

**COMPREHENSIVE AGREEMENT**

by and between

**TRANSPORTATION DISTRICT COMMISSION OF HAMPTON ROADS**

and

**CEI DEVELOPMENT, LLC**

May 28, 2009

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## COMPREHENSIVE AGREEMENT

**THIS COMPREHENSIVE AGREEMENT** (the “Agreement”) is entered into as of the 28th day of May, 2009, by and between the **TRANSPORTATION DISTRICT COMMISSION OF HAMPTON ROADS**, a transportation district commission created pursuant to the Virginia Transportation District Act of 1964 (the “Commission”), and **CEI DEVELOPMENT, LLC**, a Virginia limited liability company authorized to do business in Virginia (the “Developer”).

### RECITALS

A. In enacting the Public-Private Education Facilities and Infrastructure Act of 2002, Virginia Code §§ 56-575.1, *et seq.* (as amended, the “PPEA”), which became effective on July 1, 2002, the Virginia General Assembly found and declared, among other things, that:

(i) there is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of education facilities and other public infrastructure and government facilities within the Commonwealth of Virginia that serve a public need and purpose;

(ii) such public need may not be wholly satisfied by existing methods of procurement in which qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed; and

(iii) authorizing private entities to develop or operate one or more qualifying projects may result in the availability of such projects to the public in a more timely or less costly fashion, thereby serving the public safety, benefit, and welfare.

B. The PPEA grants the Commission the authority to approve the development or operation by a private entity of an education facility, technology infrastructure or other public infrastructure or government facility needed by the Commission as a qualifying project, or the design or equipping of a qualifying project so developed or operated, if the Commission determines that the qualifying project serves the public purpose of the PPEA.

C. Under the PPEA, the Commission may determine that a qualifying project serves the public purpose of the PPEA if:

(i) there is a public need for or benefit derived from the qualifying project of the type the private entity proposes as a qualifying project;

(ii) the estimated cost of the qualifying project is reasonable in relation to similar facilities; and

(iii) the private entity's plans will result in the timely development or operation of the qualifying project.

D. On January 26, 2006, the Commission adopted and made publicly available guidelines (the "Guidelines") establishing procedures for the development of public facilities through public-private partnerships with procedures satisfying the PPEA.

E. Recognizing that the Commission had an urgent need for a new Southside administrative, operations and maintenance facility and that the Commission had made a new Southside administrative, operations and maintenance facility a top priority in its capital improvement program, the Commission determined in writing by Resolution number 03-2006, dated January 26, 2006, a copy of which is attached hereto as Exhibit R-E, that proceeding with procurement of the new Southside administrative, operations and maintenance facility under the PPEA is likely to be advantageous to the public and that use of "competitive negotiation" procedures under the PPEA for the new Southside administrative, operations and maintenance facility is likely to be more advantageous to the Commission and the public based upon (i) the probable scope, complexity or urgency of the new Southside administrative, operations and maintenance facility, or (ii) risk sharing, added value, an increase in funding or economic benefit from the new Southside administrative, operations and maintenance facility that would not otherwise be available.

F. On May 22, 2007, the Commission issued a request for proposals for a public-private partnership for a new Southside administrative, operations and maintenance facility, RFP #07-45506 (the "RFP"). The RFP is incorporated by this reference as part of this Agreement.

G. On July 24, 2007, in response to the RFP, the Developer submitted to the Commission a proposal (the "Proposal"). The Proposal is incorporated by this reference as part of this Agreement. For purposes of the PPEA, the Developer shall be considered the private entity.

H. The Commission, after evaluation, considered the Proposal to be worthy of further investigation and detailed review. In accordance with the PPEA and the Guidelines, the City of Norfolk (the "City"), as the affected local jurisdiction, was furnished a copy of the Proposal and the Commission received comments from the City.

I. On January 2, 2008, the Commission and Concord Eastridge, Inc., an affiliate of the Developer, entered into an interim agreement (as amended from time to time, the "Interim Agreement"), a copy of which is attached as Exhibit R-I, to allow the parties to further explore the feasibility and desirability of the proposed public-private partnership, to establish rights and obligations of the parties related thereto, and to establish a process and timetable for next steps in the consideration of a possible comprehensive agreement between the parties. To allow additional time for negotiation of a possible comprehensive agreement and to permit project design and engineering to progress in timely fashion, the Interim Agreement was amended by the parties on May 7, 2008 (the "First Amendment"), again on May 28, 2008 (the "Second Amendment"), again on November 19, 2008 (the "Third Amendment"), and again on March 31, 2009 (the "Fourth Amendment"), copies of which are included as part of Exhibit R-I.

J. As a result of the Proposal and subsequent discussions, and in light of the work performed and analyses made pursuant to the Interim Agreement, the Commission waived the submission of a detailed proposal and negotiated with the Developer a comprehensive agreement pursuant to the PPEA and the Guidelines for the contemplated project.

K. The Commission and the Developer have now negotiated this Agreement consistent with the PPEA, the Guidelines, and other applicable law and regulation, and this Agreement has been posted and made publicly available before entry into it as required by the PPEA.

L. The Commission has determined that a new Southside facility to be delivered by the Developer in accordance with the terms of this Agreement serves the public purpose of the PPEA under the criteria of Virginia Code §56-575.4(C), as amended, and the Commission has approved this Agreement, all pursuant to Resolution 04-2009, dated May 28, 2009, a copy of which is attached hereto as Exhibit R-L.

## **AGREEMENT**

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

### **ARTICLE I - GENERAL**

#### **1.1 Incorporation of Recitals and Duties of “Private Entity” Under PPEA.**

The foregoing recitals are true and correct and are incorporated herein by reference. The duties of a private entity as applicable to the contracted services under the PPEA are hereby incorporated into this Agreement and imposed upon the Developer.

**1.2 Definitions.** All capitalized terms used in this Agreement and the other Contract Documents shall have the meanings set forth in Exhibit 1.2 unless otherwise expressly defined within such Contract Document.

#### **1.3 General Scope.**

(a) Under this Agreement, the Developer will coordinate and provide (or cause to be provided) to the Commission development services, site design services, design services, and construction to locate, design, and build the Project and related amenities at the Site on a turn-key basis in accordance with the terms of this Agreement, the General Conditions (attached hereto as Exhibit 1.3(a)), and the other Contract Documents.

(b) The parties understand this Agreement to represent a transaction involving, together, a series of agreements, instruments and documents setting forth distinct roles

and responsibilities of the respective public- and private-sector participants. Each party to this Agreement agrees to (i) execute and deliver in a timely fashion all other agreements to which it is a party and other instruments and documents as contemplated by the terms of this Agreement, and (ii) perform or cause to be performed all obligations in accordance therewith.

(c) The parties understand and agree that the Developer will be responsible for all aspects of coordinating the development, design and design coordination, construction and delivery of the Project as provided in the Contract Documents, but that certain goods and services provided pursuant to this Agreement may be provided by Subcontractors procured or retained by the Developer. However, notwithstanding anything herein to the contrary, the Developer shall be responsible for delivering all Work as a single and integrated project, in three distinct phases, in accordance with the Contract Documents.

**1.4 Findings Under PPEA.** The Commission has determined that the Project serves the public purpose of the PPEA because:

(a) There is a public need for and a benefit derived from the public portions of the Project;

(b) The estimated cost of the Project, as established for Phase One in the Contract Documents, is reasonable in relation to similar facilities; and

(c) The Developer's plans will result in the timely development of the Project.

## **ARTICLE II – PROJECT PHASES**

**2.1 Phase One.** Phase One of the Project consists of the Work to be performed by or at the direction of the Developer as shall be necessary and appropriate to deliver a new, fully-functioning bus operation and maintenance facility, along with a parking structure, for the benefit of the Commission. The new facility shall be located on the Commission's real property situated at 509 East 18<sup>th</sup> Street in the City, which property is more fully described on Exhibit 2.1 attached hereto. The site of Phase One is to be the eastern portion of such property, as delineated on Exhibit 2.1(a) attached hereto. Phase One shall be fully in accord with the details of the Construction Documents (which are incorporated by this reference as part of this Agreement), and it shall be delivered by the Developer in accordance with the Contract Documents.

**2.2 Phase One-A.** It is anticipated that Phase One-A of the Project shall be consistent with the Work to be performed by or at the direction of the Developer as shall be necessary and appropriate to deliver a new, fully-functioning administration building, along with an extension of the parking structure to be constructed as part of Phase One, for the benefit of the Commission. The administration building is envisioned to consist of approximately 36,000 gross square feet of office space for exclusive use by the Commission. The main office component, as conceptualized, will be located in a two-story structure (or possibly a three-story structure) to be situated on top of the extended parking structure, with a small lobby and reception area at the street level. The extension of the parking structure will include approximately 140 additional

parking spaces. The new administration building and extended parking deck are to be located adjacent to Phase One on the Commission's real property situated at 509 East 18<sup>th</sup> Street in the City, which property is more fully described on Exhibit 2.1 attached hereto. The site of Phase One-A is to be the western portion of such property, as delineated in concept on Exhibit 2.2 attached hereto. The details of Phase One-A, including scope of work, schedule (to be consistent with the relevant portions of Exhibit 3.1 attached hereto), price and payment terms, are to be established by the Commission and the Developer through good-faith negotiations as expeditiously as possible following entry into this Agreement. The parties anticipate that, soon after entry into this Agreement, they will enter into an amendment to this Agreement to include the details of Phase One-A.

### **2.3 Phase Two.**

(a) Phase Two of the Project is intended to involve a ground lease by the Commission to the Developer of approximately 2.1 acres of real property situated at 1500 Monticello Avenue in the City, which property is more fully described on Exhibit 2.2 attached hereto. The term of such ground lease is anticipated to be sixty-five (65) years, with renewal options for up to an additional thirty (30) years. However, the terms and conditions of such ground lease are to be established by agreement of the parties at the time the redevelopment potential of the referenced parcel is determined following an examination of factors relevant to private development, including but not limited to allowable density, types of improvements, environmental issues and parking requirements. Alternative arrangements in lieu of a conventional ground lease may include (i) a participating ground lease with a lower base rent, but with the Commission receiving a negotiated share of the net operating income generated by the private development, or (ii) a purchase of the referenced parcel by the Developer from the Commission at a price to be established by the parties based upon the market value of the land at the time of sale.

(b) Within one-hundred eighty (180) Days following the Agreement Date, the Developer shall initiate the planning process for Phase Two and carry it forward expeditiously through schematic design, in an effort to arrive at an economically viable and marketable development concept that receives the preliminary approval of the City. At such time, the parties shall negotiate the details of the intended transaction and execute the appropriate documents to memorialize same. It is acknowledged by the parties that the Commission's Monticello Avenue property may have some challenging environmental issues associated with it, due to suspected soil contamination, possible archeological constraints, and/or flood plain limitations. Within one-hundred twenty (120) Days following the Agreement Date, the Commission shall investigate these property matters and provide, at its cost, independent third-party written reports to the Developer for the Developer's prompt consideration and evaluation. Such reports shall be completed and deemed reasonably acceptable by the Developer before the Developer shall be obligated to proceed with schematic design as noted above. Phase Two may include an adjacent property to the north that is owned by the City, containing approximately 1.27 acres, situated at 1600 Monticello Avenue in the City, and known as the Union Mission Parcel. The City has indicated to the parties its willingness to negotiate an arrangement with the Developer whereby the Developer will either ground lease or purchase the Union Mission Parcel. It is acknowledged by the parties that the Union Mission Parcel will be included as part of the Phase Two

development only in the event that the Developer is able to negotiate an acceptable transaction with the City.

