

COMPREHENSIVE  
AGREEMENT

between

Goochland County, Virginia

and

John K. George & Company

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Tucker Park Pedestrian Trail

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September 4, 2020

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**EXHIBITS**

- A – Project Cost, Site, Purpose, Scope, Schedule, and Representatives (1 page)
- B – Schedule of Values (1 page)
- C – Operator’s Proposals (16 pages)

**THIS COMPREHENSIVE AGREEMENT** ("Agreement") is entered into effective as of this 4th day of September, 2020 (the "Effective Date"), by and between **GOOCHLAND COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia ("County" or "Owner"), and **JOHN K. GEORGE & COMPANY**, a Virginia corporation ("JKG" or "Operator"), of 5005 West Clay Street, Richmond, VA 23230.

#### **Recitals:**

R-1. In September 2008, the County adopted procedures to implement the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 ("PPEA"), Va. Code 56-575.1, *et seq.*

R-2. On March 8, 2019, the County issued Invitation for Bid 2019-18 requesting sealed bids to construct a pre-designed, at-grade, asphalt pedestrian crossing to connect the eastern and western sections of Tucker Park in Goochland, Virginia.

R-3. The County contracted with the lowest responsive and responsible bidder in June 2019; however, the contract was later terminated for convenience.

R-3. On September 15, 2019, JKG submitted a Phase I Proposal under the PPEA and the County's PPEA Guidelines ("Guidelines"), proposing a public-private effort to provide an alternatively-designed, above-grade, timber boardwalk to connect the two sections of Tucker Park.

R-4. On November 6, 2019, the County Board of Supervisors directed staff to evaluate JKG's proposal.

R-5. After the County's public notice of JKG's proposal, which stated the County's willingness to accept competing proposals for simultaneous consideration as required under the PPEA and the Guidelines, no other proposals were received by the December 27, 2019 deadline.

R-6. The County's PPEA committee reviewed JKG's Phase I Proposal, and afterward requested that JKG submit a Phase II Proposal, which JKG did on or about January 28, 2020.

R-7. On February 4, 2020, the County's PPEA committee recommended developing an agreement with JKG and making a recommendation to the Board of Supervisors for approval.

R-8. On August 4, 2020, the County Board of Supervisors held a public hearing on JKG's proposals, in accordance with state law.

R-9. The County and JKG have negotiated a comprehensive agreement consistent with the PPEA, the County's Guidelines, and JKG's proposals, the terms and conditions of which are set out in this Agreement.

R-10. The County has determined that (i) proceeding under the procurement procedures of the PPEA and Guidelines is advantageous both to it and the public, (ii) there is a public need for the project, (iii) the estimated cost of the new project is reasonable in relation to similar facilities, and (iv) JKG's design and construction proposals will result in the timely development of 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, if any, although Operator remains responsible for the architectural and engineering services for the Project, including, without limitation, its design.
- 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 Contract Cost and schedule, with any adjustments to the Contract Cost and schedule to be determined subsequently pursuant to Article XVII of this Agreement.
- 1.3 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.
- 1.4 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.
- 1.5 Contract Cost** means the limit established at the time of execution of this Agreement on the total maximum amount payable to the Operator under this Agreement absent a Change pursuant to this Agreement.
- 1.6 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) The Construction Documents, which are the final Plans and Specifications that are approved by the Owner and Operator;
  - (e) Plans and Specifications that are approved by the Owner and Operator.
  - (f) Documents incorporated by reference by this Agreement;
  - (g) Operator's Detailed-Phase II Proposal; and
  - (h) Operator's Conceptual-Phase I Proposal.
- 1.7 Contractor or Prime Construction Contractor** means the entity responsible for the construction work under this Agreement. Operator has proposed to be the Contractor for the Project in its proposals to the Owner, and Operator shall be the Contractor for the Project unless the Owner approves otherwise in writing.
- 1.8 Day** means a calendar day, and "days" mean calendar days, unless the contrary is expressly indicated.
- 1.9 Draw Schedule** means the schedule of values attached hereto as **Exhibit B** to be used as a basis for payment of the Contract Costs to Operator, setting forth the value assigned to those different components.
- 1.10 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.

