

**COMPREHENSIVE AGREEMENT BY
AND BETWEEN
THE COUNTY OF HENRICO, VIRGINIA
AND HPDC PARTNERS, LLC
FOR THE DESIGN, CONSTRUCTION
AND CONVEYANCE OF
THE CENTRAL PRECINT POLICE STATION
IN HENRICO COUNTY, VIRGINIA**

AUGUST 13, 2014

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This Comprehensive Agreement ("Agreement") is made as of the 13th day of August, 2014, by and between the County of Henrico, Virginia, a political subdivision of the Commonwealth of Virginia (the "County"), and HPDC PARTNERS, LLC, a Virginia limited liability company, (the "Developer").

RECITALS

WHEREAS, on January 10, 2014, pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code §56-575.1 *et seq.* (the "PPEA"), the Developer submitted an unsolicited proposal to design, construct, and convey to the County an approximately 10,000 square-foot police station on approximately 4.214 acres of land to be purchased by the Developer, located at 7850 Villa Park Drive within the County; and,

WHEREAS, on February 11, 2014, the Board of Supervisors of Henrico County (the "Board") accepted the unsolicited proposal for conceptual stage consideration; and,

WHEREAS, in compliance with the PPEA, the County posted a public notice to receive competing proposals by March 31, 2014; and,

WHEREAS, the County did not receive any competing proposals; and,

WHEREAS, on April 14, 2014 the County proceeded to the detailed stage of review of the Developer's unsolicited proposal; and,

WHEREAS, on May 1, 2014, the Developer submitted a detailed proposal to the County, which supplemented its initial unsolicited proposal; and,

WHEREAS, on May 13, 2014, the Board held a public hearing on the Developer's detailed proposal during the proposal review process; and,

WHEREAS, following the County's review, analysis, and evaluation of the detailed proposal, the County entered the negotiation phase of the PPEA process; and,

WHEREAS, the County and the Developer have now negotiated this Comprehensive Agreement consistent with the PPEA and other applicable law; and,

WHEREAS, the County has determined that this project serves a public purpose of the PPEA under the criteria of Virginia Code §56-575.4(C), and the Board has approved this Comprehensive Agreement.

NOW THEREFORE, the Developer agrees to design the Building (defined below), to construct the Building upon the Land (defined below), and to convey the Property (defined below) to the County in strict accordance with the Agreement Documents. The parties further agree as follows:

DEFINITIONS

1. "Abnormal Weather" means adverse weather in a calendar month that affects the Developer's Critical Path, in excess of the ten-year averages of adverse weather in Richmond, Virginia for the applicable calendar month. If the Developer claims a delay due to Abnormal Weather, it must substantiate such delay by using weather data from the National Oceanic and Atmospheric Administration for Richmond, Virginia.
2. "Agreement Documents" shall mean this Comprehensive Agreement and the Exhibits listed below. The Exhibits are hereby incorporated into and made part of this Agreement.

| | | |
|---|------------------|------------------------------|
| 1 | EXHIBIT A | The Purchase Contract |
| 2 | N/A | This Comprehensive Agreement |

| | | |
|----|------------------|--|
| 3 | EXHIBIT B | Project Schedule |
| 4 | EXHIBIT C | List of Required Project Features and Conceptual Specifications |
| 5 | EXHIBIT D | HPDC's completed 50% Design (Sheets C0.01, C1.01, C1.02, C2.01, C2.02, C3.01, C4.01, C4.02, C5.01, C5.02, C5.03, C6.01 dated June 19, 2014; Sheets A1.1, A2.1, A2.2, A2.3, A3.1, A4.1, A4.2, A4.3, A5.1, A6.1 dated July 1, 2014; and Mechanical and Plumbing design sheets M-1 and P-1 dated June 30, 2014) |
| 6 | EXHIBIT E | List of Extended Warranties Required from Developer |
| 7 | EXHIBIT F | Plan of Development Application |
| 8 | EXHIBIT G | Plan of Development Review Process |
| 9 | EXHIBIT H | Insurance Requirements |
| 10 | EXHIBIT I | HPDC's PPEA Detailed Submission dated May 1, 2014 |
| 11 | EXHIBIT J | HPDC's Unsolicited PPEA proposal dated January 10, 2014, including HPDC's supplemental submission dated January 29, 2014 |

In case of a conflict among or between any of the Agreement Documents, the order of precedence shall be in the order set out above from top to bottom.

3. "Building" means the approximate 10,000 square-foot police station that is to be built by the Developer for the County at 7850 Villa Park Drive in Henrico County, Virginia.
4. "Change Order" means a written order in accordance with Article IV, which modifies the terms of the Agreement Documents and may modify the Purchase Price and/or the Contract Time.
5. "Claim" means any dispute, demand, or other matter in question between the parties for any compensation, time, and/or damages relating to this Agreement or the Work. Claims must be pursued in strict compliance with Article XVI, which compliance shall be a condition precedent to bringing any legal action based on a Claim.

6. "Closing" means a meeting between the County and the Developer within 30 days after Substantial Completion, during which the Developer will transfer ownership of the Property to the County in accordance with **Exhibit A**.
7. "Codes and Standards" means all local, state and federal regulations, ordinances, codes, laws, or requirements applicable to the Work, including, without limitation, the Virginia Uniform Statewide Building Code.
8. "Contract Time" means the time allotted to the Developer under this Agreement, set out in Section 3.1. below.
9. "County" means Henrico County, Virginia.
10. "County Representative" means the County's designated Project Manager. The County Representative is not authorized to execute Change Orders.
11. "Critical Path" means the sequence of tasks or events set out in **Exhibit B** that directly impacts Substantial Completion.
12. "Day" means a calendar day, unless the contrary is expressly indicated.
13. "Defect" or "Defective" is a noun or adjective, respectively, which, when used in reference to the Work, refers to Work that fails to materially conform to the Agreement Documents or to the requirements of the Codes and Standards.
14. "Design" means the combination of Plans and Specifications and all other work products that are the result of the Design Services.
15. "Design Professional" means any architect, engineer, and/or consultant engaged by Developer that provides any design, architectural and/or engineering services relating to the design portion of the Work, and any firm that employs any of them.

16. "Design Services" means all of the services provided under this Agreement that relate to the design of the Project.
17. "Developer" means HPDC Partners, LLC, which is the legal entity responsible for the design, construction, and conveyance of the Property under this Agreement. The Developer is the "private entity" as that term is defined in the PPEA.
18. "Final Completion" refers to the point in the progress of the Work when all of the Work is complete, including punch-list items and the County has issued to the Developer a written letter of final acceptance in accordance with Article XI below.
19. "General Contractor" means RVA Construction, Inc., which is the prime contractor that will be used by the Developer for the construction portion of the Work, or any successor contractor approved by the County.
20. "Land" means the real property described in **Exhibit A**.
21. "Plans and Specifications" means the drawings, surveys, plans, and written specifications the Developer causes to be prepared for the Project, as approved by the County.
22. "Plan of Development Review" or "POD Review" means County's Planning Department's and Board of Supervisors' regular process for reviewing and approving or rejecting plans of development for public buildings.
23. "Project" means the complete and proper design and construction of an approximately 10,000 square-foot police station in Henrico County, Virginia, as called for in the Plans and Specifications, the terms of this Agreement, and any agreed upon modifications.
24. "Property" means the Land and the Building situated thereon, and all other improvements and appurtenances to be built on the Land called for in the Agreement Documents.

25. "Purchase Price" means the final compensation to be paid by the County to the Developer at the time of Closing in exchange for the Property. The Purchase Price shall be three million six hundred thousand dollars (**\$3,600,000**). Prior to the Closing, the Purchase Price shall be adjusted to account for (i) Change Orders executed during the life of the Agreement, and/or (ii) any liquidated damages assessed against the Developer.
26. "Substantial Completion" refers to the point in the progress of the Work when a final Certificate of Occupancy is issued for the Building. For the purpose of this Comprehensive Agreement, liquidated damages will not accrue after Substantial Completion.
27. "Work" shall mean all of the required duties, services, labor, materials, equipment and all other responsibilities of the Developer under this Agreement.

