

COMPREHENSIVE AGREEMENT

between

THE COMMONWEALTH OF VIRGINIA

Department of Game and Inland Fisheries

and

Northlake DGIF LLC

December 20, 2012

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COMPREHENSIVE AGREEMENT

THIS COMPREHENSIVE AGREEMENT (“Agreement”), dated the ____ day of December, 2012, is made and entered by and between **THE COMMONWEALTH OF VIRGINIA, Department of Game and Inland Fisheries**(hereinafter, the “Department” or the “Owner”), and **Northlake DGIF LLC**(hereinafter, the “Developer”).

RECITALS

R-1 The 2009 General Assembly authorized the Project in Chapter 871, 2009 Acts of the Assembly, Section C-2-113.05 that established the process, resources, and limitations of the Project. Among these is a requirement that the principal cost shall not exceed \$10 million. The 2010 General Assembly in Chapter 872, Acts of the Assembly, Section C-2-113.05 amended the Project authorization to allow the Owner to move from the site provided in 2009 if it would reduce the cost of the Project. The 2011 General Assembly in Chapter 890, Acts of the Assembly, Section 76.82 authorized the Owner to utilize revenue bond funds for the principal costs of the Project.

R-2. On or about December 28, 2009 the Owner accepted an unsolicited proposal for the development of a new headquarters facility (the “Project”) submitted to the Department pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code §§56-571.1 *et seq.* (the “Act”) and the procedures entitled Public-Private Education Facilities and Infrastructure Act of 2002, Commonwealth of Virginia Procedures dated January 2008 (the “Procedures”) adopted by the Commonwealth of Virginia pursuant to Section 56-575.16(4) of the Act, (the Act and the Procedures are sometimes hereinafter referred to as the “PPEA”).

R-3. Pursuant to the Procedures, the Department notified the offeror that it had decided to consider the unsolicited proposal, the Department provided notice on July 7, 2010 inviting any competing proposals by August 24, 2010.

R-4. Three additional offerors submitted conceptual proposals by the deadline. The proposals were evaluated by a building committee of the Department and two proposals were selected for Phase II proposals.

R-5. On or about March 7, 2011, the two offerors submitted their Part 2, Detailed-Phase Proposals to the Owner. The Part 2 Proposals were evaluated by the Department's Building Committee, and DominionLand and Development LLC was selected as the successful offeror. The successful offeror established a legal entity (Northlake DGIF LLC) to serve as the developer as presented in the Legal Structure portion of the Part A (Qualifications and Experience) section of its Part 2 proposal. A copy of the Scope of Work from the successful offer's proposal is included in this Comprehensive Agreement as Tab A. The proposed scope and estimates for the Project were acceptable to the Department, and the Department proceeded with all required reports and obtained the requisite final authorizations and approvals in order to proceed with the Project.

R-6. The Department conducted negotiations with the Developer and subsequently entered into the Interim Agreement with the Developer dated November 4, 2011, a copy of which is attached and incorporated herein as Tab B (the "Interim Agreement").

R-7. Although originally a part of the Part 2 proposal submitted by Developer, the real estate transactions contemplated by this Agreement shall take place outside the scope of this Agreement as described in general terms in Tab C hereof. This Comprehensive Agreement is expressly contingent on the acquisition by the Department of an approximately 15.45 acre parcel, suitable for use as a headquarters and subject to terms and conditions acceptable to the Department, as further described in Tab C.

R-8. The Developer has, through itself and through the services of licensed entities engaged by the Developer, fully and faithfully performed the services required under the Interim Agreement, and the parties hereto wish to finalize the other design-build aspects of the Project under this Agreement.

R-9. The Developer submitted as part of the team to execute this program the entities listed below. Changes to this team for individual phases of the work may be made with the approval of the Department.

The Virginia licensed Architect / Engineer is identified as:

Architect/Engineer - Baskervill
Address - Brent Farmer, Principal
101 S. 15th Street, Suite 200
Richmond, VA23219

The Virginia Licensed Contractor that will provide construction services as a subcontractor to Developer is:

Contractor - Kjellstrom and Lee Inc.
Address- H. Fulton Sensabaugh, Jr., Senior VP
1607 Ownby Lane
Richmond, VA23220

The Developer agrees that each of these contracts shall be transferable by right to the Owner should this Comprehensive Agreement be terminated by the Owner for cause pursuant to Section 41 of the General Conditions.

NOW THEREFORE, for and in consideration of the mutual promises, conditions and covenants herein set forth, the parties agree as follows:

1. **APPROVALS.** The Department is an agency of the Commonwealth of Virginia and expenditure of funds hereunder is subject to appropriation of funds by the Virginia General Assembly. The Department has obtained final gubernatorial and legislative funding approvals or authorizations to commence the scope of work for the Project.
2. **INCORPORATION OF RECITALS AND DUTIES OF "PRIVATE ENTITY" UNDER PPEA.** The foregoing recitals are hereby incorporated into this Agreement. In addition, the duties of a "Private Entity" under Va. Code § 56-575.8 are hereby incorporated into this Agreement and imposed upon Developer.

3. **DEFINITIONS.** The following definitions apply to this Agreement:

a) “Building Official” means the Director of the Division of Engineering and Buildings in the Virginia Department of General Services, and the staff of the Bureau of Capital Outlay Management (BCOM) within the Division of Engineering and Buildings, that perform the Building Official functions pursuant to Va. Code §36-98.1. Upon the Department’s approval of the submitted construction plans as described below, which approval shall be timely and shall not be unreasonably withheld, the Developer shall submit the plans to the Building Official for review, approval and issuance of a Building Permit.

b) The “Comprehensive Agreement” or the “Agreement” consists of this Comprehensive Agreement Between Department and Developer and the exhibits and attachments hereto.

c) “Construction Work” shall have the meaning set forth in the General Conditions, including construction-related services and construction required by this Agreement to be provided by Developer, and further including, but not limited to, furnishing labor, and furnishing and incorporating materials and equipment into the construction.

d) The “Contract Documents” consist of this Agreement along with all plans and other drawings required under this Agreement, and any and all modifications to these documents, including the General Conditions and all modifications to the General Conditions approved in Tab H. To the extent there is any conflict between this Comprehensive Agreement and any other of the Contract Documents, this Comprehensive Agreement shall govern.

e) “CPSM” shall mean the Commonwealth of Virginia’s Construction and Professional Services Manual, 2004 edition with revisions and amendments current as of the date of this Agreement, issued by the Division of Engineering and Buildings’ Bureau of Capital Outlay Management, which provides guidance and standards for planning and constructing facilities on state-owned property, as limited by and to only the Chapters and Appendices in Tab D.

f) “Department” shall mean the Department of Game and Inland Fisheries of the Commonwealth of Virginia as signator of this Comprehensive Agreement. Further,

the Department shall mean the “responsible public entity” as that term is defined in the PPEA.

g) “Design Professional” means any architect, engineer, and consultant engaged by Developer, providing any design, architectural and/or engineering services relating to the Project, and any of the firms that employ any of them.

h) “Developer” shall mean Northlake DGIF LLC, which is the legal entity responsible for the design and construction of the Project under this Agreement. Further, the Developer shall mean the “private entity” as that term is defined in the PPEA.

i) “Final Completion of Construction Work” and “Final Completion” shall have the meaning set forth in Section 1 of the General Conditions.

j) “Project” shall mean the site preparation and necessary related design work, including permitting and the like, and design and construction of the Facilities in accordance with Developer’s conceptual (Part 1) proposal and subsequent detailed (Part 2) proposal that provided refinement of the scope of the Facilities to be provided to the Department in accordance with approved contract documents.

k) “Substantial Completion of Construction Work” or “Substantial Completion” shall have the meaning set forth in Section 1 of the General Conditions incorporated into this Agreement.

l) “Work” shall mean all of the required duties, services, labor, materials, equipment and all other responsibilities of the Developer under this Agreement.

4. **GENERAL SCOPE AND FINDINGS UNDER PPEA.**

a) Developer shall provide to the Department all inclusive development, design and construction services consistent with the final scope approved by the Department and Developer to design and build the Project.

b) The Department has determined that the Project serves the public purpose of the PPEA because:

- (i) There is a public need for or benefit derived from the Project;
- (ii) The estimated cost of the Project is reasonable in relation to similar facilities; and,

(iii) The Developer's plans will result in the timely design, construction, improvement, renovation, expansion, equipping, implementation, or installation of the Project.

c) The Department and the Developer shall work together to finalize the scope of the project and then ensure that the scope of work as proposed can be completed within the budget as defined in this Agreement. Failure to reach agreement on such a scope of work, despite diligent, good-faith efforts to do so on the part of each party, shall be cause for immediate termination of this Agreement with no further obligation, liability or expectation, provided, however, that (i) each party shall work cooperatively to complete any remaining Work already begun, if useful to the Project, (ii) Owner shall pay Developer all sums due for Work actually performed pursuant to the Interim Agreement or this Agreement, and (iii) materials created by Developer for the Project shall be turned over to Owner following payment of all applicable sums due for Work actually performed pursuant to the Interim Agreement or this Agreement.

