.2. CONDITIONS AFFECTING THE WORK.

- a. The Operator is responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions that can affect the work or its costs, including, but not limited to available parking and staging areas and existing building materials and components. Any failure by the Operator to reasonably ascertain the conditions affecting the work does not relieve the Operator from responsibility for successfully performing the work without additional expense to the Owner. The Owner assumes no responsibility for any representations concerning conditions made by any of its officers, employees or agents before execution of this Agreement unless such representations are expressly stated in the Agreement.
- b. Owner has furnished Operator copies of the following reports about which Owner makes no representation or warranty regarding their accuracy:

(1)

Commented [TL1]: What reports do we have?

2)

3.3. INTERPRETATION OF CONTRACT DOCUMENTS.

- a. The Contract Documents are intended to be complementary and to be interpreted in harmony to avoid conflict if this can reasonably be accomplished.
- b. The following rules regarding correlation and intent of the Contract Documents are first to be employed in the event of any inconsistency, conflict, or ambiguity: (1) Anything mentioned in the Specifications and not shown on the Plans, or shown on the Plans and not mentioned in the Specifications, is of like effect as if shown or mentioned in both; (2) In case of conflicts between Plans and Specifications, the Specifications will govern; (3) In case of a difference between small and large-scale drawings, the large-scale drawings will govern; (4) Schedules on any contract drawing take precedence over conflicting information on that or any other contract drawing; (5) On any of the drawings in which a portion of the work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out will apply also to all other like portions of the work.
- c. If, despite application of the rules in 3.3b, an inconsistency, conflict, or ambiguity still exists between or among the Contract Documents that cannot be reasonably harmonized, then precedence shall be given to the Contract Documents in the order in which they are enumerated in paragraph 1.7. of this Agreement.

ARTICLE IV

PROJECT DEVELOPMENT

DESIGN AND CONSTRUCTION.

The Operator shall be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, plans, specifications, and other services furnished by the Operator under this Agreement.

4.2. DRAWINGS AND SPECIFICATIONS.

Based upon the Scope of Work and/or requirements furnished by the Owner in writing and included herein, the Operator shall prepare the complete contract working plans and specifications. All design submissions for this Project shall be made in both paper drawing/document form and CADD electronic file form. The minimum scale for building drawings shall be 1/8 inch = 1 foot except for small scale drawings of the floor plan of the entire building with space tabulation. Design submissions shall be made as outlined below. The Owner review and/or approval period shall be in accordance with the Project Schedule Milestones (see Exhibit E), but not less than ten business (10) days for each of the following submissions.

a. 10% Schematic Design Development Submission:

Following a kick-off meeting, the Operator shall prepare a 10% Schematic Design submission in accordance with Exhibit K. Operator shall submit the 10% Schematic Design submission to the Owner for review and approval in accordance with the Project Schedule shown in Exhibit E. The Owner review period will be in accordance with the Project Schedule shown in Exhibit E.

b. 35% Design Development Submission:

Following receipt of Owner's approval of the 10% Schematic Design submission, the Operator shall prepare a 35% Design Development submission in accordance with Exhibit K. Operator shall submit the 35% Design Development submission to the Owner for review and approval in accordance with the Project Schedule shown in Exhibit E. It is understood that the Owner has the option in its sole discretion to perform a value engineering study during this period. The 65% Construction Documents submission shall reflect value engineering revisions directed by the Owner at no additional cost to Owner. The Owner review period will be in accordance with the Project Schedule shown in Exhibit E.

c. 65% Construction Documents Submission:

Following receipt of Owner's approval of the 35% Design Development submission, the Operator shall prepare a 65% Construction Documents submission in accordance with Exhibit K. Operator shall submit the 65% Construction Documents submission to the Owner for review and approval in accordance with the Project Schedule shown in Exhibit E. On an exception basis, intermediate submissions may be provided for the design of foundations, structural steel and other items or systems requiring either advance procurement or construction start prior to the completion of the overall design in accordance with the approved schedule. The Owner review period will be in accordance with the Project Schedule shown in Exhibit E.

d. 95% Construction Documents Submission:

Following receipt of Owner's approval of the 65% Construction Documents submission, the Operator shall prepare a 95% Construction Documents submission in accordance with Exhibit K. Operator shall submit the 95% Construction Documents submission to the Owner for review and approval in accordance with the Project Schedule shown in Exhibit E. On an exception basis, intermediate submissions may be provided for the design of foundations, structural steel and other items or systems requiring either advance procurement or construction start prior to the completion of the overall design in accordance with the approved schedule. The Owner review period will be in accordance with the Project Schedule shown in Exhibit E.

e. 100% Construction Documents Submission:

Following receipt of Owner's approval of the 95% Construction Documents submission, the Operator shall prepare a 100% Construction Documents submission in accordance with Exhibit K. Operator shall submit the 100% Construction Documents submission to the Owner for review and approval in accordance with the Project Schedule shown in Exhibit E. On an exception basis, intermediate submissions may be provided for the design of foundations, structural steel and other items or systems requiring either advance procurement or construction start prior to the

completion of the overall design in accordance with the approved schedule. The Owner review period will be in accordance with the Project Schedule shown in Exhibit E.

4.3. CONSTRUCTION.

With Owner's prior agreement in writing, and subject to imposition by Owner of reasonable conditions to assure a satisfactory Guaranteed Maximum Price (GMP) for the Project, construction may be allowed to commence in accordance with the Project Schedule prior to the Owner's Representative's approval of all of the Construction Documents. Where phased/fast track construction is proposed prior to overall final approval, plans and specifications covering the system or components covered by that phase must be approved by the Owner's Representative prior to the start of construction of that phase.

ARTICLE V

PRICES AND SHARED SAVINGS

5.1. PRICES.

The Operator must provide all work called for under this Agreement, including furnishing all material, services, labor and equipment to perform the Services for the prices as indicated in Exhibit G.

5.2. Contract Cost Limit ("CCL")

- a. A Contract Cost Limit (CCL) has been agreed to by the parties, the amount of which is stated in Exhibit G. The CCL is the maximum amount payable to Operator and is a cap on Operator's compensation, which is the sum of Reimbursable Costs (see Section 5.3) and Fixed Fees (see Section 5.4) payable to complete the Scope of Work. As the design is refined, a Guaranteed Maximum Price (GMP) will be established that will be less than the CCL unless Owner directs a Change to the Scope of Work.
- b. The Operator shall develop 35% Design Development drawings and specifications in accordance with Article IV in order to arrive at a Guaranteed Maximum Price (GMP) that will be less than the CCL.

5.3. REIMBURSABLE COSTS

- a. Subject to the limitation that payments to Operator shall not exceed CCL or the GMP, as applicable, Owner will reimburse Operator for all the following costs for the Project:
 1. Prime Construction Contractor materials, supplies, and equipment either incorporated directly into the construction on the Project or required to accomplish a construction activity on the Project including equipment rental, transportation, and storage.
 2. Prime Construction Contractor Labor: Labor costs for personnel performing labor at the Project site. Labor costs include hourly rates with all fringe benefits and taxes required by law and applicable contracts in force between the Contractor and its employees.
 3. Subcontractor costs for work on items directly related to and/or incorporated into the finished construction for the Project. The term "subcontracts" includes purchase orders. Operator shall conduct the subcontractor bid process on an "open book" basis, and shall allow the Owner's Representative to observe the receipt and analysis of all bids. Operator shall cause the Prime Construction Contractor to invite at least six (6) bidders, if practical, and endeavor to receive price quotations from at least three (3) firms for all subcontracts for, but not limited to, equipment, equipment rentals, materials, labor contracts, any other supplies or services, where the quotations are expected to exceed or actually exceed \$50,000, unless otherwise authorized by the Owner's Representative. The Owner's Representative may recommend additional subcontractor bidders to Operator. Operator shall furnish copies of quotations to the Owner's Representative for review prior to award. It is not required that the award be made to the lowest offeror, but shall be made on the basis of best value. Copies of all subcontracts, including all modifications and/or revisions will be furnished to the Owner's Representative within five business days from issuance. Operator may select certain subcontractors without going through the bid process as required above if it first obtains Owner's written consent, which may be withheld in Owner's discretion.
 4. Other Project-related direct costs that may be reimbursed under this Agreement include, but are not limited to, the following: Contractor direct expenses; legal, insurance and accounting (project related); general conditions, payment and performance bonds, taxes including gross receipts tax, permits, utility availability, relocation and usage costs, "on site construction" supervision, quality control, safety, training, engineering/layout, fire protection, cleanup, field office equipment and operation, but not including expenses incurred prior to the Effective Date of this Agreement. All such costs must be directly and verifiably attributable to the Project.
 5. Because the Owner is a local government entity, it can purchase certain supplies and materials at a lower cost. As such, the Owner may order directly any materials, supplies, and equipment needed for the project. Any such purchases will be paid by the Owner and the payment by the Owner shall be a credit to the reimbursable costs of the project. Owner and the Operator shall work in good faith to determine which materials, supplies and equipment should be ordered directly by Owner.
- b. Owner will not reimburse Operator for the following costs:
 1. Prime Construction Contractor costs *not* associated with personnel assigned to the Project are considered to be indirect costs that are included as part of the Fixed Fees and are not Reimbursable Costs. Examples of indirect costs that are not Reimbursable Costs include, but are not limited to: bonuses to senior executives, travel by company executives or officers, and personnel whose services and/or responsibilities include multiple projects, e.g., accounting, home office estimating, and purchasing personnel. Additionally, costs for repairs and maintenance of Contractor-owned equipment (including by any subsidiary or affiliated companies) or rental equipment are not Reimbursable Costs. Repair costs and costs of routine maintenance of rental equipment are to be included in the rental price.
 2. Public relations and advertising, bad debts, contributions and donations, dividends or payments of profits, entertainment, fines or penalties, life insurance for officers, partners, or proprietors, interest on loans, lobbying, losses on other contracts, income taxes, proposal preparation costs and legal costs involving disputes with the Owner.
 3. Costs incurred prior to the Effective Date of this Agreement.

5.4. FIXED FEES

The Owner shall pay the Operator Fixed Fees, which consist of the architecture and engineering fees, development fees and expenses, and general contracting fees stated in Exhibit G. The Fixed Fees include all compensation payable by Owner to Operator beyond Reimbursable Costs for the Services and are intended to compensate for the Operator's and Prime Construction Contractor's home office support, overhead costs, and profit for the

Project and for all design professional services. The Fixed Fees will not vary with either the estimated cost or actual cost of construction of the Project except as expressly allowed in this Section 5.4. The components of the Fixed Fees in a. through c. below will be increased when an agreed upon Change in the Project results in a significant increase in the direct costs, such as an increase in engineering man-hours, or increased insurance costs. The Fixed Fees will not be reduced unless the Owner requires an equitable reduction in the Fixed Fees for any Change that reduces the Scope of Work.

- a. Operator's Fees and Expenses: This component of the Fixed Fees includes all labor and material costs and fee to manage the development and construction process including, without limitation, management of the design, construction, and permitting, and to prepare the Guaranteed Maximum Price. This component of the Fixed Fees covers all work in connection with development activities.
- b. Architect-Engineer (A-E) Fees and Expenses for Services for Design, Construction Documents and During Construction: This component of the Fixed Fees covers the design and preparation of Schematic Design, Design Development and Construction Documents. This component of the Fixed Fees also covers construction administration by the A-E and includes, but is not limited to, review of shop drawings and samples, field interpretation of Construction Documents, preparation of required clarification drawings, and participation in quality control activities.
- c. General Contractor Fee during Construction: This component of the Fixed Fees covers profit on construction plus home office support (including Project Manager, Project Engineer, Estimator, and Purchasing) and overhead costs.

5.5. GUARANTEED MAXIMUM PRICE.

- a. A Guaranteed Maximum Price (GMP) shall be established by the parties for the Project *at the time of approval of the 35% Design Development submission* and prior to commencement of construction. The GMP is the maximum sum that the Owner shall pay to the Operator in total for this Project, except as otherwise provided in this Comprehensive Agreement. It includes all the Reimbursable Costs as defined in Section 5.3 that will be payable to Operator and all Fixed Fees as defined in Section 5.4 that will be payable to Operator.
- b. If at any time during construction it becomes apparent that the final Reimbursable Costs and Fixed Fees will exceed the GMP, the Operator shall immediately notify the Owner's Representative and advise him/her of the action it proposes to take to reduce costs.
- c. All proposed revisions or changes to the approved Plans and Specifications must be submitted to the Owner's Representative for review and approval for conformance with the approved design development plans and specifications, regardless of whether or not they affect the GMP. Owner's review and approval shall be not be unreasonably conditioned, delayed or withheld.
- d. Operator shall ensure that the GMP is less than the CCL.
- e. No payment shall be made to Operator in excess of the GMP except as adjusted for any agreed upon Changes made in accordance with this Agreement. The Operator shall be wholly responsible to complete the Project at no compensation above the GMP as adjusted for any Changes made in accordance with this Agreement.

5.6. CHANGE IN FIXED FEES COMPONENT RELATING TO SERVICES FOR MODIFICATION OF DESIGN.

For Changes, the Operator shall, upon the written request of the Owner's Representative, make the necessary design drawing and specification revisions; prepare and issue requests for proposal describing the modifications; prepare estimates, drawings and specifications as required; evaluate proposals and make recommendations to the Owner's Representative. The amounts payable by Owner for services under this paragraph will be negotiated, and if the amount payable cannot be agreed upon, will be based upon the rates indicated in Exhibit I hereto and a determination of a reasonable amount of time to complete such services.

5.7. SHARE IN SAVINGS.

If the final Project Reimbursable Costs plus Fixed Fees, as presented by Operator within sixty (60) days after Final Completion and then reviewed and audited by the Owner, are less than the GMP, as adjusted for any changes made in accordance with this Agreement, then savings represented by the difference shall be shared on the following basis: 25% to the Operator and 75% to the Owner.

ARTICLE VI

SAMPLES

6.1. SAMPLE APPROVAL.

After issuance of the notice to proceed with construction, the Operator shall furnish to the Owner's Representative samples required by the specifications or by the Owner's Representative, for the Owner Representative's approval. The Owner's review and approval shall not be unreasonably withheld, conditioned, or delayed and shall be made in a time frame so as not to delay the Operator or Contractor. Samples shall be delivered to the Owner's Representative as specified or as directed. The Operator shall prepay all shipping charges on samples. Materials or equipment for which samples are required may not be used in the work until the Owner's Representative approves them in writing. Approval of a sample is only for the characteristics or use named in the approval and may not be construed to change or modify any requirement of the Contract Documents. Substitutions are not permitted unless approved in writing by the Owner's Representative.

6.2. LABELS.

Each sample must be labeled to show:

- a. Name of Project building or facility, Project title, and contract number;
- b. Name of Operator and (if appropriate) Prime Construction Contractor and subcontractor;
- c. Identification of material or equipment, with specification requirement;
- d. Place of origin; and
- e. Name of producer and brand (if any).

6.3. MARKINGS.

Samples of finish materials must have additional markings that will identify them under the finish schedules.

6.4. COVER LETTER.

The Operator shall mail under separate cover a letter, in triplicate, submitting each shipment of samples and containing the information required in Sections 6.2 and 6.3 above. The Operator shall also enclose a copy of that letter with the shipment and send a copy to the Owner's Representative on the Project.

6.5. USE OF SAMPLES.

Approved samples not destroyed in testing will be sent to the Owner's Representative at the Project. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment incorporated in the work must match the approved samples. Samples not destroyed in testing and not approved will be returned at the Operator's expense if the Operator so requests in writing at the time of submission.

6.6. FAILURE.

Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this Agreement, any further samples of the same brand or make of that material. The Owner reserves the right to disapprove any material or equipment that has previously proved unsatisfactory as determined in Owner's sole discretion in service.