Article I
DEVELOPER'S GENERAL DUTIES

1.1. In general – The Developer shall utilize a turn-key approach in delivering the Property to the County. In general, the Developer shall design the Project, shall construct the Building, and shall convey the Property to the County within 30 days after Substantial Completion. The parties acknowledge that the County does not currently own or possess the Land. Therefore, the Developer is responsible for taking the 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 site conditions and available parking and staging areas. Any failure by the Developer to reasonably ascertain the conditions affecting the Work does not relieve the Developer from responsibility for successfully performing the Work without additional expense

to the County. The County shall have no responsibility for any representations concerning conditions made by any of its officers, employees or agents before execution of this Agreement.

1.1.1. Initial Duties – The County acknowledges that it has reviewed and is satisfied with the following preliminary assessments, searches, reports and surveys performed covering the Land: (i) a Phase 1 environmental site assessment, (ii) a preliminary property title search, (iii) a preliminary ALTA boundary survey, (iv) a wetlands inspection and letter dated June 27, 2014 from Davis Environmental Consulting, Inc. regarding the wetlands inspection, (v) and a preliminary geotechnical site study performed in 2000 and a reliance letter from ECS Mid-Atlantic, LLC dated June 23, 2014 regarding the 2000 geotechnical site study (collectively “Initial Property Reports”). Developer shall provide to the County the following additional materials prior to the Developer purchasing the Land: (i) an updated title search; (ii) an updated ALTA boundary survey; and (iii) an updated geotechnical report (“Additional Property Reports”). If the Additional Property Reports disclose any condition of the Land that (i) was not disclosed in the Initial Property Reports, and (ii) materially and adversely affects the County's ability to use the Property for its intended purpose, then the County shall notify Developer in writing of such objections within thirty (30) days after receipt of the applicable Additional Property Report. Within 30 days after receipt of the County's written notice of the objections the Developer shall provide to the County written notice whether (i) it intends to remedy the condition(s) giving rise to the objections or (ii) it is unwilling or unable to remedy the condition(s) giving rise to the objections. The Developer shall remedy the condition(s) prior to Substantial Completion, however, if the Developer is unable or unwilling to remedy the condition(s) prior to Substantial Completion then the County may terminate this Agreement within thirty (30) days after Developer's written notice of its inability or unwillingness to remedy

such condition. Nothing in this provision shall be construed to prevent the County from performing other or additional assessments, searches, reports, and surveys of the Property prior to Closing at its own expense.

1.1.2. Design Services – The Developer shall furnish the Design of the Project in accordance with the Agreement Documents, applicable Codes and Standards, restrictive covenants governing the use of the property, and all generally accepted engineering and architectural standards. The Design shall incorporate all of the requirements established in **Exhibit C**. The Developer shall be solely responsible for the actions and work product of the Design Professionals under this Agreement. The Developer is responsible for correction of all defects in the Plans and Specifications, all errors or omissions by the Design Professionals, and all other defects in the Design Services, without any change to the Purchase Price or Contract Time. The County does not provide the Developer any warranty, express or implied, regarding any or all of the features or conditions of the Land, the Design, or the Design Services. The Developer agrees to indemnify and hold harmless the County from any negligent acts, errors, omissions, or breach of the applicable standard of care by any Design Professional.

1.1.2.1. POD Review – The Developer shall submit a complete POD application in accordance with **Exhibit F** and the County will review, provide comments on, and approve or reject the application in accordance with **Exhibit G** and Henrico County Code §24-106. The parties agree and acknowledge that the POD application will go to the Board of Supervisors of Henrico County for approval. To the extent feasible, the County will expedite its review and comments on the Developer's application during the POD review process to accommodate the Developer's desired POD approval date of September 25, 2014.

1.1.2.2. 100% Design Review – The Developer shall deliver to the County a completed (100%) Design on or before August 26, 2014, incorporating all of the requirements established in **Exhibits C and D**, the Codes and Standards, the Agreement, and other applicable law. The County will have the right to review the completed Design to ensure that it complies with the Agreement Documents. Within 10 business days of receipt of the completed Design the County will review it and notify the Developer whether the County approves or disapproves the Design or any component thereof. In the event the County disapproves of the Design or any component thereof the County will state the reasons therefor in writing. The Developer shall promptly cause to be made such revisions to the Design as may be necessary to address the County's objections and shall resubmit the Design, or any component thereof, to the County for approval. Within five business days the County will review such revisions and notify Developer whether the County approves or disapproves the Design as modified. This process shall be repeated, if necessary, until the County's objections have been addressed and the County Representative has approved a final version of the Design in writing. The County will not unreasonably withhold approval of the Design furnished by the Developer. Notwithstanding the County's review and approval of the Design, the Developer is not relieved of its duty to comply with the Agreement Documents and with the applicable Codes and Standards. Upon the Developer's submission and the County's approval of the completed Design, the completed Design shall be fully incorporated into this Agreement as an Agreement Document and shall have priority over **Exhibits C through J**.

1.1.3. Construction Services – The Developer shall obtain and provide all tools, material, equipment, labor, permits, fees, and supervision necessary to construct the Building in accordance with the Agreement Documents, the final County-approved Design, all Codes and

Standards, and all generally accepted construction practices. The Developer shall pay for all construction testing, sampling, field tests, laboratory results, and inspection services required by the Agreement Documents and/or the Codes and Standards. Except as otherwise noted in this Agreement, the Developer shall provide all utility hookups.

1.1.4. Catch-All – The Developer shall provide all Work not specifically described in the Agreement Documents, yet required to deliver the completed Project to the County, even though every item or minor detail for the proper installation or proper operation of the Project is not set forth expressly in the Agreement Documents. The Developer shall obtain all necessary approvals relating to all of the features of the Project, which approvals are necessary by virtue of restrictive covenants or any other restrictions running with the Land.

1.1.5. Developer's Duty to Convey the Property – Within 30 days of Substantial Completion, the Developer shall convey title to the Property to the County by General Warranty Deed in accordance with **Exhibit A**. The County shall have the right to require the Escrow Agent, as that term is used in **Exhibit A**, at Closing to withhold an amount equal to 200% of the reasonable value of all punch list items then remaining (the "Retainage"). The County will direct the Escrow Agent to release such amount to the Developer within 15 days after Final Completion. In the event some or all of the punch-list work, remains unfinished for more than 60 days after Closing, the County may, upon 72 hours written notice to Developer, direct the Escrow Agent to, and the Escrow Agent shall, return the Retainage, or a portion thereof, to the County to cover the County's reasonable cost of hiring another party to complete the unfinished punch-list work.

1.1.6. County Responsibilities – It is the Developer's duty to deliver a complete, finished, ready-for-use police station to the County at the time of Closing as set forth in the Agreement Documents. Notwithstanding that duty, the County, not the Developer, will be responsible for the following items:

A. Furniture and equipment outfitting for the Building (chairs, desks, shelves, computers, printers, other electronic office machines, weight room equipment, and kitchen appliances), except that the Developer shall provide an ice maker;

B. Telecommunication and Information Technology equipment and installation (telephones, network connection, computers, routers, fiber optic connection, and radio communication equipment), except that the Developer shall be responsible for all rough-in conduit installation for all telecommunication and information technology installation;

C. Security System equipment and installation, except that the Developer shall be responsible for all rough-in conduit installation, and the Developer shall, by coordinating with the County Representative, supply door hardware that is capable of receiving door sensors for the County's card access security system.

Article II **COUNTY'S DUTY**

2.1 The County agrees to purchase the Property from the Developer for the Purchase Price within 30 days once the Developer has complied with all of the following conditions precedent:

2.1.1. The Developer has achieved Substantial Completion;

2.1.2. The Developer has assigned and delivered to the County all written warranties in **Exhibit E**;

2.1.3. The Developer has obtained all permits necessary for the County's occupation and use of the Property, including a final certificate of occupancy.

Nothing in this Agreement shall be construed to diminish the County's rights and remedies set out in **Exhibit A**. Even if all of the conditions precedent set out above are met, the County shall

still be availed of its rights and remedies set out in **Exhibit A**, as well as all of the normal and customary rights of any purchaser of real property in the Commonwealth of Virginia.

2.2. County's Duty to File the Agreement – In conformance with Va. Code §56-575.9(F), the County will file a copy of this Agreement with the Commonwealth of Virginia's Auditor of Public Accounts within 30 days of executing this Agreement.