5. **PROJECT SCHEDULES AND TIME FOR COMPLETION.** The initial project schedule (the "Project Schedule") is attached hereto as Tab E, which will be updated and adjusted as the final plans are established by the Developer and approved by the parties. The Project Schedule includes a date for Substantial Completion of Construction Work. Meeting the Substantial Completion of Construction Work dates is of the essence of this Agreement, subject to changes and other events that justify an extension of time as herein permitted, and is one of the paramount reasons for Department entering into this Agreement. The scheduling software utilized to produce the Project Schedules and all updates shall be compatible with Microsoft Project. Printed copies of the schedules shall be provided to the Department anytime there is a change to the critical path or upon its written request.

6. **PROJECT INITIATION.** The details set forth in the proposed Scope Documents (as defined in subsection 8(c) below) outline the preliminary estimated architectural, engineering, design and site work preparations for the Project. The Scope of Work is based upon the project cost summary dated December 7, 2012, along with exhibits

thereto (the "Project Cost Summary"), attached as Tab F. The Scope Documents and Project Cost Summary are subject to adjustment as permitted by this Agreement.

In the event that that the Project, or any parts thereof, are undertaken by the Department, or other agency or division of the Commonwealth, with a developer, contractor or operator other than the Developer then, absent an uncured default by the Developer, the Developer shall be entitled to recover from the Department: (i) the earned or expended costs of all Work and design materials, including plans, specifications, reports, studies, drawings, consultant materials, bid information, subcontractor costs, estimating costs, and related materials associated with the Project (or the affected parts thereof) and which have not yet been paid for by the Department; and (ii) any unpaid management fee for the Project in proportion to the value of the work so performed versus the remaining balance of work on the Project (or the affected parts thereof). The provisions of this Section 6 shall survive the termination and/or completion of this Agreement.

7. **PROJECT DEVELOPMENT.** Developer will provide services that are consistent with the provisions of this Agreement. Developer will perform and manage the design and development for the Project and provide all work required to execute the Project. In performing under this Agreement, Developer shall comply with the General Conditions of the Design-Build Contract, CO-7 DB ("General Conditions"), attached hereto and incorporated herein at Tab G, as modified by the Supplemental General Conditions attached hereto and incorporated herein at Tab H.

8. **PROJECT - DESIGN SERVICES.**

- a) The parties shall use a design-build approach for the design and construction of the Project
- b) Because this is a design-build project, Department does not provide to Developer any warranty, express or implied, regarding any services or designs performed pursuant to the design for the Project. Rather, Developer and the design professionals it uses shall warrant that the design and design services meet the standard of care as provided in this Comprehensive Agreement. The Developer shall be responsible to the

Department for the actions and work product of the design professional under this Agreement, but the parties recognize and agree that the Developer is not a licensed design professional and is not performing that aspect of the Work itself.

c) The design process will involve a turn-key approach and will proceed generally as follows: Developer has developed a description of the Project and outline specifications consisting of the detailed proposal (Tab A) as further explained in the design narrative (Tab A1), and subsequent schematic plans prepared by Baskervill dated July 12, 2012, attached hereto as Tab I, subject to certain modifications described in Tab J (collectively, the "Scope Documents"). Such Scope Documents have been reviewed and approved by the Department. The scope of the Work is as defined in the Scope Documents. Developer will complete and deliver to Department proposed construction drawings, plans, specifications and schedules. Such deliverables shall be reviewed, revised and approved or disapproved by the parties in order to produce a final set of approved plans, construction drawings, specifications and schedules for the Project (collectively, the "Plans"). The Department's approval of all of the above plans, drawings, specifications or schedules shall be timely and shall not be unreasonably withheld, conditioned or delayed; and, Department shall not be entitled to condition its approval of such plans, drawings, specifications or schedules upon the inclusion of any design specifications that are inconsistent with the then current Scope Documents as approved by the Department and the Developer. The Department's approval of such plans, drawings, specifications or schedules shall be deemed a representation that they meet the Department's needs and requirements, but shall not be deemed a representation or warranty by Department that any of such Plans meet every aspect of the code or represent good engineering, design or construction practices or be deemed to be a waiver by Department of any latent design flaw, code violation, or the standards for design and construction contained in this Agreement.

In the event the Department disapproves of the plans, drawings, specifications or schedules, or any portion thereof, or any modifications thereto, the Department's notice of the disapproval shall specify the precise basis for such disapproval. If the Department fails to notify the Developer of its disapproval within ten (10) business days of the Developer's submission of any such item(s), then such item(s) shall be deemed approved

by the Department. However, if the Developer is notified within ten (10) business days of the Developer's submission that BCOM review is required, the Department shall have ten (10) business days from its receipt of the BCOM review to notify the Developer of its disapproval. In the event Department disapproves of the plans, drawings, specifications or schedules, or any portion thereof, or any modifications thereto, the Department's notice of the disapproval shall specify the basis for such disapproval. Developer shall promptly cause to be made such revisions to the plans, drawings, specifications or schedules as may be necessary to address the Department's reasonable objections, and shall resubmit the plans, drawings, specifications or schedules to Department for the Department's approval to maintain the project schedule, provided such revisions to the plans, drawings, specifications or schedules are consistent with the Scope Documents. The Department shall review such revisions and notify Developer whether Department approves or reasonably disapproves the plans, drawings, specifications or schedules as modified, subject to the same time restraints as applicable to the initial submissions. This process shall be repeated, if necessary, until: (i) the Department's reasonable objections have been addressed and Department has approved the plans, construction drawings, specifications or schedules; or (ii) the time for the Department's response to such submittal has expired.

If the Department has disapproved plans, construction drawings, specifications or schedules, or the time for the Department's response to such submittal has expired, following the Developer's compliance with the foregoing procedures, then either party may pursue its rights pursuant to the dispute resolution procedures authorized in the General Conditions. Provided that Developer has timely submitted plans for review and approval by Department pursuant to the Project Schedule, and the Department and Developer have not mutually agreed upon final Plans by the date set forth in the Project Schedule, then in that event the Developer shall be entitled to revise the Project Schedule, budget and/or schedule of work to include extensions of the applicable commencement and completion date resulting from such changes, amendments, approvals and delays in reaching agreement upon final Plans. Final schedules and budget will be prepared by the Developer, following final approval of the plans for the Project.

d) Once the Department and Developer reach final agreement upon the plans for the Project, the Developer shall submit the proposed plans to the Building Official for review, comment, approval and issuance of a Building Permit as may be appropriate within ten (10) business days following such agreement as set forth in the project schedules. The Building Official's approval of such plans, drawings, specifications or schedules shall not be deemed a representation or warranty by the Building Official that such Plans or any portion thereof are in compliance with the applicable code or represent good engineering, design or construction practices and such approval shall not be deemed to be a waiver of any latent design flaw, code violation, or the standards for design and construction contained in this Agreement.

e) Developer shall ensure that the design plans and documents and Construction Work for the Project conform to all applicable requirements of Virginia law and the General Conditions.

9. PROJECT - CONSTRUCTION SERVICES.

a) Construction services to be provided by Developer for the Project shall be performed pursuant to this Agreement.

b) Subject to adjustment authorized by a Change Order (as defined in the General Conditions), the total firm fixed costs for the Project (the "Fixed Contract Price") shall not exceed the costs shown on the respective final approved budget after the conclusion of the design as set forth in Section 8 hereof, except to the extent adjusted pursuant to the terms of this Agreement or Change Order. The Fixed Contract Price will be agreed upon as set forth in Section 14. The Fixed Contract Price may also be adjusted by agreement of the parties during the design and financing process to reflect design changes. The Fixed Contract Price for the Agreement, as adjusted for change orders either approved by Department or to which the Developer is entitled pursuant to the terms of the General Conditions and this Agreement, constitutes Developer's complete compensation for all of the work described herein.

c) Developer is required to submit its staffing plan for the construction work for the Project to the Department, together with the names, qualifications, and years of experience for each firm or major contractor that will be utilized in the Project. The

Department will review the plan and if acceptable shall approve such staffing plan, which approval shall not be withheld unreasonably. The Developer shall, if required by the Department or for reasons outside the control of Developer, such as a person leaving its employ, submit alternative staff for consideration.

d) In addition to the inspection rights the Department has pursuant to this Agreement, the Department shall have the right to retain and pay for a "Clerk of the Works" and any consultants to inspect from time to time the progress, quality, cost, design compliance, and other aspects of the construction work in order to perform a quality assurance function on behalf of Department, consistent with the provisions of the General Conditions. The Department's Clerk of the Works shall be afforded a usable space in Developer's field office (provided such space is reasonably available) and reasonable access to the construction sites, provided they do not unnecessarily or unreasonably interfere with or hinder Developer's work on the Project.