(c) In the event the parties are unable, after good-faith, commercially reasonable efforts to do the same, to agree upon the business terms, financing or documentation needed to effect Phase Two of the Project, or in the event the Developer, after having exhausted good-faith, commercially reasonable efforts to do the same, is unable to obtain all necessary zoning, site, environmental and other permits required by the City or other Governmental Units having jurisdiction over the Project, then either party may terminate the Phase Two portion of the Project upon ten (10) Days' notice to the other party.

### **ARTICLE III – PROJECT SCHEDULE**

**3.1 Project Schedule.** Attached hereto as Exhibit 3.1 is the initial Project Schedule, which is divided into three (3) components (Phase One, Phase One-A, and Phase Two). The Project Schedule includes the Guaranteed Completion Date (which is the date for Substantial Completion of Work of Phase One), other milestone dates for Phase One, and tentative milestone dates for Phase One-A and Phase Two. The Project Schedule shall be further developed and interim milestone dates added consistent with this Agreement, with such Project Schedule to be reasonably based on required completion dates for the Project, all in sufficient detail to permit identification and monitoring of all significant Work elements related thereto. The Developer shall include in the Project Schedule sufficient allowance of time for any necessary rezoning of the Site, for the transfer of the title of portions of the Site, for the obtaining of easements, for permitting, for reviews and approvals by Governmental Units, and for reviews and approvals by the Commission. The parties anticipate that, soon after entry into this Agreement and based upon good-faith negotiations, they will enter into an amendment to this Agreement for an expansion of the scope of Work and additions to the Project Schedule regarding development of temporary bus maintenance and operations facilities for use by the Commission while the construction Work for Phase One is in process.

**3.2 Notice to Proceed.** Unless otherwise agreed in writing by the parties, the Notice to Proceed for Phase One shall not be issued until (i) all permits necessary for the relevant construction Work have been secured by the Developer in accordance with the Contract Documents, which permits the Developer shall exercise its best efforts to secure in prompt fashion; and (ii) the Commission along with any other Person having possessory rights to the Site has vacated the Site in a manner sufficient to allow the Developer to cause the relevant construction Work to commence. Any delays in the Commission or other parties in possession leaving the Site prior to issuance of the Notice to Proceed shall result in the Project Schedule and applicable milestones being extended by a comparable period of time pursuant to Section 8.2 of the General Conditions; however, as of the date of this Agreement neither party has knowledge of another Person with any such possessory rights.

**3.3 Limited Authorization to Proceed.** Entry into this Agreement by both parties shall constitute a limited authorization for Developer to proceed, or cause its Subcontractors to proceed, with the pre-construction services described on Exhibit 3.3 attached hereto; provided,

however, that under no circumstances shall this Section 3.3 entitle the Developer or obligate the Commission to payments beyond those reflected on the Payment Schedule.

**3.4 Guaranteed Completion Date.** The Developer shall achieve Substantial Completion of the Work for Phase One on or before the Guaranteed Completion Date. The Guaranteed Completion Date shall be the date which is 497 Days after the date of issuance of the Notice to Proceed with construction for Phase One, unless adjusted pursuant to Section 8.2 of the General Conditions.

## **ARTICLE IV – PROJECT DEVELOPMENT**

### **4.1 Development and Site Design Services.**

(a) The Developer represents and warrants that it has undertaken and completed the following development and site design services pursuant to the Interim Agreement or in conjunction with its performance thereunder, as required to complete the Work for Phase One:

(i) reviewed physical inspection reports of the Site provided by the Commission or others, if any, including subsurface tests, soil tests, borings, water surveys, wetlands studies, topographical surveys, sewage disposal surveys and drainage determinations, including but not limited to the Phase I Environmental Investigation Report; the Phase II Environmental Investigation Report; the asbestos survey and the asbestos survey location plan, each dated September 18, 2008; and the asbestos survey addendum, dated October 10, 2008;

(ii) made any and all additional material inspections, tests, and surveys not already done or undertaken by the Commission in order to perform hereunder and provide for the development of the Project as contemplated in this Agreement;

(iii) identified any additional engineering studies and operations that are necessary to carry out the intent of this Agreement;

(iv) reviewed the Commission or the City-provided environmental audits and surveys for the Site;

(v) reviewed the Commission or the City-provided surveys and reports, if any, necessary to satisfy itself generally as to the measurements, status and condition of the Site, and undertaken any such material additional studies or testing as may be necessary to evaluate such measurements, status or condition; and

(vi) designed or caused to be designed on-site improvements necessary for development of the Site for Phase One.

(b) The Developer shall provide the following development and site design services pursuant to this Agreement as required to complete the Work for Phase One:



(i) complete performance of all remaining obligations under the Interim Agreement, if any;

(ii) coordinate with the Commission, the City, or any agency or body necessary to establish requirements for off-site and on-site improvements required for the Site; including without limitation streets and utilities;

(iii) identify required off-site improvements, if any, and cause the off-site improvements, if any, to be designed and constructed for Phase One to be accomplished in accordance with this Agreement;

(iv) perform or cause to be performed all site work necessary to prepare the Site for Phase One in accordance with the Site Civil Construction Documents dated March 12, 2009; and

(v) submit applications for permits for construction Work and obtain all approvals for Phase One that are required for site work, construction and occupancy to the extent not accomplished pursuant to the Interim Agreement; provided that the Commission will provide the Commission's signatures when required and will otherwise reasonably cooperate with the Developer to submit, pursue and obtain all such permits and approvals but with the understanding that responsibility for such permits and approvals shall remain with the Developer.

(c) The Developer shall take all other actions necessary so that the Site is ready for construction in accordance with the Project Schedule and that Phase One is Substantially Complete in accordance with the Construction Documents and ready for opening, occupancy, and operation, all in compliance with all applicable Legal Requirements.

(d) The Developer shall take or cause to be taken all reasonable steps necessary during design and construction to have the Phase One facility become LEED certifiable. This responsibility shall include the following:

(i) Identify all possible design elements and construction practices that can contribute toward the Phase One number of possible LEED credits and provide detailed and accurate cost/benefit analyses, as applicable and requested by the Commission, from which good business decisions by the Commission can be made.

(ii) Ensure that the design elements and construction practices identified in the LEED checklist and accompanying documentation, attached hereto as Exhibit 4.1(d), result in the Project being LEED certifiable consistent with the specific LEED credits shown therein.

(iii) Provide all engineering and administrative services required to handle the Project's LEED registration and certification submittal requirements in accordance with the U.S. Green Building Council ("USGBC").

(iv) Ensure that all records necessary during design and construction of the facility are maintained in good order and made available as needed. Submittal of LEED documentation, as it becomes available and ready for submittal, shall be submitted to the USGBC as the work progresses.

(v) Maintain for the Commission one complete set, in reproducible form, of all drawings, specifications, addenda, descriptions, shop drawings, applicable meeting minutes, as-built drawings, cut sheets and any other required records necessary for complete and final LEED certification submittal. These records shall be clearly identified and organized by LEED credit following the sequence laid out in the USGBC LEED-NC Version 2.2 Registered Project Checklist. As-built drawings shall be neatly and clearly marked in color during construction to record all variations made during construction.

The specific LEED credits, as itemized below, which can only be earned as a result of the Commission-controlled practices and policies during the post-commissioning, operational use of the Phase One facility, are beyond the control of the Developer:

- (i) Green Housekeeping (Innovation in Design Credit 1.3)
- (ii) Green Power (Energy and Atmosphere Credit 6)

Developer and Commission share responsibilities for achieving the following LEED credits:

(i) Enhanced Commissioning (Energy and Atmosphere Credit 3) – Developer shall be responsible for initiating the enhanced commissioning process and contracting for these services during the design and construction phases. Commission shall assume responsibility for completing the commissioning process upon Substantial Completion.

(ii) Measurement and Verification (Energy and Atmosphere Credit 5) – Developer shall provide or cause to be provided all the required building systems, training, and instructions necessary for Commission staff to perform this work. Commission shall be responsible for the actual measurement and verification submittals to USGBC.

#### **4.2 Design and Construction.**

(a) The Developer shall provide or cause to be provided the design and construction services for Phase One described on Exhibit 4.2(a) in accordance with the General Conditions, the Project Schedule and the Construction Documents. Pursuant to the Interim Agreement, as amended, the Developer caused the Design Consultant to fully and completely design Phase One and prepare and seal the Construction Documents. The parties acknowledge that the Commission has approved the Construction Documents. However, such approval shall in no way serve to transfer any liability for design of the Project from the Developer to the Commission, and the Developer and its Subcontractors shall remain fully responsible for the design. In the event the Construction Documents include any error, omission, flaw or shortcoming, or are otherwise not fully in compliance with the Contract Documents, the Developer shall bear full responsibility for correcting or causing to be corrected the Construction

Documents and any Work related thereto within the Contract Time(s) and in a manner that complies fully with all of the Contract Documents. With respect to Phase One-A, the Developer shall provide or cause to be provided the development, site design, design, and construction services as shall be established by the Commission and the Developer pursuant to the terms of Section 2.2. With respect to Phase Two, the parameters of any design and construction services for which the Developer shall be responsible as part thereof shall be determined by the parties in timely fashion once the structure and components of the Phase Two development become more clearly delineated and are agreed upon by the parties.

(b) The Commission does not provide any warranty, express or implied, regarding the suitability of any design for the Project. Rather, the Developer agrees that the services of the Lead Designer and the other Design Consultants shall meet the standards of care described in the General Conditions. Also, the Developer shall ensure that (i) its contract with its Contractor does not excuse its Contractor from performance or entitle it to additional compensation from the Commission due to any errors or omissions in design, and (ii) bonds provided do not excuse the Contractor or surety from any obligation under the bonds based on any errors or omissions in design.

(c) The Developer shall require the Lead Designer's and its consultants' personnel to have the necessary expertise, experience and credentials, and such personnel shall be reasonably acceptable to the Commission. The persons named in Exhibit 4.2(c) are designated key Design Consultants who shall be involved in design services for the Project and may not be removed from the Project (i) without the Commission's written consent, which consent shall not be unreasonably withheld in the event the Developer provides a suitable replacement with equivalent expertise, experience and credentials; or (ii) unless the Commission directs their removal from the Project as reasonably objectionable.

(d) The Developer shall ensure that the design and construction for the Project meet or exceed the Legal Requirements and the standards specifically identified or established in the Contract Documents.