2.3. County's Duty to Cooperate. County shall promptly review all plans, drawings, submittals and change order proposals as set forth in this Agreement so as not to delay Developer in its activities. The County shall also make periodic review of the progress of the Building during the course of construction in order to avoid destructive investigation of as-built conditions unless the County has a reasonable belief that a construction defect exists or that the Building was not constructed materially in accordance with this Agreement.

Article III **CONTRACT TIME**

3.1. Project Schedule Updates and Deadline for Substantial Completion – The Developer shall perform the Work in accordance with the Project Schedule, which is attached hereto as **Exhibit B**. The Developer shall schedule a Project meeting with the County at least once per month; at each Project meeting, the Developer shall provide to the County Representative or his designee an updated Project Schedule that accurately reflects the contemporaneous progress of the Work. The Developer shall achieve Substantial Completion within 395 days, running from the date that this Agreement is executed by the County. Because the Developer will acquire the Land, it may begin the Work at any time; the County will not issue a formal notice to proceed.

3.2. Liquidated Damages – The parties agree that time is of the essence and that the County will suffer financial loss if Substantial Completion is not achieved within the time set out in Section 3.1 above. The parties recognize the delays, expense, and damages involved in proving

in a legal proceeding the actual loss suffered by the County if Substantial Completion is not achieved within the time set out in Section 3.1 above. Accordingly, notwithstanding any other provision of this Agreement, the Developer and the County agree, stipulate, and fix as liquidated damages but not as a penalty, the sum of Five Hundred Dollars (\$500) that the Developer shall pay to the County for each day that expires after the date specified for Substantial Completion in Section 3.1 above, that the Developer does not achieve Substantial Completion. The parties agree that Five Hundred Dollars (\$500) per day is not a penalty; rather, it is intended to compensate the County for its lost use of the Building. The Developer hereby waives any defense as to the validity of liquidated damages stated in this Agreement on the grounds that such liquidated damages are void as a penalty or are not reasonably related to actual damages, and the parties agree that the County's entitlement to liquidated damages shall be determined at the time of Substantial Completion and shall not be subject to the claims provisions of the Agreement Documents. At the time of Closing, the County may decrease the Purchase Price by the total aggregated liquidated damages that accrue under this Agreement.

Article IV **MODIFICATIONS**

4.1. Modifications to the Purchase Price – Except as provided under Sections 3.2 and/or 8.1 of this Agreement, the Purchase Price may be modified only in writing by the parties. The parties agree that there is a presumption that any work undertaken by the Developer under this Agreement is within the scope of this Agreement and is fully compensated by the Purchase Price. If the Developer claims that any instructions given to it by the County involve a deviation from the scope of the Work in this Agreement and the deviation or change increases the Developer's cost to perform the Work, then it shall give the County written notice thereof before beginning the additional work, and the Developer shall submit a price quotation for the additional work. If

the County agrees to increase the Purchase Price, a Change Order shall be issued to increase the Purchase Price by the mutually-agreed amount. If the Developer and the County cannot agree on an amount, the Developer shall perform the additional work and proceed under the Claims procedure set out in Article XVI. Other than County requested or directed deviations from the scope of the Work in this Agreement, which deviations and/or changes increase the Developer's cost to deliver the Property, there shall be no additive Change Orders under this Agreement. Nothing in this section shall be construed to prohibit mutually-agreed, deductive Change Orders.

4.1.1. **The prior written approval of the Henrico County Board of Supervisors will be required for any Change Order that increases the Purchase Price.**

4.2. **Modifications to the Contract Time** – The Contract Time may be modified only in writing by the parties. The parties agree that there is a presumption that any work undertaken by the Developer under this Agreement is within the scope of this Agreement and is to be completed within the Contract Time. If the Developer claims that any instructions given to it by the County involve a deviation from the scope of the Work in this Agreement and the deviation or change affects the Developer's Critical Path, then it shall give the County written notice thereof, and the Developer shall submit a written request for additional time within 10 days of receiving the instructions. If the County agrees, a Change Order shall be issued to increase the Contract Time by a mutually-agreeable amount. If the Developer and the County cannot agree on an amount, the Developer shall perform the additional work and proceed under the Claims procedure set out in Articles XVI and XVII of this Agreement.

4.3. **Change Orders Satisfy Requests for Additional Compensation and Time** – A Change Order shall state the parties' agreement to (i) the additional compensation, if any, and (ii) the time extension, if any, allocable to the additional work covered by the Change Order. Whenever

the parties execute a Change Order to increase the Purchase Price for additional work, the Change Order will also include an extension of the Contract Time, if such extension is necessary, for the additional work covered by the Change Order. Thus, if a Change Order increases the Purchase Price, but does not extend the Contract Time, then there is no time extension related to the additional work covered by the Change Order, and any future Claim for a time extension related to the additional work covered by the Change Order is prohibited, unless specifically reserved in the Change Order.

4.4. Matters not Eligible for Change Orders – Without limitation, no Change Order may be based on any of the following matters:

4.4.1. Errors, omissions, inconsistencies, or other defects in the Design;

4.4.2. Any design change requested by the County while reviewing any draft Design to the extent such change is requested for consistency with the Agreement Documents and/or the applicable Codes and Standards, except to the extent the requests arise from changes in the applicable Codes and Standards which take effect after the execution of this Agreement;

4.4.3. Defects in the Project Schedule;

4.4.4. Correction of nonconforming or Defective work;

4.4.5. Correction of the Developer's Plan of Development to comply with the Henrico County Code as identified by the County in writing during the POD Review;

4.4.6. Compliance with the applicable Codes and Standards in effect as of the date of execution of this Agreement for building, electrical, or other permits required to perform the Work;

4.4.7. Failure of the Developer or a subcontractor to comply with the Agreement Documents; or,

4.4.8. Developer's failure to ascertain the conditions affecting the Work, including any site conditions or other conditions of the Property.

Article V
WARRANTIES AND WORKMANSHIP

5.1. Warranties – The Developer shall be responsible for ensuring that (a) all Design Services are performed in accordance with applicable Codes and Standards, and conform to all professional engineering principles generally accepted as standards of the industry in the Commonwealth of Virginia, and (b) all construction Work is in accordance with the requirements of the Agreement Documents and free from defect for a period of two years after the date of Substantial Completion, excepting normal wear and tear, service or maintenance.

5.2. Materials and Workmanship – All equipment and materials incorporated in the Work must be new and for the purpose intended. Unless otherwise specifically provided, reference to any equipment, material, or patented process by brand name, make, or catalog number in the Plans and Specifications establishes a standard of quality only. The Developer may substitute any equipment, material, or process that the County's Representative finds in writing to be equal to that named.

5.3. Warranty Remedies – If, within the applicable warranty period, the warranted Work needs to be repaired or changed because of Design errors or omissions or because the materials, equipment, or workmanship were inferior, Defective, or not in accordance with the requirements of the Agreement Documents, the Developer shall promptly, and without additional expense to the County:

5.3.1. Correct the Defective Work to a condition consistent with the Agreement Documents;

5.3.2. Correct all damage to equipment and the Property, including the Building or its contents, that is the result of the Defective Work;

5.3.3. Correct any Work, materials, or equipment disturbed by the corrective work; and

5.3.4. Reimburse the County for all reasonable and documented costs to repair, if the Developer fails to promptly correct Defective Work covered under the warranties provided in this Agreement after reasonable notice from the County and the County has the Defective Work corrected by others.

5.4. General Contractor Warranty – The parties acknowledge that the Developer will not construct the Building; instead, the Developer will enter into a contract with the General Contractor covering the construction portions of the Work. Therefore, as part of its obligation under **Exhibit E**, prior to Closing the Developer shall cause the General Contractor to deliver to the County a written construction warranty covering the all of the materials and workmanship provided by the General Contractor for the Project. The General Contractor's written construction warranty must warrant that all of the Work provided by the General Contractor is in accordance with the requirements of the Agreement Documents, and is free from defect in materials, equipment, and installation, for a period of two years after the date of Substantial Completion, excepting normal wear and tear, service, or maintenance. This warranty is in addition to the warranties set out in 5.1. and 5.2. above.

5.5. Additional Extended Warranties – The parties agree and acknowledge that **Exhibit E** is a list of extended warranties, in addition to the General Contractor warranty, that Developer will provide or assign from manufacturers.