10. **PLAN OF FUNDING.** Subject to the terms of this Agreement, the Department agrees to provide funds to the Developer for the costs of the Work in accordance with the terms and conditions of this Agreement.

11. **RECORDS, RECORD COPIES AND PLANS.** Developer shall maintain in good order one record copy of the plans, all change orders, and any other related documents provided by or for Developer, marked currently to record changes made during construction in accordance with the provisions of the General Conditions. During construction, Department shall have the right to review all plans, change orders and other related documents provided by or for Developer during regular business hours. Upon completion of the design and construction of the Project, Developer shall deliver to Department the following in both hardcopy and electronic media:

- (i) a complete set of record documents, with drawings printed on mylar, for the Project and one copy of the CADD floor plans prepared for each design discipline of each floor of each building in both CADD and .pdf formats;
- (ii) all written specifications, as amended;

- (iii) complete copies of all operations and maintenance manuals for all equipment installed by Developer in the facility; and,
- (iv) all warranties required pursuant to this Agreement.

12. **WARRANTIES.**All the warranties expressly set forth in the General Conditions shall apply to the Project, it being the parties' intent that these warranties are cumulative and are to be construed to give Department the maximum protection consistent with their terms and applicable Virginia law. All warranties given by Developer under the Agreement shall be assignable to Department. All warranties and guarantees provided by Developer shall commence upon the date of Substantial Completion.

13. **DESIGN-TO BUDGET.**The design-to budget for this Project shall be under \$10 million, except as such amount may be modified by a future act of the Virginia General Assembly. For purposes of this section, the "design-to budget" shall be constituted by the sum of the Developer's sitework/building budget, interim agreement costs, and soft costs as detailed in Tab F.

14. **COMPENSATION TO BE PAID TO THE DEVELOPER AND PROJECTED PAYMENTS.**In connection with this Agreement, the firm Fixed Contract Price for the Work shall be set and finalized by the parties at the conclusion of the design phase and 100% complete Construction Documents are prepared and approved by the Department and the Building Official. At that time, the Department and Developer will agree upon the final amount that the Department shall pay and the Developer agrees to accept as just and adequate compensation for the performance of the Work in accordance with the Contract Documents, which shall be set forth in a writing signed by the parties.

The procedures for establishing a schedule of values for the work, for requesting monthly progress payments for work in place, and for requesting payments for properly stored materials are stated in the General Conditions. Unless otherwise provided under the Contract Documents, interest on payments due the Contractor shall accrue at the rate of one percent per month. § 2.2-4355 of the Code of Virginia.

Developer has provided to Department an estimated draw schedule, which schedule is set forth in Tab K attached hereto, consisting of cost summaries and a monthly draw schedule for the Project, to assist Department in developing funding needs. Developer shall notify Department of changes in these projections in sufficient time so that Department can adjust its funding requirements to meet increases in Project costs without incurring unnecessary additional funding costs.

15. **PAYMENT BONDS, PERFORMANCE BONDS, AND OTHER SECURITY.**

a) Developer shall obtain and maintain, or cause to be obtained and maintained by its contractor performing the work, at all times during the performance of the construction work, performance and payment bonds, or letters of credit, in connection with the respective construction, improvements, renovation, expansion, equipping, or installation of the Project, in the forms and amounts reasonably satisfactory to the Department, as required to satisfy the payment and performance bonding requirements of the PPEA, the Procedures, and the provisions of Va. Code § 56-575.9(A)(1). The value of the payment and performance bonds shall be the costs of construction as set forth in Tab F for the Project. The cost of the premiums for such bonds, or letters of credit, shall be included in the Fixed Contract Price.

b) Subcontractor's Bond Requirements. On a case-by-case basis, the Department may require subcontractors to the contractor to provide Performance and/or Payment Bonds as may be required in the PPEA or otherwise, using forms approved by the Department. The amount of each such Payment and Performance Bond shall be equivalent to the full value of the relevant subcontract or such lesser amount as the Department shall approve in writing. All costs of each Performance and Payment Bond for those subcontractors so designated by Department shall be quoted separately for the Department's prior written approval before such bond is obtained. Nothing in this Section shall preclude Developer from requiring a bond from any subcontractor of contractor. The costs of such bonds requested by the Department shall entitle the Developer to a Change Order to equitably adjust the contract value.

16. **INSURANCE.**

a) At all times during the performance of the work under this Agreement, Developer shall take out and maintain, or cause to be taken out and maintained by its contractor, the following insurance with A-rated companies reasonably satisfactory to Department. The cost of said policies is included in the Fixed Contract Price:

(1) Workers' Compensation and Employers' Liability Insurance for all of its employees engaged in work on the Project in an amount not less than the minimum required by Va. Code §§ 2.2-4332 and 65.2-100 *et seq.*, and, in case any of such work on the Project is sublet, the Developer shall require each contractor similarly to provide Workers' Compensation and Employers' Liability Insurance for all of the latter's employees to be engaged in such work. The Developer shall submit on the form provided by the Department a Certificate of Coverage verifying Workers' Compensation. The Developer shall likewise obtain a Certificate of Coverage for Workers' Compensation coverage from each subcontractor prior to awarding the contract and shall provide a copy to the Department.

(2) Commercial general liability insurance to include bodily injury, including death, and property damage, personal and advertising injury, products and completed operations, medical payments, premises and operations, blanket contractual liability, and XCU (explosion, collapse and underground) which may arise from operations under this Agreement, whether such operations be by itself or by any contractor, or by anyone directly or indirectly employed by either of them. The Developer should carry Department's and Developer's protection, if they wish to insure themselves against their contractors. The Commonwealth should be named as an additional insured and so endorsed to the policy. The contract name and number should be added to the certificate of insurance where it reads "Certificate Holder". The amounts of general liability insurance shall be not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. The certificate or policy obtained shall state that the limits are specific to this Agreement. The Department, the Commonwealth of Virginia, and their officers,

employees and agents, shall be named as an additional insured with respect to the work being procured.

(3) Automobile liability insurance which shall insure it against claims of personal injury, including death, as well as against claims for property damage, which may arise from operations under this Agreement, whether such operations be by itself or by any contractor, or by anyone directly or indirectly employed by either of them. The amounts of automobile insurance shall be not less than \$1,000,000 combined single limit for bodily injury and property damage per occurrence.

(4) Umbrella or Excess Liability insurance following the form of the primary insurance policy in an amount not less than \$5,000,000, supplementing the Commercial General Liability policy and Business Automobile liability policy.

b) Developer may satisfy the minimum liability limits required above for Commercial General Liability and Business Automobile liability under an Umbrella or Excess Liability policy, or through insurance provided by its contractor in which the Developer, Department, the Commonwealth of Virginia, and their officers, employees and agents, shall be named as an additional insured with respect to the work being procured..

c) The Developer, or through its contractor, at its cost, shall obtain and maintain in the names of the Department, the Commonwealth of Virginia and the Developer "all-risk" builder's risk insurance (or fire, extended coverage, vandalism and malicious mischief insurance, if approved by the Department) upon the entire structure or structures on which the Construction Work of this Agreement is to be done and upon all material in or adjacent thereto which is intended for use thereon, to one hundred percent (100%) of the insurable value thereof. Such insurance may include a commercially reasonable deductible and exclusion provisions, subject to the Department's reasonable approval in writing, in which case the Developer will be liable for such deductions, whenever a claim arises. The loss, if any, is to be made adjustable with and payable to the Department, in accordance with its interests, as they may appear. The Commonwealth of Virginia, Department and their officers, employees and agents, shall be named as additional insureds in any policy of insurance issued. Written evidence of

the insurance shall be filed with the Department no later than thirty (30) days following the Notice to Proceed received by Developer from the Department. A copy of the policy of insurance, or other reasonably acceptable documentation, shall be given to the Department upon demand. The value of the builder's risk insurance shall exclude the costs of demolitions, excavations, backfills, foundations, underground utilities and sitework. The insurance shall terminate coverage if the policy expires, is cancelled, the Department's interest in the building ceases, or the building is accepted and insured by Department or the Commonwealth of Virginia. Cessation of the Builder's Risk coverage shall be affirmatively coordinated with the Department.

d) Developer shall be responsible for the filing of claims and settling of claims with insurance adjusters.

e) The Department reserves the right, but not the obligation, to review and request reasonable revisions to any insurance requirement for coverages to be maintained by Developer, including but not limited to limits, sub-limits, deductibles, self-insured retentions, coverages and endorsements based upon insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work/specifications affecting the applicability of coverage. Additionally, Department reserves the right, but not the obligation, to review and reasonably reject any insurance policies failing to meet the criteria stated herein and to reasonably reject any insurer providing coverage due to its poor financial condition or failure to operate legally.