(e) The Developer's contracts with the Lead Designer and the Contractor shall expressly make the Commission an intended third-party beneficiary of each contract and all warranties therein.

(f) The Commission may recommend subcontractors, suppliers and vendors to include among those from whom the Contractor may request bids, and the Developer shall have the Contractor follow such recommendations if reasonably practicable to do so.

(g) The Developer shall cause to be obtained and provided to the Commission warranties for the Project and its equipment and components as provided in the General Conditions and the other Contract Documents. All the warranties provided for in the Contract Documents shall apply to the Project, it being the parties' intent that these warranties are cumulative and are to be construed to give the Commission the maximum protection consistent with their terms. All warranties obtained by the Developer and by the Contractor shall be assigned to the Commission or the Commission shall be expressly made an intended third-party beneficiary thereof.

(h) The Developer shall submit to the Commission the Developer's and its Contractor's staffing plan for the construction of the Project, together with the names, qualifications, and years of service of management. No changes to such management shall be made which are reasonably objected to by the Commission (except for changes which are outside the control of the Developer and the Contractor, such as a person leaving their employ). The persons named in Exhibit 4.2 are designated key personnel for construction, and the Developer agrees that any such person may not be removed from the Project (i) without the Commission's written consent, which consent shall not be unreasonably withheld in the event the Developer provides a suitable replacement with equivalent expertise, experience and credentials; or (ii) unless the Commission directs their removal from the Project as reasonably objectionable.

(i) The Commission shall have the right to retain and pay for a construction manager, project manager, or consultants to inspect from time to time the progress of the construction Work in order to perform a quality control function on behalf of the Commission. The costs or fees for the Commission's use of such persons shall be at the Commission's sole expense; provided, however, the Developer shall provide space, furniture, utilities and a telephone line for their use at the Site as part of the Contract Price. These consultants are in addition to, and not in lieu of, any contract administration and inspection services that the Developer is to provide at its expense under the Contract Documents.

(j) Construction shall meet the following standards: (i) compliance with all applicable Legal Requirements; (ii) for Phase One, conformance with all Construction Documents; and for Phase One-A and Phase Two, conformance with all Phase One-A and Phase Two construction documents that are given final approval by the Commission; (iii) all materials and equipment are to be new unless approved in writing by the Commission; (iv) all workmanship is to be of high quality and of a nature that would pass without exception in the trade or industry concerned; and (v) all of the Work is equal to or exceeds the quality of other comparable work at other comparable projects in Virginia and North Carolina.

(k) The Developer shall coordinate and have its Lead Designer and Contractor coordinate with the Commission and shall use best efforts to ensure that the Project does not cause damage to adjoining property or unreasonably disrupt or disturb the activities of adjoining property owners. In this regard, the Developer acknowledges that cemeteries lie adjacent to the Site. The Developer further acknowledges that it has reviewed with the Lead Designer and the Contractor (i) the Environmental Analysis dated February 2009 related to the Site, as prepared for the FTA pursuant to the National Environmental Protection Act (NEPA), as well as (ii) the Section 106 Report dated November 2008 and the Archeological Assessment Report dated January 2009 related to the Site, as prepared for the Virginia Department of Historic Resources. Each of the aforementioned analyses and reports is hereby incorporated by reference into this Agreement.

(l) The Developer shall ensure that no mechanic's liens result from any construction at the Site based on the Work the Developer or its Subcontractors and agents perform or are required to perform under this Agreement. If any mechanic's lien results from Work the Developer and its Subcontractors and agents perform or are required to perform under this Agreement, the Developer shall promptly cause such lien to be removed at its own cost and

expense. The Developer shall not be responsible for any mechanic's lien based solely on the activities of the Commission, its agents, Separate Contractors and invitees.

(m) The Commission acknowledges that the existing Elmwood Cemetery brick wall adjacent to the Project Site has deteriorated in various locations; therefore, Developer shall not be held liable for damages to the wall occurring as a direct result of vibrations associated with construction activity on the Project Site or reasons beyond Developer's reasonable control (e.g., wind, excavation of nearby soils that somehow might aggravate the already failing wall structures, etc.). Developer shall be held responsible for damages to the wall resulting from causes within its reasonable control. Therefore, Developer shall take all reasonable measures to protect the Elmwood Cemetery brick wall during construction operations, including, but not necessarily limited to, installing a construction fence to prevent materials and equipment from coming within close proximity of the wall, and maintaining such protective measures for the duration of construction activities. In addition, Developer will provide or cause to be provided vibration monitoring during demolition, pile installation and construction activities. Vibration monitoring will be conducted to ensure vibrations to not exceed acceptable limits as to be determined by the Commission prior to commencement of construction ("Acceptable Vibration Limits"). To the extent vibration testing indicates vibrations that exceed the Acceptable Vibration Limits, the Commission shall be responsible, at its own cost and expense, to accomplish such remedial efforts as the Commission deems necessary to protect the wall or to bring the vibrations down to acceptable limits.

## **ARTICLE V – PROJECT FUNDING**

### **5.1 Contract Price.**

(a) Subject to the terms of this Agreement and the other Contract Documents, the Commission shall pay to the Developer the Contract Price as compensation for the Developer's performance hereunder in relation to Phase One. The Contract Price is set forth on Exhibit 5.1(a). The Contract Price does not include any sums paid pursuant to the Interim Agreement.

(b) The parties have not yet established a price for Phase One-A. Conceptually, Phase One-A involves extending the parking deck being constructed under Phase One, to provide additional employee parking and a building pad upon which an approximate 36,000 square foot administration building will be constructed, as described in Section 2.2. Phase One-A will have impacts to the Phase One civil and site design as well as the concurrently proposed streetscape/landscape treatments along 18<sup>th</sup> and Armistead Streets in the City. As described in Section 2.2, it is the intention of the Commission and the Developer to work together in good faith to expeditiously refine this preliminary development concept so that the parties may proceed with design development and construction of Phase One-A under an amendment to this Agreement.

(c) Any reference on Exhibit 5.1(a) or elsewhere in any of the Contract Documents to the Commission's or an owner's contingency fund (or words similar thereto) shall mean amounts owned by the Commission and over which the Commission has complete control

and discretion. Any such fund shall be available for use by and at the sole discretion of the Commission for any contingencies related to the Project. All amounts included in any such fund for Phase One shall be considered part of the Contract Price. No such fund shall be drawn upon except by advance written direction of the Commission. To the extent any sums in any such fund are not authorized for expenditure by the Commission prior to final completion of a particular phase of the Project, ownership and control of all such sums shall remain with the Commission.

**5.2 Projected Payments.** In connection with this Agreement, the Developer has provided a schedule of payments by month for Phase One (as set forth in Exhibit 5.2) to assist the Commission in determining funding needs associated with Phase One for which the Commission is responsible. A schedule of payments for Phase One-A shall be similarly developed as part of an amendment to this Agreement once the scope and price for such Work has been negotiated. The Developer shall notify the Commission of changes in the schedule of payments by month in sufficient time so that the Commission can adjust its funding or obtain financing to meet increases, if any, in requirements. Adjustments to the schedule of payments by month will be provided to the Commission on a monthly basis; provided, however, that the Commission shall not be obligated to make payment with respect to any upward adjustments unless it has had at least three (3) months advance notice of such upward adjustment as reflected in such monthly schedule of payments, unless such advance notice is waived in writing by the Commission. Such a waiver may be effected by the Commission's execution of a Change Order committing it to an upward adjustment in payments within the next following three (3) months, or by other appropriate writing. Payments shall be made by the Commission to the Developer in accordance with the terms and procedures set forth in the General Conditions.

**5.3 Plan of Funding.** The Commission intends to fund the costs of the public portions of the Project for which it is responsible in a manner acceptable to the Commission in its sole discretion that results in the availability of funds pursuant to the projected revenue needs as referenced herein. The Commission's funding sources for the Project are Federal and Commonwealth grants and local subsidies. At the time of execution of this Agreement, \$41,900,000 in grant funding has been allocated by the Commission for the Project as set forth on Exhibit 5.3. The Commission pledges to fully fund the Project and make all reasonable efforts to obtain the necessary funds in a manner that ensures timely payments. In cooperation with the Developer prior to the issuance of the Notice to Proceed, the Commission will develop a financial plan for Phase One that coordinates the schedule of payments by month (as set forth in Exhibit 5.2) to the Developer and the funding sources.

## **ARTICLE VI – ASSURANCES**

### **6.1 Insurance and Bonds.**

(a) For Phase One and Phase One-A, the Developer shall cause to be furnished the insurance and bonds described in the General Conditions. The parties anticipate that additional insurance and bonding requirements shall apply to Phase Two, as appropriate to the scope of Phase Two and risks associated therewith.

(b) Although the Developer is responsible for all fees and expenses associated with all permits and other authorizations necessary or appropriate to the Phase One Work (except and unless expressly provided in the Contract Documents to the contrary), the Commission shall be responsible for any refundable deposits or escrow amounts necessary to be posted with a Governmental Unit as a condition of issuance of any such permits or authorizations pursuant to any Legal Requirements. In the event any such deposit or escrow amount is not fully refunded to the Commission in a timely manner as a result of the action or inaction of the Developer, any Subcontractor or Sub-subcontractor, or any Person under the control of or acting at the direction of any of them, the Developer shall pay to the Commission a sum equal to any un-refunded deposit or escrow amounts within seven (7) Days of the date on which the Commission notifies the Developer that it has been advised by the applicable Governmental Unit of amounts that will not be refunded.

## **6.2 Additional Guaranty and Assurance of Performance.**

(a) The parties recognize that the Commission's selection of the Developer for entry into this Agreement, despite the Developer being a limited liability company with no substantial assets, has been premised on the capabilities and resources of various members of the Developer's team proposed for the procurement leading to this Agreement who are not parties to this Agreement and who are not in privity of contract with the Commission under this Agreement. The Commission thus has premised entry into this Agreement upon receipt of adequate guaranties and financial assurances of performance of obligations under this Agreement.

(b) As a condition of entry into this Agreement, the Developer shall furnish the Guaranty in the form of Exhibit 6.2(b) executed by the Guarantor.

(c) Failure by the Developer to provide the Commission the Guaranty as required by subparagraph (b) above shall render the Commission's obligations under this Agreement null and void.