- 1.11 **Land** means the real property described in **Exhibit A** hereto.
- 1.12 **Operator** means John K. George & Company, a Virginia corporation, FEIN 54-1623235.
- 1.13 **Owner** means Goochland County, Virginia, a political subdivision of the Commonwealth of Virginia.
- 1.14 **Owner's Representative** means that individual designated by the Owner in writing to perform the functions of Owner's Representative specified in this Agreement.
- 1.15 **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.
- 1.16 **Plans and Specifications** mean the surveys, plans and specifications that Operator causes to be prepared for the Project that are approved by the Owner and Operator.
- 1.17 **Project** means the Tucker Park Pedestrian Trail to 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 agreed to by Change Order.
- 1.18 **Project Schedule** means the schedule for construction of the Project, which, in its initial version, is set forth in **Exhibit A** attached hereto.
- 1.19 **Punch List Items** means a list of items of work to be completed and deficiencies to be corrected, identified by the Owner's Representative, that do not affect the attainment of Substantial Completion. If the Owner's Representative and Operator 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.
- 1.20 **Requisition** means an application for payment in the form acceptable to Owner.
- 1.21 **Scope of Work** means all the work for the Project to be provided by Operator within the Contract Cost, except as modified by any Change.
- 1.22 **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.
- 1.23 **Substantial Completion** means the date determined by inspection by the Owner's Representative 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 will be responsible for ensuring that the total cost of the Project to Owner does not exceed the Contract Cost established by this Agreement. Pursuant to this Agreement, Operator will develop a design for the Project that will not exceed the Contract Cost. Operator will be responsible for completing the Project so that payments by Owner will not exceed the Contract Cost even if the costs to Operator to do so exceed the Contract Cost, unless otherwise adjusted pursuant to 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 warrants 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 governing body of Goochland County, Virginia, 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 up to 10% of any portion of the Services to be performed hereunder, but Operator shall not thereby be relieved of any of its obligations set forth herein.

## **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 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**

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.

### 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 of 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

#### 4.1 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 PDF 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 but not less than ten (10) days for each of the following submissions.

**a. 10% Schematic Design Development Submission:**

Within thirty (30) days of the Effective Date, the Operator shall prepare a 10% Schematic Design submission for Owner review and approval.

**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. Operator shall submit the 35% Design Development submission to the Owner for review and approval in accordance with the Project Schedule. 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.

**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. Operator shall submit the 65% Construction Documents submission to the Owner for review and approval in accordance with the Project Schedule. 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.

**e. 100% Construction Documents Submission:**

Following receipt of Owner's approval of the 65% Construction Documents submission, the Operator shall prepare a 100% Construction Documents submission. Operator shall submit the 100% Construction Documents submission to the Owner for review and approval in accordance with the Project Schedule. 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.

#### 4.3 Construction

With Owner's prior agreement in writing, 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

#### 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 B.

#### 5.2 Contract Cost

A Contract Cost has been agreed to by the parties as not to exceed **ONE HUNDRED SIXTY THOUSAND DOLLARS (\$160,000)**. The Contract Cost is comprised of the Operator's proposed pricing of \$140,000, plus a \$20,000 construction cost contingency, and is the maximum amount payable to Operator to complete the Scope of Work, except as otherwise provided in this Agreement. Operator must provide documentation satisfactory to Owner for any

materials cost increase related to construction cost contingency, as provided in Article XVI of this Agreement.

## **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 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.

#### **6.3 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 Contract Cost in lieu of such replacement.

#### **6.4 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. 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.

#### **6.5 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 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 Operator in general practice consistent with the highest industry standards shall be used in preparing contract specifications.
- d. Testing to establish compliance with the Contract Documents for critical items or critical portions of the work shall be specified as the Owner'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 and at Owner's cost.
- 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 Owner should not require submittals for minor commercial items or for items of marginal value.
- f. The specifications shall require that the Operator furnish shop drawings as approved for major items of equipment to be installed in the work.
- g. 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, and graphic scale. 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.

- h. 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.
- i. All design submissions shall be accompanied by electronic files of the submission in PDF.
- j. 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, if any, and the Prime Construction Contractor or the Operator required to resolve deficiencies, shall be furnished to the Owner's Representative.

### **7.3 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. The Owner reserves the right to review "As-Built" documents at any time during the Project.
- d. 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.

## **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. The Operator shall provide to Owner 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 facility, 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. 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 part of the Contract Cost 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.

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. 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.

## 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 90 days after it receives the Notice to Proceed from the Owner's Representative, **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 thirty (30) 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.

#### 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, **\$250** for each calendar day of unexcused delay until Substantial Completion is achieved. Liquidated damages may be deducted by Owner from any amount 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 payment for increased costs caused by the delay or interruption (including the costs incurred during any suspension or interruption), and an adjustment 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 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. 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.

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 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.
  - 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 90% 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 6:00 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.

3. Operator may not change personnel in key positions designated in the staffing section of its proposals and in **Exhibit A** without the permission of Owner. Owner will not consent to or accept any substitutions if, in its sole discretion, to do so would increase Owner's cost or would result in the reduction of quantity or quality of the services to be provided.