6.7. TESTING.

Samples of materials or equipment delivered on the site or in place may be taken by the Owner's Representative for testing. Failure of a sample to meet the requirements of the Contract Documents may void previous approvals of the item tested. The Operator shall replace materials or equipment found not to have met requirements of the Contract Documents, unless Owner, in its sole discretion, elects to accept an equitable downward adjustment to the GMP in lieu of such replacement.

6.8 COST OF TESTING.

The Operator shall pay for all costs of construction testing, including sampling, field tests, laboratory tests, inspection services to verify soil classifications, moisture density of soils, observation of subgrades to receive compacted structural fill for building and pavement support, observation of pavement subgrades to receive compacted base course material, observation of fill placement and field density testing, observation of footing subgrades to evaluate suitable bearing, observation of concrete pours, field concrete slump testing, air content testing, molding of concrete cylinders, laboratory curing and compression testing of concrete, observation of steel installation, ultra-sonic testing of steel moment connections, steel weld testing. The Operator shall provide written reports of observations, recommendations, and testing activities as the project progresses. Written report will be made on a biweekly basis to the Owner. All tests pertaining to physical or chemical properties of materials must be made in a laboratory approved by the Owner's Representative. The Operator shall include all applicable tests required by ASTM in the specifications. The specifications will also include all tests and inspections required by Codes and Standards.

The Owner will pay for the costs of any other tests deemed necessary, and related engineering services, unless the tests indicate that the workmanship or materials used by the Operator are not in conformance with the Construction Documents, approved shop drawings, or the approved materials. In this event, the Operator shall pay for the tests, remove all work and material failing to conform, and replace with work and materials in full conformity, without additional cost to the Owner.

6.9 INVENTORY OF SAMPLES.

The Operator shall maintain an inventory of all approved samples until final inspection of the Project. Such samples shall be available to Owner for additional viewing, inspection and testing, as deemed necessary by Owner, at all times.

ARTICLE VII

MEASUREMENTS, DRAWINGS, SPECIFICATIONS

7.1. REQUIREMENT FOR VERIFICATION OF MEASUREMENTS/ON SITE DOCUMENTS.

- a. The Operator shall keep at the site copies of all drawings and specifications related to the Contract Documents and shall at all time give the Owner's Representative and designated representative access to them.
- b. When the word "similar" appears on the drawings, it has a general meaning and must not be interpreted as meaning identical, and all details must be worked out in relation to their location and connection with other parts of the work.
- c. In case of discrepancy either in figures, drawings, or specifications, the matter must be promptly submitted to A-E, who shall provide a determination in writing, for approval by the Owner's Representative in writing. Any adjustment by the Operator without such approval will be at the Operator's own risk and expense. The Operator shall furnish from time to time such detailed drawings and other information as may be deemed reasonably necessary by Owner's Representative.
- d. The Operator shall verify all dimensions shown of existing work, and all dimensions required for work that is to connect with work now in place, by actual measurement of the existing work. Any discrepancies between the requirements of the Contract Documents and the existing conditions shall be referred to the Owner's Representative for a determination in writing before the Operator performs any work affected by these discrepancies.

7.2. DRAWINGS AND SPECIFICATIONS REQUIREMENTS.

The following requirements apply to Operator's responsibility to cause the Plans and Specifications to be prepared:

- a. Required technical specifications shall be prepared in accordance with the highest industry standards. Specifications must be complete, concise, and free of repetition and ambiguity. Care must be exercised to avoid specifying the same work in more than one section and to avoid duplication or conflict with the general provisions, special provisions, and the drawings.
- b. The specifications shall be submitted on 8-1/2"x11" sheets.
- c. If guide specifications are not furnished, typical specifications developed and used by the A-E in general practice consistent with the highest industry standards shall be used in preparing contract specifications. The CSI Format for Construction Specifications, CSI Document MP-2A, shall be used in the arrangement of Project specifications.
- d. Testing to establish compliance with the Contract Documents for critical items or critical portions of the work shall be specified as the Operator's responsibility. Testing shall be consistent with that required under standard commercial practices. Any testing requirements specified do not limit the Owner from having additional testing and inspection performed in Owner's discretion.
- e. Submittals such as shop drawings, samples, and certificates shall be specified as necessary to establish compliance with the Contract Documents for critical portions of the work. The Operator should not require submittals for minor commercial items or for items of marginal value. The Operator shall include in the mechanical and electrical sections the extent of a manufacturer's literature, rating data, performance curves, spare part lists, and shop drawings that must be furnished for review and approval before procurement.

- f. The specifications shall require the Operator to make field tests of heating and air conditioning systems to demonstrate that the equipment will perform as required. The results of the tests are to be submitted before the final inspection. Manufacturer's representatives may be required for inspection, start-up, and instructions in the operation and maintenance of equipment and the Operator shall ensure their presence for such purposes if requested by the Owner.
- g. The specifications shall require that the Operator furnish manufacturer's manuals, spare parts lists, diagrams, instructions, performance data, curves, and shop drawings as approved for major items of equipment to be installed in the work.
- h. All required drawings shall be prepared and furnished as reproducible tracings. All final drawings must be 8-1/2"x11, 11"x17," 18"x24," 24"x36," or 30"x42," trim-to-trim, with Owner title block, graphic scale, and metric conversion table. Drawing methods and quality must permit satisfactory, clear, and legible one-half (1/2) size reproduction. Lettering on the drawings will not be smaller in height than .12 (1/8) inch freehand or .10 inch mechanical.
- i. All final drawings shall be detailed working drawings as necessary for efficient execution of the construction work. They must conform with the above general requirements and the requirements previously stated. All original drawings must be prepared at an adequate scale to properly present the design data development including detailed features. Drawing scales for buildings or structures smaller than 1/8-inch = 1'-0" are not permitted without prior written approval of the Owner's Representative.
- j. The electrical design must be separated into two plans when necessary to avoid congestion: one devoted to the power, receptacle, telephone, fire alarm and intercommunication systems, and the other to lighting. Similarly, the plumbing and heating/air conditioning must be separated when necessary to avoid congestion. A minimum scale of 1/4-inch = 1'-0" must be used for all details of areas of congestion such as mechanical rooms, toilet rooms, and the like, and as may otherwise be reasonably designated by the Owner's Representative. Drawing scale for site, utility, or other related work (work outside the five foot building line), including details (engineer's) must clearly and adequately reflect the design data developed. Drawings must be organized and provide appropriate details of the site work (layout, grading, paving, and drainage) and the utilities (water, sewer, gas, power, and communications) separate from the building and/or structure drawings.
- k. All design submissions prepared using CADD support shall be accompanied by electronic files of the submission in AutoCad.
- l. Any discrepancies in figures, drawings, specifications, or submittals shall be promptly resolved by the Operator. Copies of all Requests For Information (RFI) or other correspondence, including confirmations of verbal instructions between the A-E and the Prime Construction Contractor or the Operator required to resolve deficiencies, shall be furnished to the Owner's Representative.

7.3. SHOP DRAWINGS, COORDINATION DRAWINGS, AND SCHEDULES.

- a. The Operator shall submit to the Owner's Representative, in triplicate, a schedule listing all items that will be furnished for review and approval no later than thirty (30) days after final approval of Plans and Specifications. For example, the schedule must include shop drawings and manufacturer's literature, test procedures, test results, certificates of compliance, material samples, and special guarantees, etc. The schedule must indicate the type of item, contract requirement reference, the Operator's scheduled date for submitting the above items, identification of the first scheduled activity and projected needs for approval answers to support procurement or installation. In preparing the schedule, reasonable time will be allowed for review, approval, and possible re-submittal. Also, the scheduling shall be coordinated with the approved construction progress chart. The Operator must revise and/or update the schedule as the Owner's Representative reasonably directs. Such revised schedule must be made available to the Owner's Representative for monitoring.
- b. The Operator shall submit to the Owner's Representative shop drawings, coordination drawings, and schedules for approval as required by the specifications or requested by the Owner's Representative, as follows:
 - 1. Shop drawings shall include fabrication, erection, and setting drawings, schedule drawings, manufacturer's scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.
 - 2. Drawings and schedules, other than catalogs, pamphlets and similar printed material, shall be reviewed, signed and submitted in reproducible form with three prints made by a process approved by the Owner's Representative. Upon approval, the reproducible form will be returned to the Operator who shall furnish the number of additional prints, not to exceed ten. The Operator shall submit shop drawings in catalog, pamphlet, and similar printed form in a minimum of four copies plus as many additional copies as the Operator may desire or need for the use of subcontractors.
- c. Before submitting shop drawings on the mechanical and electrical work, the Operator shall obtain the Owner's Representative's written approval of lists of mechanical and electrical equipment and materials as required by the specifications.
- d. The Operator must check the drawings and schedules and coordinate them (by means of coordination drawings whenever required) with the work of all trades involved before submission, indicating approval on them. Drawings and schedules submitted without evidence of subcontractors/trades' approval may be returned for resubmission.
- e. Each shop drawing or coordination drawing must have a blank area 5 x 5 inches, located adjacent to the title block. The title block must display:
 - 1. Number and title of drawing;
 - 2. Date of drawing or revision;
 - 3. Name of Project building or facility;
 - 4. Name of Operator and, if appropriate, of Subcontractor submitting drawing;
 - 5. Clear identity of contents and location on the work; and
 - 6. Project title and contract number.
- f. Unless otherwise provided in this Agreement, or otherwise directed by the Owner's Representative, shop drawings, coordination drawings, and schedules must be submitted by Operator sufficiently in advance of construction requirements to permit ten (10) calendar days for checking and appropriate action. Such items shall be submitted to the Owner's Representative (2 copies) for review concurrently with the A-E's review.
- g. Except as otherwise provided in subparagraph h. below, approval of drawings and schedules will be general and may not be construed as:
 - 1. Permitting any departure from the requirements of the Contract Documents; or
 - 2. Relieving the Operator of responsibility for any errors, including details, dimensions, and materials.
- h. If drawings or schedules show variations from the requirements of the Contract Documents because of standard shop practice or for other reasons, the Operator must describe the variation in the letter of transmittal. If acceptable, the Owner's Representative may approve any or all variations and

issue an appropriate Change Order. If the Operator fails to describe these variations, it is not relieved of the responsibility for executing the work in accordance with the Contract Documents, even though the drawings or schedules have been approved.

- i. Shop drawings, samples, color schedules, catalog cuts, construction schedule, etc. submitted to Owner's Representative must first be reviewed by the A-E to verify compliance with the Construction Documents. The Owner's Representative reserves the right to review building shop drawings, and formwork and falsework drawings. Such submittals shall be only in response to a specific request by the Owner's Representative.
- j. The Operator shall prepare and submit equipment room layout drawings and drawings of areas where the equipment proposed for use could present interface or space difficulties. Room layout drawings must conform to the requirements established for drawings. Layouts must be submitted within forty (40) calendar days of completion of final construction drawings. Submittals describing the various mechanical and electrical equipment items which are to be installed in the areas represented by the layout drawings must be assembled and submitted concurrently and accompanied by the room layout drawings. Room layout drawings must show all pertinent structural and fenestration features and other items such as cabinets required for installation and which will affect the available space. All mechanical and electrical equipment and accessories must be shown in scale in plan and also in elevation and/or section in their installed locations. Duct work and piping also must be shown.
- k. All shop drawings, ductwork drawings, and sprinkler drawings must be on 30" by 42" sheets to fit the size of the Project drawings.
- l. At the completion of the Project, updated ductwork drawings and sprinkler drawings must be submitted as part of the "As-Built" drawings submission.
- m. All certificates required for demonstrating proof of compliance of materials with specification requirements, including mill certificates, statements of application, and extended warranties, must be executed in quadruplicate and furnished to the Owner's Representative. It is the Operator's responsibility to review all certificates to ensure compliance with the requirements of the Contract Documents and that all affidavits are properly executed prior to submission to the Owner's Representative. Each certificate must be signed by an official authorized to certify on behalf of the manufacturing company. Each certificate must contain the name and address of the manufacturer, the Project name and location, and the quantity and date(s) of shipment or delivery to which the certificate(s) apply. Copies of laboratory test reports submitted with certificates must contain the name and address of the testing laboratory and the date(s) of the tests to which the report applies. Certification shall not be construed as relieving the Operator from furnishing satisfactory material, if, after test(s) are performed on selected sample(s), the material is found not to meet the specified requirements.
- n. The A-E shall review and approve shop drawings and other items. All approvals must be in accordance with the terms of the Contract Documents. Processing will be accomplished in accordance with the following procedure:
 - 1. The Construction Contractor shall transmit reproducible copies of shop drawings etc. to the A-E for review. Information copies of the letter of transmittal, clearly identifying shop drawings, etc., shall be furnished to the Owner.
 - 2. As a result of the A-E's review, each submittal will be marked by the A-E as follows:
 - "A-Action": The fabrication, manufacture and/or construction may proceed providing the work is in compliance with the Contract Documents.
 - "B-Action": The fabrication, manufacture and/or construction may proceed providing the work is in compliance with the A-E's notations and the Contract Documents.
 - "C-Action": No work shall be fabricated, manufactured or constructed and a new submittal is required. No submittal marked "C-Action" shall be permitted on site.
 - (a) The Operator is responsible for obtaining prints of all "A-Action" and "B-Action" reproducible shop drawings and distributing them to the field and to the subcontractors. Concurrently, two (2) copies of each print shall be provided to the Owner.
 - (b) The Operator is responsible for obtaining copies of all "A-Action" and "B-Action" manufacturer's descriptive literature, literature, catalog cuts and brochures and distributing them to the Prime Construction Contractor. Concurrently, two (2) copies of each shall be provided to the Owner.
 - (c) The Operator is responsible for submitting new shop drawings, brochures and/or samples to replace all "C-Action" items and furnishing two (2) copies to the Owner.
 - 3. The Operator is responsible for maintaining the Shop Drawing Log. An updated copy of the Log shall be furnished to the Owner no less than monthly.

7.4. RECORD "AS BUILT" DRAWINGS.

- a. The Operator shall, during the progress of the work, keep a master set of prints on the job site on which is kept a complete, careful and neat record of all deviations from the Construction Documents made during the course of the work.
- b. The Operator shall provide the Owner with one, complete, reproducible set of the Construction Documents incorporating the revisions and changes made during construction up to acceptance of the facility. These updated plans and specifications shall reflect all changes to the Construction Documents to indicate the "As-Built" conditions, including revisions in site and building area tabulations. These drawings and specifications must be certified as to their correctness by the signature of the Operator and used in preparing a permanent set of "As-Built" drawings.
- c. In addition to reproducible submissions, the Operator must submit a CADD system electronic file for these "As Built" documents prepared with a CADD system compatible with the Owner CADD system identified by the Owner's Representative.
- d. The Owner reserves the right to review "As-Built" documents at any time during the Project.
- e. The Operator shall forward all "As-Built" drawings, specifications and photographs to the Owner's Representative not later than thirty (30) calendar days after Project completion.
- f. Costs associated with the preparation and completion of the "As-Built" drawings will not be paid to Operator by Owner until the As-Built drawings are approved by the Owner's Representative.

7.5. SPARE PARTS DATA.

- a. The Operator shall furnish spare-parts data for each different item of equipment furnished. The data must include a complete list of parts and supplies, with current unit prices and sources of supply; a list of parts and supplies that are either normally furnished at no extra cost with the purchase of the equipment, or specified to be furnished as part of the Contract Documents, and a list of additional items recommended by the manufacturer to ensure efficient operation for a period of 180 days at the particular installation.
- b. The foregoing does not relieve the Operator of any responsibilities under the guarantees specified.

ARTICLE VIII

Warranty

8.1. WARRANTIES.

The Operator warrants that all the work furnished as part of the Services is in accordance with the requirements of the Contract Documents, free from defect or inferior materials or equipment, and of such quality workmanship as to meet the highest standard of care in Virginia for the type of work performed, for a period of two years after the date of Substantial Completion or acceptance of the facility (whichever comes first), and, unless otherwise agreed by the Owner in writing, in Owner's sole discretion, all materials and equipment are new. Attached as Exhibit H is a list of extended warranties that Operator is providing or is assigning from manufacturers. All warranties provided or assigned by Operator shall be cumulative, so as to maximize Owner's warranty protection.