f) Any changes in the coverage specified above that result in additional cost shall be cause for a Change Order.

g) At the written request of the Department, the Developer agrees to provide Department Certificates of Insurance and Declaration pages of the policies, or other reasonably acceptable documentation, evidencing that all coverages, limits and endorsements required herein are maintained and are in full force and effect. The Certificates of Insurance and Declaration pages shall clearly indicate the project name and project number. Said Certificates of Insurance and Declaration pages shall include a minimum thirty (30) day obligation to endeavor to notify Department due to cancellation or non-renewal of coverage. The Certificate Holder address shall read:

Larry G. Hart
Infrastructure Director
Department of Game and Inland Fisheries
4010 West Broad Street
Richmond, VA 23230-1104
Telephone No.: 804-367-1295
Facsimile No.: 804-367-2311

17. **DESIGN PROFESSIONALS.** Developer represents and warrants that the Design Professionals, to include architects, engineers, designers for the Project, shall, without limitation, comply with the following:

a) Each of the Developer's architects/engineers responsible for any component of the design portion of the Construction Work shall obtain and maintain in force during the contract period and for a period of 5 years after the final completion of the Construction Work professional liability and errors and omission insurance in the amount of \$2,000,000 per claim occurrence and \$3,000,000 aggregate combined claims limit. In lieu of maintaining coverage for such 5 year period, the Design Professional may purchase "completed operations" coverage for the Project.

b) Developer shall ensure that the requirements of this Section are incorporated into its contracts with its Design Professionals and that they incorporate these same requirements into their subcontracts with other Design Professionals so that Department is able to enjoy the full benefits of this Section.

18. **DEPARTMENT'S REPRESENTATIONS.** The Department hereby represents and warrants to Developer as follows:

a) The Department is an agency of the executive branch of the Commonwealth of Virginia and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement.

b) Each person executing this Agreement on behalf of the Department is duly authorized to execute each such document on behalf of the Department.

c) Neither the execution and delivery by the Department of this Agreement and any other documents executed concurrently herewith to which the Department is a

party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.

d) There is no action, suit, proceeding, investigation or litigation pending and served on the Department which challenges the Department's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other related documents to which the Department is a party, or which challenges the authority of the Department official executing this Agreement or the other related documents, and the Department has disclosed to Developer any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Department is aware.

e) Department shall provide full and timely information regarding requirements for and limitations on the Project, shall render decisions in a timely manner so as to avoid delay in the Developer's services, and shall fully and timely perform its obligations under this Agreement.

f) Department shall also:

(1) Pay all sums due to Developer as and when provided herein, subject to the terms of the General Conditions, which sums have been appropriated by the Virginia General Assembly and approved by the Department's Board.

(2) Provide, at the times required to support the Project Schedule, qualified personnel necessary to perform the Department's duties hereunder;

(3) Assist the Developer in obtaining such technical data as may be necessary for the Developer to perform the Work and obtain all necessary permits and approvals;

(4) Provide and maintain throughout the duration of the work, all at no cost to the Developer, access to the site for the Work, including, but not

limited to, supplying all rights-of-way, easements, land allotment fees and leases necessary to perform the Work;

(5) Provide all necessary information and assistance to allow all environmental and governmental allocations, permits, qualifications and licenses to be obtained that are necessary for the performance of the Work or the operation of the project;

(6) Appoint one or more individuals who shall be authorized to act on behalf of Department, with whom Developer may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon Department as to all matters pertaining to this Agreement and the performance of the parties hereunder;

(7) Perform its obligations, responsibilities and duties described in this Agreement;

(8) Provide any information as required to support the Project Schedule;

(9) Obtain and maintain throughout the performance of the Work all permits, qualifications and licenses required to be taken out in the name of Department, as the case may be, which are necessary for the performance of the Work;

(10) Provide evidence reasonably satisfactory to the Developer, at any time, that sufficient funds are available and committed for the entire cost of the Project, including a reasonable allowance for changes in the Work as may be approved in the course of the Work;

(11) Owner shall periodically review and, if appropriate, update the overall Budget for the Project and shall promptly notify the Developer thereof in writing. If the overall Budget, or any designated portion thereof, is increased or decreased, then the Department and Developer

shall agree upon, as appropriate, corresponding changes in the Project scope, quality and schedule;

(12) Department shall provide prompt written notice to the Developer if it becomes aware of any errors, omissions or inconsistencies in the Developer's services or in the services or information furnished by the Department;

(13) Services provided by parties retained by the Department, whether such services are performed directly by such parties or by sub-consultants retained by such parties, shall be performed by qualified professionals licensed as may be required by applicable law to perform such services in the jurisdiction in which the Project is located; and,

(14) Department shall provide to the Developer certifications with respect to the documents and services provided by any contractors or professionals retained by the Department (a) that, to the best of their knowledge, information and belief, the documents or services to which such certification relates (i) are consistent with the criteria set forth in the Project documents, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Department and the Developer shall be entitled to rely upon the representations and statements contained in such certifications.

19. **DEVELOPER'S REPRESENTATIONS AND WARRANTIES.** Developer hereby represents and warrants to the Department as follows:

a) Developer is a duly organized and validly existing limited liability company, is properly authorized to conduct business in the Commonwealth of Virginia, has the requisite power and it, or through or by its contractors, subcontractors, consultants and Design Professional, has or will obtain all required licenses to carry on its present

and proposed activities, and has full power, right and authority to execute and deliver this Agreement and the other related documents to which Developer is a party and to perform each and all of the obligations of Developer provided for herein and therein.

b) Developer has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other related documents to which Developer is a party.

c) Each person executing this Agreement or any other related document on behalf of Developer has been or will at such time be duly authorized to execute each such document on behalf of Developer.

d) Neither the execution and delivery by Developer of this Agreement and the other related documents to which Developer is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or a violation of the governing instruments of Developer or any other agreements or instruments to which it is a party or by which it is bound.

e) There is no action, suit, proceedings, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other related documents to which Developer is a party, or which challenges the authority of the Developer official executing this Agreement or the other related documents; and Developer has disclosed to the Department any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware.

f) Developer certifies that all material representations, information and data provided in support of, or in connection with, the final approved Plans for the Project are true and correct in all material respects to its knowledge and shall comply with the applicable requirements of the Uniform Statewide Building Code and the provisions of the CPSM applicable to this Project.

g) The representations and warranties of the Developer contained herein shall survive expiration or termination of this Agreement.

20. **PERIODIC REPORTING.** The Developer shall cause to be filed periodic reports with the Department as required in the General Conditions.

21. **SMALL, WOMEN-OWNED, AND MINORITY-OWNED BUSINESS**

PARTICIPATION. The Developer shall provide or cause to be provided to the Owner a plan for the involvement of Small, Women, and Minority (SWaM) owned businesses for services requested under this Agreement. Such plan shall be provided, in written form, to the Owner, thirty (30) days after the Agreement is executed by both parties. At a minimum, the Developer will undertake the following actions with regard to the procurement of products and services under this Agreement:

- a) Utilize qualified SWaM businesses solicitation lists as prepared by the Developer and, upon request from the Developer to the Department, the Department's list, that have the potential to provide products and services required under this Agreement.
- b) Assure that SWaM businesses are solicited whenever they are potential sources of products or services.
- c) When economically and managerially feasible, divide the overall work of the Project into small tasks or quantities.
- d) Establish work schedules, where the requirements of the work permit, to encourage SWaM participation.
- e) Use the services and assistance of the Virginia Department of Minority Business Enterprise, and similar agencies to identify potential SWaM businesses.
- f) Demonstrate compliance with the solicitation of SWaM businesses by performing the following:
 - (i) Maintain a log of potential SWaM firms with each respective organization's name, address, telephone number, fax number, e-mail address and type(s) of services available. This log is to be updated and submitted for review by the Owner on a monthly basis with updates shown in a different font or color to provide immediate visibility to such updates.

- (ii) Establish, schedule and actively promote SWaM participation at meetings, fairs and other events designed to raise awareness of the Project's desires for securing SWaM participation. At such meetings, fairs, etc., the Developer shall provide adequate representation to provide explanations and instructions to those in attendance regarding the processes to follow for SWaM participation.
 - (iii) Participate in non-Project events in the the affected locality where opportunities for networking with the area's SWaM community exists.
- g) Prepare and issue to the Owner, on monthly basis, a Project specific SWaM participation Report. Such Report shall include, as a minimum, the following information:
 - (i) A summary of activities undertaken within the month to increase SWaM visibility to the Project and to encourage SWaM participation on the Project. Such summary shall include:
 - 1. A listing of SWaM business contacted.
 - 2. Specific work package opportunities that were explained to the contracted businesses.
 - 3. A description of the attempts made to encourage the contacted businesses' participation on the Project.
 - 4. Specific responses by the contacted businesses to those attempts and any bidding processes in which such businesses participated and their respective bidding results.
 - (ii) A summary of SWaM subcontracts awarded in the month and cumulatively to date on the Project, showing small, women and minority owned awards separately.
 - (iii) The percentage (expressed in terms of dollar value) of subcontracts awarded to SWaM businesses as a percentage of the overall subcontracted Project value, showing small, women and minority owned awards separately.