Article VI
RISK OF LOSS

6.1. Risk Transfers with Title – Risk of loss or damage to the Property, or any portion thereof, is the Developer's until such time as title to the Property is transferred to the County at the time of Closing, unless such loss or damage is caused solely by the County or its agents.

Article VII
PERMITS

7.1. Developer to Obtain Permits – It shall be the duty of the Developer to obtain all permits and other regulatory approvals necessary to complete the Work, including, without limitation, building permit(s), environmental permit(s), and zoning permit(s). The Developer shall demonstrate compliance with all environmental permit(s), or impact statement requirements and regulations identified in the Agreement Documents prior to, and during construction.

Article VIII
RIGHT TO INSPECT THE WORK

8.1. County's Right to Inspect – The County shall have the right to inspect the Work at reasonable times, and from time to time, to ensure that Developer's activities are in accordance with the Codes and Standards and with the terms of this Agreement. During normal business hours, and during times when the Work is being actively executed on the Project site, the Developer shall allow County personnel reasonable access to the Property for inspection of the Work. The County agrees not to exercise its inspection rights in a manner that unreasonably interferes with Developer's performance of the Work or the performance of this Agreement. The County may reject any Work that does not meet the requirements of this Agreement, and the Developer must correct any such Work. If the Developer refuses to correct any non-conforming Work, the County may elect to accept the rejected Work and the Purchase Price shall be adjusted based on an independent, reasonable price quote to correct the non-conforming Work.

8.1.1. Destructive Inspection/Testing – If the County has a reasonable belief that a construction Defect exists or that the Building was not constructed materially in accordance with this Agreement, then the County may inspect completed Work by removing or tearing it out. If the County removes or tears out completed Work for inspection and some or all of the inspected Work is found not to conform to the Agreement, the Developer must replace or correct all of the Work that was removed or torn out for the inspection, including any portions of the removed or torn out Work that did conform to the Agreement. If the County removes or tears out completed Work which is found to conform to the Agreement, the County will issue an additive Change Order for the Developer's replacement of the removed or torn out Work.

8.1.2. Inspections Required by Law – Notwithstanding any contrary provision herein, when the Agreement or Codes and Standards require the Developer to have certain Work inspected before covering or completing the Work, and the Developer covers or completes the Work without the required inspection, the County may perform, or cause to be performed, destructive inspection and/or testing, and the Developer shall replace or correct all of the Work that was removed or torn out for the inspection, regardless of whether the inspected Work conforms to the requirements of the Agreement.

Article IX

NOTICES

9.1. Notice – Whenever notice is required under the terms of this Agreement, such notice shall be effective on the following entities, when delivered upon the corresponding individuals:

| THE COUNTY | THE DEVELOPER |
|--|--|
| John H. Neal, Jr. Director of General Services 1590 East Parham Road Richmond, VA 23228 Nea02@co.henrico.va.us | Hugh Tierney Manager, HPDC, LLC P.O. Box 662 Virginia Beach, VA 23451 htierney@empiredevelopment.net |

| | |
|--|--|
| <p>With a copy to:</p> <p>S. Michael Westermann Assistant County Attorney P.O. Box 90775 Henrico, VA 23273-0775 wes035@henrico.us</p> | <p>With a copy to:</p> <p>Christopher Ambrosio Vandeventer Black LLP 101 W. Main St., Suite 500 Norfolk, VA 23510 cambrosio@vanblk.com</p> |
|--|--|

ARTICLE X **COUNTY INSTALLATION WORK**

10.1. County Installation Work – The County may install, or cause to be installed, those items set out in Section 1.1.6. of this Agreement even if the Developer has not yet achieved Substantial Completion, if County coordinates such installation so as not to interfere with Developer’s activities or impact its ability to obtain inspections and approvals. Such installation by the County shall be conducted solely at the risk of the County and shall not be covered by Developer’s insurance.

Article XI **PROJECT CLOSE OUT**

11.1. Punch-List Work – When the Developer has achieved Substantial Completion, it shall notify the County Representative in writing. Upon receipt of the Substantial Completion written notice, the County Representative, or his designee, will inspect the Work and issue a written punch-list setting forth all of the remaining Work to be performed by the Developer before Final Completion. When the Developer contends that it has finished all of the punch-list work and has achieved Final Completion, it shall notify the County of such contention in writing. Upon receipt of the Final Completion written notice, the County Representative, or his designee, will inspect the Work and either generate a second punch-list from the items unresolved in the first punch-list or issue a letter of final acceptance to the Developer. When a second punch-list is required, the above process will be repeated until the County Representative agrees in writing

that the Developer has achieved Final Completion and issues a letter of final acceptance to the Developer.

11.2. Before the County will issue the letter of final acceptance, the Developer must provide all normal and customary operation and maintenance manuals to the County for mechanical, electrical, plumbing, structural, roofing, windows, door treatments, HVAC, and exterior components.

11.3. As-Built Plans – During the progress of the Work, the Developer shall keep a master set of prints on the job site on which is kept a complete, careful and legible record of all deviations from the Plans and Specifications made during the course of the Work. Prior to Final Completion, the Developer shall provide the County with one, complete, reproducible set of the Plans and Specifications incorporating the revisions and changes made during construction up to the County's final acceptance of the Property. These updated Plans and Specifications shall reflect all changes to indicate the "As-Built" conditions, including revisions in site and building area tabulations. These Plans and Specifications must be certified as to their correctness by the Developer and used by the Developer in preparing a permanent set of "As-Built" plans. The Developer shall deliver the permanent "As-Built" plans to the County Representative in the following format: (i) an e-transmit version of "As-Built" CAD file documents generated from AutoCAD 2012 or a more recent version and (ii) an electronic (.pdf) version. The County reserves the right to review the contemporaneous "As-Built" documents at any time during the Work. The County will not issue a letter of final acceptance until the Developer has delivered these As-Built plans.

11.4. Transfer of Warranties – Prior to Final Completion, the Developer shall obtain each transferable guarantee or warranty of equipment, materials, or installation that is furnished by

any manufacturer or installer. The Developer shall obtain and furnish to the County all information required to make any such guarantee or warranty legally binding and enforceable by the County and shall submit both the information and the guarantee or warranty to the County in sufficient time to permit the County to meet any time limit requirements specified in the guarantee or warranty or, if no time limit is specified, before Final Completion.

ARTICLE XII

FINANCIAL INFORMATION AND STATEMENTS

12.1. County's Right to Request Financial Information – During the life of the Agreement, the Developer agrees to provide monthly up-to-date financial statements showing the Developer's draws on the loan(s) that will finance the Developer's execution of the Work, and up-to-date information regarding payments made to subcontractors.

Article XIII

BONDS

13.1. Construction Bonds – The Developer shall enter into a contract with the General Contractor (the "Construction Contract"), under which the General Contractor will undertake all of the construction portions of the Work. At the time that the Developer and the General Contractor enter into the Construction Contract, the Developer shall deliver, or cause to be delivered to the County a performance bond and a payment bond, each for 100% of the value of the Construction Contract. Under the bonds, the General Contractor shall be the principal, the Developer shall be an obligee, and the County shall also be named as an obligee, with rights equal to the Developer under the bonds. The form of the bonds shall be unmodified AIA312 (2010) performance and payment bonds. The bonds shall be executed by one or more surety companies selected by the General Contractor that are authorized to do business in Virginia. The bonds shall be dated on or after the execution date of the Construction Contract. The Developer

and the General Contractor shall not undertake any construction portions of the Work until the bonds are delivered to the County and are approved in writing by the Henrico County Attorney.

Article XIV

CONSTRUCTION AND INTERPRETATION OF AGREEMENT

14.1. Agreement Construction – The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it.

14.2. Severability – If any provision of the Agreement Documents is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement Documents shall not be affected thereby and each other provision of the Agreement Documents shall be valid and enforceable to the fullest extent permitted by law.

14.3. Section Headings – The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

14.4. Noun forms – As used in this Agreement and as the context may require, the singular includes the plural and *vice versa*.

14.5. Consistent Construction – This Comprehensive Agreement and the Exhibits are intended to be complementary and consistent with each other and shall, to the maximum extent possible, be construed according to such intent.

Article XV
GENERAL CONDITIONS

15.1. Annual Appropriations – The parties acknowledge that the County of Henrico, Board of Supervisors has appropriated funds in the Fiscal Year 2015 budget for the Purchase Price.