8.2. REPAIRS.

If, within the warranty period, the Owner's Representative finds that warranted work needs to be repaired or changed because the materials, equipment, or workmanship were inferior, defective, or not in accordance with the requirements of the Contract Documents, the Operator shall promptly, and without additional expense to the Owner:

- a. Place in a condition consistent with the warranties and satisfactory to the Owner all of the warranted work;
- b. Correct all damage to equipment, the site, the building, or its contents that is the result of such unsatisfactory work in a manner satisfactory to the Owner; and
- c. Correct any work, materials, or equipment disturbed in fulfilling the warranty in a manner satisfactory to the Owner; and
- d. Should the Operator fail to proceed promptly in accordance with the warranty, the Owner may have the work performed by others at the Operator's expense.

8.3 TRANSFER OF WARRANTIES.

The Operator shall obtain each transferable guarantee or warranty of equipment, materials, or installation that is furnished by any manufacturer or installer in the ordinary course of the business or trade. The Operator shall obtain and furnish to the Owner all information required to make any such guarantee or warranty legally binding and effective, and shall submit both the information and the guarantee or warranty to the Owner in sufficient time to permit the Owner to meet any time limit requirements specified in the guarantee or warranty or, if no time limit is specified, before completion and acceptance of all work under this Agreement.

8.4 NON-WAIVER.

Owner, by accepting any warranties or guarantees under this Agreement, does not waive any legal right or remedy that Owner otherwise may have for breach of this Agreement.

ARTICLE IX

INSURANCE, BONDS AND RISK

9.1 BONDS.

Operator shall provide payment and performance bonds for 100% of the constructed value of the Project. The bonds shall be provided when and to the extent the Operator has been given a notice to proceed with construction at the site. The bonds shall make the Owner obligee and shall be in a form acceptable to Owner and approved by the County Attorney. The sureties providing the bonds shall be rated A+ or AVIII or higher, approved by the Owner's Representative in writing, and authorized to do business in the Commonwealth of Virginia.

9.2 INSURANCE.

- a. During the term of this Agreement, the Operator must maintain as a Reimbursable Expense the insurance required by this Section 9.2. Insurance companies providing such insurance shall be licensed in Virginia and shall be rated at least A (financial strength) and IX (size) by A.M. Best. Policies shall include all terms and provisions normally included in a policy of the type specified. The Owner shall be included as an additional insured on the liability policies.
- b. The Operator must maintain and furnish evidence of workers' compensation, employers' liability insurance, and the following general public liability and automobile liability insurance:

GENERAL LIABILITY: Combined single limit per occurrence of \$1,000,000.
AUTOMOBILE LIABILITY: Combined single limit per occurrence of \$1,000,000.
- c. Each policy must include substantially the following provision: "It is a condition of this policy that the company furnishes written notice to the Owner thirty (30) days in advance of the effective date of any reduction in or cancellation of this policy."
- d. The Operator must furnish a certificate of insurance or, if required by the Owner's Representative, true copies of liability policies and manually countersigned endorsements of any changes. Insurance must be effective, and evidence of acceptable insurance furnished by Operator to Owner, before beginning performance under this Agreement. Evidence of renewal must be furnished not later than five days before a policy expires.
- e. The maintenance of insurance coverage as required by this Section 9.2 is a continuing obligation, and the lapse or termination of insurance coverage without replacement coverage being obtained will be grounds for termination for default.
- f. The Owner does not carry builder's risk insurance coverage. Operator, as a Reimbursable Expense, shall provide builder's risk insurance for 100% of the Project value and shall have Owner named as an additional insured. The Builder's Risk coverage shall include property in transit, on or off-premises, that will become part of the Project. The Builder's Risk coverage shall include any pre-existing portion of any building damaged as a result of the Project. Operator shall procure and maintain a builder's risk insurance policy on an "all risk", 100% replacement cost basis, until completion of the Project. The Operator agrees to endorse the policy with a manuscript endorsement eliminating the automatic termination of coverage in the event the building is occupied in whole or in part, or put to its intended use, or partially accepted by the Owner. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the Owner's interest in the building ceases, or the building is accepted and insured by the Owner. Cessation of the Builder's Risk coverage shall be affirmatively coordinated by Operator with the Owner.
- g. Operator shall be responsible for filing and settling of claims and liaison with insurance adjusters.

9.3 ERRORS AND OMISSIONS.

- a. The Operator must maintain Professional Liability insurance in the amount of \$ 1,000,000 for errors and omissions.
- b. Unless the Operator's policy is prepaid, non-cancelable, and issued for a period at least equal to the term of this Agreement on an occurrence basis, the Operator shall have the policy amended to include substantially the following provision: "It is a condition of this policy that the company furnish written notice to the Owner thirty (30) days in advance of the effective date of any reduction in or cancellation of this policy."
- c. The Operator shall furnish a certificate of insurance or, if required by the Owner's Representative, true copies of liability policies and manually countersigned endorsements of any changes. Insurance must be effective, and evidence of acceptable insurance furnished by Operator to Owner, before beginning performance under this Agreement. Evidence of renewal shall be furnished not later than five days before a policy expires.

9.4 INDEMNIFICATION.

The Operator shall hold harmless, defend and indemnify the Owner and its officers, boards and board members, agents, representatives, and employees from all claims, losses, damage, actions, causes of action, expenses, and/or liability regardless of the merit of same, including any related attorney fees, accountant fees, expert witness fees, consultant fees, court costs, per diem expenses, traveling and transportation expenses, or other such related costs resulting from, brought for, or on account of (i) any personal injury or property damage received or sustained by any person, persons or property growing out of, occurring, or attributable to any work performed under or related to this Agreement, to the extent resulting in whole or in part from negligent acts or omissions of the Operator, any Subcontractor, or any employee, agent, or representative of the Operator or any Subcontractor or anyone performing Work for the Project through them, (ii) any mechanics' or construction liens arising as a result of the Work, or (iii) any failure of the Project to comply with any applicable governmental laws, ordinances, rules and regulations.

9.5 BANKRUPTCY.

In the event the Operator enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Operator shall notify Owner's Representative. The notification shall be sent to ensure its receipt within five (5) days of the initiation of the bankruptcy proceedings. The notification shall include the date on which the bankruptcy petition was filed, the court in which the petition was filed, and a list of Project contracts for which final payment has not yet been made. This obligation remains in effect until final payment under this Agreement. If a surety upon any bond furnished in connection with this Agreement or any insurance carrier providing coverage in connection with this Agreement becomes insolvent, the Operator shall promptly replace the bond or insurance policy with one which is equivalent and acceptable to Owner.

9.6 GUARANTEES OF PERFORMANCE BY MEMBERS OF LIMITED LIABILITY COMPANY.

The members of Operator, if a limited liability company, by executing this Agreement, hereby jointly and severally guarantee **100% of all** the performance of Operator under this Agreement.

ARTICLE X

NOTICES TO PROCEED, COMMENCEMENT AND COMPLETION

10.1 INITIAL NOTICE TO PROCEED.

Execution of this Agreement by Owner constitutes Notice to Proceed with design and Construction Document preparation.

10.2 NOTICE TO PROCEED FOR CONSTRUCTION, PROSECUTION, AND COMPLETION OF WORK.

No construction work may be performed by or through Operator except pursuant to a Notice to Proceed with construction issued by the Owner's Representative. The Operator shall:

- a. Commence work under this Agreement within ten (10) days after the date it receives the Notice to Proceed from the Owner's Representative,
- b. Prosecute the work diligently, and
- c. Substantially complete the construction work not later than July 1st, 2025 , TIME BEING OF THE ESSENCE.

Some work (preliminary sitework, demolition, shop drawings, fabrication, general conditions work, etc.) may have to be performed prior to the full commencement of construction. The time stated for completion includes cleanup of the site. Operator shall achieve Final Completion as soon as possible but not later than ninety (90) calendar days after Substantial Completion. At the time of receipt of the building permit and monthly thereafter, Operator shall consult with the Owner's Representative with regard to the likely Substantial Completion date and earlier occupancy dates so as to allow the Owner to plan its move.

10.3 NOTICE OF DELAY.

Immediately, and in no event no later than ten (10) days after first becoming aware of any difficulties that might cause any delay under this Agreement, the Operator shall notify the Owner's Representative in writing of them. The notification must identify the difficulties, the reasons for them, and the estimated period of delay anticipated. Failure to give such notice in strict compliance with this Section 10.3 will waive any right by Operator to make a claim based upon such delay. Such notice shall be a condition precedent to Operator's right to pursue a claim for an adjustment to payment or schedule based upon such delay.

10.4 LIQUIDATED DAMAGES FOR DELAY.

- a. If the Operator fails to achieve Substantial Completion of the Project within the time specified by this Agreement, the Operator shall, in place of actual damages for delay, pay to the Owner each day as liquidated damages, and not as a penalty, \$150.00 for each calendar day of unexcused delay until Substantial Completion is achieved. Liquidated damages are not a Reimbursable Cost and may be deducted by Owner from any Reimbursable Costs or Fixed Fees otherwise due the Operator, or from shared savings otherwise due the Operator. Owner's failure to deduct liquidated damages that have accrued shall not be deemed a waiver of Owner's rights to their payment.
- b. Alternatively, if Substantial Completion is delayed beyond the date specified by this Agreement, the Owner may terminate this Agreement in whole or in part under the Termination for Default clause in Article XVIII, Section 18.2, and the Operator shall be liable for liquidated damages under Section 10.4.a. until the Owner can reasonably attain Substantial Completion.
- c. Operator shall not be charged with liquidated damages when the delay in Substantial Completion arises out of causes beyond the control and without the fault or negligence of the Operator or anyone providing work on the Project through Operator as further described in Section 10.6, below.
- d. Operator agrees that the per diem measures of liquidated damages in 10.4.a. are reasonable measures of the damages that Owner is likely to suffer in case of delay, and Operator agrees that it will not challenge the per diem amounts or liquidated damages imposed pursuant to this Article X except as to whether Operator is responsible for the delays, themselves, that have resulted in the assessment of liquidated damages. The

Operator hereby waives any defense as to the validity of any liquidated damages stated herein on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

10.5 SUSPENSIONS AND DELAYS.

- a. If the performance of all or any part of the work of this Agreement is unreasonably suspended, delayed, or interrupted by:
 1. An order or act of the Owner's Representative in administering this Agreement; or
 2. By a failure of the Owner's Representative to act within the time specified in this Agreement or within a reasonable time so as not to delay the work of the Operator; then the Operator may request an equitable adjustment to the Reimbursable Costs payable under this Agreement due to any increased costs caused by the delay or interruption (including the costs incurred during any suspension or interruption), and in the schedule and any other contractual term or condition affected by the suspension, delay, or interruption. However, no adjustment may be made under this Section 10.5.a. for any delay or interruption to the extent that performance would have been delayed or interrupted by the fault or negligence of the Operator or those providing work through Operator.
- b. A claim under this clause will not be allowed for any costs incurred before the Operator has notified the Owner's Representative in writing of the act or failure to act involved, or if Operator has failed to follow the procedures of Article XVII, Section 17.5 of this Agreement for such claim.

10.6 EXCUSABLE DELAYS.

Operator shall not be in default by reason of any failure in performing this Agreement in accordance with its terms (including any failure by the Operator to make progress in the prosecution of the work that endangers performance) if the failure arises out of causes beyond the control and without the fault or negligence of the Operator or those providing any services through Operator. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Owner, fires, severe floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe and extreme weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Operator or those providing any of the Services through Operator, including without limitation, the A-E, the Prime Construction Contractor, and any subcontractor, who shall plan for all contingencies which can be reasonably anticipated, such as unfavorable weather. Contingencies which can be reasonably anticipated shall not be considered a basis for claiming an excusable delay.

10.7 CONSTRUCTION SCHEDULE/ PROGRESS CHART.

- a. Within five (5) calendar days after receiving Notice to Proceed, the Operator shall prepare and submit to the Owner's Representative a complete detailed Project Schedule in the form of an electronic file and six (6) copies of a practical progress chart. The schedule shall show the principal categories of work, corresponding with those used in the breakdown on which progress payments are based, the order in which the Operator proposes to carry on the work, the date on which it will start each category of work, and the contemplated dates for completion. The Project Schedule must be in suitable scale to indicate graphically the total percentage of work scheduled to be in place at any time. The Operator shall use a Critical Path Method (CPM) format. This schedule shall be in Primavera™ P3 or SureTrak™ format, or in such format as the Owner and Operator mutually agree, with at least 200 activities including sitework, procurement, delivery, and installation of construction materials and equipment. Activities shall be organized by work areas, and shall be cost loaded to facilitate approval of progress payments. A critical path shall be developed based on scheduling logic that identifies all successor and predecessor activities and float. Activity constraints shall be avoided. At the end of each progress payment period, or at such reasonable intervals as directed by the Owner's Representative, the Operator shall:
 1. Revise the Project Schedule to reflect any changes in the work, completion time, or both, as approved by the Owner's Representative;
 2. Enter on the Project Schedule the total percentage of work actually in place; and
 3. Submit three (3) copies of the adjusted Project Schedule, and a complete electronic update, to the Owner's Representative.
- b. If the work falls behind the Project Schedule after taking into consideration any excusable delays as defined above, Operator shall take such action as necessary to improve progress. The Owner's Representative may require the Operator to submit a revised Project Schedule demonstrating its proposed recovery plan to make up the lag in scheduled progress. If the Owner's Representative finds the proposed plan unacceptable, the Operator may be required to submit a new plan. If the new plan submitted is not reasonable, after consultation with the Operator, the Owner's Representative may require the Operator to increase the work force, accelerate the planned construction volume, increase assigned construction equipment, or the number of work shifts, without increase to the GMP.
- c. Failure of the Operator to comply with these requirements will be considered grounds for a determination by the Owner's Representative that the Operator is failing to prosecute the work with such diligence as will ensure its completion within the time specified.

10.8 EXCEPTION TO COMPLETION SCHEDULE AND LIQUIDATED DAMAGES.

In cases where the Owner's Representative determines in writing that sodding and/or planting and/or specified maintenance thereof is not feasible during the construction period, such work will be excepted from the completion schedule and the liquidated damages provision of Section 10.4. The work must be accomplished or completed during the first sodding and/or planting period or the specified maintenance period following the original completion date.

ARTICLE XI

OPERATOR RESPONSIBILITIES

11.1 PERFORMANCE AND SUPERINTENDENCE OF WORK BY OPERATOR.

- a. The Operator or its Prime Construction Contractor shall perform on the site, with its own organization, work equivalent to at least 5% percent of the total amount of work to be performed under this Agreement. The percentage of work required to be performed by the Operator or its Prime Construction Contractor may be reduced with written approval of the Owner's Representative.
- b. The Operator must give personal superintendence to the work either in person or by having a foreman or superintendent on the payroll, approved by the Owner's Representative, with authority to act on behalf of the Operator, on the site at all times work is in progress.
 1. A minimum of one Operator's superintendent (on the Operator's payroll) must be provided on site to be responsible for coordinating, directing, inspecting, and expediting the work of the Prime Construction Contractor and its subcontractors.
 2. It is contemplated that all work will be performed during normal working hours, between the hours of 7:00 a.m. until 5:00 p.m., local time, unless otherwise specified in this Agreement. Work performed by the Operator at its own volition outside such normal working hours must be

at no additional expense to the Owner. The Operator's material and equipment deliveries must not interfere with the arrival or departure of Owner employees and visitors to existing facilities.

- c. The Operator must refer requests received from occupants of buildings included in the work area to change the hours of work, including anticipated cost and schedule impact, to the Owner's Representative for resolution.
- d. The Operator shall submit a daily construction report by 10:00 a.m. of the following working day on a form provided by the Owner's Representative. The report shall indicate the number of people by trade or craft, and the type and location of work. The report shall include subcontractors, safety and quality violations observed, corrective measures taken to correct the violations, and other information requested by the Owner's Representative. The Owner's Representative may modify the requirements of this report as the Project progresses.