- (iv) The numerical quantity of contracts awarded to SWaM organizations as a percentage of the overall Project quantity of contracts awarded to small, women and minority owned awards separately.
 - (v) The total dollar amount of work contracted, committed and projected to be performed by SWaM businesses, small, women and minority owned awards separately.
 - (vi) The total dollar amounts paid to date by the Developer, and its subDevelopers, to SWaM businesses, small, women and minority owned awards separately.
- h) It shall be the responsibility of the Developer to use reasonable efforts to validate and confirm to the Department that when work has been awarded to a SWaM business and a dollar amount for such an award has been claimed and documented in the Project's SWaM reports, that the full amount of the award has been made to a bona fide SWaM business and that no portions of the award have been subcontracted through the SWaM business to a non-SWaM business in a "pass through" arrangement.

22. **BCOM FEESPAID BY THE DEPARTMENT.** The Department shall be responsible for paying all fees and costs due to the Bureau of Capital Outlay Management (BCOM) for its role as the building official for the Developer's first plan submission as well as up to two (2) subsequent plan submissions for the purpose of addressing BCOM's comments on the prior plan submission. The Department shall not be responsible, however, for fees or costs of any kind related to any errors or omissions (in relation to the applicable standard of care) by the Developer's design team that are identified by the Building Official after the first review, or its failure to reasonably address any identified items in subsequent reviews.

23. **INSPECTIONS.** The Department retains the right to inspect the Project at its cost at any time and from time to time to ensure that Developer's activities are acceptable to Department and are in accordance with the terms of the General Conditions. The Department shall not exercise its inspection rights in a manner that unreasonably

interferes with Developer's performance of the Construction Work, or the performance of this Agreement, or the related agreements referenced herein.

24. **TERMINATION OF AGREEMENT.** This Agreement may be terminated as set forth in the terms, conditions and requirements of the General Conditions, including without limitation Sections 40, 41, and 42. In addition, if any of the contingencies identified herein cannot be fulfilled in a time or manner reasonably contemplated to successfully complete the Project in accordance with the Project Schedule, and if, after thirty (30) days written notice of the need to complete such contingency and good faith efforts to do so on the part of the party required to fulfill the contingency, the contingency still cannot be met, then the party in whose favor the contingency runs may elect to terminate this Agreement for failure to meet a contingency as a termination for convenience.

25. **INDEMNIFICATION.**

a) To the extent not inconsistent with the provisions of the General Conditions, Developer shall provide those indemnities expressly set forth in the General Conditions. In addition to those express indemnities, Developer shall indemnify and hold harmless and defend the Department, its Agency Head, officers, employees, consultants and agents, to the fullest extent permitted by law, from any and all third-party claims or causes of action for loss, liability, damage or expense, including reasonable attorney's fees and disbursements, for bodily injury, sickness, or death, and property damage or destruction (other than to the Project itself) caused by or resulting from the Developer's its subcontractors, design consultants or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable, misconduct or negligent acts or omissions arising out of or in connection with the negligent performance of Developer's duties under this Agreement or any failure of the completed Construction Work performed by Developer to comply with any applicable governmental laws, ordinances, rules and regulations; provided, however, that such foregoing obligations above by Developer to indemnify and hold Department harmless shall not apply to any loss, liability, damage or expense, including attorneys' fees, to the extent caused in whole or in part by: (a) a breach of this Agreement by Department; (b) claims or violations of

applicable law or the terms of this Agreement by Developer in compliance with instructions or specifications furnished by Department; or, (c) the misconduct and/or negligence of Department, its agents, employees, Developers, invitees, business invitees, tenants, and guests.

26. RIGHT TO INSPECT CERTAIN RECORDS.

a) Developer's and Department's records related to the Project shall be maintained by the Department and Developer and open to inspection and subject to audit and/or reproduction, during normal working hours at the location where the records are usually maintained or other mutually agreed location, by the non-defaulting party's agents or authorized representatives at the requesting party's cost. The records shall include, but not be limited to the following: accounting records, written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders), agreed labor rates, original estimates, daily reports/logs (in a form approved by the Department and acceptable to the Developer and its subcontractor), progress reports and job cost reports, estimating worksheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges or payments related to the Fixed Contract Price under this Agreement (all the foregoing hereinafter referred to as "records"). Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with the Fixed Contract Price under this Agreement. Notwithstanding the foregoing, nothing in this Section or this Agreement shall operate as or constitute a waiver or release of Developer's rights pursuant to Va. Code § 56-575.4(G), § 2.2-3705(A)(56), or as set forth in the notices provided to the Department by Developer.

b) For the purpose of such audits, inspections, examinations and evaluations, the Department's and Developer's agent or authorized representative shall have access to said records from the effective date of this Agreement, for the duration of the Agreement, and until two (2) years after the completion or termination of this agreement.

c) The Department's and Developer's agents or its authorized representatives shall have reasonable access to the Developer's and Project facilities, shall have reasonable access to all necessary Project records, and shall be provided adequate and appropriate work space at the Developer's office or elsewhere, in order to conduct audits of Project related records in compliance with this Section. The Department's agents or its authorized representatives shall give Developer reasonable advance notice of intended audits.

d) In the event that the Department elects to have a professional audit Developer's records as provided in this Agreement, such audit must be conducted by an independent nationally or regionally recognized accounting firm mutually agreed to by the parties that is not being compensated by Department upon a contingency fee basis and the Department's auditor shall execute a written agreement agreeing that the auditor is not being compensated on a contingency fee basis.

e) In the event that Developer fails to comply with the record-keeping requirements set forth in subsection (a) above, then the Department may provide written notice to Developer of such deficiency. If within fifteen (15) days of its receipt of such notice Developer fails to cure the deficiency (or fails to take substantive action to cure the deficiency if it cannot be fully cured within such fifteen (15) day period), then Department may withhold from any payment made to Developer all or any part of Developer's compensation with respect to only the portion of the Work to which the deficiency relates, but only until such requirements have been satisfied.

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

To the Department: Larry G. Hart
Infrastructure Director
Department of Game and Inland Fisheries
4010 West Broad Street
Richmond, VA23230-1104
Telephone No.:804-367-1295
Facsimile No.: 804-367-2311
Email: larry.hart@dgif.virginia.gov

With copy to: Steven O. Owens, Esq.
Sr. Assistant Attorney General/Chief
Real Estate and Land Use Section
900 East Main Street
Richmond, Virginia23219
Telephone No.: (804) 786-6955
Facsimile No.: (804) 371-2086
Email: SOwens@oag.state.va.us

To Developer: Michael J. Carroll
Managing Member
Northlake DGIF LLC
Telephone No.: (804) 359-3575
Facsimile No.: (804) 353-1946
Email: mcarroll@glcva.com

With a copy to: Tom Kinter
Member
Northlake DGIF LLC
Telephone No.: (804) 359-3575
Facsimile No.: (804) 353-1946
Email: TKinterl@glcva.com

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

28. SUCCESSORS AND ASSIGNS.

a) Developer may not, without the prior written consent of the Department, which consent shall not be unreasonably withheld, conditioned or delayed, voluntarily or

involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under this Agreement.

b) The Department may transfer and assign its interests in the Project, this Agreement and any other agreement involving the Project to any other public agency or public entity as permitted by law, provided that the successor or assignee has assumed all of the Department's obligations, duties and liabilities under this Agreement and has provided Developer with reasonable assurance of its legal and financial authority to honor and perform the same.

c) If either party changes its name, such party agrees to promptly furnish the other party with written notice of change of name and appropriate supporting documentation.

d) 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.

29. **TIME IS OF THE ESSENCE.** The parties hereto agree that time is of the essence in this Agreement. The Developer shall proceed expeditiously with adequate forces and make diligent efforts to keep the Project on schedule, and the Developer shall achieve Substantial Completion of the Work and Final Completion of the work within the completion times specified in this Agreement as the same may be adjusted pursuant to the provisions of this Agreement. The parties agree that closing on the real property identified herein and execution of this Comprehensive Agreement shall take place on or before December 28, 2012. If delayed due to factors beyond the reasonable control of either party, these events shall take place as soon as reasonably possible or as otherwise mutually agreed between the parties.

30. **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 Department.