15.2. Indemnification – The Developer agrees to indemnify, defend and hold harmless the County and the County's officers, agents and employees from any claims, damages, suits, actions, liabilities and costs of any kind or nature, including attorneys' fees, asserted by third parties against the County, arising from or caused by the provision of any goods and/or services, the failure to provide any goods and/or services and/or the use of any services and/or goods furnished (or made available) by the Developer under this Agreement, provided that such liability is not attributable to the County's negligence. The parties further agree that for third party claims accruing after Final Completion, the Developer shall indemnify, defend and hold harmless the County and the County's officers, agents and employees only from claims, damages, suits, actions, liabilities and costs of any kind or nature, including attorneys' fees, asserted by third parties against the County arising from or caused by (i) the Developer's provision of warranty Work or other Work at the Property site or (ii) the Developer's failure to comply with the Plans and Specifications or other provisions of this Agreement.

15.3. Sovereign Immunity – Notwithstanding any contrary language in the Agreement Documents, the County neither waives nor abrogates its sovereign immunity, in part or in whole, in any manner, under any theory, hereunder, including, without limitation, the County's immunity from actions for simple negligence.

15.4. Controlling Law and Venue – The Agreement is made and entered into, and shall be performed, in the County of Henrico, Virginia, and shall be governed by the applicable laws of the Commonwealth of Virginia without regard to conflicts of law principles. Any dispute arising out of the Agreement, its interpretations, or its performance shall be litigated only in Henrico County General District Court or the Circuit Court of the County of Henrico, Virginia.

15.5. Merger – The Agreement Documents represent the entire agreement between the parties and supersede all prior communications and negotiations. This Agreement may be modified only in writing, signed by both the County and the Developer. Notwithstanding the foregoing, the Developer certifies that all material representations, information and data provided in support of, or in connection with, **Exhibits I and J** were true and correct when made, have been supplemented as appropriate, updated as provided in this Agreement, and there have been no other material changes with respect to any representations, information or data provided for them. Any violation of this section shall give the County the right to terminate the Agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

15.6. Counterparts – This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both 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.

15.7. Independent Contractor – It is expressly understood and agreed by the parties hereto that Developer, in performing its obligations under this Agreement, shall be deemed an independent contractor and not an agent, employee or partner of the County.

15.8. Successor and Assigns – Developer may not voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under this Agreement

without the prior written consent of the County's Representative, which consent shall not be unreasonably withheld, conditioned or delayed. 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.

15.8.1. Name Change – If the Developer changes its name, it agrees to promptly furnish the County with written notice of change of name and appropriate supporting documentation.

15.9. Contractors and Subcontractors – Developer may subcontract any portion of the Work to be performed hereunder, but Developer shall not thereby be relieved of any of its obligations under the Agreement. Developer intends to use RVA Construction, Inc. as its General Contractor and any change in the General Contractor requires the written approval of the County, which shall not be unreasonably withheld.

15.10. Representations and Warranties of Authority – Developer represents and warrants that it has legal authority to enter into this Agreement and perform all of its obligations herein, that all Work under this Agreement shall be performed by appropriately licensed entities or individuals when required, and that the execution of this Agreement by it has been duly and properly authorized. County represents and warrants that it has legal authority to enter into this Agreement and perform its obligations herein and that the execution of this Agreement by it has been duly and properly authorized, including approval by the Board of Supervisors of Henrico County, in accordance with Va. Code § 56-575.16.

15.11. Equal Opportunity Employment – During the performance of this Agreement, the Developer agrees as follows:

15.11.1. No Discrimination – The Developer 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 Developer. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

15.11.2. Identification as Equal Opportunity Employer – The Developer, in all solicitations or advertisements for employees placed by or on behalf of the Developer, will state that Developer is an equal opportunity employer.

15.11.3. Safe Harbor – 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.

15.11.4. Inclusion in Subcontracts – The Developer will include the provisions of the foregoing paragraphs 15.11.1., 15.11.2., and 15.11.3. (substituting the subcontractor or vendor for Developer as the obligated party) in its contract with the General Contractor and require the General Contractor to include such provisions in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

15.12. Drug-free Workplace – During the performance of this Agreement, the Developer agrees to (i) provide a drug-free workplace for the Developer'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 Developer'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 Developer that the Developer

maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses (substituting the subcontractor or vendor for the Developer 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. For the purposes of this paragraph, "*drug-free workplace*" means a site for the performance of work done in connection with this Agreement by Developer where its employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

15.13. Records and Work Product – During performance of the Work, the Developer shall make available for review by the County upon reasonable notice for three years from Final Completion, all records pertaining to the Developer's execution of the Work. Such records shall include, but not be limited to, all paid vouchers, including those for out-of-pocket expenses; other reimbursement supported by invoices, including the Developer's copies of periodic estimates for partial payment; Change Orders; and insurance documents. Such records shall be available to the County on demand upon reasonable notice during the Developer's normal working hours.

15.14. Illegal Aliens – Developer shall not, during the performance of this Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

15.15. County Business License – If the Developer does not have a current business license issued the County, it shall obtain one and provide a copy of such to the County Representative prior to beginning the Work, if required.

ARTICLE XVI **CLAIMS**

16.1. Claims – The Developer may assert a Claim against the County only as follows:

16.1.1. Notice of Intent – The Developer shall give the County a written notice of intent to file a Claim within five business days of the occurrence upon which the Claim is based.

16.1.2. Filing the Claim – Developer shall submit the actual Claim and any supporting data reasonably available within 30 days after the occurrence giving rise to the Claim, 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. Complete satisfaction of §§16.1.1. and this 16.1.2. are conditions precedent for Developer to pursue a Claim arising under or relating to this Agreement, and noncompliance with these provisions bars the Claim. Unless otherwise agreed by the parties, the County will respond in writing to any Claims within 30 days of their receipt. If the County does not respond in 30 days, the Claim will be deemed denied, and the Developer may pursue resolution of the Claim under §16.1.5. or §16.1.6.

16.1.3. Injunctive Relief – Nothing in §§16.1.1. or 16.1.2. shall prevent a party from seeking immediate temporary injunctive or other temporary equitable relief in the Circuit Court of Henrico County.

16.1.4. Pendency of Claim – In the event of any Claim arising, Developer shall continue its performance diligently during its pendency as if no Claim had arisen. The County agrees that it will not assert, as any defense to any Claim asserted by the Developer, that Henrico County Code §16-46 operates as a statutory cap.

16.1.5. Dispute Resolution - Any dispute between the parties arising out of this Agreement, including any Claim, unresolved after Final Completion, shall be subject to the following dispute resolution process:

16.1.5.1. For disputes arising on or before Final Completion, the party seeking relief shall within 60 days of Final Completion request a meeting of the authorized representatives as stated in Paragraph 9.1 and attempt in good faith to resolve any such dispute. In the absence of complete resolution of the dispute from such request and meeting, a principal of HPDC and the Deputy County Manager for Community Operations shall meet within 10 days of such meeting and attempt in good faith to resolve any such dispute. In the absence of complete resolution of the dispute such meetings, the party seeking relief shall file an action in the Henrico Circuit Court no later than one year from the date of Final Completion.

16.1.5.2. For disputes arising after Final Completion, the party seeking relief shall provide written notice of the specific claim for relief to the other party ("Initial Notice"). The other party shall then have 30 days to provide a written response to the claim for relief, indicating what if any action will be taken. If such response fails to provide complete resolution of the dispute, or if the responding party fails to provide a written response, then within another 30 days, the party seeking relief shall request a meeting of the authorized representatives as stated in Paragraph 9.1 and attempt in good faith to resolve any such dispute. In the absence of complete resolution of the dispute from such request and meeting, a principal of HPDC and the Deputy County Manager for Community Operations shall meet within 10 days of such meeting and attempt in good faith to resolve any such dispute. In the absence of complete resolution of the dispute through such meetings, the party seeking relief shall file an action in the Henrico Circuit Court no later than one year from the date of the Initial Notice.