11.2 MATERIALS AND WORKMANSHIP.

- a. Unless otherwise specifically provided, all equipment and materials incorporated in the work must be new and of prime grade for the purpose intended. Unless otherwise specifically provided, reference to any equipment, material, or patented process by brand name, make, or catalog number establishes a standard of quality only. The Operator may substitute any equipment, material, or process that the Owner's Representative finds to be equal to that named, which finding shall be in writing.
- b. In the event of substitution in accordance with paragraph a above, the Operator shall furnish to the Owner's Representative for approval the manufacturer's name, the model number, and any other relevant information on the performance, capacity, nature, and rating of equipment or materials proposed for substitution. If requested by the Owner's Representative, samples must be submitted for approval at the Operator's expense, shipping charges prepaid. Materials or processes substituted without the Owner's approval may be rejected by Owner.
- c. The Operator shall obtain the Owner's Representative's written approval of the machinery and mechanical equipment incorporated into the work. The Operator shall submit samples of all materials and equipment as required by the specifications. Owner approval or rejection shall be based upon the Contract Documents.
- d. All work shall be performed in a skillful and workmanlike manner. The Owner's Representative may, in writing, require the Operator to remove from the work any employee the Owner's Representative deems incompetent, careless, or otherwise objectionable. The Operator shall immediately remove from the work any employee so designated.

11.3 RESPONSIBILITY FOR DESIGN.

- a. It is understood and agreed that this Agreement includes design services. The Operator agrees not to assign or transfer interests in this Agreement. The Operator agrees not to transfer or delegate, to others, its responsibilities under this Agreement except the Operator shall be allowed to subcontract portions of the Scope of Work. The Operator may engage Persons who are design professionals to provide design services for the Project. The Operator represents that the design professionals providing services for the Project include Persons with required Virginia licenses and registrations. The Operator further represents that the structural, electrical, mechanical and other engineering disciplines necessary for the design of the Project will be under the direct supervision of licensed professional engineers who are registered in Virginia or who are persons in responsible charge of an engineering firm registered in Virginia.
- b. The Operator is responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other services furnished by the Operator under this Agreement. The Operator must without any changes to the Fixed Fees, GMP, and CCL, correct any errors or deficiencies in the designs, drawings, specifications, and other services.
- c. As part of the Operator's responsibility under this Agreement, the Operator shall ensure that the design and construction of the Project comply with applicable codes and standards, including without limitation the Americans with Disabilities Act.
- d. Any Owner review, approval, or acceptance of, or payment for, any of the services required under this Agreement shall not be construed to relieve Operator of any obligation under this Agreement. The Operator shall remain liable to the Owner for all damage caused by the Operator's performance of any Services furnished under this Agreement that is negligent or fails to meet the requirements of this Agreement.
- e. The rights and remedies of the Owner provided for under this Agreement are in addition to any other rights and remedies provided by law.

11.4 USE OF PREMISES.

- a. The Operator, the Prime Construction Contractor, and any subcontractors and their employees shall comply with the regulations governing access to, operation of, and conduct while on the site and shall perform the work required under this Agreement so as not to unreasonably interfere with the conduct of Owner business or use and occupancy by Owner tenants except as indicated in Exhibit B.
- b. As permitted by the site conditions, the Operator shall separate its personnel, the Prime Construction Contractor's personnel, and subcontractors' personnel from Owner visitors, employees, and Owner property not involved in the Project. The Operator shall cordon off the construction area using barricades or other means to achieve this separation.
- c. Any requests received by the Operator from occupants to change the sequence of work shall be referred to the Owner's Representative.
- d. The Operator, any subcontractors, and their employees will not have access to any Owner facility outside the scope of this Agreement without permission of the Owner's Representative except as provided in Exhibit B.
- e. Where available, Operator may use utility services of the building only if the Owner's Representative determines sufficient capacity is available to support the work and confirms such determination in writing. Operator, Prime Construction Contractor, or subcontractor employees may not use the toilet facilities. No cleaning of tools, including painting equipment/brushes, is permitted in the toilet or janitorial facilities.

Operator shall provide a Site Utilization Plan for Owner review at the time of the revised design development submission.

11.5 PERMITS AND RESPONSIBILITIES.

- a. The Operator is responsible for obtaining any necessary licenses and permits at Operator's expense, and for complying with the codes and standards in connection with the prosecution of the work. The Operator is responsible for all injury to persons or damage to property that occurs as a result of its negligence. The Operator must take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Operator is responsible also for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction that may have been accepted.
- b. The Operator shall demonstrate compliance with all environmental permit, assessment, or impact statement requirements and regulations identified in the Contract Documents prior to, and during construction.

11.6 BUILDING CODES, FEES, AND CHARGES.

- a. The Operator shall comply with all state and local building code requirements.

b. The Operator shall pay all fees and charges for connections to outside services and for use of property outside the site.

11.7 FEDERAL, STATE, AND LOCAL TAXES.

a. The CCL and GMP include all applicable federal, state, and local taxes and duties.

11.8 IDENTIFICATION OF CONTRACT DELIVERABLES.

Unless otherwise specified, the cover page of each document prepared and submitted by the Operator to the Owner under this Agreement must include the following information:

- a. Name and business address of the Operator.
- b. Contract number.
- c. Name, position, and office location of the Owner's Representative.
- d. Date of document.

11.9 PATENT AND COPYRIGHT INDEMNITY.

- a. Except as provided in paragraph d below, the Operator shall indemnify, defend and hold harmless the Owner, its employees, officers, boards, board members, representatives and its agents against liability, including other such costs and fees as further set out in Section 9.4 above, from any claim of patent and/or copyright infringement (or unauthorized use) arising from any of the Services provided by or through Operator for the Project.
- b. The Owner shall promptly notify the Operator of any claim or suit subject to paragraph a above.
- c. This indemnification does not apply to claims of infringement of a patent and/or copyright resulting from the Owner's Representative's specific written direction, compliance with which requires the infringement.
- d. This clause must be included in all subcontracts under this contract, at any tier, over \$50,000.

11.10 NON-DISCLOSURE.

The Operator shall not disclose any information received from the Owner that is marked confidential unless such disclosure is required by law or approved by the Owner, such approval not to be unreasonably withheld or delayed.

11.11 DEBRIS AND CLEANUP.

- a. On a daily basis during the progress of the work, the Operator must remove and dispose of the resultant debris and keep the site neat and clean.
- b. The Operator shall, upon completion of the work, remove all construction equipment and surplus materials (except materials or equipment that are to remain Owner property as provided by this Agreement), and leave the site in a clean, neat, and orderly condition satisfactory to the Owner's Representative, in Owner's sole discretion.

11.12 HEAT.

Unless otherwise specified, or unless directed otherwise by the Owner's Representative in writing, the Operator shall provide heat as necessary to protect all work materials and equipment against injury from dampness and cold, and in the case of information technology equipment requiring the same, air conditioning, to protect it from heat and humidity.

11.13 ENGLISH LANGUAGE REQUIREMENT OF ON-SITE SUPERINTENDENT.

The Operator's on-site superintendent must be able to speak, read, and write English to the extent necessary to permit reasonable communication with Owner personnel.

11.14 SUBSTITUTE MATERIALS OR METHODS.

Where the technical provisions permit the Operator to propose substitute materials, items, systems, or equipment, the selection of such options is subject to the following conditions:

- a. Once a substitute has been selected and approved by the Owner's Representative, it must be used for the entire Project unless the Operator has proposed, and Owner's Representative has approved, the substitute for a limited application
- b. The Operator must coordinate its selection with the drawings and specifications and the A-E.
- c. Substitutions proposed by Operator shall be at no increase to the GMP.

11.15 ADVERTISING OF AWARDS.

Except with the Owner's Representative's prior approval, the Operator agrees not to refer in its commercial advertising to imply in any manner that the Owner endorses its products.

11.16 GROUND BREAKING CEREMONIES.

Operator agrees to participate in groundbreaking ceremonies at a time specified by the Owner.

ARTICLE XII

OWNER RIGHTS AND RESPONSIBILITIES

12.1 OWNER'S REPRESENTATIVE.

The Owner may appoint an Owner's Representative, who may be either an Owner employee or a contractor. The name, address, telephone number, and specific responsibilities, authority, and limitations of the Owner's Representative will be provided to the Operator in writing. The Owner's Representative may be removed or replaced at any time without prior notice to the Operator, but notification of the change, including the name and address of any successor Owner's Representative, will be provided promptly to the Operator by the Owner, in writing.

12.2 SITE VISITS.

- a. The Owner from time to time during construction may desire to conduct groups of guests on visits to the site of the work. These tours will be authorized by the Owner's Representative or his appointed representative. In such event the Operator shall cooperate by providing access to and posting signs to give notice of dangerous areas, providing hard hats, and making such other arrangements for the safety and convenience of the

guests as may be required. The Owner's Representative shall give the Operator as much advance notice of any such visits as is practical, and to the maximum practicable extent shall schedule any such visits so as not to interfere with the progress of the work.

- b. The Operator's indemnification of the Owner contained in Section 9.4 of this Agreement shall not apply during any such visits to guests of the Owner or to Owner officers, employees, or agents who are engaged in conducting, guiding, or accompanying any such visits, leaving the Owner and the Operator responsible for their own acts and omissions according to applicable law and other clauses of this Agreement. This limited exception in this Section 12.2.b to Operator's indemnification obligation does not apply to inspections, investigations, or official site visits provided for elsewhere in this Agreement or conducted for the purpose of aiding in the enforcement of law.

12.3 OWNER-DIRECTED STAFFING CHANGES.

- a. Should the Owner's Representative reasonably deem it to be in the best interests of the Owner to require the removal of any person working on or under this Agreement, that person must be immediately removed from the work.
- b. "Person," as used in this clause, includes any persons providing work through the Operator.

12.4. EXAMINATION OF RECORDS.

- a. The Owner and its authorized representatives shall, until three (3) years after final payment under this Agreement, have access to and the right to examine any pertinent books, documents, papers, or other records of the Operator involving transactions related to this Agreement that are paid for on a cost reimbursable basis.
- b. The Operator agrees to include in all subcontracts under this Agreement and to have its Prime Construction Contractor include in all its subcontracts a provision to the effect that the Owner and its authorized representatives will, until three years after final payment under this Agreement, have access to and the right to examine any pertinent books, documents, papers, or other records of the Prime Construction Contractor and subcontractors involving transactions related to the work performed on a cost reimbursable basis and further providing that such individuals shall otherwise comply with the provisions contemplated by Section 12.4c. The term subcontract as used in this clause excludes:
 - 1. Purchase orders; and
 - 2. Subcontracts for public utility services at rates established for uniform applicability to the general public.
- c. For the purposes of this Section 12.4, the Operator agrees to provide Owner adequate and appropriate work space at the Operator's facilities in order to conduct such examinations.

12.5 OWNERSHIP OF WORK PRODUCT.

- a. Work Product: All drawings, specifications and other documents and electronic data furnished by the Operator to the Owner under this Agreement and the copyrights thereto ("Work Product") are owned by Operator or its design professionals, as they may agree among themselves, with Owner having the license rights granted by this Agreement. Upon the final payment by Owner to Operator, Owner shall have ownership rights to the Work Product in conjunction with the Operator and may use the Work Product as it sees fit.
- c. Owner's Limited License upon Termination for Convenience. If Owner terminates this Agreement with the Operator for its convenience, the Operator hereby grants Owner a limited license to use the Work Product to complete the Project, for its occupancy and use, and for maintenance and repairs, future renovations, and expansions by the Owner. Use of Work Product (i) that does not represent approved Plan and Specifications, or (ii) for renovations and expansions, shall be at the Owner's sole risk without liability or legal exposure to any Indemnified Party.
- d. Owner's License upon Operator's Default. If this Agreement is terminated due to Operator's default, Owner shall be the co-owner of the Work Product with the Operator.
- e. Owner's Indemnification for Use of Work Product. If Owner uses the Work Product under Section 12.5. b or c of this article, to the maximum extent permitted by law, Owner shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorney's fees and other such costs set forth in Section 9.4, above, arising out of or resulting from the use of the Work Product for renovations and expansions or to complete the Project.
- f. Operator shall include in its contract with its A-E and have included in contracts with any design professionals providing any services for this Project provisions that require all design professionals providing any services for the Project to grant the licenses that Operator grants under this 12.5, and Operator shall indemnify, defend and hold harmless Owner and its agents, employees, architects, engineers, consultants and contractors from any claim of copyright infringement or unauthorized use by any Person based upon Owner's use of the Work Product pursuant to this Section 12.5.
- g. Nothing in this Section 12.5 shall be deemed to relieve Operator or any design professionals providing services through Operator of their obligation under this Agreement that all design and design services provided for this Project meet the highest standard of care in Virginia for the applicable design professional providing such design or services.
- h. The licenses granted to Owner pursuant to this Section 12.5 are at no additional cost to Owner beyond the compensation required by this Agreement for the Services.

12.6 SURVEY MONUMENTS AND BENCHMARKS.

- a. The Operator will establish such general reference points, for written approval by the Owner's Representative, as will enable the Operator to proceed with the work. The Operator shall provide new monuments where shown or specified. If the Operator finds that any previously established reference points have been destroyed or displaced, or that none have been established, the Operator shall promptly notify the Owner's Representative.
- b. The Operator must protect and preserve established benchmarks and monuments and make no changes in locations without the written approval of the Owner's Representative. Established reference points that may be lost, covered, destroyed, or disturbed in the course of performance of the work under this Agreement, or that require shifting because of necessary changes in grades or locations, must (subject to prior approval of the Owner's Representative) be replaced and accurately located or relocated (as appropriate) by a licensed engineer or licensed land surveyor.
- c. New monuments will be six (6) inches square by three (3) feet deep (unless otherwise specified), of concrete or stone, with a 3-inch copper or brass pin, 3/8-inch in diameter, in the center, and must be set flush with the ground or pavement in locations indicated on the site plan.
- d. Monuments will not be required where lines of buildings are coincident with property lines.
- e. The Operator shall verify the figures shown on the survey and site plan before undertaking any construction work and will be responsible for the accuracy of the finished work.

- f. After completion of construction and before final payment, the Operator must furnish the Owner blueprints (in triplicate) of plans showing the exact location of construction survey monuments with reference to true property lines.

12.7 OWNER PARTIAL OCCUPANCY.

- a. The Owner's Representative reserves the right of partial occupancy or use of facilities, services, and utilities, before final acceptance, without implying completion or acceptance of any part of the Project by the Owner. Before such occupancy or use, the Owner's Representative must furnish the Operator an itemized list of work remaining to be performed or corrected. Failure to list an item will not relieve the Operator of the responsibility for complying with the terms of the Contract Documents. Responsibility for damage to the work within the partially occupied area shall be transferred to the Owner for any such partial occupancy or use.
- b. Costs incurred and delays to the completion of the Project as a result of such partial occupancy or use of facilities, services, and utilities are subject to equitable adjustment under Article XVII, Section 17.1.