#### **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. All work shall be performed in a skillful and workmanlike manner.

#### **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 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 Contract Cost 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 and the Virginia Uniform Statewide Building Code.
- 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 are negligent or fail 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.
- 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. 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.
- e. Where available, Operator may use utility services of the facility 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.
- f. 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 Contract Cost includes 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 title and date.
- 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 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.

### **11.13 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 any A-E.
- c. Substitutions proposed by Operator shall be at no increase to the Contract Cost.

### **11.14 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.

## **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 designee. In such event the Operator shall cooperate by providing access to and posting signs to give notice of dangerous areas, 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 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.
- b. Owner's Limited License to Use for Renovations, Etc.: Operator hereby grants Owner a limited license to use the Work Product in connection with Owner's occupancy and use of the Project, including for maintenance and repairs, future renovations, and expansions, conditioned on use of the Work Product for renovations and expansions being at Owner's sole risk and without liability or legal exposure to Operator or anyone working by or through Operator, including design professionals of any tier (collectively the "Operator Parties.")
- 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, Operator hereby grants Owner a license to use the Work Product in connection with Owner's completion and occupancy of the Project, for maintenance and repairs, and for future renovations and expansions by the Owner.

- e. Owner's Agreement Not to Sue for Use of Work Product. If Owner uses the Work Product under Section 12.5.b. or c. of this article, Owner agrees to assume responsibility for and hold harmless the Operator Parties from 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 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 Section 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.

**12.4 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 if 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, if required, 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 PDF format) of plans showing the exact location of any new construction survey monuments with reference to true property lines.

**12.5 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.

**12.6 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, any 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 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, property, 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 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), including but not limited to, the Virginia Occupational Safety and Health (VOSH) Program, and the Virginia Department of Labor and Industry's Emergency Temporary Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.
  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, property, 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, 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 supersedes 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.

## **ARTICLE XVI**

### **PAYMENTS**

#### 16.1 Invoices

- 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 on 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, a complete inventory of 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. 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.
- b. 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.
- c. In making progress payments, the Owner's Representative will ordinarily retain five percent (5 %) 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.
- d. All material and work covered by progress payments will be the sole property of the Owner. However, this paragraph does not:
  - (1) 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
  - (2) Waive the right of the Owner to require fulfillment of all terms of the Contract Documents.
- e. 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.
- f. 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 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.

#### 16.3 Construction Cost Breakdown

The Operator's submission of the Contract Cost must include a construction cost breakdown as reasonably requested by Owner's Representative, including verified documentation satisfactory to Owner for any construction cost contingency. The Operator shall provide copies of its contract with its Prime Construction Contractor and construction subcontracts, 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 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 the Contract Cost 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 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. 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.
- c. 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. No claims will be allowed for defective plans or specifications prepared by or for the Operator.
- d. No claim by the Operator will be allowed if asserted after final payment under this Agreement.
- e. 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.
- f. 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 Equitable Adjustments.**

In the event of a Change, an appropriate monetary adjustment to the Contract Cost will be made if all the requirements of this Agreement are met. The Operator's written statement of the change in cost 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

#### **17.3 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 Contract Cost 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.

#### **17.4 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. If, after the expiration of the ninety (90) day period in Section 17.5.a, the dispute, claim or matter in question remains unresolved, then either party may institute a lawsuit in the Circuit Court of Goochland County, or if the subject or amount in controversy is within its jurisdiction, the General District Court of Goochland County.
- c. Nothing in Section 17.5.b. shall prevent a party from seeking immediate temporary injunctive or other temporary equitable relief in Goochland 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. Complete performance of the work not terminated.
  - 7. 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. 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 schedule of values based on the progress obtained on the Project at the time of the termination;
  - 2. The Operator's anticipated profits and work not completed; and
  - 2. The cost of settling and paying claims arising out of the termination of work under subcontracts.
- e. 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.
- f. 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.
- g. 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 full payment to Operator for same, less the cost of settling and paying claims arising out of the termination of work. 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 forty-five (45) calendar days of receipt of a valid invoice, or because the Owner has not made payment within forty-five (45) calendar days after the time stated in the Agreement for payment.

- 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, all at no cost to the Operator.

#### **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 the Contract Cost 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 three (3) months after the date of Substantial Completion.

## **ARTICLE XX**

### **MISCELLANEOUS**

#### **20.1 Antitrust**

By entering into this Agreement, the Operator conveys, sells, assigns and transfers to the County all rights, title, and interest in and to all causes of action the Operator may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the goods or services purchased or acquired by the Owner under this Agreement.