**6.3 Financial Statements.** The Developer agrees to provide the Commission with copies of complete and current financial statements for itself and the Guarantor on an annual basis, or more frequently if requested by the Commission, as well as copies of all Federal tax returns for itself and the Guarantor. Such annual financial statements shall (i) include audited balance sheets and related statements of income, shareholders' equity and cash flows for the relevant period prepared by Gaintner, Bandler, Reed, CPAs, of Phoenix, Arizona, or such other independent certified public accountants as may be selected by the Developer and reasonably acceptable to the Commission; and (ii) be delivered to the Commission by the Developer as soon as available and in any event within ninety (90) days after the end of each fiscal year of the relevant Person. Tax returns shall be delivered to the Commission by the Developer within fifteen (15) days after filing. The Developer shall also deliver to the Commission, promptly following any requests therefor, such other information regarding the financial condition of itself and the Guarantor as the Commission may reasonably request. In the event that either the Developer or the Guarantor does not have financial statements that comport with the requirements of item (i) above and only has financial statements that are unaudited, the Developer shall instead submit other financial records of the applicable entity as specified by the

Commission (e.g., reviews, compilations or other reports prepared by independent certified public accountants, internal records and statements, deposit/holdings and borrowing/credit account statements, financial institution references, etc.) to the Commission's designated independent accounting firm. The Developer may designate any submitted financial records, tax returns and other financial information as confidential proprietary information exempt from release under the Virginia Freedom of Information Act by following the procedure for such designation indicated in this Agreement, and the Commission shall use its best efforts to maintain the confidentiality of such information.

## **ARTICLE VII – CONTRACTING PRACTICES**

### **7.1 Equal Opportunity Employment.**

(a) During the performance of this Agreement, the Developer agrees as follows:

(i) The Developer shall 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.

(ii) The Developer, in all solicitations or advertisements for employees placed by or on behalf of the Developer, shall state that the Developer is an equal opportunity employer.

(iii) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the notice, advertisement, and solicitation requirements of this paragraph.

(b) The Developer shall cause to be included the provisions of the foregoing paragraphs (a)(i), (a)(ii), and (a)(iii) (substituting the Subcontractor or vendor for the Developer as the obligated party) in every Subcontract, sub-Subcontract at all tiers, or purchase order of over \$10,000, so that the provisions will be binding upon each Subcontractor, Sub-subcontractor or vendor.

### **7.2 Drug-Free Workplace.**

(a) 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) cause to be included the provisions of the foregoing clauses (substituting the Subcontractor or vendor for the Developer as the obligated party) in every Subcontract, sub-Subcontract at all tiers, or purchase order of over \$10,000, so that the provisions will be binding upon each Subcontractor, Sub-subcontractor or vendor.

(b) For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with this Agreement by the 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.

## **ARTICLE VIII – REPRESENTATIONS, WARRANTIES, CONDITIONS AND COVENANTS**

**8.1 Commission’s Representations and Warranties.** The Commission hereby represents and warrants to the Developer as follows:

(a) The Commission is a transportation district commission created pursuant to the Transportation District Act of 1964, Chapter 45 of Title 15.2 of the Virginia Code, as amended, and has full power, right and authority to execute, deliver and perform its obligations hereunder, in accordance with and subject to the terms and conditions of this Agreement.

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

(c) Neither the execution and delivery by the Commission of this Agreement and any other documents executed concurrently herewith to which the Commission 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 Commission which challenges the Commission’s authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other related documents to which the Commission is a party, or which challenges the authority of the Commission official executing this Agreement or the other related documents, and the Commission has disclosed to the Developer any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Commission is aware.

(e) The representations and warranties of the Commission contained herein shall survive expiration or termination of this Agreement.

**8.2 Developer’s Representations and Warranties.** The Developer hereby represents and warrants to the Commission as follows:

(a) The Developer is a duly organized and validly existing limited liability company created under the laws of the Commonwealth, has the requisite power and 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 the Developer is a party and to perform each and all of the obligations of the Developer provided for herein and therein. Attached hereto as Exhibit 8.2(a) is a copy of the Developer's current, complete and fully-executed operating agreement. So long as this Agreement remains in effect, no modification, amendment or supplementation shall be made to the aforementioned operating agreement, including but not limited to membership or terms relating to its special purpose and the prohibition of certain acts as set forth therein, without the Commission's prior written consent, which consent may be withheld in the Commission's sole discretion.

(b) All of the membership interest of the Developer is owned directly by Susan H. Eastridge and R. Jeffery Arnold, who collectively own all of the issued and outstanding shares of capital stock of the Guarantor, which guarantees the Developer's performance hereunder pursuant to the terms of the Guaranty. The Guarantor is a duly organized and validly existing corporation created under the laws of the State of Arizona, has the requisite power to carry on its present business, and has full power, right and authority to execute and deliver the Guaranty and to perform each and all of its obligations provided for therein. The Guarantor has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, the Guaranty. Each person executing the Guaranty or any other related document on behalf of the Guarantor has been or will at such time be duly authorized to execute each such document on behalf of the Guarantor. Neither the execution and delivery by the Guarantor of the Guaranty and any other related documents for which the Guarantor is a party, nor the consummation of the transactions contemplated thereby, is in conflict with or will result in a default under or a violation of the governing instruments of the Guarantor or any other agreements or instruments to which it is a party or by which it is bound. There is no action, suit, proceedings, investigation or litigation pending and served on the Guarantor which challenges the Guarantor's authority to execute, deliver or perform, or the validity or enforceability of, the Guaranty and any other related documents to which the Guarantor is a party, or which challenges the authority of the Guarantor official executing the Guaranty or any other related documents; and the Developer has disclosed to the Commission any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Developer is aware.

(c) The 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 the Developer is a party.

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

(e) Neither the execution and delivery by the Developer of this Agreement and the other related documents to which the 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 the Developer or any other agreements or instruments to which it is a party or by which it is bound.

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

(g) The Developer is in material compliance with all Legal Requirements applicable to Developer or its activities in connection with this Agreement and the other related documents.

(h) The Developer has furnished to the Commission the following materials and information relating to the Guarantor: (i) financial statements and balance sheet for the period ending December 31, 2008, prepared and certified by the Guarantor's vice-president of finance; (ii) a copy of Federal tax return(s) for calendar year 2007; (iii) a copy of account statements as of February 28, 2009, from each financial institution in which material deposit/holding or borrowing/credit accounts are maintained; and (iv) a copy of all debt instruments and related security agreements from each and every additional lender, as of February 28, 2009, reflecting all amounts owed to or otherwise committed by any such lender.

(i) The Developer certifies that all material representations, information and data provided in support of, or in connection with, the proposal for the Project are true and correct.

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

**8.3 Limitation on Developer's Contracting Powers.** Except for this Agreement; the contracts, subcontracts and agreements expressly permitted under this Agreement; and other Project agreements authorized and directed by the Commission, the 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 Commission or any of its member jurisdictions or which are contrary to the terms of this Agreement without the express prior written consent of the Commission. The Commission may withhold or condition its consent in its sole and absolute discretion.

## **ARTICLE IX – TERMINATION, DEFAULT AND REMEDIES**

### **9.1 Developer's Right to Stop Work or Terminate Agreement.**

(a) The Developer may terminate this Agreement for default if, through no fault of the Developer or any persons or entities performing portions of the Work under direct or indirect contract with the Developer, (i)(A) the Commission has failed to issue a certificate for payment and has not notified the Developer of the reason for withholding the certificate for payment within thirty (30) Days of receipt of a valid invoice, or the Commission has failed to make payment within thirty (30) Days after the time required by the Agreement for payment, or (B) the Commission has failed to fulfill a material obligation or duty herein, and (ii) after receiving written notice of such failure, the Commission fails to cure such failure within fourteen (14) Days if the failure relates to payment or within thirty (30) Days for any other failure; provided, however, if the nature of a failure not relating to payment under (i)(B) is not reasonably capable of being corrected within such thirty-Day period and the Commission notifies the Developer of a reasonable alternative period, the Commission shall be allowed such reasonable alternative period so long as the Commission promptly pursues such correction to completion and completes the same within ninety (90) days thereafter. In the event any delays in payment or performance are cured by the Commission consistent with the terms of this paragraph, the Developer (i) may submit a request for Change Order that the Contract Time(s) for performance be reasonably extended by Change Order and (ii) shall be entitled to receive equitable adjustment to the Contract Time(s) as appropriate to the circumstances surrounding such request for a Change Order, in accordance with and to the extent permitted by the terms and conditions of the General Conditions.

(b) The Developer may terminate this Agreement for default if, through no fault of the Developer, the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work through the Developer or Contractor, repeated suspensions, delays or interruptions of the entire Work by the Commission, other than resulting from a termination of the Developer for default, constitute in the aggregate more than one hundred eighty (180) Days in any three hundred sixty five (365) Day period subject to the terms of the General Conditions.

(c) The Developer may, in addition to any other rights afforded by this Agreement or at law, suspend or stop part or all of the Work for the following reasons:

(i) The Commission's failure to pay to the Developer amounts when properly due under this Agreement; or

(ii) The failure of the Commission to take reasonably adequate steps to pay for, or finance, the Project, such that sufficient funding sources are not available to pay for the projected Project costs contemplated for the period of the next following three (3) months.

Before suspending or stopping Work for any of the events in subparagraphs (i) or (ii) above, the Developer shall first notify the Commission in writing that the Developer will suspend or stop a part, parts, or all of the Work unless said event is cured within fourteen (14) days from Commission's receipt of the Developer's notice. If the Commission does not cure the event within such fourteen-day period, the Developer may suspend or stop Work as provided herein, and such suspension or stoppage shall be deemed to be a change pursuant to Article 9 of the General Conditions.

(d) In the event of termination by the Developer pursuant to subparagraph (a) above, the Developer shall be entitled to recover from the Commission payment of the following, but no more: (i) a pro-rata portion of its fee based upon the percentage of Work actually performed up to the date of termination; (ii) all amounts that the Developer is obligated to pay to the Lead Designer, the Contractor and other Subcontractors for Work actually performed on the Project consistent with the Contract Documents up to the date of termination; and (iii) the reasonable cost of demobilization and physically closing down the Project.

## **9.2 Commission's Right to Terminate the Agreement for Cause.**

(a) Commission, without prejudice to any other rights or remedy it may have and without relieving any surety of its obligations under the bonds, may by delivery of a Notice of Termination to Developer, terminate the employment of Developer and its right to proceed either as to the entire Work or (at the option of Commission) as to any portion thereof and may take possession of the Work and complete the Work by contract or otherwise as Commission may deem expedient if, in the opinion of Commission, one of the following occurs and after receiving written notice of such occurrence the Developer fails to cure such occurrence within thirty (30) Days; provided, however, if the nature of the occurrence is not reasonably capable of being corrected within such thirty-Day period and the Developer notifies the Commission of a reasonable alternative period, the Developer shall be allowed such reasonable alternative period so long as the Developer promptly pursues such correction to completion and completes the same within ninety (90) days thereafter:

(i) The Developer fails to timely observe or perform or cause to be observed or performed any covenant, agreement, obligation, term or condition required to be observed or performed by the Developer under the Contract Documents to which it is a party;

(ii) The Developer makes any representation or warranty in any of the Contract Documents to which it is a party that is inaccurate or misleading when made and has an adverse effect upon the Project or the Commission's rights or obligations under the Contract Documents;

(iii) The Developer fails to execute and deliver any Contract Document to which it is a party as and when required under this Agreement;

(iv) The insolvency or bankruptcy of Developer or the occurrence of a material adverse change in the financial condition of Developer which will hinder or impede Developer's fulfillment of all contractual obligations, including completion within the Contract Time;

(v) The Developer refuses or fails, after notice from Commission, to supply enough skilled personnel or material consistent with its timely performance under the Contract Documents;

(vi) The Developer refuses or fails to prosecute the Work or any part thereof with such diligence as will insure its completion within the specified Contract Times (or any duly authorized extension thereof) or fails to complete the Work within said Contract Times;

(vii) The Developer fails to make prompt payment to Persons supplying services or materials for the Work;

(viii) The Developer refuses or fails to properly schedule, plan and execute the Work, as specified herein, so as to complete the Work in accordance with the Project Schedule and within the specified Contract Time(s), or to provide scheduling or related information, revisions and updates as required by the Contract Documents;

(ix) The Developer fails or refuses to regard laws, permits, ordinances, resolutions, or the instructions of Commission, or otherwise violates any material provision of this Agreement; or

(x) The Guarantor fails to timely observe or perform any covenant, agreement, obligation, term or condition required to be observed under the Guaranty or any similar instrument executed and delivered by the Guarantor pursuant to the terms hereof.