12.8 OWNER PROPERTY.

- a. The Owner will deliver to the Operator, at the time and locations stated in this contract, the Owner property described in the specifications. If that property, suitable for its intended use, is not delivered in a timely manner to the Operator, the Owner's Representative may make an equitable adjustment in accordance with Article XVII, Section 17.1 if:
 - 1. The Operator submits a timely written request for an equitable adjustment; and
 - 2. The facts warrant an equitable adjustment.
- b. Title to Owner property remains in the Owner even if incorporated in or affixed to property not owned by the Owner. The Operator may use the Owner property only in connection with this Agreement. The Operator must maintain adequate property control records in a form acceptable to the Owner's Representative and must make them available for Owner inspection upon request.
- c. Upon delivery of Owner property to the Operator, the Operator assumes the risk and responsibility for its loss or damage, except:
 - 1. For reasonable wear and tear;
 - 2. To the extent property is consumed in performing the Agreement; or
 - 3. As otherwise provided in the Contract Documents.
- d. Changes in Owner-Furnished Property
 - 1. By written notice, the Owner's Representative may; (a) decrease the property provided or to be provided by the Owner under this Agreement; or (b) substitute other Owner owned property for the property to be provided by the Owner, or to be acquired by the Operator for the Owner under this Agreement. The Operator must promptly take any action the Owner's Representative may direct regarding the removal and shipping of the property covered by this notice.
 - 2. In the event of any decrease in or substitution of property pursuant to subparagraph d.1 above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Owner had agreed in this Agreement to make available, the Owner's Representative, upon the Operator's written request, or if substitution causes a decrease in the cost of performance, on the Owner's Representative's own initiative, may equitably adjust any contractual provisions affected by the decrease, substitution, or withdrawal, in accordance with the "Changes" clause.
- e. The Operator must maintain and administer a program or system acceptable to the Owner's Representative for the utilization, maintenance, repair, protection, and preservation of Owner property until it is disposed of in accordance with this Section 12.8.
- f. The Owner, and any persons designated by it, shall at reasonable times have access to premises where any Owner property is located for the purpose of inspecting it.
- g. Within forty-five (45) calendar days after Notice to Proceed with construction, the Operator must submit a schedule to the Owner's Representative, in an acceptable format and giving desired dates for delivery of items and property furnished by the Owner. Approved dates of delivery must be confirmed by the Owner's Representative in writing. Approved dates of delivery must be confirmed by the Operator thirty (30) calendar days prior to scheduled delivery. The Operator must submit a written report to the Owner's Representative within forty-eight (48) hours after receipt, noting any shortages or damage to the Owner-furnished property.
- h. If Owner-furnished equipment is to be installed and is not on the construction site, the Owner will make separate arrangements to provide delivery to the site. Any costs to Operator for labor associated with loading or unloading this Owner-furnished equipment will be negotiated.
- i. Upon completing this Agreement, the Operator shall follow the Owner's Representative's instructions regarding the disposition of all Owner property not consumed in performing this Agreement or previously returned to the Owner. The Operator shall prepare for shipment, deliver f.o.b. origin, or dispose of the Owner property, as directed or authorized by the Owner's Representative. The net proceeds of any such disposal will be credited to award amounts due Operator or will be paid to the Owner as directed by the Owner's Representative.

12.9 OTHER CONTRACTS.

The Owner may award other contracts for additional work, and the Operator must cooperate fully with the other contractors and Owner employees, and carefully fit in its own work as may be directed by the Owner's Representative. The Operator must not unnecessarily commit or permit any act that will interfere with the performance of work by any other contractor or by Owner employees. Should contractors or Owner employees delay the Operator, cause any damage to Operator's work or otherwise cause an increase in the Operator's cost or time of performance, the contract sum and contract time shall be equitably adjusted.

12.10 OWNER PROPERTY FURNISHED "As Is".

- a. The Owner makes no warranty whatsoever with respect to Owner property furnished "as is" except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when inspected by the Operator pursuant to the solicitation or (if not inspected by the Operator) as when last available for inspection under the solicitation.
- b. The Operator may repair any property made available to the Operator "as is." Repair will be at the Operator's expense except as otherwise provided in this clause. Such property may be modified at the Operator's expense, but only with the written permission of the Owner's Representative. Any repair or modification of property furnished "as is" does not affect the title of the Owner.
- c. If there is any change (between the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation) in the condition of Owner property furnished "as is" that will adversely affect the Operator, the Operator must, upon receipt of the property, notify the Owner's Representative of that fact, and (as directed by the Owner's Representative) either (1) return the property

at the expense of the Owner or otherwise dispose of it, or (2) effect repairs to return it to the condition it was in when inspected under the solicitation, or (if not inspected) as it was when last available for inspection under the solicitation. Upon completion of (1) and (2) above, the Owner's Representative, upon written request from the Operator, will equitably adjust any contractual provisions affected by the return, disposition, or repair, in accordance with the "Changes" clause. The foregoing provisions for adjustment are exclusive, and the Owner is not liable for any delivery of Owner property furnished "as is" in a condition other than that in which it was originally offered.

- d. Except as otherwise provided in this clause, Owner property furnished "as is" is governed by this Section 12.10 of this Agreement.

12.11 RECORDS INSPECTION AND COPYING

Operator agrees that the Owner may, at its option and expense, inspect and copy all records relating to the Services provided under this Agreement to the extent necessary to confirm compliance with the terms of the Agreement.

ARTICLE XIII

ADMINISTRATIVE ITEMS

13.1 STANDARD REFERENCES.

All publications and other documents (such as manuals, handbooks, codes, standards, and specifications) cited in this Agreement for the purpose of establishing requirements applicable to equipment, materials, or workmanship are hereby incorporated by reference in this Agreement.

ARTICLE XIV

SUBCONTRACTING

14.1 SUBCONTRACTS

- a. Nothing in this Agreement may be construed to create any contractual relationship between any subcontractors, and the Owner. The divisions or sections of the specifications are not intended to control the Operator in dividing the work among subcontractors or to limit the work performed by any trade.
- b. The Operator is responsible to the Owner for acts and omissions of its own employees, of subcontractors and their employees, and any other person providing work on the Project through Operator. The Operator is also responsible for the coordination of the work of the trades of subcontractors.
- c. The Owner will not undertake to settle any differences among the Operator, the Prime Construction Contractor, the A-E, and subcontractors or any of them.

ARTICLE XV

PROTECTION OF PERSONS AND PROPERTY

15.1 ACCIDENT PREVENTION.

- a. All construction work on this Project must be performed in compliance with the Occupational Safety and Health Act of 1970 and with local or state occupational safety and health regulations enforced by an agency of the locality or state under a plan approved by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). Where requirements are different or in conflict, the more stringent requirement will apply.
- b. The Operator shall maintain an accurate record of exposure data and all accidents incidental to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, material, supplies, or equipment. The Operator must submit regular Project safety reports, exposure data, and accident reports, as prescribed by the Owner's Representative.
- c. Health and Safety Plans are required as follows:
 - 1. Prior to commencing on-site work, the Operator must submit to the Owner's Representative, in triplicate, a Health and Safety Plan designed to provide a system by which hazards on the Project site will be controlled to minimize or eliminate occupational injuries or illnesses during performance of the contract.
 - 2. The Health and Safety Plan must state that the Prime Construction Contractor, A-E, and all subcontractors are required to comply with the Operator's Project safety rules and requirements issued under the authority of that program.
 - 3. The Health and Safety Plan must identify, by name, the Operator's representative responsible for the execution of the Project safety program. The Operator's Project safety representative must have the express written authority from the Operator to stop work, to abate hazardous conditions or unsafe practices, and to eject any Operator, Subcontractor, or vendor employees from the Project site for failure to comply with safety requirements.
 - 4. When conducting work at existing Owner facilities, the Health and Safety Plan must include the precautionary measures to be taken to protect Owner staff, faculty, students, employees and the public.
- d. The authority, responsibilities, and duties of the Operator's Project safety representative must be incorporated as part of the written Health & Safety Plan. The safety responsibilities include, but are not limited to, conducting subcontractor construction safety program reviews, conducting employee safety orientation training, conducting weekly safety meetings, conducting daily site safety inspections, auditing Subcontractor safety compliance, and preparing required periodic and special safety reports.
- e. In addition to the general requirements of Health and Safety Standards, the Operator, A-E and Prime Construction Contractor, specifically must comply with applicable OSHA requirements concerning Hazard Communications Standards. Details of the Operator's hazard communications program shall be included in the Health & Safety Plan.

15.2 HEALTH AND SAFETY STANDARDS.

- a. In performing this contract, the Operator must:
 - 1. Comply with applicable Occupational Safety and Health Standards promulgated pursuant to the authority of the Occupational Safety and Health Act of 1970 (OSHA).

2. Comply with any other applicable federal, state, or local regulations governing workplace safety to the extent they do not conflict with a.1 above; however, the more stringent shall apply.
 3. Comply with any Owner standard unless the OSHA standard contains more rigorous or stringent safety requirements, in which case the OSHA standard governs and takes precedence.
 4. Take all other proper precautions to protect the safety and health of the Operator's employees, Owner staff, faculty, students, employees, and the public.
- b. The Operator must coordinate its use of existing Owner premises with the Owner's Representative. Subjects of this coordination include the designation of work and storage areas; the extent, if any, of use by the Operator of Owner tools and equipment; the furnishing by the Operator of appropriate signs and barricades to exclude unauthorized personnel from the work areas and to call attention to hazards and dangers; and other matters relating to the protection of Owner staff, faculty, students, employees, property and the public.
 - c. Materials, supplies, articles, or equipment manufactured or furnished under this contract or order must conform to the Occupational Safety and Health Standards pursuant to the authority of OSHA, and to other safety and health requirements specified in this contract or order. When conducting work on existing facilities, the Operator must provide the Owner's Representative copies of Material Safety Data Sheets (MSDS) for any hazardous material, as defined by OSHA's Hazard Communications Standards, to be used on the job.
 - d. If no OSHA standard exists, federal or other nationally recognized standards apply. Copies of current Occupational Safety and Health Standards are available from regional and/or area offices of the U.S. Department of Labor, Occupational Safety and Health Administration.

15.3 PROTECTION OF THE ENVIRONMENT, EXISTING VEGETATION, STRUCTURES, UTILITIES, AND IMPROVEMENTS.

- a. The Operator shall perform all work necessary to implement and accomplish a program to prevent environmental pollution during or as a result of construction performed under this Agreement. As a minimum, the Operator's work must conform to all requirements of applicable federal, state and local law.
- b. The Operator must preserve, protect and maintain all existing vegetation (such as trees, shrubs, and grass), landscape features, athletic fields, and structures on or adjacent to the site of work that are not to be removed. Care must be taken in removing trees authorized by the Owner's Representative for removal, to avoid damage to vegetation that will remain in place. Any trees or other landscape features scarred or damaged by the Operator's equipment or operations must be restored by the Operator. The Owner's Representative decides what method of restoration must be used and whether damaged trees and/or shrubs will be treated or replaced. The Operator shall use guard posts or barriers as necessary to control vehicular traffic passing close to trees and/or shrubs to remain. Areas disturbed, such as temporary roadways or embankments, must be restored to near natural conditions that will permit the growth of vegetation. Disturbed areas must be graded and filled as required, covered with six inches of topsoil and landscaped as per the Contract Documents.
- c. The Operator shall protect from damage all existing improvements or utilities at or near the site of the work, the location of which is known, and must repair or restore any damage to these facilities resulting from failure to comply with the requirements of this contract or to exercise reasonable care in performing the work. If the Operator fails or refuses to repair such damage promptly, the Owner's Representative may have the necessary work performed and charge the cost to the Operator.
- d. The Operator shall obtain approval from the Owner's Representative for any temporary roads, embankments and disposal areas not included in Project specifications or drawings and restore such areas to original conditions, including appropriate landscaping, upon the completion of work.
- e. Monuments, markers and works of art must be protected. Items discovered that have potential historical or archeological interest must be preserved. The Operator must leave the archeological find undisturbed and must immediately report the find to the Owner's Representative so that the proper authority may be notified. The contract sum and contract time shall be equitably adjusted if the Operator incurs additional cost or time to perform as a result of any such discovery.
- f. Operator shall follow all Environmental Protection Agency, Department of Environmental Quality and other applicable governmental regulations and guidelines, as to the labeling, use, storage and disposal of "hazardous waste", which shall for the purposes of this agreement be defined as (a) any chemical, substance, material, mixture, contaminant or pollutant, now or hereafter defined as a "hazardous substance" under the comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time; (b) petroleum, crude oil, or any fraction thereof; (c) any pollutant, contaminant, special waste or toxic substance now or hereinafter listed, defined by or subject to regulation under any federal, state or local statute, ordinance, rule, regulation, standard, policy, guidance, permit, order, administrative or judicial decision or pronouncement, previously, currently or hereafter in effect, as amended from time to time, pertaining to health, safety, or the environment, including without limitation, natural resources, environmental regulation, contamination, pollution, cleanup, or disclosure. Operator agrees to indemnify, hold harmless and defend Owner and all Owner's successors, employees, officers, boards, board members, representatives, and agents from any liability, claim, demand, action, cause of action, suit, loss, damage, injury, expense, cost, settlement, or judgment of any kind or nature including but not limited to demands, fines, remediations, or penalties asserted by any governmental entity, as a result of the treatment, storage, disposal, handling, spillage, leakage, or presence in any form in soils, surface waters, groundwaters, air, or property, of any wastes or "hazardous waste" as defined in this paragraph, at the subject property, to the extent caused or contributed to by Operator or Operator's subcontractors.

15.4 ACCESS TO SITE.

- a. The Operator's access to the site and use of existing roads will be as agreed to by the Operator and the Owner's Representative including issuing vehicle passes for construction and private vehicles.
- b. Operator shall not permit workers to carry firearms or other deadly weapons onto any Owner construction site or into any facility, including in their personal or construction vehicles. This supercedes any state or local law permitting the carrying of firearms or weapons. Violation of this clause shall be grounds for removal of individuals or contractors from the site or termination for default.

15.5 HANDLING ASBESTOS AND OTHER HAZARDOUS MATERIALS.

The Operator shall be responsible for handling any known asbestos or other known hazardous or contaminated materials existing on the site.

15.6 ELEVATOR WORK-QUALIFICATIONS.

- a. The Operator, Prime Construction Contractor, or the subcontractor whom the Operator uses for performance of the elevator work, must have had at least three (3) years of successful experience in installing and servicing elevators.
- b. In addition, the Operator, the Prime Construction Contractor, or its subcontractor must have installed, on at least two prior projects, elevators comparable to those required for this Project that have performed satisfactorily under conditions of normal use for a period of not less than one (1) year. To be considered comparable, prior installations must have not less than the same number of elevators operating together in one group as

the largest number in any group specified for this Project, except that a group of four may be considered comparable to a large group specified for this Project.

- c. A list of the prior comparable installations by the Operator, the Prime Construction Contractor, or its subcontractor, together with the names and addresses of the buildings, the names of the owners or managers, and any other pertinent information required must be submitted promptly upon request of the Owner.
- d. The names, addresses, experience, and statement of work to be performed by each subcontractor or second-tier subcontractor whom the Operator, Prime Construction Contractor, or the principal subcontractor, as the case may be, will use for performance of minor portions of the installation of elevators must also be submitted promptly upon request of the Owner.
- e. The Owner may reject the proposed elevator subcontractor if it is determined that it has failed to meet the experience requirements, or if it has been found to have an unsatisfactory record of prior elevator installations. In the case of rejection, the Operator must resubmit another name within ten (10) days for renewed consideration.

ARTICLE XVI

PAYMENTS

16.1 INVOICES (CONSTRUCTION).

- a. The Operator's invoices must be submitted before payment can be made.
- b. The Operator agrees that submission of an invoice to the Owner for payment is a certification that:
 - 1. Any services being billed for have been performed in accordance with the requirements of the Contract Documents; and
 - 2. Any supplies for which the Owner is being billed have been delivered or suitably stored off site, with appropriate insurance coverage, and in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated in the Contract Documents. Operator shall provide, suitable to Owner's Representative approval, evidence of insurance for storage facility, a complete inventory of items, a written right of access to the items, and certification of title to the Owner.
- c. To ensure proper payment, Operator must furnish all documents required elsewhere in the Contract Documents and/or as reasonably required by the Owner's Representative.