ARTICLE XVII

DELAYS

17.1. Delays – Under this Agreement there are three categories of delays, which are:

17.1.1. Compensable Delays – A Compensable Delay is any delay to Substantial Completion or to Final Completion beyond the control and without the fault or negligence of the Developer or its subcontractors, resulting from County requested or directed changes in the Work, or the County's failure to comply with its obligations under this Agreement. For Compensable Delays, the Developer will be entitled to an extension of the Contract Time equal to the period of delay and may be entitled to additional compensation covering the Developer's extended overhead directly allocable to the extension of the Contract Time.

17.1.2. Excusable Delays – An Excusable Delay is any delay to Substantial Completion or to Final Completion beyond the control and without the fault or negligence of the Developer, or its subcontractors, resulting from acts of God or of the public enemy, acts of government (other than the County), fires, floods, Abnormal Weather, epidemics, quarantine restrictions, embargoes, hurricanes, tornadoes, or similar events. Labor disputes are not Excusable Delays, rather, they are Inexcusable Delays. For Excusable Delays, the Developer will be entitled to an extension of the Contract Time equal to the period of delay, but shall not be entitled to any additional compensation related to that extension, including but not limited to the Developer's extended project overhead directly allocable to the extension of the Contract Time.

17.1.3. Inexcusable Delays – An Inexcusable Delay is any delay to Substantial Completion or to Final Completion other than a Compensable Delay or an Excusable Delay. For Inexcusable Delays, the Developer will be not be entitled to any extension of the Contract Time and will not be entitled to any additional compensation relating to the Inexcusable Delay.

ARTICLE XVIII

OWNERSHIP OF WORK PRODUCT

18.1. Ownership – The Developer shall deliver to County the same rights of ownership or license for use of the Design provided to Developer by any Design Professional providing Design Services

for the Project. The County may use the work product in connection with its occupancy and use of the Project, including for maintenance and repairs, future renovations and expansions, or for any other purpose the County deems appropriate.

ARTICLE XIX **INSURANCE REQUIREMENTS**

19.1. The Developer shall maintain insurance to protect itself and the County from claims under the Workers' Compensation Act and from any claim for damages for personal injury, including death, and for damages to property which may arise from the provision of goods and/or services under the Agreement, whether such goods and/or services are provided by the Developer or by any subcontractor, regardless of tier, or anyone directly employed by either of them. Such insurance shall conform to the Insurance Requirements set out in **Exhibit H**.

ARTICLE XX **TERMINATION**

20.1. Termination – If the Developer should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Developer's insolvency, or if the Developer should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to prosecute the Work within the time specified herein, or if the Developer otherwise materially defaults in its performance of the Agreement, then the County may without prejudice to any other right or remedy, and after giving the Developer 30 days' written notice, terminate this Agreement, and the County will have no duty to purchase the Property.

ARTICLE XXI
SUBMITTALS

21.1. Submittals – Prior to beginning the applicable portions of the Work, the Developer shall provide submittals to the County Representative's approval and/or selection for, at least, the following products, which the Developer will incorporate into the Project:

- a. Cabinets,
- b. Doors (interior and exterior),
- c. All finishes, including all paint colors,
- d. HVAC system,
- e. Ice maker,
- f. Lighting fixtures (exterior and interior),
- g. Asphalt,
- h. All flooring,
- i. Cove base,
- k. Roof system, and
- l. Building electrical system.

The County will review any submittals and respond to the Developer within five business days, approving, rejecting, or requesting additional information for each submittal.

ARTICLE XXII
MISCELLANEOUS

22.1. Miscellaneous – Notwithstanding any contrary provisions in **Exhibits C** and/or **D** the parties agree that the following features are included in the Purchase Price and shall be incorporated into the Design:


- a. The Developer agrees to provide: (i) two floor drains in restrooms (4 total) at locations approved by the County, (ii) supply and install sound traps above ceilings (6 total) at locations approved by the County, (iii) supply and install a CO sensor in the garage at a location approved by the County, (iv) and supply the necessary bumper blocks in the parking area (4 total) at locations approved by the County;
- b. The Developer agrees to locate the dumpster and dumpster pad at the south end of the vehicular turning area to resolve the conflict between the dumpster and the sanitary sewer line in **Exhibit D**;
- c. The Developer agrees to construct an island at the western end of the southern row of parking and add one parking space at the east end of the parking row;
- d. The Developer agrees to construct two sidewalk connections: (i) one between the visitor parking and rear lot and (ii) the other between the garage area and the western end of the sidewalk;
- e. The Developer agrees to adjust the curb line at the south end of the visitor parking lot to allow straight back up from the end space;
- f. The Developer agrees to provide evergreen screen trees on the western property line and to provide minimum perimeter trees at 2 per 100 feet on the eastern and western property lines along the pavement;
- g. The Developer agrees to include a permanent BMP Pond, if necessary, at no additional cost to the County;
- h. The Developer agrees to relocate sewer cleanout from the spare office to a corridor; and

- i. The Developer may reduce the width of two-way drive aisles to 30 feet so long as the Developer can provide truck turning movements acceptable to the County's Traffic Engineer to show that the drive aisles and parking areas can accommodate a 40-foot vehicle.

(SIGNATURE PAGE TO FOLLOW)

WHEREFORE, the parties hereby execute this Comprehensive Agreement as evidenced by the signatures below:

HPDC Partners, LLC
P.O. Box 662
Virginia Beach, VA 23451




Signature

C. Denton Baker
Managing Member

8/20/14

Date

County of Henrico
P.O. Box 90775
Henrico, VA 23273-9775



Signature

John A. Vithoulikas
County Manager

8/25/2014

Date

APPROVED AS TO FORM



COUNTY ATTORNEY

8-22-14

PURCHASE CONTRACT

THIS PURCHASE CONTRACT ("Contract") is made by and between **HPDC PARTNERS, LLC**, a Virginia limited liability company, or its successors or assigns ("Seller"), and the **COUNTY OF HENRICO, VIRGINIA** ("Purchaser"). This Contract is effective as of the date (the "Effective Date") on which the second party to sign executes this Contract.

WITNESSETH:

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. Property. Subject to the terms hereof, Seller agrees to sell, and Purchaser agrees to purchase, those certain tracts or parcels of land located in the County of Henrico, Virginia, consisting of approximately 4.214 acres as more particularly described on **Schedule "A"** attached hereto and incorporated herein (less and except the Tee Box Area, as defined below), together with all improvements located thereon, and together with all appurtenances, rights, easements, rights of way and hereditaments incident thereto and all title and interest, if any, of Seller in and to any land lying in the bed of any street, road or avenue, open, closed or proposed, in front of or adjoining said tracts of land (all of the foregoing collectively the "Property"). As used herein, "Tee Box Area" means the approximate area labeled "Tee Box" on the survey entitled "ALTA/ACSM Land Title Survey of 4.214 Acres of Land on the South Line of Villa Park Drive," prepared by Burgess & Niple and dated April 24, 2014, a copy of which is attached hereto as **Schedule "A-1."** After execution of this Contract the parties agree to have a formal delineation of the Tee Box Area by an engineer or surveyor, and to incorporate such delineation into this Contract. Prior to or at Closing, Seller will record a boundary line adjustment plat or similar instrument to account for the exclusion of the Tee Box Area from the Property to be conveyed to Purchaser.

2. Purchase Price.

A. At Closing, Purchaser shall pay to Seller three million six hundred thousand and 00/100 dollars (\$3,600,000.00) (the "Purchase Price"). The Purchase Price shall be subject to any adjustments required by the Comprehensive Agreement between the Seller and Purchaser, dated August 13, 2014 (the "Comprehensive Agreement"). In addition, if Closing is not completed on or before the Closing Date specified in Section 5 below due solely to the actions of the Purchaser or due solely to circumstances within the Purchaser's exclusive control, then the Purchase Price shall be increased by an amount equal to the Per Diem Carry Costs times the number of days that elapse between the thirty-first day after Substantial Completion and the date on which Closing is actually completed. "Per Diem Carry Costs" means the sum of (1) the amount of interest that accrues per day on the mortgage loan under which Seller is the borrower and which is secured by a lien on the Property or a portion thereof, plus (2) the real estate taxes assessed against the Property for the applicable period, prorated on a daily basis, plus (3) Seller's total insurance expense related to the Property for the applicable period, prorated on a daily basis.

3. Seller's Representations and Warranties. Seller represents and warrants to Purchaser as follows:

A. Seller is a duly organized and validly existing limited liability company authorized to transact business in the Commonwealth of Virginia and has all requisite power and authority for the making of this Contract.