(b) In the event of a termination pursuant to this Section 9.2, the Commission shall have the right to:

(i) Exercise any and all remedies available under the Contract Documents, at law or in equity, including but not limited to recovery of damages to the extent provided by law, subject to the provisions of Section 9.5; and

(ii) Offset any sums the Commission owes to the Developer by any sums owing to the Commission from the Developer, including but not limited to liquidated damages or other undisputed or finally adjudicated monetary damages owing the Commission under the General Conditions.

(c) In the event of a termination pursuant to this Section 9.2 that is later finally determined not to be allowable under the terms of subparagraph (a) above, then the termination shall be treated as a termination for convenience pursuant to Section 9.3 hereof.

**9.3 Commission's Right to Terminate the Agreement for Convenience.** The performance of Work under the Agreement may be terminated by Commission in whole, or from time to time in part, whenever Commission shall determine that such termination is in the best interest of Commission. Any such termination shall be effected by delivery to Developer of a Notice of Termination specifying the extent to which performance of Work under this Agreement is terminated, and the date upon which such termination becomes effective. Any such termination shall be without prejudice to any other rights the Commission may have, and it shall not relieve any surety of its obligations under its bonds.

**9.4 Developer's Responsibilities Upon Termination.** The Developer's responsibilities upon receipt of a Notice of Termination shall be as set forth in the General Conditions.

**9.5 Liquidated Damages for Delay.** The Commission shall be entitled to assess, withhold, and collect liquidated damages from the Developer as follows:

(a) If the Guaranteed Completion Date established in Section 3.3 for Substantial Completion of the Work for Phase One (as such date may be adjusted pursuant to Section 8.2 of the General Conditions) is not met, the Developer shall pay to the Commission, as liquidated damages for such delay:

(i) The amount of \$1,100.00 per Day for the first forty-five (45) Days of delay, plus

(ii) The amount of \$2,500.00 per Day for each Day beyond the first forty-five (45) Days of delay.

(b) The Developer agrees that the liquidated damages under this Section 9.5 are reasonable and not a penalty and hereby waives any right to claim otherwise. The Developer agrees it will not challenge liquidated damages imposed pursuant to this Section 9.5 except as to whether it is responsible for the delays for which damages are being imposed. The Commission shall be permitted, but shall not be obligated, to withhold liquidated damages from any payments due the Developer. The Commission may, in its sole discretion, wait until at or after Substantial Completion or Final Completion to claim liquidated damages.

(c) For Phase One-A, the amounts of liquidated damages for delay shall be determined when the Project Schedule for Phase One-A is established in greater detail.

(d) When the details of Phase Two are more complete, the parties will determine if liquidated damages for delay are appropriate and, if so, the amounts and applicability thereof.

**9.6 Early Completion Bonus.**

(a) In the event the Developer achieves Substantial Completion of the Work for Phase One prior to the Guaranteed Completion Date (as such date may be adjusted pursuant to Section 8.2 of the General Conditions), the Developer shall be entitled to receive a bonus equal to \$1,100.00 for each Day of early completion.

(b) The amount of any early completion bonus that becomes due pursuant to this Section 9.6 shall be included in the final payment by the Commission to the Developer for Phase One.

**9.7 Waiver of Claims for Consequential Damages.** The Commission and the Developer waive claims against the other for consequential damages arising out of or relating to this Agreement. Nothing contained in this Section 9.7 shall be deemed to preclude an award of liquidated damages when applicable in accordance with this Agreement.

## **ARTICLE X - INDEMNIFICATION**

### **10.1 Patent and Copyright Infringement.**

(a) Developer shall defend any action or proceeding brought against any Commission Indemnitee based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Commission Indemnitee shall give prompt written notice to Developer of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Developer shall indemnify and hold harmless Commission Indemnitees from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Commission Indemnitees or Developer in any such action or proceeding. Developer agrees to keep Commission Indemnitees informed of all developments in the defense of such actions.

(b) If a Commission Indemnitee is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Developer shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Developer cannot so procure such right within a reasonable time, Developer shall promptly, at Developer's option and at Developer's expense: (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

(c) Subparagraphs (a) and (b) above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright: (i) relating solely to a particular process or product of a particular manufacturer specified by Commission and not offered or recommended by Developer to Commission; or (ii) arising from modifications to the Work by Commission after acceptance of the Work.

**10.2 Payment Claim Indemnification.** Provided that Commission is not in breach of its contractual obligation to make payments to Developer for the Work, Developer shall indemnify, defend and hold harmless Commission Indemnitees from any claims or mechanic's liens brought against any Commission Indemnitee or against the Project as a result of the failure of Developer, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within ten (10) days of receiving written notice from a Commission Indemnitee that such a claim or mechanic's lien has been filed (except for any mechanic's lien for which the Developer is not responsible pursuant to subparagraph 4.2(m)), Developer shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Developer fails to do so, Commission Indemnitee will have the right to discharge the claim or lien and hold Developer liable for costs and expenses incurred, including attorneys' fees.

### **10.3 Developer's General Indemnification.**



(a) The parties agree that the relationship of Developer to Commission shall be that of an independent contractor and that as such, Developer will be responsible for all damages, loss or injury, including death, to persons or property that may arise or be incurred in or during the conduct and progress of the Work as the result of any action, omission or operation under the Agreement or in connection with the Work, whether such action, omission or operation is attributable to Developer, a Design Consultant, a Subcontractor, a Sub-Subcontractor, any supplier, or any one directly or indirectly employed by any of them. Developer shall make good any damages that may occur in consequence of the Work or any part of it. Developer shall assume all liability, loss and responsibility of whatsoever nature by reason of its neglect or violation of any Legal Requirement. Developer, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Commission Indemnitees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) arising from, in connection with, or relating in any manner to the Project. Such obligation by Developer to indemnify, hold harmless and defend Commission Indemnitees shall not apply to any loss, liability, damage or expense, including attorneys' fees and expenses, to the extent proximately caused solely by any negligence or willful misconduct by Commission or any officer, employee, agent, representative or Separate Contractor of the Commission.

(b) If an employee of Developer, a Design Consultant, a Subcontractor, a Sub-Subcontractor, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable, has a claim against a Commission Indemnitee, Developer's indemnity obligation set forth in subparagraph (a) above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Developer, a Design Consultant, a Subcontractor, a Sub-Subcontractor or other Person under any employee benefit acts, including workers' compensation or disability acts.

#### **10.4 Defense and Indemnification Procedures.**

(a) If Commission receives notice of or otherwise has actual knowledge of a claim which it believes is within the scope of Developer's indemnification under the Contract Documents, it shall by writing as soon as practicable: (i) inform Developer of such claim; (ii) send to Developer a copy of all written materials Commission has received asserting such claim and (iii) notify Developer that either: (i) the defense of such claim is being tendered to Developer; or (ii) Commission has elected to conduct its own defense for a reason set forth below.

(b) If the insurer under any applicable insurance policy accepts tender of defense, Developer and Commission shall cooperate in the defense as required by the insurance policy. If no defense is provided by insurers under potentially applicable insurance policies, then the following provisions shall apply.

(c) If the defense is tendered to Developer, it shall within fifteen (15) days of said tender deliver to Commission a written notice stating that Developer: (i) accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter; (ii) accepts the tender of defense but with a "reservation of rights" in whole or in part; or (iii) rejects the tender of defense

if it reasonably determines it is not required to indemnify against the claim under the Contract Documents. If such notice is not delivered within such fifteen (15) days, the tender of defense shall be deemed rejected.

(d) If Developer accepts the tender of defense, Developer shall have the right to select legal counsel for Commission Indemnitees, subject to reasonable approval of Commission's attorney, and Developer shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense: (i) Developer shall at Developer's expense, fully and regularly inform Commission of the progress of the defense and of any settlement discussions; and (ii) Commission shall, at Developer's expense for all of Commission's reasonable out-of-pocket third party expenses, fully cooperate in said defense, provide to Developer all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to Commission and maintain the confidentiality of all communications between it and Developer concerning such defense to the extent allowed by law.

(e) Commission shall be entitled to select its own legal counsel and otherwise control the defense of such claim if: (i) the defense is tendered to Developer and it refuses the tender of defense, or fails to accept such tender pursuant to subparagraph (c) above, or reserves any right to deny or disclaim such full indemnification thereafter; or (ii) Commission, at the time it gives notice of the claim or at any time thereafter, reasonably determines that: (A) a conflict exists between it and Developer which prevents or potentially prevents Developer from presenting a full and effective defense; or (B) Developer is otherwise not providing an effective defense in connection with the claim and Developer lacks the financial capability to satisfy potential liability or to provide an effective defense. Commission may assume its own defense pursuant to the above by delivering to Developer written notice of such election and the reasons therefor.

(f) If Commission is entitled and elects to conduct its own defense pursuant hereto, all reasonable costs and expenses it incurs in investigating and defending and claim for which it is entitled to indemnification hereunder (and any settlements or judgments resulting therefrom) shall be reimbursed by Developer after completion of the proceeding.

(g) If Commission is entitled to and elects to conduct its own defense, then it shall have the right to settle or compromise the claim with Developer's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court, and with the full benefit of Developer's indemnity. Notwithstanding the foregoing, if Commission elects to conduct its own defense and it is later determined that no indemnification obligation existed as to the particular claim, Commission shall pay its own costs and expenses relating thereto.

**10.5 Cumulative Obligations.** The Developer's obligations to indemnify the Commission and hold it harmless under this Article X do not supersede any obligations by the Developer or anyone else under any Contract Document to indemnify the Commission and hold it harmless, these indemnification obligations being intended to be cumulative.

## **ARTICLE XI – COOPERATION AND DISPUTE RESOLUTION**

**11.1 Cooperation.** The parties agree to cooperate to achieve the objectives of this Agreement and to use reasonable 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 the Commission to those matters requiring an appropriate Commission vote) so as to not unduly delay the Project Schedule.