#### **20.2 Approval by Governing Body a Condition Precedent to Agreement's Effectiveness**

Approval of this Agreement by the Goochland County Board of Supervisors is condition precedent to this Agreement's effectiveness.

#### **20.3 Arbitration**

It is expressly agreed that nothing under this Agreement is subject to arbitration, and any references to arbitration are expressly deleted from the

Agreement.

#### **20.4 Assignment**

Operator is not entitled to assign its rights, nor delegate its duties, under this Agreement without the prior consent of the Owner, which consent the Owner may withhold in its sole discretion.

#### **20.5 Availability of Funds**

The financial obligations of the Owner contained in this Agreement are subject to annual appropriation. Owner shall be bound hereunder only to the extent of the funds available or which may hereafter become available through appropriation by the Board of Supervisors for purposes of this Agreement.

#### **20.6 Compliance with Laws**

Operator must comply and must cause the Operator's project team and Operator's agents and subcontractors to comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of its obligations under this Agreement.

#### **20.7 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.

#### **20.8 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. This Agreement can be executed through an electronic signature, and an electronic record of this Agreement is as valid and enforceable as an original.

#### **20.9 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 during the performance of the Agreement.

#### **20.10 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. Operator's Conceptual Phase I and Detailed-Phase II proposals at **Exhibit C** are attached and incorporated by reference for purposes of providing details concerning the overall intent of the parties. However, **Exhibit C** is not intended to contradict this Agreement, and in the event of inconsistencies, this Agreement shall control.

#### **20.11 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.

#### **20.12 Ethics in Public Contracting**

This Agreement incorporates by reference any state or federal law related to ethics, conflicts of interest, or bribery, including by way of illustration and not limitation, the Virginia Conflict of Interests Act, the Virginia Governmental Frauds Act, and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Virginia Code, as amended. The Operator certifies that its proposals are made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor in connection with this Project, and that it has not conferred on any public employee having official responsibility for this Project any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

#### **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 Act.

#### **20.14 Governing Law**

This Agreement is entered into and will be performed in Goochland County, Virginia, and 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 Goochland County Circuit Court, or in the Goochland 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.

### **20.15 Immigration Reform and Control Act of 1986**

The Operator certifies that it does not and will not during the performance of this Agreement employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

### **20.16 No Personal Liability of Owner Officials or Representatives**

No director, officer, official, employee, agent or representative of the Owner is, or will be, personally liable to Operator or any of Operator's project team, or any successor in interest of any of them, as a consequence of any default or breach by the Owner for any sum that may become due to Operator, any of the Operator's project team, or any successor in interest of any of them, or on any obligation incurred under this Agreement.

### **20.17 No Third Party Beneficiary or Other Similar Rights**

There are no third-party beneficiaries to this Agreement. Accordingly, no third-party is entitled to make any claim under this Agreement for failure to perform or other breach under this Agreement. Only the Parties (and their respective permitted successors and permitted assigns) are entitled to rely upon the provisions of this Agreement.

### **20.18 Notices**

- a. All notices and demands involving this Agreement must 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:

To the Owner:       Derek Stamey  
Interim County Administrator  
Goochland County  
P.O. Box 10/1800 Sandy Hook Rd.  
Goochland, VA 23063  
Telephone: (804) 556-5855  
Facsimile: (804) 556-4617  
Email: [dstamey@goochlandva.us](mailto:dstamey@goochlandva.us)

With a Copy to:    Tara McGee  
County Attorney  
P.O. Box 10/1800 Sandy Hook Rd.  
Goochland, VA 23063  
Telephone: (804) 556-5877  
Facsimile: (804) 556-4369  
Email: [tmcgee@goochlandva.us](mailto:tmcgee@goochlandva.us)

To the Operator:   John K. George  
President  
John K. George & Company  
3000 W. Clay Street  
Richmond, VA 23230  
Telephone: (804) 560-1717  
Email: [john@johnkgeorgeandcompany.com](mailto:john@johnkgeorgeandcompany.com)

- b. Either party may, upon prior notice to the other, specify a different person or address for the giving of notices. Notices shall be effective one day after sending if sent by overnight courier or three days after sending if sent by certified mail, return receipt requested.

### **20.19 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.

### **20.20 Representations and Warranties of Authority**

- a. Operator represents and warrants that (i) as of the date of this Agreement, all factual statements made in Operator's submissions to the County evidencing the Project (including those pertaining to prior experience and expertise) are true, accurate, and not misleading in any material respects, (ii) Operator has the expertise and capacities to perform its obligations under this Agreement, (iii) the data and other information contained within the Project Scope will be accurate and complete and its use for the purposes of this Agreement will not violate any law, or infringe or violate any property right, (iv) all Work under this Agreement will be performed by appropriately licensed entities or individuals when required, and (v) Operator has legal authority to enter into this Agreement and perform all of its obligations herein, 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 the Owner affixed to this Agreement).