B. This Contract is validly executed and delivered by Seller and the performance by Seller hereunder does not violate (1) any agreement or contract to which Seller is a party or (2) any judgment, order, injunction, decree, regulation or ruling of any court or other governmental authority to which Seller is subject.

C. This Section 3 shall survive Closing and shall not merge into the Deed conveying the Property.

4. Purchaser's Representations, Warranties, and Acknowledgments.

A. Purchaser represents and warrants to Seller as follows:

(1) This Contract is validly executed and delivered by Purchaser and the performance by Purchaser hereunder does not violate (i) any agreement or contract to which Purchaser is a party or (ii) any judgment, order, injunction, decree, regulation or ruling of any court or other governmental authority to which Purchaser is subject.

(2) The execution of this Contract by Purchaser has been properly authorized under state and local law, including all applicable notice, public hearing, and voting requirements, and is binding on the Purchaser.

B. PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS, WARRANTIES, AND COVENANTS OF SELLER IN THIS CONTRACT, IN THE COMPREHENSIVE AGREEMENT, OR IN DOCUMENTS TO BE DELIVERED AT CLOSING, SELLER MAKES NO REPRESENTATION OR WARRANTY, WHETHER EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW, WITH RESPECT TO THE PROPERTY OR ANY PORTION, ASPECT, OR COMPONENT THEREOF, AND EXPRESSLY DISCLAIMS THE SAME.

C. This Section 4 shall survive Closing and shall not merge into the Deed conveying the Property.

5. Closing.

A. Unless this Contract is terminated as herein provided, the closing hereunder ("Closing") shall be held no later than thirty (30) days after the date of Substantial Completion, as that term is defined in the Comprehensive Agreement or as soon thereafter as all conditions to closing in favor of Purchaser under the Comprehensive Agreement have been satisfied or waived in writing by Purchaser (the "Closing Date"). Closing shall be conducted through a title insurance company or law office selected by mutual agreement of Seller and Purchaser ("Escrow Agent"). Upon receipt of all funds, documents, and other items required to be delivered under this Contract, Escrow Agent shall cause the Deed described below to be recorded and shall thereafter disburse funds and documents as provided in this Contract and/or in accordance with local custom. Seller and Purchaser shall, if requested by Escrow Agent, sign a commercially reasonable escrow agreement, in a form acceptable to the Henrico County Attorney. Notwithstanding any other provision, in accordance with the Comprehensive Agreement, the parties agree that at the time of Closing the Purchaser will direct the Escrow Agent to withhold 200% of the reasonable value, as determined by the Purchaser, of all punch-list work then remaining (the

"Retainage"), and the Escrow Agent shall not disburse the Retainage to the Seller until the Purchaser has issued a letter of final acceptance under the terms of the Comprehensive Agreement. In the event some or all of the punch-list work, as that term is used in the Comprehensive Agreement, remains unfinished for more than sixty (60) days after Closing, the Purchaser may, upon seventy-two (72) hours' notice to Seller, direct the Escrow Agent to, and the Escrow Agent shall, return the Retainage, or a portion thereof, to the Purchaser to cover the Purchaser's reasonable cost of hiring another party to complete the unfinished punch-list work.

B. At Closing, in addition to any other documents required to be delivered under the terms of this Contract, Seller shall deliver or cause to be delivered to Escrow Agent the following: (1) a general warranty deed with English Covenants of Title, duly executed and acknowledged and in proper form for recordation, conveying fee simple title to the Property to Purchaser, subject to all valid recorded easements, liens, covenants, restrictions, declarations, and other encumbrances of record, excluding deed of trust liens and other liens voluntarily placed against the Property by Seller, which shall be released as part of Closing (or which Purchaser's title insurance company may insure against) (the "Deed"); (2) a valid bill of sale or assignment, to the extent necessary to convey all components of the Property not conveyed pursuant to the Deed described above; (3) a commercially reasonable and customary affidavit that Purchaser's title insurance company may reasonably require in order to issue policies of title insurance free of exceptions for unfiled mechanics, materialmen's or similar liens caused by Seller and parties in possession in a form acceptable to the Henrico County Attorney; (4) a certificate of non-foreign status as required by Section 1445 of the Internal Revenue Code; and (5) any other document and information customary in commercial real estate transactions of this type, including information necessary to fill out and file a 1099-S, which are reasonably required by the Henrico County Attorney.

C. At Closing, in addition to any other documents required to be delivered under the terms of this Contract, Purchaser shall deliver or cause to be delivered cash or other immediately available funds to Escrow Agent in the amount of the Purchase Price, subject to adjustment as provided in paragraph 6 of this Contract.

D. Prior to Closing, Purchaser may perform or cause to be performed an as-built ALTA survey of the Property at its own cost. The survey shall be performed by a land surveyor licensed in Virginia. In the event the as-built ALTA survey discloses any condition of the Property that (i) was not shown on surveys previously provided by Seller to Purchaser, and (ii) either (1) materially and adversely affects Purchaser's ability to use the Property for its intended purpose, or (2) is a deviation from or failure to comply with the Agreement Documents as defined in the Comprehensive Agreement, then Purchaser shall notify Seller in writing within a reasonable time and in all events prior to the scheduled date for Closing. Seller shall remedy the condition and the date for Closing shall be extended as reasonably necessary for Seller to complete the remedy. If Seller is unable or unwilling to timely remedy the condition, then Purchaser may terminate this Contract without any further obligation hereunder.

6. Adjustments. The following shall be adjusted between Seller and Purchaser and shall be prorated on a *per diem* basis as of the Closing Date, except as noted below:

A. Real estate taxes, personal property taxes, and assessments on the Property shall be apportioned *pro rata* between Seller and Purchaser, with Seller responsible for the same to and including the Closing Date and Purchaser responsible for the same from and after the Closing Date. Purchaser shall receive a credit in an amount equal to any taxes and assessments unpaid as of the Closing

Date and for which Seller is responsible hereunder. Seller shall receive a credit in an amount equal to any taxes and assessments which have been paid by Seller applicable to periods after the Closing Date. To the extent Purchaser is exempt from any of the foregoing taxes, the Purchase Price shall be adjusted so that, after Closing, Seller will have paid only the portion of such taxes attributable to periods prior to and including the Closing Date. Seller and Purchaser shall cooperate in good faith following Closing, if necessary, to carry out the purposes of this paragraph.

B. Seller shall pay at Closing the state and local recording taxes and clerk's fee payable by the grantor as a result of conveyance of the Property, subject to any available exemptions. Purchaser shall pay all such taxes and fees payable by the grantee, subject to any available exemptions permitted by law at the time the Deed is recorded. All utilities, operating expenses and other apportionable expenses shall be prorated between Seller and Purchaser as of the Closing Date.

C. Other than adjustments to be made following the Closing Date, (a) if a net amount is owed by Seller to Purchaser pursuant to this Section 6, such amount shall be credited against the Purchase Price, and (b) if a net amount is owed by Purchaser to Seller pursuant to this Section 6, such amount shall be added to the Purchase Price.

D. This Section 6 shall survive Closing and shall not merge into the Deed conveying the Property.

7. Possession. Possession of the Property shall be delivered as of the Closing Date, and recordation of the Deed and certification by the Purchaser's title insurance company that title to the Property is in the condition required by this Contract, except to the extent entry by the Purchaser is otherwise permitted by the Comprehensive Agreement.

8. Condemnation. If any eminent domain proceeding affecting any part of the Property is commenced or threatened by a governmental entity other than Purchaser or its departments or agencies (a "Condemnation"), Seller shall immediately give Purchaser written notice thereof. If, in Purchaser's reasonable discretion, such Condemnation has no material adverse effect on the Property, Purchaser shall receive the award resulting from the Condemnation, (or the right to the same shall be assigned to Purchaser if not yet paid), and this transaction shall be closed as if no such Condemnation or other taking shall have occurred. However, if such Condemnation will have, in Purchaser's reasonable discretion, a material adverse effect on the Property, Purchaser may terminate this Contract, and neither party shall have any further liability or obligations to the other under this Contract.