### **11.2 Resolution of Disputes, Claims and Other Matters.**

(a) The following provisions apply to any disputes, claims or other matters between Commission and the Developer arising under or relating to this Agreement and/or any Contract Document.

(i) The Developer shall give Commission written notice of any claim for any additional compensation, damages, or delay (for purposes of this subparagraph, a “Claim”) within seven (7) days of the beginning of either the occurrence or the time when the Developer knew or should have known of the occurrence of the event leading to the Claim being made and shall submit the actual Claim and any supporting data within thirty (30) days after the occurrence giving rise to the Claim ends. The written notice shall be a document addressed to the Commission that clearly states the Developer’s intention to make a claim and the occurrence involved and shall be transmitted in a manner to ensure prompt receipt by Commission. Any Claim must be certified under oath as true and correct by a principal of the Developer. 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 time impacts will be resolved as they occur, and no claims of cumulative impacts or deferral of claimed time impacts will be allowed unless, with respect to a deferral, the Commission in its sole discretion agrees in writing to such deferral. Complete satisfaction of this subparagraph is an absolute prerequisite for the Developer to pursue a Claim arising under or relating to this Agreement. Failure by the Developer to satisfy this subparagraph shall constitute a waiver by the Developer of the Claim for which such failure occurs.

(ii) The parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation conducted pursuant to the Rules of the American Arbitration Association, with the site of the mediation being Norfolk, Virginia. Should the dispute, claim or other matter in question remain unresolved for the shorter of (A) completion of negotiation and mediation, or (B) more than 90 days after mediation is requested by a party, either party may proceed in accordance with (iii) below. However, nothing in this paragraph excuses the Developer from compliance with all the provisions of (i).

(iii) If the procedures of (ii) have been followed, but, more than ninety (90) days have passed since a party has invoked mediation, and the dispute, claim or other matter in question remains unresolved, then either party may institute a lawsuit or chancery action, as appropriate, in the Circuit Court of the City of Norfolk, Virginia, or if the subject or amount in controversy is within its jurisdiction, the General District Court of the City of Norfolk, Virginia,

and may thereafter pursue all available appeals in Virginia state courts, to the extent they have jurisdiction, or in the United States District Court for the Eastern District of Virginia, at Norfolk, Virginia. The parties agree that the aforementioned courts shall have exclusive jurisdiction and venue, and each of them voluntarily submits to the jurisdiction and venue of such courts and waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine.

(iv) Nothing in paragraphs (ii) and (iii) shall prevent a party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of the City of Norfolk if circumstances so warrant.

(b) In the event of any dispute, claim, or other matter in question arising, the Developer shall continue its performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. During the pendency of any claim, dispute or other matter in connection with the payments of moneys, the Developer shall be entitled to receive payments for non-disputed items, subject to any right of set-off by Commission.

(c) This Section 11.2 supersedes any right at common law by the Developer for a claim of material breach or for rescission of this Agreement.

### **11.3 Rights and Remedies.**

(a) The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law, not inconsistent with the Contract Documents.

(b) No action or failure to act by the Commission or the Developer shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

(c) The Developer agrees that it can be adequately compensated by money damages for any breach of this Agreement which may be committed by the Commission and hereby agrees that, no default, act, or omission of the Commission, except for those described in Section 9.1, shall constitute a breach of this Agreement entitling the Developer to cancel or rescind the provisions of this Agreement or (unless the Commission shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. The Developer hereby waives any and all rights and remedies to which it might otherwise be or become entitled, saving only its right to money damages.

## **ARTICLE XII – WORK PRODUCT AND RECORDS**

### **12.1 Ownership and Use of Plans.**

(a) The Developer shall deliver to the Commission copies, including reproducible copies, of the plans and other related documents for information and reference in connection with the Commission's use and occupancy of all phases of the Project. Further, the plans and other related documents may be used by the Commission, in whole or in part, or in modified form, for completion and maintenance of the Project by others, without further employment of, or payment of any additional compensation to any of the Design Consultants, in which event the Commission shall release such Design Consultants from any responsibility for the conformance of the incomplete portions of the Project to the plans and other related documents from causes other than the negligence or fault of such professionals. In the event of the termination of this Agreement for any reason, the Developer shall immediately deliver to the Commission a full set of copies of the plans and other related documents then in the possession or control of the Developer or the Design Consultants retained by the Developer.

(b) The Commission shall have the ownership of and the right to use any plans and the other related documents for the construction of buildings or facilities by or for the Commission other than the Project without the payment of any additional compensation to the Developer or the Design Consultants, in which event the Commission shall release such Design Consultants and the Developer from any responsibility in connection with the plans and other related documents to the extent so used. Use of the plans and other related documents by the Commission prior to final completion of a phase of the Project or termination of the contract for construction of facilities by or for the Commission other than the Project shall only be allowed with the consent of the Developer. Notwithstanding the foregoing, the plans and specifications are instruments of service, and the Developer or the Design Consultants (as they have agreed among themselves), shall retain the rights to reuse or site adapt the plans for other projects whether or not in contract with the Commission. This subparagraph (b) permits the Developer, the Design Consultants or the Commission to make use of the plans for future projects without the consent of, or compensation to the other. In the event that the Commission elects to reuse the plans, and the Commission engages the services of licensed professionals to review, site adapt, sign and seal the plans as architect and engineer of record for other projects, the Commission's use of the plans shall extend to these professionals to the extent they use the plans solely for the Commission. Except as otherwise provided in this Agreement or in the other Contract Documents, no plans shall be used with the Developer's or Design Consultant's title block, logo or company name without the written consent of the Developer or Design Consultant; and

The Commission's authorized representatives shall include, but not be limited to, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their duly authorized representatives, the Commonwealth, and any other public entity providing funding for this Agreement or other activities in relation to the New Southside Facility.

(i) The Developer shall ensure that the requirements of subparagraphs (a) and (b) of this Section 12.1 are incorporated into its contracts with its Design Consultants and that they incorporate these same requirements into their subcontracts with other Design Consultants so that the Commission is able to enjoy the full benefits of such requirements.

**12.2 Records Inspection and Copying.** The Developer agrees that the Commission and its authorized representatives and consultants may, at the Commission's option and expense, at reasonable times and upon prior notice, inspect and copy all records relating to costs

associated with this Agreement to the extent necessary to confirm compliance with the terms of the Agreement, until three (3) years after termination of this Agreement. The Developer agrees to provide the Commission adequate and appropriate work space at the Developer's facilities in order to conduct such examinations. The Developer agrees to include in all contracts and consulting agreements under this Agreement, including without limitation, those with the Contractor and Lead Designer, and to cause its Contractor and Lead Designer to include in all their subcontracts and consulting agreements, a provision that the Commission and its authorized representatives will, until three (3) years after services were last rendered for the Project, at reasonable times and upon prior written notice, have access to and the right to inspect and copy books, documents, papers, or other records of the Lead Designer, Contractor, Design Consultants and Subcontractors. The term subcontract as used in this clause excludes:

- (i) Purchase orders; and
- (ii) Subcontracts for public utility services at rates established for uniform applicability to the general public.

**12.3 Public Records.** Any work product the Commission owns pursuant to the this Agreement or otherwise, and any document of which the Commission 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 Commission recognizes that certain work product the Commission owns or may obtain hereunder or pursuant to this Agreement and certain documents of which the Commission 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. Should such records become the subject of a request for public disclosure, the Commission shall respond as follows:

- (a) The Commission shall use reasonable efforts to immediately notify the Developer of such request and the date by which it anticipates responding.
- (b) The Developer must then assert in writing to the Commission any claim that such records contain proprietary information that is exempt from disclosure under Va. Code § 2.2-3705, or is subject to protection pursuant to Va. Code § 59.1-339, or other law of the Commonwealth so that the Commission may consider such assertion in responding to the requester.
- (c) If the Developer fails to make such assertion within three (3) Business Days after the date the Commission notifies the Developer of its intended response, the Commission shall have the right to make such disclosure.
- (d) If the Developer makes a timely assertion that the requested records contain proprietary information, trade secrets or confidential information, and thus are exempt from disclosure or otherwise protected under the laws of the Commonwealth, upon consultation with the Developer to agree upon a reasonable effort and legal cost, at the Developer's expense,

the Commission and the Developer shall seek judicial declaration of the rights of the parties. Until such declaration is made, the Commission will maintain the confidentiality of such records.

(e) In no event shall the Commission be liable to the Developer as a result of any disclosure of such records by the Commission.

(f) If the Commission's denial of a request for disclosure of records is challenged in court and the Commission agrees to a request by the Developer to defend its position, the Developer shall assist the Commission in its defense and shall indemnify the for any and all damages assessed and costs (including the fees and costs of the Commission's attorneys) the Commission incurs in such defense, including any attorneys' fees lawfully assessed against the Commission.

(g) If the Developer believes that any work product or any document subject to transmittal to or review by the Commission 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 the laws of the Commonwealth, the Developer shall use its best efforts to identify such information prior to such transmittal or review and it and the Commission shall confer on appropriate means of ensuring compliance with applicable laws prior to transmittal or review. Any such information must be identified specifically; the Commission will not honor any general claim of confidentiality for an entire document, or one which includes portions of a document which are patently not confidential. The Developer shall comply with the requirements of Va. Code § 2.2-3705.6(11) with regard to any such information. Upon the written request of either party, the Developer and the Commission shall mutually develop a protocol for the transmittal, review and disclosure of work product or other documents produced or obtained by the Developer so as to avoid violations of any applicable law.

### **ARTICLE XIII – CONFLICT OF INTEREST**

**13.1 No Conflicts.** Neither the Developer nor any person or company affiliated with it, nor any subconsultant or subcontractor of any tier, shall have, during the term of this Agreement and any extensions thereof, any contractual or other financial relationship with the Commission, its commissioners, officers, employees or agents, any Commission prime contractor, or with any subcontractor or supplier to any Commission prime contractor other than the contractual relationships established under this Agreement, unless an exception is granted as described below.

**13.2 Exceptions.** Upon request of the conflicted party and upon full disclosure and for good cause, the Commission may grant an exception to this requirement, when in its sole judgment the exception will not create a conflict between the conflicted party's obligations hereunder and the duties and obligations imposed on the conflicted party under the contractual or other relationship for which an exception is requested.

**13.3 Failure to Report.** Any failure by a party to report such a conflict promptly upon becoming aware of it may, at the discretion of the Commission, be considered a default hereunder.

**13.4 Organizational Conflicts.** The Developer shall use best efforts to ensure that, to the best of its knowledge, none of its consultants, contractors, subconsultants or subcontractors of any tier shall have an organizational conflict of interest, including by example and not by way of limitation:

(a) Lack of impartiality or impaired objectivity – When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.

(b) Unequal access to information – The contractor has an unfair competitive advantage through obtaining access to non-public information during the performance of an earlier contract.

(c) Biased ground rules – During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

(d) Other actions – Any other situation where the contractor has obtained information or exerted influence which would give it an unfair competitive advantage in soliciting or performing Work hereunder.