### **20.21 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 that Goochland County adopts from time to time to govern the use by Operator, its subcontractors and employees, of the property that is the subject of this Agreement, including but not limited to the County's pandemic operational policies and procedures such as social distancing and mask requirements, where applicable.

### **20.22 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.

**20.23 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.

**20.24 Transacting Business in Virginia** Operator must be authorized to transact business in Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Virginia Code or as otherwise required by law. Operator shall not allow its existence to lapse or its certificate of authority or registration to transact business in Virginia to be revoked or cancelled at any time during the term of this Agreement. County may void this Agreement if Operator fails to remain in compliance with the provisions of this section.

**20.25 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.

[REMAINDER OF PAGE INTENTIONALLY BLANK - SIGNATURE PAGE FOLLOWS]

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

Owner: Goochland County, Virginia

By: \_\_\_\_\_  
Derek Stamey, Interim County Administrator

ATTEST:

\_\_\_\_\_  
County Deputy Clerk

Operator: John K. George & Company

By: \_\_\_\_\_  
John K. George, President

Approved as to legal form:

\_\_\_\_\_  
County Attorney's Office

## Exhibit A

**Contract Cost Limit: \$160,000**

### Project Site

The site is comprised of southern portions of Goochland County Tax Map Parcel Numbers 42-1-0-30-H and 53-1-0-7-A along the James River, known as Tucker Park, and the site includes the road and bridge right-of-way area belonging to the Commonwealth of Virginia that bisects the two County-owned parcels. The project connects the eastern and western sections of Tucker Park through the State right-of-way, including underneath the State Route 522 bridge.

### Project Objective

To enhance the County's recreational amenities by connecting the eastern and western sections of Tucker Park abutting the James River via a connector trail/boardwalk through State right-of-way.

### Project Scope

Design, permitting, and construction of an above grade, curving, 200'± long, 8' wide, ADA compliant timber boardwalk along and/or over portions of the James River to connect the eastern and western sections of Tucker Park in Goochland, Virginia, in accordance with the terms and conditions of the Comprehensive Agreement, including but not limited to preparing, coordinating, and obtaining all required federal, state, and local permits and approvals, and constructing the project in compliance with all applicable codes, regulations, specifications, and standards.

The design and permitting scope of work includes wetlands delineation/soil science, geotechnical/subsurface analysis, civil engineering, structural engineering, surveying, complete sealed engineered design plans sufficient to obtain all required federal, state, and local permits necessary for the Project, and the issuance and approval of all such plans, specifications, and permits by all necessary local, state and federal agencies.

The construction scope of work includes the furnishing of all management, supervision, financing, goods, products, materials, equipment, systems, labor, tools, testing, services, permits, licenses, construction machinery, transportation, and other incidentals customary and necessary to properly construct the project.

### Estimated Project Schedule

Design & Permitting 180 days from Effective Date (subject to adjustment based on state and federal permitting progress)

- 10% Design Plans – 30 days from Effective Date
- 35% Design Plans – 30 days from Owner approval of 10% Design Plans
- 65% Construction Plans – 30 days from Owner approval of 35% Design Plans
- 100% Construction Plans – 30 days from Owner approval of 65% Construction Plans

Construction 120 days from Owner issuance of Construction Notice to Proceed (NTP)

- Commence Site clearing and preparation – within 10 days from NTP
- Commence Construction – within 30 days from NTP
- Substantial Completion – within 90 days from NTP
- Final Completion – within 120 days from NTP

### Operator's Project Principals & Management Team (subject to agreement between JKG and the parties)

Architect	John K. George of John K. George & Company
Construction Manager	John K. George of John K. George & Company
Wetlands Delineation/Soil Science	Greg Monett of Enviro-Utilities
Geotechnical/Subsurface Analysis	Scot Harrell of GeoTexEngineering, PLC
Civil Engineering	Claire Shirley, P.E., of Gradient, PC
Structural Engineering and Special Inspections	Bob Nelson, P.E., of Engineering Design Associates
Surveying	Garland Dietz, RLS, of Dietz Land Surveying

### Owner's Representatives

Project Manager	Derek Stamey, Deputy County Administrator
Professional Engineer	Todd Kilduff, P.E., Deputy County Administrator
Invoicing and Payment	Wanda St. P. Tormey, Purchasing Director