16.2 PAYMENT.

- a. Reimbursable Costs for Construction:
 - 1. The Owner will make progress payments monthly within thirty (30) calendar days of receipt of the Operator's invoice or at more frequent intervals as determined by the Owner's Representative. Before the first progress payment becomes due, the Operator must prepare a schedule of values reasonably acceptable to the Owner's Representative. The values in the breakdown will be used for determining progress payments.
 - 2. If material delivered to the Project site that will be incorporated into the Project will be taken into consideration in computing progress payments, before each payment is made, the Operator must furnish the Owner's Representative proof of the quantity, value, and delivery of such material.
 - 3. In making progress payments, the Owner's Representative will ordinarily retain ten percent (10%) of the progress payments earned on the construction portion of the work. However, if the Owner's Representative, at any time after fifty percent (50%) of the construction portion of the work has been completed, finds that satisfactory progress is being made, he/she may authorize payment in full of all future progress payments earned.
 - 4. All material and work covered by progress payments will be the sole property of the Owner. However, this paragraph does not:
 - (a) Relieve the Operator of responsibility to protect and safeguard material and work for which payment has been made or for restoration of any damaged work; or
 - (b) Waive the right of the Owner to require fulfillment of all terms of the Contract Documents.
 - 5. Before receiving a progress payment or final payment under this Agreement, the Operator must certify to the Owner's Representative that payment due to the Prime Construction Contractor and subcontractors have been made from the proceeds of prior payments or will be made in a timely fashion from the payment then due the Operator.
 - 6. Upon completion and acceptance of all work, the amount due the Operator under this Agreement shall be paid upon presentation of a properly executed invoice, after the Operator has furnished the Owner with a release of all claims against the Owner arising by virtue of this Agreement, other than claims in stated amounts that must be specifically excepted by the Operator from the operation of the release. If the final cost as audited by the Owner is less than the GMP, the final invoice shall include any share in savings (see Section 5.7). If the sum of all progress payments and the final invoice is greater than the GMP, the final invoice shall be adjusted so that the sum of all progress payments and the final payment is not greater than the GMP. If the Operator's claim to amounts payable under the Agreement has been assigned as provided in the Assignment of Claims clause, a release may also be required of the assignee.
- b. Payment of the Fixed Fees will be made in accordance the schedule contained in Exhibit D.

16.3 CONSTRUCTION COST BREAKDOWN.

The Operator's submission of their Guaranteed Maximum Price (GMP) must include a construction cost breakdown by CSI Division and other breakdowns as reasonably requested by Owner's Representative. The Operator shall provide copies of its contract with its Prime Construction Contractor and construction subcontracts and a comparison to the GMP, for approval by the Owner's Representative, and for use in verifying monthly construction invoices.

16.4 ALLOWABLE COST AND PAYMENT.

- a. **Invoicing:** The Owner will make payments to the Operator when requested as work progresses, but not more than monthly, in amounts approved by the Owner's Representative, such approval not to be unreasonably withheld. The Operator must submit an invoice or voucher to the address specified by Owner, supported by a statement of claimed allowable costs of performing this Agreement, in such form and detail as the Owner's Representative may reasonably require.

- b. **Audit:** At any time or times before final payment, the Owner's Representative may have the Operator's invoices or vouchers and statements of cost audited. Any payment may be:
1. Reduced by amounts found by the Owner's Representative not to constitute Reimbursable Costs; or
 2. Adjusted for prior overpayments or underpayments.
- c. **Final Payment:**
1. The Operator must submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but not later than one year (or longer, as the Owner's Representative may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the Operator's compliance with all terms of this contract, the Owner will promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
 2. In exchange for final payment the Operator shall release the Owner and its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Agreement, except for those that have been identified as open in the final invoice.

ARTICLE XVII
CHANGES/CLAIMS/DISPUTES

17.1 CHANGES.

- a. The Owner may at any time, without notice to any sureties, by written change specifically designated or indicated to be a Change Order or Change Directive, make a Change, including, without limitation, one that:
1. Changes the plans and specifications (including drawings and designs);
 2. Changes the method or manner of performance of the work;
 3. Changes the Owner-furnished facilities, equipment, materials, services, or site; or
 4. Directs acceleration in the performance of the work.
- b. Any other written or oral order, direction, instruction, interpretation, or determination from the Owner that causes a change to the Scope of Work or its duration will only be treated as a Change Directive, allowing a change in compensation or schedule, only if (1) the Operator gives the Owner's Representative written notice as soon as possible, but not later than within ten (10) days, of the receipt by Operator, the Prime Construction Contractor, or any subcontractor, whichever has first receipt of such order, direction, instruction, or determination, stating (i) the date, circumstances, and source of the order, direction, instruction or determination, and (ii) that the Operator regards the order, direction, instruction or determination as a Change, and (2) Operator does not incur additional costs attributable to such order, direction, instruction or determination without first receiving a Change Directive from Owner unless waiting for a Change Directive is clearly unreasonable under the circumstances.
- c. Except as provided in this Section 17.1, no order, direction, instruction, interpretation, determination, statement, or conduct of the Owner's Representative may be treated as a Change or entitle the Operator to any adjustment in compensation or schedule.
- d. If any Change under this Article causes an increase or decrease in the Operator's cost of, or the time required for, the performance of any part of the work under this Agreement, the Owner shall issue a Change Order or Change Directive. However, no claim for any Change shall be allowed for which the Operator has not strictly complied with the requirements of paragraph b as well as all other requirements of this Agreement. No claims will be allowed for defective plans or specifications prepared by or for the Operator.
- e. No claim by the Operator will be allowed if asserted after final payment under this Agreement.
- f. After approval of final Plans and Specifications, except for the correction of errors and omissions, the Operator shall not make or allow any changes in the plans or specifications, including drawings and designs, without approval of the Owner's Representative.
- g. The GMP shall be adjusted for overruns and underruns in the allowances. The Operator shall include in the GMP all allowances stated in the Agreement. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner's Representative may direct or as required to perform the work, but the Operator shall not be required to employ persons or entities to whom the Operator has reasonable objection. Unless otherwise provided in this Agreement, (1) allowances shall cover the Reimbursable Costs to the Operator of materials and equipment delivered at the site and all required taxes, less applicable trade discounts but no other costs, whether or not such costs would otherwise constitute Reimbursable Costs; (2) Operator's cost for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the GMP but not in the allowances; and (3) whenever Reimbursable Costs covered by (1) are more or less than allowances, the GMP shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual Reimbursable Costs covered by (1) costs and the allowances. Materials and equipment under an allowance shall be selected by the Owner's Representative in sufficient time to avoid delay in the work. Allowance overruns may be deducted from the Owner's portion of savings, if any, in the Operator's contingency, with the Operator's approval such approval, to be at the sole discretion of Operator.
- h. The Operator shall not proceed with any Change until the Owner has obtained all necessary approvals and funds to pay for the Change.

17.2 CHANGE ORDER ACCOUNTING.

The Owner's Representative may require Change and Change-order accounting whenever the estimated cost of a Change or series of related Changes exceeds \$50,000. The Operator, for each Change or series of related Changes, must maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the Change. The Operator shall maintain such accounts until the parties agree to an equitable adjustment for the Changes ordered by the Owner's Representative or the matter is finally disposed of in accordance with Section 17.5.

17.3 EQUITABLE ADJUSTMENTS.

a. **Fixed Fees for A-E Services:**

1. There will be no monetary adjustment to any of the Fixed Fees component for Architect-Engineer Services under this Agreement except where the Scope of Work has been modified by the Owner. The A-E component of Fixed Fees for such Scope of Work changes will only be adjusted when the Owner-requested change requires a duplication of work that has already been accomplished, causes an appreciable increase in direct labor, material or other costs to work included under the A-E component of the Fixed Fees, or requires new labor, material or

other direct costs of work not included under the existing A-E component of the Fixed Fees. All other changes required to complete the work will be the responsibility of the Operator.

2. Adjustment in the A-E component of Fixed Fees will be based upon the extent of change to the work and not upon a percentage of construction costs. The Owner will negotiate an adjustment on the basis of the costs per discipline for the production of drawings, calculations, specifications, estimating and other services. Prior to negotiations, the Operator shall submit an Estimate of Fee for Modification of Design.
3. Where a proposal for a Fixed Fees modification is submitted by the Operator, the overhead, profit and commission percentages included in the proposal will be based solely on changes in labor, material, or other direct costs covered under the Fixed Fees. No percentages for overhead, profit, or commission will be allowed on employment taxes under FICA and FUTA. The percentages for overhead, profit and commission will be negotiated and may vary according to the nature, extent, and complexity of the work involved. Not more than three percentages, not to exceed the maximum percentages shown below, will be allowed regardless of the number of tiers of subcontractors; that is, the markup on work subcontracted by a subcontractor will be limited to one overhead percentage and one profit percentage in addition to the Operator's commission percentage. On proposals covering both increases and decreases of the Fixed Fees of the Agreement, the overhead, profit, and where applicable commission will be computed on the net change only.

| | Overhead | Profit | Commission |
|--|----------|--------|------------|
| To Operator on work performed by other than own forces | 5% | 5% | 10% |
| To Architect and/or the subcontractors for that portion of work performed with their respective forces | 140%* | 10%* | 0% |

* billable rate multiplier

4. The Operator must submit with its proposal its request for time extension (if any).
 5. In considering a proposal, the Owner may check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.
 6. Upon written request by the Owner's Representative, the Operator must submit a proposal, in accordance with the requirements and limitations set forth in subparagraphs (a.1) through (a.6) of this clause, for work involving proposed changes covered by the request, within the time limit indicated in the request or any extension of such time limit as may be subsequently granted. If, within a reasonable time after the receipt of such proposal, the Owner's Representative orders the Operator to proceed with the performance of the work contemplated, the proposal submitted prior to the order will constitute the Operator's statement of the monetary extent of claim for equitable adjustment to any component of the Fixed Fees.
- b. Reimbursable Costs and Fixed Fees For Development and Construction:**
1. There will be no monetary adjustment to the GMP under this Agreement except when the Scope of Work has been modified by the Owner by Change and except as allowable under the other provisions of this Agreement. All other changes required to complete the work shall be the responsibility of the Operator.
 2. In the event of a Change, an appropriate monetary adjustment to the GMP will be made if all the requirements of this Agreement are met. The Operator's written statement of the monetary extent of any claim for equitable adjustment under this Agreement must be submitted in the form of a lump sum proposal (unless otherwise requested) with an itemized breakdown of all increases or decreases in the cost of the Operator's and all subcontractors' work, in at least the following detail:
 - (a) Material quantities and unit cost
 - (b) Labor costs (identified with the specific item of material to be placed or operation to be performed)
 - (c) Construction equipment
 - (d) Worker's Compensation, Automobile and Public Liability Insurance, Builders Risk
 - (e) Overhead-Subcontractor only
 - (f) Profit-Subcontractor only
 - (g) Employment taxes under FICA and FUTA
 3. The Operator's and Contractor's overhead, profit and commission will be included in a modification to the component of the Fixed Fees for Development and Construction Support Services, if required. The subcontractors' overhead and profit percentage included in the proposal will be considered to include, but not be limited to, insurance other than mentioned in b.2. of this clause, use of small tools, incidental job burdens, and general office expense. No percentages for overhead, profit or commission will be allowed on employment taxes under FICA and FUTA. The percentages for overhead, profit and commission will be negotiated and may vary according to the nature, extent, and complexity of the work involved. Not more than two percentages for subcontractor's work, not to exceed ten (10) percent each, will be allowed regardless of the number of tiers of subcontractors; that is, the markup on work subcontracted by a subcontractor will be limited to one overhead percentage and one profit percentage. On proposals covering both increases and decreases of the Scope of Work, the overhead and profit will be computed on the net change only.
 4. The Operator must submit with its proposal its request for time extension (if any).
 5. In considering a modification to the GMP, the Owner may check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.
 6. Where modification is made to the GMP, appropriate adjustment will be made to the Fixed Fees for Development and Construction Support Services. This adjustment should include the Operator's profit and overhead costs only for work which:
 - (a) Requires a duplication of work already included under the fee that has already been accomplished;
 - (b) Causes an appreciable increase in direct labor, material or other costs included under the fee; or
 - (c) Requires new labor, material or other direct costs of work not included under the fee.

The Operator's and Contractors percentage of profit and overhead costs will be negotiated and may vary according to the nature, extent, and complexity of the work, but will not exceed ten (10) percent for the Operator and ten (10) percent for the Contractor in total.

7. Payment for a Change involving construction work will be made on the basis of direct construction costs and subcontractor costs that are Reimbursable Costs, up to the limit of the revised GMP. Payment for Operator and Contractor services will be made on the basis of the negotiated fee.
8. After receipt of a proposal with a detailed breakdown, the Owner's Representative will act reasonably promptly thereon. However, when the necessity to proceed with a Change does not allow sufficient time to check a proposal, or in the event of a failure to reach an agreement on a revised GMP, the Operator, if directed by Owner, shall proceed with the work and will be reimbursed for all direct costs. The GMP shall be subsequently modified based on the actual cost of the change, plus a fee increase for overhead and profit as provided in this Article XVII.
9. Upon written request by the Owner's Representative, the Operator shall submit a proposal, in accordance with the requirements and limitations set forth in subparagraphs (b.1) through (b.9) of this clause, for work involving contemplated changes covered by the request, within the time limit indicated in the request or any extension of such time limit as may be subsequently granted. If, within a reasonable time after receipt of such proposal, the Owner's Representative orders the Operator to proceed with the performance of the work proposed, the proposal submitted prior to the order will constitute the Operator's statement of the monetary extent of its claim for adjustment to the Guaranteed Maximum Price.

17.4 DIFFERING SITE CONDITIONS

Operator represents that it has recommended the site(s) for the Project and has had full opportunity to inspect such site(s) to determine suitability for this Project. Operator therefore waives any claim to an adjustment in Guaranteed Maximum Price arising from subsurface, latent or other unknown physical conditions at the site and voluntarily assumes the risk of increased costs associated with the possible existence of such conditions.

17.5 RESOLUTION OF DISPUTES, CLAIMS AND OTHER MATTERS

Disputes, claims and other matters in question between the parties shall only be resolved as follows:

- a. The Operator shall give Owner written notice of any claim for any additional compensation, damages, or delay within ten (10) days of the beginning of the occurrence of the event leading to the claim being made, or within ten (10) days of when Operator or any of its subcontractors first knew or first reasonably should have known of the occurrence of the event leading to the claim being made, and Operator shall submit the actual claim and any supporting data reasonably available within thirty (30) days after the occurrence giving rise to the claim ends unless otherwise agreed in writing by the parties. The "occurrence" means the condition encountered in the field giving rise to the claim and not a later dispute about payment for that condition. Claims of delay will be resolved as they occur, and no claims of cumulative impacts or deferral of claimed delay will be allowed. Complete satisfaction of this Section 17.5.a is a condition precedent for Operator to pursue a claim arising under or relating to this Agreement, and failure by Operator to satisfy this subparagraph a as to written notice or, unless otherwise agreed in writing by the parties, to submit its claim and reasonably available data in accordance with this Section 17.5.a will waive any claim by Operator as to which such failure applies. Unless otherwise agreed by the parties, the Owner shall act on any claims within ninety (90) days of their receipt.
- b. The parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation conducted pursuant to the Rules of the American Arbitration Association, with the site of the mediation being Appomattox County, Virginia. Should the dispute, claim, or other matter in question remain unresolved for the shorter of (i) following negotiation and mediation, or (ii) more than ten (10) days after mediation is invoked by a party, either party may proceed in accordance with Section 17.5.c below.
- c. If the procedures of Section 17.5.b have been followed, but, more than ten (10) days have passed since a party has invoked mediation, and the dispute, claim or matter in question remains unresolved, then either party may institute a lawsuit or chancery action, as appropriate, in the Circuit Court of Appomattox County, Virginia, or if the subject or amount in controversy is within its jurisdiction, the General District Court of Appomattox County, Virginia.
- d. Nothing in Sections 17.5.b or 17.5.c shall prevent a party from seeking immediate temporary injunctive or other temporary equitable relief in Appomattox County Circuit Court if circumstances so warrant.
- e. In the event of any dispute, claim, or other matter in question arising, Operator shall continue its performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. During the pendency of any dispute in connection with the payment of moneys, Operator shall be entitled to receive payments for non-disputed items.
- f. No claim by Operator shall be allowed if submitted after final payment.