**13.5 Awareness of Conflict.** In the event the Developer becomes aware of any actual or potential conflict of interest as described above, it shall promptly notify the Commission of the circumstances involved and describe the steps it proposes to take to eliminate or mitigate the conflict. The Commission's determination as to the acceptability of the proposed measures shall be final and binding.

## **ARTICLE XIV – LIMITATION OF LIABILITY OF DEVELOPER AND GUARANTOR**

### **14.1 Limitation of Liability of Developer and Guarantor.**

(a) Notwithstanding anything contained in this Agreement or the other Contract Documents:

(i) The Developer's liability under the Contract Documents and the Guarantor's liability under the Guaranty to the Commission for any and all claims, losses, costs or damages (including but not limited to any indemnification obligations), with respect to Phase One and Phase One-A of the Project shall not exceed Two Million Dollars (\$2,000,000.00) in the aggregate; and

(ii) The Developer's liability under the Contract Documents and the Guarantor's liability under the Guaranty to the Commission for any and all claims, losses, costs or damages (exclusive of any indemnification obligations relating to or arising out of fraud, intentional misconduct, or gross negligence of the Developer): (A) for Phase One of the Project shall be limited in time to a period expiring thirty-eight (38) months from the date of Substantial Completion of Phase One, and (B) for Phase One-A of the Project shall be limited in time to a



period expiring thirty-eight (38) months from the date of Substantial Completion of Phase One-A.

(b) The limitation of liability set forth in this Article XIV shall in no way be construed to (i) alter, modify, limit, reduce or otherwise affect the liability of the Developer or the Guarantor, or any rights of the Commission, except as expressly provided in this Article XIV; (ii) alter, modify, limit, reduce or otherwise affect the liability of the Developer or the Guarantor for any claims, losses, costs or damages reimbursed pursuant to an insurance policy provided by the Developer as required by the Contract Documents; (iii) alter, modify, limit, reduce or otherwise affect the liability of the Developer or the Guarantor for any claims, losses, costs or damages relating to or arising out of fraud, intentional misconduct, or gross negligence of the Developer, except that the terms of Section 14.1(a)(i) above shall apply in the case of gross negligence, but not fraud or intentional misconduct, of the Developer; (iv) alter, modify, limit, reduce or otherwise affect the liability of any other person or entity other than the Developer and the Guarantor, including but not limited to the Contractor, the Lead Designer, or any other Subcontractor, Sub-Subcontractor or third party; (v) alter or modify any terms of the Contract Documents relating to insurance, bonds, third-party warranties, or other security for performance; or (vi) limit the Developer's rights to seek recovery from the Contractor, the Lead Designer, or any other Subcontractor, Sub-Subcontractor or third party, to whom the Developer may look for reimbursement with respect to any obligation for which the Developer may be liable under this Agreement.

(c) To the extent the Commission, in its sole discretion, chooses to directly pursue the Lead Designer, Contractor or any Subcontractor with respect to any obligation or liability owed by Developer under this Agreement (for purposes of this subparagraph (c), a "Direct Claim") and the Commission achieves full or partial recovery on such Direct Claim, the Commission shall not also be entitled later to pursue recovery against Developer under this Agreement on account of any portion of the same Direct Claim for which Commission achieved and received full recovery; provided, however, that the Commission shall not be prohibited from concurrently pursuing full or partial recovery on a Direct Claim from multiple parties, including but not limited to Developer consistent with the preceding terms of this Article XIV and other provisions of the Contract Documents, prior to achieving and receiving full recovery thereon.

## **ARTICLE XV – MISCELLANEOUS**

**15.1 Incorporation of Terms and Conditions from RFP.** The terms and conditions of Part III of the RFP are hereby incorporated into this Agreement but only to the extent that they do not conflict with the terms hereof.

### **15.2 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 Contract Documents are intended to be complementary and consistent with each other and shall, to the maximum extent possible, be construed according to such intent.

### **15.3 Successors and Assigns.**

(a) The Developer may not, without the prior written consent of the Commission, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under this Agreement.

(b) The Commission 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 Commission's obligations, duties and liabilities under this Agreement and has provided the 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) Except as expressly otherwise provided, this Agreement may not be assigned without the prior written consent of the parties to this Agreement.

(e) 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.

**15.4 Notices.** All notices and demands by any party to any other shall be given in writing and sent by facsimile (with receipt confirmed) to the facsimile number below with confirmation at the telephone number below and a copy of the notice sent by United States first-class mail, postage prepaid, or by a nationally recognized overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To the Commission:                      Transportation District Commission of Hampton Roads  
c/o Hampton Roads Transit  
Attention: Michael S. Townes, President/CEO  
3400 Victoria Boulevard  
Hampton, VA 23661  
Telephone: (757) 222-6000  
Facsimile: (757) 222-6195

with copy to:                      Charles E. Wall, Esquire  
Williams Mullen  
1021 East Cary Street  
17<sup>th</sup> Floor  
Richmond, Virginia 23218-1320  
Telephone: (804) 783-6498  
Facsimile: (804) 783-6507

To the Developer:                      Jeffery Arnold, Manager  
CEI Development, LLC  
c/o Concord Eastridge, Inc.  
901 N. Glebe Road, #350  
Arlington, VA 22203

Telephone: (202) 955-9200  
Facsimile: (202) 955-9255

with copy to:

Mark D. Williamson, Esquire  
McGuireWoods LLP  
101 W. Main Street  
Suite 9000  
Norfolk, VA 23510  
Telephone: (757) 640-3713  
Facsimile: (757) 640-3973

Any party may, upon prior notice to the others, specify a different address for the giving of notice. Notices shall be effective one day after sending if sent by overnight courier or by facsimile (provided that, in the case of a facsimile, confirmation is made by telephone and first-class mail), or three days after sending if sent by certified mail, return receipt requested. Notices to the Developer shall be deemed also to be effective and proper notice to the Lead Designer and the Contractor.

**15.5 Time of the Essence.** The times within which the Developer agrees to complete construction of the Project and to achieve milestone dates, Substantial Completion, and Final Completion for the Project are of the essence of 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 for the Project the milestone dates, Substantial Completion of the Work, and Final Completion of the Work within the completion times specified in this Agreement, and the Project Schedule.

**15.6 Independent Contractor.** It is expressly understood and agreed by the parties hereto that the Developer, in performing its obligations under this Agreement, shall be deemed an independent contractor and not an agent, employee or partner of the Commission. No employee of the Developer shall be considered to be an employee or agent of the Commission.

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

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

**15.9 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.

**15.10 Entire Agreement.** This Agreement and the exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between the Developer and the Commission concerning the Project, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as otherwise indicated herein, portions of the Contract Documents shall be deleted or modified or deemed automatically deleted or modified as necessary to be consistent with the provisions of this Agreement. Except as otherwise indicated herein, to the extent of any inconsistency between a provision contained in any other Contract Document and a provision of this Agreement, the provision contained in this Agreement shall prevail. No alteration, amendment, change or addition to this Agreement shall be binding upon the Developer or the Commission unless reduced to writing and signed by each party. Excerpts of the RFP and the Proposal are incorporated by reference for purposes of providing details concerning the overall intent of the parties. However, no document incorporated by reference is intended to contradict this Agreement.

**15.11 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia. The provisions of this Agreement shall not be construed in favor of or against either party but shall be construed according to their fair meaning as if both parties jointly prepared this Agreement.

**15.12 Copy of Agreement to Auditor of Public Accounts.** The Commission shall submit a copy of this Agreement to the Virginia Auditor of Public Accounts within thirty (30) days of its effective date.

**15.13 Exhibits.** The following exhibits are hereby deemed to be part of this Agreement:

Exhibit R-E	Commission Approval of PPEA Procurement
Exhibit R-I	Interim Agreement and Amendments
Exhibit R-L	Commission Approval of Agreement
Exhibit 1.2	Definitions
Exhibit 1.3(a)	General Conditions
Exhibit 2.1	Property Description of Site for Phases One and One-A
Exhibit 2.1(a)	Phase One Property Delineation

Exhibit 2.2	Phase One-A Property Delineation
Exhibit 2.3	Phase Two Property Description
Exhibit 3.1	Project Schedule
Exhibit 3.3	Pre-construction Services
Exhibit 4.1(d)	LEED Checklist
Exhibit 4.2(a)	Design and Construction Services for Phase One
Exhibit 4.2 (c)	Key Design Consultants
Exhibit 4.2(h)	Key Construction Personnel
Exhibit 5.1(a)	Contract Price
Exhibit 5.2	Payment Schedule for Phase One
Exhibit 5.3	Financial Program
Exhibit 6.2(b)	Form of Guaranty
Exhibit 8.2(a)	Developer's Operating Agreement

[Signatures on following pages]

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

TRANSPORTATION DISTRICT COMMISSION  
OF HAMPTON ROADS

By: Michael S. Townes  
Michael S. Townes, President/CEO

STATE OF Virginia )

)

CITY/COUNTY OF Hampton )

The foregoing instrument was acknowledged before me, Dale E. Lewis, Notary Public, this 2<sup>nd</sup> day of June, 2008 by Michael S. Townes, who has presented identification of Drivers License (a United States Passport, a certificate of United States citizenship, a certificate of naturalization, an unexpired foreign passport, an alien registration card with photograph, a state issued driver's license or a state issued identification card or a United States military card). Michael S. Townes voluntarily acknowledged this instrument as President and Chief Executive Officer of the Transportation District Commission of Hampton Roads, and attested that he is duly authorized and empowered to execute this Agreement on behalf of the Transportation District Commission of Hampton Roads.

Dale E. Lewis  
Notary Public

Registration Number: 250801  
My commission expires: July 31, 2009

Notary Seal

CEI DEVELOPMENT, LLC

By: Susan H. Eastridge  
Susan H. Eastridge, Manager

STATE OF Virginia )

CITY/COUNTY OF Arlington )

The foregoing instrument was acknowledged before me, Anna Ford,  
Notary Public, this 3<sup>rd</sup> day of June, 2009, by Susan H. Eastridge, who has presented  
identification of drivers license (a United States Passport, a certificate of United States  
citizenship, a certificate of naturalization, an unexpired foreign passport, an alien registration card with  
photograph, a state issued driver's license or a state issued identification card or a United States military  
card). Susan H. Eastridge voluntarily acknowledged this instrument as Manager of CEI Development, LLC,  
and attested that she is duly authorized and empowered to execute this Agreement on behalf of CEI  
Development, LLC.