9. Insurance; Risk of Loss. Risk of loss with respect to the Property shall remain with Seller until Closing, except to the extent such loss is caused solely by the Purchaser or its agents. If, prior to Substantial Completion, all or a portion of the Property is damaged, or rendered unusable, in whole or in part, by fire, or other cause, then the Property shall be restored as provided in the Comprehensive Agreement. If, after Substantial Completion and prior to Closing, all or a portion of the Property is damaged, or rendered unusable, in whole or in part, by fire, or other cause, then: (a) if such event involves, in the opinion of the insurance adjuster handling the claim, damage less than an actual or constructive total loss, then Purchaser shall at its election either have the Seller make all necessary repairs prior to Closing, or receive all insurance proceeds attributable to such loss and the parties shall proceed with Closing notwithstanding the damage; or (b) if such event involves, in the opinion of the insurance adjuster handling the claim, an actual or constructive total loss, then within 20 days of the insurance

adjuster's written notice to Purchaser of the determination of actual or constructive total loss, Purchaser at its option will elect to either (i) proceed as noted in subsection (a) immediately above, or (ii) terminate this Contract and thereafter neither party shall have any further obligation or liability to the other under this Contract. In the event the Property is damaged and the Purchaser elects to have Seller make the necessary repairs prior to Closing, Seller shall complete the repairs within 240 days from the date of the casualty, and the Closing date shall be postponed until after the Seller has re-achieved Substantial Completion. However, if restoration work has not started within 120 days of the date of the casualty then Purchaser shall have the right to terminate this Contract and thereafter neither party shall have any further obligation or liability to the other under this Contract. Additionally, in the event the Property is damaged and the Purchaser elects to have Seller make the necessary repairs prior to Closing, the Purchaser shall have the right to make an independent inspection of the damage and to make a determination regarding the scope and value of the damage and the scope and the value of the necessary repairs.

10. Survival of Covenants. Except as provided otherwise in this Contract, all covenants, representations and warranties contained in this Contract shall terminate at Closing, except that the parties acknowledge and agree that the warranties and obligations set out in the Comprehensive Agreement shall survive Closing for the applicable periods set forth in the Comprehensive Agreement and will not be merged into the Deed.

11. Assignment. Purchaser and Seller may not assign this Contract, in whole or in part, without the prior written consent of both parties.

12. Notices. All notices or communications hereunder shall be written and shall be by personal delivery or nationally recognized overnight carrier (e.g. Federal Express), to the parties hereto at the addresses shown below, or at such other address as any of them may designate by proper notice. Notice shall be deemed given on the date actually received (or the date on which delivery is attempted, if refused) or, if sent by overnight delivery, the day after the date on which it is deposited with the carrier.

Purchaser: COUNTY OF HENRICO, VIRGINIA
County Manager
4301 E. Parham Road
Henrico, VA 23228-2745
(P.O. Box 90775
Henrico, VA 23273-0075)
Fax: (804) 501-4162

Copy to: Director of Real Property Department
County of Henrico, Virginia
4300 E. Parham Road
Henrico, VA 23228-2752
(P.O. Box 90775
Henrico, VA 23273-0075)
Fax: (804) 501-4554

Seller: HPDC PARTNERS, LLC
Attention: C. Denton Baker, Manager

541 Eastpark Court
Sandston, Virginia 23150

Copy to: VANDEVENTER BLACK LLP
Attention: Christopher Ambrosio, Esq.
101 W. Main Street, Suite 500
World Trade Center
Norfolk, Virginia 23510

13. Like Kind Exchange Under Section 1031 of the Internal Revenue Code. The parties acknowledge that Seller may wish to enter into a like kind exchange (simultaneous or deferred) with respect to the Property (the "Exchange") pursuant to the applicable provisions of Section 1031 of the IRC of 1986, as amended. Each party shall cooperate in all reasonable respects in such respect; provided, however, that: (a) Closing shall not be extended therefore; (b) the non-exchanging party shall not be required to incur any additional expense; and (c) the exchanging party's ability to consummate the Exchange shall not be a condition to Closing.

14. Miscellaneous.

A. This Contract shall be governed by, construed and enforced under the laws of the Commonwealth of Virginia.

B. This Contract is an Exhibit to the Comprehensive Agreement and is meant to be construed in conformity with that agreement.

C. In the event of a conflict between the terms of this Contract and the Comprehensive Agreement, the terms of this Contract will control.

D. All the terms, covenants, representations, and warranties of this Contract shall be binding upon, and inure to the benefit of and be enforceable by, the parties hereto and their heirs, personal representatives, successors and assigns.

E. No waiver of any condition, or the breach of any term, covenant, representation or warranty contained in this Contract, whether by conduct or otherwise, in one of more instances, shall be deemed a further or continuing waiver of a condition, covenant, representation or warranty contained herein.

F. Any amendment or modification hereof shall be in writing executed by the party sought to be charged thereby.

G. Wherever used herein, the singular shall include the plural, and vice-versa, and the use of any gender shall include all other genders.

H. The captions and Section headings contained herein are for convenience only and shall not be used in construing or enforcing any of the provisions of this Contract.

I. This Contract may be executed, by facsimile or by .pdf format, in two (2) or more counterparts, each of which shall be deemed an original hereof, but all of which, together, shall constitute

a single agreement.

J. Time is of the essence with respect to every provision of this Contract.

15. Annual Appropriation. The parties acknowledge that the Board of Supervisors of Henrico County, Virginia has appropriated funds in the Fiscal Year 2015 budget for the Purchase Price.

REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURE PAGE TO FOLLOW.

IN WITNESS WHEREOF, Purchaser and Seller have caused this Contract to be executed on their behalf and any party executing this Contract warrants that such party has the authority to do so.

SELLER: **HPDC PARTNERS, LLC,**
a Virginia limited liability company

Date: 8/20/14 By: C. Denton Baker (SEAL)
Name: C. Denton Baker
Title: Managing Member

PURCHASER: **COUNTY OF HENRICO, VIRGINIA**

Date: 8/25/2014 By: [Signature] (SEAL)
Name: John A. Vitthalkas
Title: County Manager

APPROVED AS TO FORM
COUNTY ATTORNEY
8-22-14

{Additional County signatures and proper signature format}

SCHEDULE "A"

DESCRIPTION OF PROPERTY

All that certain lot, piece or parcel of land, lying and being in Henrico County, Virginia, containing 4.214 acres, as shown on the plat of survey dated October 4, 2000, prepared by Jordan Consulting Engineers, P.C., entitled "ALTA/ACSM Survey for Air, Water and Soil Properties, LLC Showing a 4.214 Acre Parcel of Land on the South Line of Villa Park Drive, Brookland District, Henrico County, Virginia", a copy of which is recorded in Plat Book 110, page 354, reference to which plat is made for a more particular description of the property and described in accordance with said plat as follows:

Beginning at the intersection of the western boundary of the right of way line of Brook Road (U.S. Route 1) and the southern boundary of the right of way line of Villa Park Drive and continuing along the southern boundary of the right of way line of Villa Park Drive, S 88° 00' 53" W 270.63 feet to a point; thence along the arc of a curve to the right, having a radius of 409.68 feet and a delta angle of 29° 53' 30", an arc length of 214.33 feet to a point; thence N 62° 00' 37" W 349.41 feet to a point; thence along the arc of a curve to the left, having a radius of 559.00 feet and a delta angle of 37° 05' 52", an arc length of 361.94 feet to a point; thence S 80° 53' 23" W 446.19 feet to a point; thence along the arc of a curve to the right, having a radius of 604.00 feet and a delta angle of 16° 59' 43", an arc length of 179.16 feet to a point; said point being the actual point and place of beginning for Parcel 1; thence leaving the southern boundary of the right of way line of Villa Park Drive in a southerly direction the followings (4) courses and distances; (1) S 07° 53' 14" W 33.55 feet to a point; (2) S 07° 14' 28" E 482.78 feet to a point; (3) S 82° 45' 32" W 454.17 feet to a point; (4) N 16° 50' 18" E 651.86 feet to a point on the southern boundary of the right of way of Villa Park Drive; thence along the southern boundary of the right of way of Villa Park Drive in an easterly direction, S 73° 09' 42" E 118.47 feet to a point; thence along the arc of a curve to the left, having a radius of 604.00 feet to a delta angle of 08° 57' 04", an arc length of 94.36 feet to a point, said being the point and place of beginning for Parcel 1 and containing 4.214 acres.