ARTICLE XVIII

TERMINATIONS

18.1 TERMINATION FOR CONVENIENCE.

- a. Performance under this Agreement may be terminated by the Owner for convenience, for any reason, in whole or in part at any time. A termination may be effected by delivery to the Operator of a notice of termination specifying the extent of work terminated, and the effective date of the termination (thirty [30] calendar days minimum notice).
- b. Upon receipt of a notice of termination, unless otherwise directed by the Owner's Representative, the Operator must take the following actions:
 1. Stop work to the extent specified in the notice.
 2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of the unterminated work.
 3. Terminate all orders and subcontracts to the extent that they relate to the work terminated.
 4. Settle all outstanding liabilities and claims arising out of the termination of orders and subcontracts.
 5. Transfer title to the Owner and deliver as directed by the Owner's Representative:
 - (a) Work in process, completed work, and other material produced as a part of or acquired for the work terminated; and
 - (b) The completed or partially completed (in both hard copy and electronic format) plans, drawings, information, and other property that, if the Agreement had been completed, would have been furnished to the Owner.

6. Use its best efforts to sell, as directed by the Owner's Representative, any property of the types referred to in paragraph b.5 above, provided that the Operator may acquire property under the conditions prescribed and at prices approved by the Owner's Representative, and the proceeds of any such transfer will be applied in reduction of any payments to be made by the Owner to the Operator, or be credited to the price or cost of the work covered by this Agreement, or be paid in any manner directed by the Owner's Representative.
 7. Complete performance of the work not terminated.
 8. Take any action that may be necessary, or that the Owner's Representative may direct, for protecting and preserving any property related to this Agreement that is in the possession of the Operator and in which the Owner has or may acquire an interest.
- c. At any time, the Operator may submit to the Owner's Representative a list, certified as to quantity and quality, of termination inventory not previously disposed of, and may request the Owner to remove inventory items or enter into a storage agreement covering them. Not later than fifteen (15) calendar days after receiving this request, the Owner will accept title to the items and remove them or enter into a storage agreement. The list will be subject to verification by the Owner's Representative upon removal of the items or, if the items are stored, within forty-five (45) days after submission of the list.
 - d. After termination, the Operator must submit to the Owner's Representative a termination claim in the form and with the certification prescribed by the Owner's Representative. The claim must be submitted promptly, but in no event more than one (1) year after the effective date of termination, unless an extension in writing is granted by the Owner's Representative. However, if the Owner's Representative determines that the facts justify such action, any termination claim may be received and acted upon at any time after the one (1) year period. Upon failure of the Operator to submit a termination claim within the time allowed, the Owner's Representative may determine, on the basis of the information available, the amount, if any, due the Operator by reason of the termination and will pay that amount.
 - e. If the Operator and the Owner's Representative fail to agree on the amount to be paid to the Operator by reason of the termination, the Owner will pay the Operator the total of:
 1. The amount payable per the Draw Schedule for Fixed Fees and the Schedule of Values for Reimbursable Costs based on the progress obtained on the Project at the time of the termination.;
 2. The cost of settling and paying claims arising out of the termination of work under subcontracts.
 - f. The total sum to be paid to the Operator may not exceed the total Agreement price as reduced by the payments made and as further reduced by the Agreement price of work not terminated. Except for normal spoilage, and except to the extent that the Owner expressly assumed the risk of loss, there will be excluded from the amounts payable to the Operator under paragraph e above, the fair value, as reasonably determined by the Owner's Representative, of property destroyed, lost, stolen, or damaged so as to become undeliverable to the Owner, or to a buyer.
 - g. The Operator has the right of review under the "Claims and Disputes" clause of any determination made by the Owner's Representative under paragraph d or e above, except that, if the Operator has failed to submit its termination claim within the time provided in paragraph d above and has failed to request an extension of time, there may be no right of review.
 - h. In arriving at the amount due the Operator, there must be deducted:
 1. Any valid claim that the Owner may have against the Operator under this Agreement; and
 2. The agreed price for or the proceeds of sale of materials, supplies, or other things kept by the Operator or sold and not recovered by or credited to the Owner.
 - i. If the termination is partial, the Operator must file with the Owner's Representative a request in writing for an equitable adjustment of the price specified in the Agreement relating to the continued portion of the Agreement.

18.2 TERMINATION FOR DEFAULT.

- a. The Owner may, subject to paragraph d below, by written notice of default to the Operator, terminate this Agreement in whole or in part if the Operator fails to:
 1. Complete the requirements of this Agreement within the time specified in the Agreement or any extension;
 2. Make progress, so as to endanger performance of this Agreement; or
 3. Perform any of the other material provisions of this Agreement (but see subparagraph b following).
- b. Owner may terminate this Agreement under paragraph a.2 and a.3 if the Operator does not commence to cure the failure within ten (10) calendar days (or more if authorized in writing by the Owner's Representative) after receipt of the notice from the Owner's Representative specifying the failure.
- c. Owner may terminate this Agreement without notice or opportunity to cure if Operator declares bankruptcy or is involuntarily placed into bankruptcy.
- d. If the Owner terminates this Agreement in whole or in part, it may acquire similar supplies or services or complete the work, and the Operator will be liable to the Owner for any excess costs. However, the Operator must continue the work not terminated.
- e. Except for defaults of subcontractors at any tier, the Operator is not liable for any excess costs if the failure to perform the Agreement arises from causes beyond the control and without the fault or negligence of the Operator.
- f. If this Agreement is terminated for default, the Owner may require the Operator to transfer title and deliver to the Owner, as directed by the Owner's Representative, any completed supplies, partially completed supplies, and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights that the Operator has specifically produced or acquired for the terminated portion of this Agreement. Upon direction of the Owner's Representative, the Operator must also protect and preserve property in its possession in which the Owner has an interest.
- g. The Owner will pay the Agreement price for completed items delivered and accepted. The Operator and Owner's Representative may agree on the amount of payment for items delivered and accepted under paragraph e above for the protection and preservation of the property. Failure to agree will be a dispute under Section 17.5 of this Agreement. The Owner may withhold from these amounts any sum the Owner's Representative determines to be necessary to protect the Owner against loss because of outstanding claims.
- h. If, after termination, it is determined that the Operator was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for convenience.
- i. The rights and remedies of the Owner under this Section 18.2 are in addition to any other rights and remedies provided by law or under this Agreement.

18.3 TERMINATION FOR OWNER DEFAULT.

- a. The Operator may terminate the contract for default if, through no act or fault of the Operator or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the work under direct or indirect contract with the Operator, the Owner has not issued a certificate for payment and has not notified the Operator of the reason for withholding the certificate for payment within thirty (30) calendar days of receipt of a valid invoice, or because the Owner has not made payment within thirty (30) calendar days after the time stated in the Agreement for payment. The Operator shall notify Owner of said default, and Owner does not cure the default within ten (10) days.
- b. The Operator may terminate the Agreement for default if, through no fault of the Operator, Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the work under direct or indirect contract with the Operator or Contractor, repeated suspensions, delays or interruptions of the entire work by the Owner, other than resulting from a termination for convenience or termination of Operator for default, as described in the contract, constitute in the aggregate more than one hundred twenty (120) calendar days in any three hundred sixty-five (365) calendar day period.

ARTICLE XIX

INSPECTION AND ACCEPTANCE

19.1 INSPECTION OF PROFESSIONAL SERVICES.

The Owner's Representative may, at any time or place, inspect the services performed and the products, including documents and reports. No matter what type of contract is employed, and in addition to any specific standards of quality set out in this agreement, the Owner's Representative may reject any services or products that do not meet the requirements of this Comprehensive Agreement. No payment will be due for any services or products rejected under this clause.

19.2 INSPECTION AND ACCEPTANCE.

- a. Owner inspection and testing of materials and workmanship will be made at reasonable times at the site of the work or off the site as the Owner's Representative may direct. Off-site inspection or testing does not relieve the Operator of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Owner after acceptance of the completed work under the terms of paragraph f of this section.
- b. The Operator must, without charge, replace any material or correct any workmanship found by the Owner not to conform to the contract requirements, unless the Owner consents to accept such material or workmanship with an appropriate adjustment in contract price. The Operator must promptly segregate and remove rejected material from the premises.
- c. If the Operator does not promptly replace rejected material or correct rejected workmanship, the Owner may, by contract or otherwise, replace or correct it and charge the cost to the Operator.
- d. The Owner may examine completed work by removing or tearing it out. The Operator must replace or correct any work found not to conform to contract requirements. If work is torn out and found to comply with contract requirements, the Owner's Representative must make an equitable adjustment for the services provided for the inspection and replacement of the work.
- e. The Owner will inspect the work as soon as practicable after completion.
- f. The Owner may terminate this contract for default and seek any remedy allowed by law if the Operator does not maintain an acceptable inspection system or follow Owner directions to replace or correct incorrect or defective items.

19.3 TECHNICAL SUPERVISION.

- a. Performance of the work is subject to technical input by representatives of the Owner. Technical input includes suggestions to the Operator which fill in technical details, suggest possible lines of inquiry, or otherwise clarifies the scope of work, but do not constitute new scopes of work.
- b. The Owner reserves the right to use construction management support services (CMSSC) personnel, or other qualified personnel under contract to the Owner, to provide such technical supervision.

19.4 APPROVAL OF DESIGN.

- a. The Owner's Representative must approve final plans and specifications. However, phased or fast track construction may commence prior to approval of final plans and specifications, provided the Owner's Representative has approved plans and specifications covering only that phase of the work. The Owner's Representative's review will be primarily for general arrangement and compliance with Owner requirements included as part of the contract.

Owner's Representative's approval shall not be construed as:

- 1. Permitting any departure from the contract requirements, without specific prior written approval.
 - 2. Relieving the Operator of responsibility for any errors including, but not limited to, details, dimensions and materials;
 - 3. Relieving the Operator of responsibility for compliance with applicable codes of local, state, or federal codes or regulations
- b. After approval of plans and specifications, the Operator shall be responsible for revising plans and specifications to correct deficiencies. Copies of revised plans and specifications will be furnished to the Owner's Representative. There will be no modification to any fee or to the GMP to the contract, as a result of such deficiencies.

19.5 PROJECT CLOSEOUT.

Unless specified for an earlier date elsewhere in this contract, the Operator must process all documents, changes, claim submissions, complete all Project closeout items, and submit a final report certifying that this action has been taken not later than six (6) months after the date of Substantial Completion.

19.6 ASBESTOS FREE AND LEAD-BASED PAINT FREE CERTIFICATION.

The Operator must certify that no asbestos-containing building materials or lead-based paints (interior or exterior) were used in this Project. The Operator must include completed and unaltered asbestos free and lead-based paint certifications as a closeout submittal document. The only acceptable alternative for asbestos certification is to conduct a post-construction asbestos survey in accordance with AHERA requirements.

ARTICLE XX
MISCELLANEOUS

20.1 REPRESENTATIONS AND WARRANTIES OF AUTHORITY.

- a. Operator represents and warrants that it has legal authority to enter into this Agreement and perform all of its obligations herein, that all Work under this Agreement shall be performed by appropriately licensed entities or individuals when required, and that the execution of this Agreement by it has been duly and properly authorized. As a condition to this Agreement's effectiveness, Operator shall provide to Owner a certificate in form and with attachments satisfactory to Owner showing to Owner's satisfaction Operator's legal existence and authority to enter into this Agreement.
- b. Owner represents and warrants that it has legal authority to enter into this Agreement and perform all its obligations herein and that the execution of this Agreement by it has been duly and properly authorized, including approval by the local governing body in accordance with Va. Code § 56-575.16 (as evidenced by the signature of approval on behalf of Owner affixed to this Agreement).

20.2 EQUAL OPPORTUNITY EMPLOYMENT.

- a. During the performance of this Agreement, the Operator agrees as follows:
 - (1) The Operator 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 federal or state law relating to discrimination in employment, except where there is a bona-fide occupational qualification reasonably necessary to the normal operation of the Operator. The Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - (2) The Operator, in all solicitations or advertisements for employees placed by or on behalf of the Operator, will state that Operator is an equal opportunity employer.
 - (3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the notice, advertisement, and solicitation requirements of this paragraph.
- b. The Operator will include the provisions of the foregoing paragraphs a(1), a(2), and a(3) (substituting the subcontractor or vendor for Operator as the obligated party) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

20.3 DRUG-FREE WORKPLACE.

- a. During the performance of this Agreement, the Operator agrees to (i) provide a drug-free workplace for the Operator'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 Operator'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 Operator that the Operator maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses (substituting the subcontractor or vendor for the Operator as the obligated party) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- b. For the purposes of this paragraph, "drug-free workplace" means a site for the performance of work done in connection with this Agreement by Operator where its employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

20.4 NOTICES.

- a. All notices and demands by any party to any other shall be given in writing and sent by a nationally-recognized, overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

If to Owner: Susan M. Adams, County Administrator
County of Appomattox
153A Morton Lane #863
Appomattox, VA 24522
(434) 352-2637 (Telephone)
(434) 352-4214 (Facsimile)

With a copy to: Thomas E. Lacheney
Deal & Lacheney P.C.
County Attorney for Appomattox County
153A Morton Lane #863
Appomattox, Va. 24522

(888) 456-1547 (Telephone)
(804) 464-8970 (Direct Dial)
(877) 457-1231 (Facsimile)

If to Operator: William Cook, President
Jamerson-Lewis Construction, Inc.
1306 Stephenson Avenue
Lynchburg, Virginia 24501
(434) 846-3486 (Telephone)
(434) 846-4102 (facsimile)

With a copy to: _____

b. Any party may, upon prior notice to the others, specify a different address for the giving of notice. Notices shall be effective one day after sending if sent by overnight courier or three (3) days after sending if sent by certified mail, return receipt requested.

20.5 SUCCESSORS AND ASSIGNS.

Except as expressly otherwise provided, all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may not be assigned without the prior written consent of the parties to this Agreement. Notwithstanding the foregoing, if financing is obtained for the Project, the Owner may assign this Agreement to a third-party, as needed, to acquire a leasehold interest in the sites and to own the Project improvements. This Agreement may also be assigned to a mortgagee(s)/trustee(s) of deed(s) of trust of the fee or leasehold interest in the sites or portions of them. The Operator hereby consents to collateral assignment of this Agreement in favor of such mortgagee(s)/trustee(s) of deed(s) of trust, in a form reasonably satisfactory to such mortgagee(s)/trustee(s).

20.6 NO WAIVER.

The failure of Owner to insist upon the strict performance of any provisions of this Agreement, the failure of Owner to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by Owner of any act by Operator requiring Owner's consent or approval shall not be construed to waive or render unnecessary the requirement for Owner's consent or approval of any subsequent similar act by Operator. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged.

20.7 SEVERABILITY

If any term or provision of this Agreement shall be determined to be invalid or unenforceable in any respect, it shall be replaced with a substantially similar provision to the greatest extent possible and the Agreement shall remain in full force and effect.

20.8 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 Agreement or any counterpart hereof to produce or account for the other counterpart.

20.9 ENTIRE AGREEMENT.

This Agreement and the exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between Operator and Owner concerning the Project, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. No alteration, amendment, change or addition to this Agreement shall be binding upon Operator or Owner unless reduced to writing and signed by each party. Extracts from Operator's Conceptual Phase and Detailed-Phase proposals at Exhibit B are attached and incorporated by reference for purposes of providing details concerning the overall intent of the parties. However, Exhibit B is not intended to contradict this Agreement, and in the event of inconsistencies, this Agreement shall control.

20.10 WAIVER OF CLAIMS FOR CONSEQUENTIAL DAMAGES

Except as otherwise specifically provided, Owner and Operator waive claims against the other for consequential damages arising out of or relating to this Agreement. Nothing contained in this paragraph shall be deemed to preclude an award of liquidated damages when applicable in accordance with this Agreement.