31. **NO WAIVER.**

a) The failure of Department or Developer to insist upon the strict performance of any provisions of this Agreement, the failure of Department or Developer 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 by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

b) No act, delay or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such party under this Agreement, or to relieve the other party from the full performance of its obligations under this Agreement.

c) No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party.

d) The acceptance of any payment or reimbursement by a party shall not: (i) waive any preceding or then-existing breach or default by the other party of any term, covenant or condition of this Agreement, other than the other party's prior failure to pay the particular amount or part thereof so accepted, regardless of the paid party's knowledge of such preceding or then-existing breach or default at the time of acceptance of such payment or reimbursement; or (ii) continue, extend or affect (A) the service of any notice, any suit, arbitration or other legal proceeding or final judgment, (B) any time within which the other party is required to perform any obligation or (C) any other notice or demand.

32. **COOPERATION.** The parties agree to cooperate to achieve the objectives of this Agreement and to use reasonable, diligent and good faith efforts to resolve all disputes and disagreements that may arise hereunder. Each party agrees to designate representatives with the authority to make decisions binding upon such party (subject in the case of Department to those matters requiring administrative action beyond the scope of the Department's Agency Head) so as to not delay the Project schedule. The parties

acknowledge and agree that various other construction and renovation projects may be conducted at the same time the Developer is performing the Work set forth in this Agreement. Therefore, the Department shall cooperate with the Developer in facilitating all reviews, approvals, and authorizations needed by Developer to perform the Work as part of other on-going unrelated separate projects.

33. **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.

34. **ENTIRE AGREEMENT.**

a) This Agreement with all amendments, addenda, and exhibits attached thereto or incorporated therein, constitutes the entire and exclusive agreement between the parties relating to the specific matters covered herein. All other prior or contemporaneous verbal or written agreements, understandings, representations and/or practices relative to the foregoing are hereby superseded, revoked, and rendered ineffective for any purpose; provided, however, that the rights and obligations of the parties pursuant to the Interim Agreement shall remain in effect consistent with the terms thereof. This Agreement may be altered, amended, or revoked only by an instrument in writing signed by each party hereto, or its permitted successor or assignee. No verbal agreement or implied covenant shall be held to vary the terms hereof, any statute, law, or custom to the contrary notwithstanding.

b) The Department's notices and instructions described in the Recitals to this Agreement and Developer's proposals at Tab A, as amended, and the Procedures are incorporated by reference to details concerning the overall intent of the parties. The exhibits at the Tabs attached hereto may be amended, supplemented or revised by mutual written agreement of the Department and Developer.

c) If any provisions of this Agreement are rendered obsolete or ineffective in serving their purpose by change in law, passage of time, financing requirements or other future events or circumstances, the parties agree to negotiate in good faith appropriate

amendments to or replacements of such provisions in order to restore and carry out the original purposes thereof to the extent practicable; provided, however, that neither party is obligated to agree to any amendment or replacement which would reduce its rights or enlarge its responsibilities under this Agreement in any material respect.

35. **LIMITATION ON DEVELOPER'S CONTRACTING POWERS.** Except for this Agreement; the contracts, subcontracts and agreements expressly permitted under this Agreement; and other Construction Documents defined in the General Conditions into this Agreement, Developer shall have no right or authority to enter into, deliver or perform any contracts or agreements pertaining to the Project which purport to bind the Department or the Commonwealth of Virginia or which are contrary to the terms of the Construction Documents defined in the General Conditions without the express prior written consent of the Department. The Department may withhold or condition its consent in its sole and absolute discretion.

36. **DISCLOSURES; NON-WAIVER; APPROPRIATIONS.**

a) The Developer understands and acknowledges that Department is an Agency of the Commonwealth of Virginia and with respect to tort liability for acts or occurrences involving the Project, including product liability, the Commonwealth and Department are either (i) constitutionally immune (or partially immune) from suit, judgment or liability, (ii) insured, or (iii) covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies and practices.

b) The Developer understands and acknowledges that Department has not agreed to provide any indemnification or save harmless agreements running to the Developer. No provision, covenant or agreement contained in this Agreement shall be deemed to be a waiver of the sovereign immunity of the Commonwealth of Virginia, or of Department, from tort or other liability.

c) This Agreement shall be governed by, and construed according to, the laws of the Commonwealth of Virginia. The parties choose the City of Richmond,

Virginia, as the venue for any remedial action instituted pursuant to the terms of this Agreement.

d) Agencies of the Commonwealth of Virginia cannot expend funds unless appropriated by the Virginia General Assembly and may not obligate a future session of the Virginia General Assembly. Therefore, notwithstanding any provision in this Agreement to the contrary, if any session of the Virginia General Assembly fails to appropriate funds for the continuance of this Agreement, this Agreement and all obligations hereunder shall automatically terminate upon depletion of the then currently appropriated or allocated funds.

37. **FINANCIAL STATEMENTS.** Developer agrees to provide Department with copies of compiled, unaudited, complete and current financial statements for it and its affiliates working on the Project on an annual basis upon request, or more frequently if reasonably requested by Department. The Developer may designate such financial statements as confidential proprietary information, exempt from release under the Virginia Freedom of Information Act as set forth in the PPEA and/or pursuant to Section 38 of this Agreement.

38. **PUBLIC RECORDS.** Any work product the Department owns pursuant to this Agreement or otherwise, and any document of which the Department obtains a copy, may be considered public records under the Virginia Public Records Act, Va. Code § 42.1-76 through § 42.1-91, or official records under the Virginia Freedom of Information Act, Va. Code § 2.2-3700 through § 2.2-3714, and as such may be subject to public disclosure. The Department recognizes that certain work product the Department owns, pursuant to this Agreement and certain documents of which the Department obtains a copy, may contain information exempt from disclosure under Va. Code § 2.2-3705, may constitute trade secrets as defined in Va. Code § 59.1-336, and may include confidential information which is otherwise subject to protection from misappropriation or disclosure. Any claim for the protection of certain records from disclosure shall be provided by the Developer in accordance with the applicable statute. Should such records become the subject of a request for public disclosure, the Department shall respond as follows:

- a) The Department shall use reasonable efforts to immediately notify Developer of such request and the date by which it anticipates responding.
- b) Unless previously notified by the Department that such material was, in the Department's opinion, not properly designated as confidential or proprietary and therefore subject to disclosure, the Department will withhold such information and notify the requester in accordance with the applicable statute. Notwithstanding the foregoing, nothing in this Section or this Agreement shall operate as or constitute a waiver or release of Developer's rights pursuant to Va. Code § 56-575.4(G), § 2.2-3705(A)(56), or as set forth in the notices provided to the Department by Developer.
- c) If Department intends to disclose information the Developer has designated proprietary or confidential, the Developer may seek to enjoin such disclosure and the Department will not disclose the information until a final decision has been rendered by the Courts.
- d) If Department withholds information and is sued by the requester, then Developer shall cooperate in the defense of such nondisclosure and shall indemnify and hold harmless the Department from any damages or costs that may result from the improper designation of submitted materials as proprietary or confidential.
- e) In no event shall the Department be liable to Developer as a result of any disclosure of such records by the Department, except as set forth in the PPEA and FOIA.
- f) If the Department's denial of a request for disclosure of records is challenged in court, and the Department agrees to a request by the Developer to defend its position, Developer shall assist the Department in its defense of the Developer's claims of confidentiality. Alternatively, at the request of the Department, the Developer may undertake the defense of the Developer's claims of confidentiality in cooperation with the Department. If Developer believes that any work product or any other document subject to transmittal to or review by the Department under the terms of this Agreement, or any other Project Agreement, contains proprietary or confidential information or trade secrets that are exempt or protected from disclosure pursuant to State law, Developer shall use its best efforts to identify such information prior to such transmittal or review and Developer and the Department shall confer on appropriate means of ensuring compliance with applicable laws prior to transmittal or review. Upon the written request

of either party, Developer and the Department shall mutually develop a protocol for the transmittal, review and disclosure of work product or other documents produced or obtained by Developer so as to avoid violations of any applicable law.

39. CONSTRUCTION AND INTERPRETATION OF AGREEMENT.

a) 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, and instead other rules of interpretation and construction shall be utilized.

b) If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the parties in good faith shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

c) 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.

d) References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto

(which are hereby incorporated herein by reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation and/or undertaking “herein,” “hereunder” or “pursuant hereto” (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument unless the context thereof clearly requires the contrary. Unless expressly provided otherwise, all references to Sections refer to the Sections set forth in this Agreement. Unless otherwise stated in this Agreement (including documents incorporated by reference), words which have well-known technical or construction industry meanings are used in this Agreement in accordance with such recognized meaning.

e) As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

f) This Agreement, its exhibits and the other Project Agreements are intended to be complementary and consistent with each other and shall, to the maximum extent possible, be construed according to such intent.

40. APPROVAL BY GOVERNOR A CONDITION PRECEDENT TO

AGREEMENT'S EFFECTIVENESS. It shall be a condition precedent to this Agreement's effectiveness that it first be approved by the Governor of the Commonwealth of Virginia or the Governor's authorized designee.

41. EXHIBITS. The following exhibits are hereby deemed to be part of this Agreement at the following Tabs:

Tab A –	Scope of Work/Proposal, dated March 7, 2011
Tab A1 –	Design Narrative
Tab B –	Interim Agreement

Tab C –	Real Estate Transactions
Tab D–	Applicable CPSM Chapters and Appendices
Tab E –	Project Schedule
Tab F –	Project Cost Summary
Tab G –	General Conditions of the Design-Build Contract
Tab H–	Supplemental General Conditions
Tab I–	Schematic Plans dated 12 July 2012
Tab J–	Modifications to 12 July 2012 Schematic Plans
Tab K –	Estimated Draw Schedule

[THE BALANCE OF THIS PAGE IS LEFT BLANK FOR
COUNTERPART SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Comprehensive Agreement as of the day and year first above written.

DEPARTMENT

THE COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF GAME AND INLAND FISHERIES

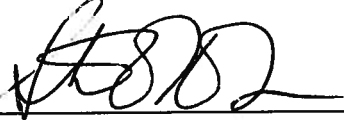
By: _____ Date
 Robert W. Duncan
Its: Executive Director

NORTHLAKE DGIF, LLC


DEVELOPER

By: _____ Date
 Michael J. Carroll
Its: Managing Member

APPROVED AS TO FORM:

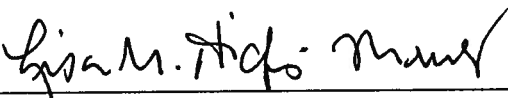
By:  12/14/12
Steven O. Owens Date
Sr. Assistant Attorney General
Office of the Attorney General of Virginia

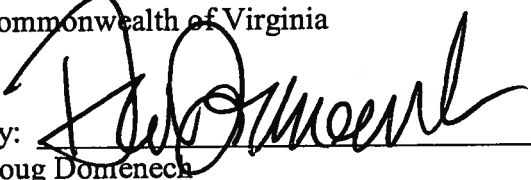
RECOMMEND APPROVAL:

By:  12/20/12
Date
Director, ~~Division of Engineering and Buildings~~
Department of General Services
Commonwealth of Virginia

APPROVED

Pursuant to Va. Code §56-575.16.2:

By:  12/20/12
Date
Lisa Hicks-Thomas
Secretary of Administration
Office of the Governor
Commonwealth of Virginia

By:  12/14/2012
Date
Doug Domenech
Secretary of Natural Resources
Office of the Governor
Commonwealth of Virginia

IN WITNESS WHEREOF, the parties have executed this Comprehensive Agreement as of the day and year first above written.

DEPARTMENT

THE COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF GAME AND INLAND FISHERIES

By: Robert W. Duncan 12/18/12
Robert W. Duncan Date
Its: Executive Director

NORTHLAKE DGIF, LLC

DEVELOPER

By: _____ Date
Michael J. Carroll
Its: Managing Member

IN WITNESS WHEREOF, the parties have executed this Comprehensive Agreement as of the day and year first above written.

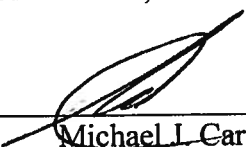
DEPARTMENT

THE COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF GAME AND INLAND FISHERIES

By: _____
Robert W. Duncan Date
Its: Executive Director

NORTHLAKE DGIF, LLC

DEVELOPER

By: _____
 Date
Michael I. Carroll
Its: Managing Member

12-17-2012

EXHIBIT A**INTERIM AGREEMENT BUDGET
SECTION 10****11/1/2011**

DESCRIPTION	COST
Land purchase by DGIF	1,480,000
Legal -organizational/ agreements	50,000
Architecture (see attached Exhibit B-1)	39,056
Civil Engineering (see attached Exhibit T-1)	34,500
Geotechnical	7,000
Survey - subdivision	5,000
Survey - legal description	600
Survey -ALTA	5,000
Survey - topography	7,000
Survey-easement plats	2,250
Recordation / county fees	1,000
* Contractor budgeting / value engineering	10,000
Consultant fees	12,000
Project management/ project admin.	32,000
Developer fee	94,118
Miscellaneous	5,000
TOTAL	1,784,524

Note: * Value engineering is internally performed- not by 3rd party.

Baskervill

EXHIBIT B-1

October 18, 2011

Mr. Tom Kinter
Northlake DGIF, LLC
c/o General Land Company
2800 Patterson Ave , Suite 2
Richmond,, VA 23221

Re: DGIF Interim Agreement Work

Dear Tom,

Our revised fee for the interim work is \$39,055.00. This fee covers the work from August, 2011 to whenever the interim agreement goes "hard" to the final agreement.

Our interim fee includes:

- Follow up meeting with DGIF to:
 - Revise the program and adjacencies.
 - Revise the space plan plans.
 - Create hard-line schematic floor plans for final approval.
 - Coordinate new furniture layout with COE or other vendor.
 - Address elevation changes to enhance the design.
 - Revise the exterior elevation.
 - Provide professional rendering upon approval of elevation.
- BCOM schematic submission, review and revisions by Baskervill.
- Printed outline specs of major material components.
- Working with K&L for pricing.
- \$350 in budgeted printing costs.

The above includes a revised rendering. Deduct \$1750 from the above if a rendering is not required.

Sincerely,

Mark S. Lindsey
Mark S. Lindsey, NCARB

A/E FEE PROPOSAL WORKSHEET

A/E FIRM NAME: Baskervill	CONSULTANTS' NAMES	PROJECT CODE:
PROJECT TITLE: DGIF Interim Agreement	Architectural Baskervill	APPROPRIATION ITEM #
PROJECT LOCATION: Hanover County, VA	Structural RTB	ESTIMATED CONSTR COST
	Mechanical RMF	
	Electrical RMF	
	Civil Timmons	
	Other	

DISCIPLINE	EST'D NO of DWGS	HOURLY RATE	BASIC SERVICES		FOR AGENCY USE	
	Size 24 x 36		EST'D NUMBER of HOURS	ESTIMATED COST A/E	CONSULTANT	EST'D NUMBER of HOURS

PART A - SCHEMATICS

Project Manager	\$ 195.00	28	\$ 5,460	
Project Architect	\$ 129.00	100	\$ 12,900	
Structural Engineer	\$ 175.00	25	\$ 4,375	
Architect	\$ 99.00	87	\$ 8,581	
Sr Interior Designer	\$ 129.00	60	\$ 7,740	
			\$ -	
			\$ -	
			\$ -	
			\$ -	

SUBTOTAL PART A

300 \$ 39,056 \$ -

PART B - PRELIMINARIES AND WORKING DRAWINGS

Professionals:				
Project Manager		\$ -		
Architect		\$ -		
Structural Engineer		\$ -		
Mechanical (HVAC) Engineer		\$ -		
Plumbing		\$ -		
Fire Protection		\$ -		
Electrical Engineer		\$ -		
Civil Engineer		\$ -		
Landscape Architect		\$ -		
SUBTOTAL PROFESSIONAL		- \$ - \$ -		

Drafting:

Architectural		\$ -		
Structural		\$ -		
Mech., Plumb., Fire Protection		\$ -		
Electrical		\$ -		
Civil		\$ -		
Landscaping		\$ -		
CADD		\$ -		
SUBTOTAL DRAFTING	0	- \$ - \$ -		

Specification/Report Writer

Typist		\$ -		
SUBTOTAL SPECIFICATIONS		- \$ - \$ -		

COST ESTIMATE

SUBTOTAL PART B

- \$ - \$ -

EXHIBIT T-1



TIMMONS GROUP FEE REVISED PROPOSAL FOR:

**VDGIF HEADQUARTERS
HANOVER COUNTY, VIRGINIA**

NOVEMBER 3, 2011

INTERIM AGREEMENT SCOPE OF SERVICES

Scope of Services

1. **Stakeholders Meeting/Design Charrettes with DGIF (5 meetings @ \$1000ea) Fee \$5000**
 - a. Site Design Meeting – Completed
 - b. Landscape Design Meeting – Completed
 - c. Site Visit with DGIF – Completed
 - d. (2) additional meetings

2. **Preliminary Meeting with BCOM to review pre-submission package Fee \$1400**
 - a. Principal and Project Manager (4 hours each)

3. **Revised site document drawings to include #1 and #2 above Fee \$4040**
 - a. Project Manager (16 hours)
 - b. Project Engineer (24 hours)

4. **Attendance at BCOM review meeting Fee \$1400**
 - a. Principal (4 hours)
 - b. Project manager (4 hours)

5. **Revise site document drawing to accommodate BCOM review and submit to contractor for revised project pricing Fee \$4940**
 - a. Project Manager (16 hours)
 - b. Project Engineer (24 hours)
 - c. Principal (4 hours)

6. **Water Quality Impact Assessment Fee \$12,500**
 - a. Project Manager (80 hours)
 - b. Environmental Technician (50 hours)

Timmons Group will perform a Major WQIA in accordance with Hanover County's CBPA, pursuant to County Code Section 10-43.