20.11 GOVERNING LAW.

This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia. Venue for any litigation arising from this Agreement shall be proper in the Appomattox County Circuit Court, or in the Appomattox County General District Court if the amount in controversy is within the jurisdictional limit of such court, and all parties to this Agreement voluntarily submit to the jurisdiction and venue of such courts, regardless

of the actual location of such parties. The provisions of this Agreement shall not be construed in favor of or against either party but shall be construed according to their fair meaning as if both parties jointly prepared this Agreement.

20.12 ANNUAL APPROPRIATION AND PLAN OF FINANCE.

The financial obligations of the Owner contained in this Agreement are subject to annual appropriation. Operator shall cooperate in executing any documents reasonably necessary to aid Owner in implementing its plan of finance for the Project.

20.13 FINANCIAL STATEMENTS.

Operator agrees to provide Owner with copies of its complete and current financial statements on an annual basis, or more frequently if reasonably requested by Owner. The Operator may designate such financial statements as confidential proprietary information exempt from release under the Virginia Freedom of Information Act by following the procedure for such designation indicated in the Owner's PPEA implementation procedures.

20.14 COPY OF AGREEMENT TO AUDITOR OF PUBLIC ACCOUNTS.

Owner shall submit a copy of this Agreement to the Virginia Auditor of Public Accounts within thirty (30) days of its effective date.

20.15 APPROVAL BY APPOMATTOX COUNTY A CONDITION PRECEDENT TO AGREEMENT'S EFFECTIVENESS.

It shall be a condition precedent to this Agreement's effectiveness that it first be approved by Appomattox County.

20.16 CERTIFICATIONS.

Operator has executed and provided to Owner a Vendor's Certification (Exhibit L), Statement of Disclaimer (Exhibit M) and Contractor Eligibility Certification (Exhibit N) contemporaneously with the execution of this Agreement. Operator shall require all subcontractors who will perform more than \$10,000.00 of work pursuant to this Agreement to execute each of these documents (Exhibits L, M and N) prior to commencement of such subcontractor's work. Also attached hereto and incorporated herein by this reference is Exhibit R, Contractor Certifications and Compliance.

20.17 RULES AND REGULATIONS OF OWNER.

Operator agrees to abide by, and to guarantee its subcontractors and their employees abide by, all reasonable rules and regulations which Appomattox County may adopt from time to time to govern the use by Operator, its subcontractors and employees of the premises and the property which is the subject of this Agreement. At present, Operator agrees to abide by the construction rules set forth in Exhibit O, which is attached hereto, and to ensure that its subcontractors and their employees also abide by such rules. Operator agrees that the rules set forth in Exhibit O are reasonable, but further agrees to abide by, and to guarantee its subcontractors and their employees abide by, any reasonable additional rules or changes to the rules which may be adopted by Appomattox County from time to time. Attached hereto and incorporated herein by this reference is Exhibit P, Required Conditions to All Contracts.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly authorized representatives as of the date first above written.

Appomattox County

By: _____
Type Name Here

Its: _____

Jamerson-Lewis Construction, Inc.

By: _____
Type Name Here

Its: _____

**Comprehensive Agreement
Between Appomattox County and Jamerson-Lewis Construction, Inc.**

EXHIBIT "A"

LAND

All property related to the Project that being the "Old" Appomattox Courthouse Additions and Renovations to include 1,220 SF of Building Additions and 2,700 SF of Building Renovations. Additions will provide an Entry Vestibule, Egress Stair, Two-story Elevator, and Utility Space. Renovations will include all new HVAC, Electrical and Plumbing Systems; new Finishes; and Accessories to adapt the space into a new Board of Supervisors Meeting Room." Access to the property will be provided by Appomattox County Facilities Department.

Appomattox County Tax Map Number: 64A5 A 24

**Comprehensive Agreement Between
Appomattox County and Jamerson-Lewis Construction, Inc.**

EXHIBIT "B"

SCOPE OF WORK

List Conceptual Stage Proposal, Detailed Stage Proposal, and other pertinent documents that define Scope of Work.

1. Request for Proposals (RFP), dated April 26, 2023, and all subsequent addendums, issued by Appomattox County for Renovation and Adaptive Reuse of the 1890's Appomattox County Courthouse
2. Original PPEA Submission Volumes 1 and 2 dated June 22, 2023

**Comprehensive Agreement Between
Appomattox County and Jamerson-Lewis Construction, Inc**

EXHIBIT "C"

CLARIFICATIONS AND ASSUMPTIONS

List clarifications and assumptions that serve as the basis for the Agreement.

1. Operator's price does not include costs for Owner's consultants, attorneys or service providers.
2. Operator's proposal does not include any asbestos abatement unless otherwise specifically stated in the proposal.
3. Operator's proposal does not include any costs associated with unsuitable soils or rock excavation. If encountered, additional costs are to be paid to the Operator based upon verified quantities and agreeable rates.
4. Operator's proposal assures that, if required, working non-traditional hours (outside 8am to 5pm) and after the normal classroom instructional period is included in their proposal and scopes of work.
5. All access to Appomattox County buildings and associated work shall be coordinated through the Appomattox County Facilities Department. Any additional cost to the Operator due to lack of access to the buildings in the performance of the scope of work shall be additionally compensated.

**Comprehensive Agreement Between
Appomattox County and Jamerson-Lewis Construction, Inc**

EXHIBIT "D"

DRAW SCHEDULE

See attached Draw Schedule dated October 25th, 2023.

Construction Draws shall be made monthly. The cutoff for monthly draws will be by the 28th of each month.

The projected draw schedule per month will be submitted for review herein.

**Comprehensive Agreement Between
Appomattox County and Jamerson-Lewis Construction, Inc.**

EXHIBIT "E"

PROJECT SCHEDULE MILESTONES

| <u>TASK</u> | <u>TARGET COMPLETION</u> |
|--|----------------------------------|
| Date of Comprehensive Agreement | November 15 th , 2023 |
| Construction Start Date | March 1 st , 2024 |
| Construction Substantial Completion Date | July 1 st , 2025 |

**Comprehensive Agreement Between
Appomattox County and Jamerson-Lewis Construction, Inc.**

EXHIBIT "F"

PAYMENT APPLICATION

See attached AIA Payment Application form G702/CMA

**Comprehensive Agreement Between
Appomattox County and Jamerson-Lewis Construction, Inc.**

EXHIBIT "G"

ITEMS AND PRICES SUMMARY SHEET

Reimbursable Costs ¹

| | | |
|--|--------------------|--------------------|
| Site Acquisition | <u>\$0</u> | |
| Site Construction | <u>\$146,300</u> | |
| Building Construction | <u>\$2,915,799</u> | |
| Permits | <u>\$0</u> | |
| Utility Connection Fees | <u>\$0</u> | |
| Inspection and Testing | <u>\$75,000</u> | |
| Furniture, Fixtures & Equipment | <u>\$58,000</u> | |
| Operator Contingency | <u>\$372,983</u> | |
| Financing | <u>\$0</u> | |
| Legal, Insurance, Accounting (Project Related) | <u>\$44,019</u> | |
| Subtotal of Reimbursable Costs | | \$3,612,101 |

Fixed Costs

| | | |
|---|-----------------------|------------------|
| Architecture/Engineering Fee & Expenses | <u>\$170,928</u> | |
| Operator Fee & Expenses | <u>Not Applicable</u> | |
| General Contractor Fee | <u>\$217,572</u> | |
| Subtotal of Fixed Costs | | \$388,500 |

| | |
|--|---------------------------|
| <u>CONTRACT COST LIMIT</u> = Reimbursable + Fixed Fee Costs | <u>\$4,000,601</u> |
| (Not to Exceed) | |

1. Individual lines items in this cost category may vary however

**Comprehensive Agreement Between
Appomattox County and Jamerson-Lewis Construction, Inc.**

EXHIBIT "H"

LIST OF EXTENDED WARRANTIES

Not Applicable

**Comprehensive Agreement Between
Appomattox County and Jamerson-Lewis Construction, Inc.**

EXHIBIT "I"

Additional Clarifications to Section 5.6 of the Comprehensive Agreement

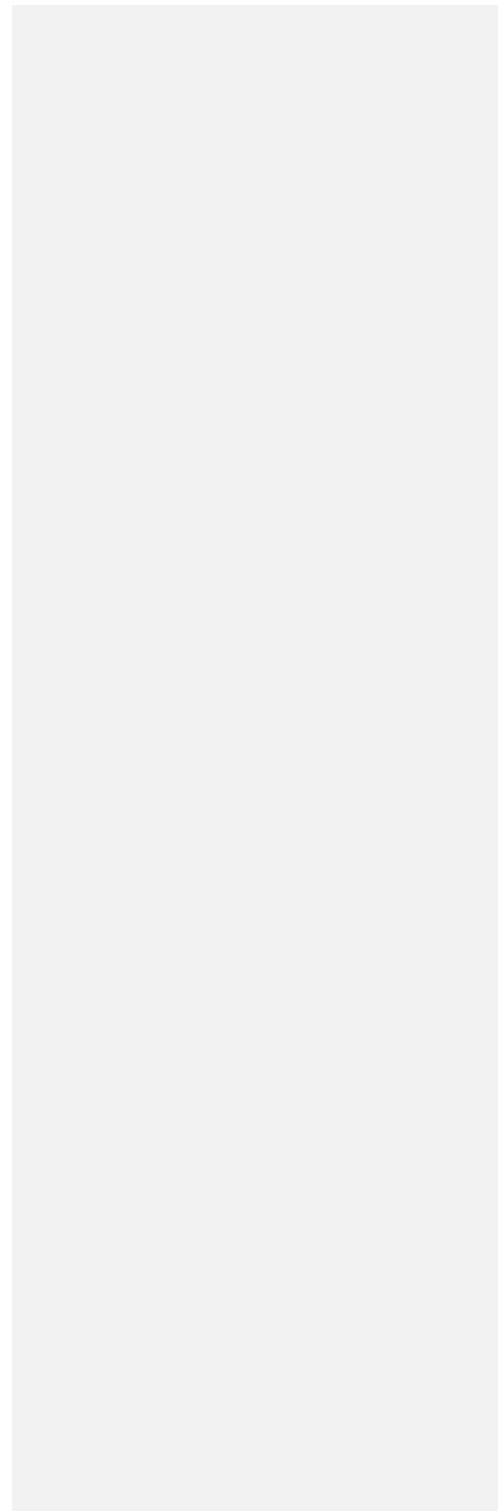
There shall be no changes in the Operator's Fixed Fee. Should additional work outside of the original scope of work be added to this contract by the Owner, the Operator, at the request of the Owner, will develop a scope of work and cost that will accomplish the requested work. This shall be considered a Change Order to the existing contract and the contractor will be allowed a 10% mark-up of the subject Change Order.

**Comprehensive Agreement Between
Appomattox County and Jamerson-Lewis Construction, Inc.**

EXHIBIT “J”

Performance and Payment Bonds attached to Comprehensive Agreement

Liability Insurance Certificate attached to Comprehensive Agreement



**Comprehensive Agreement Between
Appomattox County and Jamerson-Lewis Construction, Inc**

EXHIBIT "K"

Technical Scope of Work for Architectural / Engineering Services

See Exhibit B

**Comprehensive Agreement Between
Appomattox County and Jamerson-Lewis Construction, Inc.**

EXHIBIT "L"

VENDOR'S CERTIFICATION

I (we) hereby certify that if the contract is awarded to our firm, partnership, or corporation, that no member of the Appomattox County Board of Supervisors or members of his or her immediate family, including spouse, parents, or children, or any person representing or purporting to represent any member or members of the Board of Supervisors or School Board, has received or has been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee, political contribution, or any similar form of remuneration on account of the acts of awarding and/or executing this contract.

Handwritten Signature of Authorized Principal(s)

Name: _____

Title: _____

Name of Firm/Partnership/Corporation: _____

Date: _____

**Comprehensive Agreement Between
Appomattox County and Jamerson-Lewis Construction, Inc.**

EXHIBIT "M"

STATEMENT OF DISCLAIMER

This is to certify that no employee, official, or elected officer of the County of Appomattox has a proprietary interest in the company, corporation, partnership, or other organization, furnishing the goods and/or services or stands to benefit personally from the furnishing of such goods or services as referenced above:

Firm: _____

By: _____ (SEAL)

_____ (SEAL)

Attest:

Secretary

Date

STATE OF VIRGINIA: To-Wit:

I, the undersigned, a Notary Public in and for the State aforesaid, whose commission as such will expire on the _____ day of _____, do hereby certify that _____, whose name(s) is(are) _____, signed to the foregoing statement bearing date of _____, 20____, this day personally appeared before me in the State aforesaid and acknowledged the same before me.

Given under my hand and seal this _____ day of _____, 20____ .

Notary Public

**Comprehensive Agreement Between
Appomattox County and Jamerson-Lewis Construction, Inc.**

EXHIBIT "N"

CONTRACTOR ELIGIBILITY CERTIFICATION

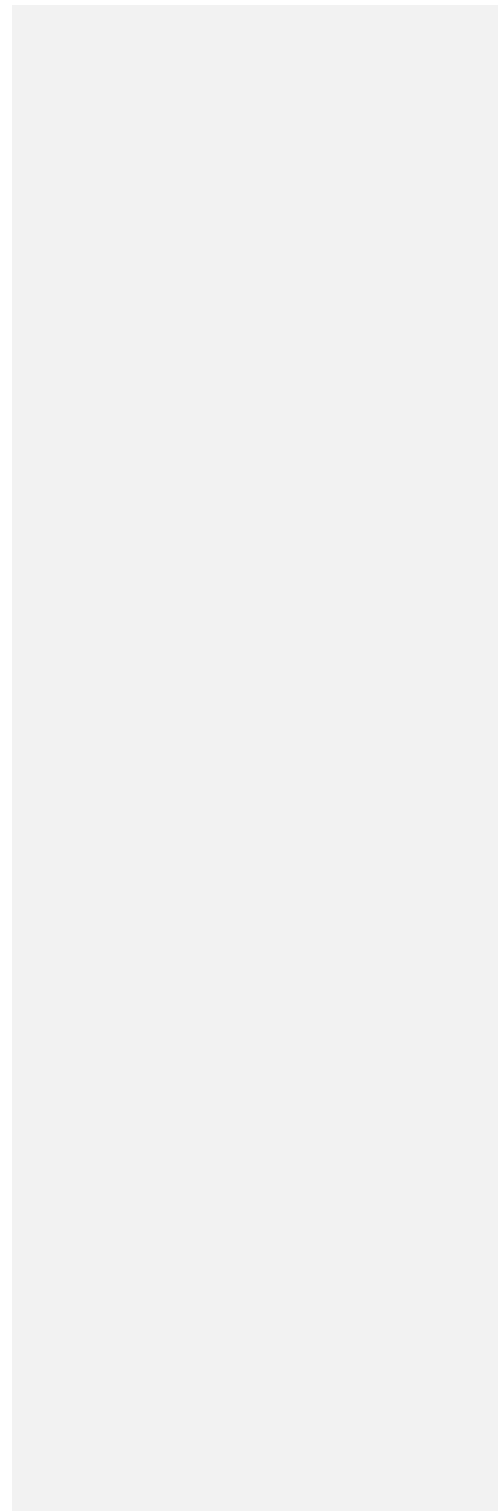
This is to certify that this person/firm/corporation has not been barred from bidding on contracts by any agency of the Commonwealth of Virginia, nor is this person/firm/corporation a part of any firm/corporation that has been barred from bidding on contracts by any agency of the Commonwealth of Virginia.

Name of Official

Title

Firm or Corporation

_____ Date



**Comprehensive Agreement Between
Appomattox County and Jamerson-Lewis Construction, Inc.**

EXHIBIT "O"

Construction Rules

**Comprehensive Agreement Between
Appomattox County and Jamerson-Lewis Construction, Inc.**

EXHIBIT "P"

Required Conditions to All Contracts

**Comprehensive Agreement Between
Appomattox County and Jamerson-Lewis Construction, Inc.
EXHIBIT "R"**

Contractor Certifications and Compliance