A. Assumptions:

- i) Surveyor will provide all necessary topographic & boundary information to identify the location of the site-specific CPBA features relative to the limits of this WQIA.
- ii) VGIN data will be available and acceptable for depicting existing topography of the project site and adjacent properties.

EXHIBIT T-1



TIMMONS GROUP

YOUR VISION ACHIEVED THROUGH OURS.

III) Architect or Builder will provide CAD data depicting the proposed development improvements, including but not limited to structures, impervious surfaces, landscaping, hardscaping and sewage disposal systems.

iv) Architect or Engineer will provide all construction drawings and developed Erosion and Sediment Control Plans.

7. Virginia Stormwater Management Plan

Fee \$2,000*

- a. Environmental Scientist (20 hours)
- b. \$500 permit fee

Timmons Group will prepare and submit a Virginia Stormwater Management Plan (VSMP) Registration Statement to the Virginia Department of Conservation and Recreation (DCR). A Stormwater Pollution Prevention Plan (SWPPP) will be prepared per state regulations for management of stormwater discharges associated with construction activities. This work will be performed in accordance with the July 1, 2009 DCR VAR-10 Permit requirements.

TOTAL FEE \$34,500

*Please note that Value Engineering, VE, is specifically excluded from these scope of services

EXHIBIT T-1

DGS-30-012
(Rev. 06/04)

CO-2.3
Sheet 1

A/E FEE PROPOSAL WORKSHEET

A/E FIRM NAME: Timmons Group	CONSULTANTS' NAMES Architectural Structural Mechanical Electrical Civil Other	PROJECT CODE:
PROJECT TITLE: Virginia DGIF Head Quarters (Interim Agreement)		APPROPRIATION ITEM #
PROJECT LOCATION: Hanover County, Va		ESTIMATED CONSTR COST

DISCIPLINE	EST'D NO of DWGS	HOURLY RATE	BASIC SERVICES		FOR AGENCY USE	
	Size 24 x 36		EST'D NUMBER of HOURS	ESTIMATED COST	EST'D NUMBER of HOURS	EST'D COST
				A/E	CONSULTANT	

PART A - SCHEMATICS

Principal	\$ 225.00	12	\$ 2,700		
Project Manager	\$ 125.00	120	\$ 15,000		
Project Engineer	\$ 85.00	48	\$ 4,080		
Environmental Scientist	\$ 75.00	20	\$ 1,500		
Environmental Technician	\$ 50.00	50	\$ 2,500		
Meetings	\$ 1,000.00	5	\$ 5,000		
Permit Fee	\$ 500.00	1	\$ 500	Lump Sum	
			\$		
			\$		

SUBTOTAL PART A

256

\$

31,280

\$

\$

\$

PART B - PRELIMINARIES AND WORKING DRAWINGS

Professional:

Project Manager		\$			
Architect		\$			
Structural Engineer		\$			
Mechanical (HVAC) Engineer		\$			
Plumbing		\$			
Fire Protection		\$			
Electrical Engineer		\$			
Civil Engineer		\$			
Landscape Architect		\$			
SUBTOTAL PROFESSIONAL		\$		\$	

Drafting:

Architectural		\$			
Structural		\$			
Mech., Plumb., Fire Protection		\$			
Electrical		\$			
Civil		\$			
Landscape		\$			
CADD		\$			
SUBTOTAL DRAFTING	0	\$		\$	

Specification/Report Writer		\$			
Typist		\$			
SUBTOTAL SPECIFICATIONS		\$		\$	

COST ESTIMATE		\$			
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SUBTOTAL PART B

\$

\$

\$

**Service Providers
Interim agreement - Section H**

EXHIBIT C

Developer / project manager

Northlake DGIF LLC
2800 Patterson Ave, Suite 200
Richmond, VA 23221
Office -804-359-3575
Fax- 804-353-1946
Contact- Tom Kinter
Tkinter@glcva.com

Legal

Williams Mullen
200 S. 10th Street
P.O. Box 1320
Richmond, VA 23218
David DuVal - 804-420-6401
DDuval@Williamsmullen.com
Charles Wall - 804-420-6498
Cwall@Williamsmullen.com

Architecture

Baskervill
101 S. 15th Street, Suite 200
Richmond, VA 23219
Office- 804-353-1010
Fax- 804-353-0909
Mark Lindsey- mlindsey@Baskervill.com
Eddie Breeden- Ebeeden@Baskervill.com

**Civil Engineering / wetlands
Environmental**

Timmons
1001 Boulders Parkway, Suite 300
Richmond, VA 23225
Office - 804-200-6500
Fax- 804-560-1016
Junie West - Junie.west@Timmons.com
Chris Thompson - Chris.thompson@Timmons.com

Survey

JenningStephenson, PC
10160 Staples Mill Road, Suite 103
Glen Allen, VA 23060
Office- 804-545-6235
Fax- 804-545-6259
Troy Stephenson- Tstephenson@jstepc-va.com

Geotechnical

Zannino Engineering, Inc.
9915 Greenwood Road
Glen Allen, VA 23060
Office - 804-262-0299
Fax- 804-262-8479
Lincoln Swineford- Lincoln@Zinninoengr.com

Contractor

Kjellstrom+Lee
1607 Ownby Lane
Richmond, VA 23220
Office- 804-283-2428
Fax- 804-285-4228
Fulton Sensabaugh - Fsensabaugh@kjellstromandlee.com
Richard Britt - Rbritt@kjellstromandlee.com

Consultant

The Donald Williams Group
Donald C. Williams
530 East Main Street, Suite 909
Richmond, VA 23219
Office- 804-592-2896
Donald Williams- Dcw@donaldwilliamsgroup.com

DRAFT DGIF HQ-DRAW SCHEDULE**11/1/2011**

DESCRIPTION	COST	DECEMBER*	JANUARY	FEBRUARY	TOTAL
Land purchase by DGIF	1,480,000.00		1,480,000.00		1,480,000.00
Legal -organizational/ agreements	50,000.00	20,000.00	15,000.00	15,000.00	50,000.00
Architecture (see attached Exhibit B-1)	39,056.00	25,386.40	9,764.00	3,905.60	39,056.00
Civil Engineering (see attached Exhibit T-1)	34,500.00	22,425.00	8,625.00	3,450.00	34,500.00
Geotechnical	7,000.00	7,000.00			7,000.00
Survey - subdivision	5,000.00	5,000.00			5,000.00
Survey - legal description	600.00	600.00			600.00
Survey -ALTA	5,000.00		5,000.00		5,000.00
Survey - topography	7,000.00	6,000.00	1,000.00		7,000.00
Survey-easement plats	2,250.00	750.00	1,500.00		2,250.00
Recordation / county fees	1,000.00		1,000.00		1,000.00
Contractor budgetting / value engineering	10,000.00		10,000.00		10,000.00
Consultant fees	12,000.00	4,000.00	4,000.00	4,000.00	12,000.00
Project management/ project admin.	32,000.00	16,000.00	8,000.00	8,000.00	32,000.00
** Developer fee	94,117.65	47,058.82	23,529.41	23,529.41	94,117.65
Miscellaneous	5,000.00	1,500.00	2,000.00	1,500.00	5,000.00
TOTAL	1,784,523.65	155,720.22	1,569,418.41	59,385.01	1,784,523.65

Note: Application for Payment shall be submtted on first of the month, for previous months services, for payment net 30 days.

**December's Application for Payment is for the months of October and November*

***Monthly fee based on total fee of \$400,000 by 17 month schedule equals \$23,529.41 per month.*

TAB C
REAL ESTATE TRANSACTIONS

All real estate transactions are subject to compliance with, and fulfillment of all requirements of, the applicable sections of the Code of Virginia and any rules, regulations, policies and procedures promulgated with respect thereto and any applicable Acts of the Assembly.

1. The Owner will acquire the approximately 15.45 acre parcel on North Lakeridge Parkway in the Northlake Business Park designated for this project per the terms of the Interim Agreement signed on January 5, 2012, and for not more than the appraised value of \$1,480,000. The acquisition as authorized in Chapter 872, 2010 Acts of the Assembly, Section C-2-113.05 will be subject to the terms and conditions of a mutually acceptable Real Estate Purchase Agreement, an approved Environmental Impact Report, modifications of the stormwater easement with Hanover County to permit the anticipated activities of the Owner within the easement area, and resolution of the subdivision covenants as obligatory to the Owner,
2. The Owner will sell the approximately 5.7 acre parcel at 10267 Telegraph Road in Hanover County as authorized in Chapter 874, 2010 Acts of the Assembly, Section 2-113.05 and apply the proceeds toward the project.
3. The Owner will sell the approximately 7.4 acre parcels with structures at 4000 – 4016 West Broad Street in the City of Richmond and Henrico County as authorized in Chapter 874, 2010 Acts of the Assembly, Section C-2-113.05 and apply the proceeds toward the project.