Anna Ford  
Notary Public

Registration Number: 7130775  
My commission expires: November 30, 2011

Notary Seal



**Exhibit R-E**

**Commission Approval of PPEA Procurement**

## TRANSPORTATION DISTRICT COMMISSION OF HAMPTON ROADS

## RESOLUTION NO. 03-2006

WHEREAS, on April 6, 2002, the Governor of the Commonwealth of Virginia signed into law the Public-Private Education Facilities and Infrastructure Act of 2002 (the "PPEA"), effective July 1, 2002;

WHEREAS, in enacting the PPEA, the Virginia General Assembly found that there is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation or installation of certain government facilities and public infrastructure that serve a public need and purpose, and that such public need may not be wholly satisfied by existing methods of procurement;

WHEREAS, the General Assembly further found that there are inadequate resources to develop needed facilities and infrastructure, and that authorizing private entities to develop or operate certain public projects may result in the availability of such projects to the public in a more timely or less costly fashion, thereby serving the public safety, benefit and welfare;

WHEREAS, the PPEA authorizes private entities to seek authorization from a "responsible public entity" to develop or operate certain qualifying projects;

WHEREAS, the PPEA provides that a responsible public entity may request proposals or invite bids for the development or operation of a qualifying project, or a private entity may submit a request for approval of a qualifying project on its own initiative;

WHEREAS, a responsible public entity may approve the proposal, bid or unsolicited request of a private entity with respect to a particular qualifying project if the responsible public entity determines that the project serves the public purpose of the PPEA;

WHEREAS, the PPEA provides that a responsible public entity desiring to request or consider a proposal, bid or request for a qualifying project shall first adopt and make publicly available guidelines that are sufficient to enable the responsible public entity to comply with the PPEA;

WHEREAS, for purposes of the PPEA, the Transportation District Commission of Hampton Roads (the "Commission") is a responsible public entity that has the power to develop or operate certain qualifying projects;

WHEREAS, the Commission desires to adopt the *Guidelines for Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002* (the "Guidelines") in the form attached hereto, which Guidelines are sufficient to enable the Commission to comply with the PPEA and will provide the Commission with the option to procure certain qualifying projects pursuant to the PPEA and to enjoy any resulting benefits to the Commission and the public;

WHEREAS, the Commission has an urgent and high-priority need to replace its existing facilities at 509 E. 18<sup>th</sup> Street and 1500 Monticello Avenue (the "Norfolk Facilities") in the City of Norfolk, Virginia (the "City"), but it lacks adequate financial resources to accomplish the replacements in a timely fashion under traditional procurement methodologies;

WHEREAS, the Norfolk Facilities are situated on properties in an area of the City that may be suitable for private development in a manner that makes such properties attractive to private entities and that compliments the City's land use plans;

WHEREAS, in accordance with the PPEA and the Guidelines, the Commission desires to solicit proposals from private entities for timely replacement of the Norfolk Facilities in a financially viable manner that accommodates the Commission's needs and requirements;

WHEREAS, with respect to the aforementioned solicitation, the Commission desires to proceed with the formation of an interim or comprehensive agreement, if any, in accordance with procurement procedures that are consistent with the procurement of "other than professional services" through "competitive negotiation" as defined in Section 2.2-4301 of the Code of Virginia and provided for in Section B(2)(b) of the Guidelines; and

WHEREAS, the Commission desires to engage the services of qualified professionals not employed by the Commission to provide to the Commission assistance in conducting the solicitation and independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any proposals submitted by private entities for approval of a qualifying project in response to the aforementioned solicitation;

NOW, THEREFORE, BE IT RESOLVED BY THE TRANSPORTATION DISTRICT COMMISSION OF HAMPTON ROADS THAT:

1. The Commission adopts the Guidelines in the form attached hereto and directs the Commission staff to make the Guidelines publicly available.
2. The Commission shall solicit proposals from private entities, by issuing a Request for Proposals ("RFP") in accordance with the PPEA and the Guidelines, for timely replacement of the Norfolk Facilities in a financially viable manner that accommodates the Commission's needs and requirements.
3. The Commission determines that proceeding with the aforementioned solicitation in accordance with procurement procedures that are consistent with the procurement of "other than professional services" through "competitive negotiation" (as defined in Section 2.2-4301 of the Code of Virginia and provided for in Section B(2)(b) of the Guidelines) is likely to be advantageous to the Commission and the public, based upon (i) the probable scope, complexity or priority of the project; (ii) risk sharing including guaranteed costs or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available. The reasons for this determination include the following: (A) Replacement of the Norfolk Facilities in a timely manner is a complex project with a broad scope that is a high priority for the Commission; and (B) the Commission anticipates and seeks to encourage

proposals from private entities that will involve (i) risk sharing including guaranteed costs or completion guarantees, added value or debt or equity investments on the part of a private entity and (ii) dedicated revenue sources or other economic benefit that would not otherwise be available through other available procurement procedures.

4. The President/CEO of the Commission is directed to engage the services of qualified professionals not employed by the Commission to assist with conducting the solicitation and to provide independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any proposals received by the Commission in response to the RFP.

5. This Resolution is adopted and is effective as of January 26, 2006.

TRANSPORTATION DISTRICT COMMISSION  
OF HAMPTON ROADS

  
W. Joe Newman, Chairman

Attest:

 1-26-06  
Secretary

1234859v2

AD112

## **Exhibit R-I**

### **Interim Agreement and Amendments**

## **INTERIM AGREEMENT**

THIS INTERIM AGREEMENT (the "Agreement"), dated this 2nd day of January, 2008 (the "Effective Date"), is made by and between the **TRANSPORTATION DISTRICT COMMISSION OF HAMPTON ROADS** (the "Commission") and **CONCORD EASTRIDGE, INC.**, an Arizona corporation (the "Developer").

### **RECITALS**

A. Pursuant to the Virginia Public-Private Education Facilities and Infrastructure Act ("PPEA"), the Commission adopted and made publicly available PPEA guidelines (the "Guidelines") on January 26, 2006.

B. Pursuant to the Guidelines, the Commission issued a Request for Proposals (RFP # 07-45506) seeking a development team to design and construct a New Southside Facility for bus administrative, operations and maintenance functions through a public-private partnership.

C. The Developer responded to the RFP with a proposal for a development project (the "Proposed Project") involving a public-private partnership between the Commission and the Developer.

D. The Commission and the Developer now desire to enter into this Agreement, as an interim agreement pursuant to the PPEA and the Guidelines, to further explore the feasibility and desirability of the Proposed Project, to establish rights and obligations of the parties related thereto, and to establish a process and timetable for next steps in the consideration of a possible comprehensive agreement between the parties.

### **AGREEMENT**

In consideration of the premises set forth in the Recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Statement of Purpose; General Scope. This Agreement shall serve as an interim agreement pursuant to the PPEA and the Guidelines, to allow the parties to further explore the feasibility and desirability of the Proposed Project, to establish rights and obligations of the parties related thereto, and to establish a process and timetable for next steps in the consideration of a possible comprehensive agreement between the parties. This Agreement is premised on the intention of each party to approach the relationship from a perspective of cooperation, good faith, and risk sharing.

2. Term. This Agreement shall become effective upon the Effective Date and shall continue for one hundred twenty (120) days unless it is terminated at an earlier date pursuant to Section 6 hereof. The parties reserve the right to extend the term of this Agreement if they mutually deem it necessary, but neither party shall be obligated to do so.
3. Scope of Work; Deliverables. The Developer shall provide to the Commission the services and deliverable items listed by category on Exhibit A (the "Deliverables"). The Developer shall provide the Commission with the Deliverables consistent with the thirty-day increment schedule also indicated on said Exhibit A (the "Schedule"). The Developer shall produce a more detailed project schedule using Microsoft Project within ten (10) business days of the Effective Date. The Developer shall deliver monthly written progress reports to the Commission's Project Manager (the "Project Management Team") on each of the thirtieth, sixtieth, ninetieth and one hundred twentieth days of the term hereof. The Developer's project managers for the Proposed Project (the "Project Principals"), along with its other principal team members, consultants and subcontractors (all of which are identified on Exhibit B), as appropriate, shall participate in monthly meetings with the Project Management Team and its selected consultants. Such monthly meetings shall occur at locations and times designated by the Project Management Team or at such other locations or times as may be agreed upon by the parties. The purpose of the monthly meetings shall be to review (a) the then-current status of the Deliverables, (b) the Developer's other findings, and (c) the Developer's performance hereunder. The Commission shall have the right to monitor the Developer's work so long as the Commission does so in a reasonable manner and does not unreasonably interfere with the Developer's business.
4. Possible Comprehensive Agreement. The Commission and the Developer shall act reasonably and in good faith to negotiate the form of a mutually satisfactory comprehensive agreement between the Commission and the Developer (or its affiliate, CEI Development, LLC) in accordance with the Schedule. However, the parties understand and acknowledge that there shall be no obligation on the part of the Commission to enter into a comprehensive agreement, another interim agreement, a joint venture agreement, or any other form of contract, arrangement or relationship with the Developer or any other party with respect to the Proposed Project or any other project, or for any other purpose. Any further contract, arrangement or relationship shall be subject to approval by the Commission.
5. Budget; Payment to Developer; Other Costs and Expenses. Exhibit A sets forth a budget (the "Budget") for the completion of the scope of work which is hereby approved by the Commission and the Developer.

Payments by the Commission to the Developer shall be made in accordance with the Budget, subject to the Developer's satisfactory performance of its obligations hereunder in a timely manner consistent with the Schedule. The Commission shall make payment to the Developer within twenty (20) days after its receipt of the Developer's monthly application for payment consistent with the Budget and the Schedule. Except as otherwise provided in the Budget, each party shall bear its own costs and expenses associated with its performance hereunder. In no event shall the total sum paid by the Commission to the Developer exceed \$417,000.00.

6. Termination. This Agreement shall terminate upon the earliest of: (a) execution of a comprehensive agreement or another interim agreement; (b) the date which is five (5) business days (or fewer days, if practical) after the date that either party notifies the other, in writing, that it does not intend to proceed with development of the Proposed Project or otherwise pursue the Proposed Project with the other party pursuant to the current procurement and elects to terminate this Agreement; or (c) the date of expiration of the term hereof. In the event either party terminates this Agreement pursuant to item (b) above, regardless of reason, then all Deliverables, along with any other work product, plans, projections, design concepts and other items delivered or due to be delivered to the Commission on or before the date of termination, shall be deemed the property of the Commission.
7. Audit. The Developer covenants and agrees that during the term hereof or any time after termination or expiration of this Agreement, and until the expiration of three (3) years after such date, within ten (10) business days after the Developer receives a reasonable written request from the Commission, the Developer shall make all salary, billing, expense and other records relating to the work performed hereunder available for inspection and copying by the Commission and its authorized representatives at a reasonable cost payable by the Commission and during the Developer's regular business hours. The Commission's authorized representatives shall include, but not be limited to, the Comptroller General of the United States; the United States Department of Transportation, Federal Transit Administration; the Commonwealth of Virginia; and any other entity providing funding to the Commission in connection with the Proposed Project or this Agreement.
8. Developer Personnel. The Developer designates R. Jeffery Arnold to serve as its project principal-in-charge. The Developer also designates Michael A. Haller and Chee Kung to serve along with R. Jeffery Arnold as the Developer's Project Principals. The Developer shall ensure that all Project Principals, throughout the term hereof, (a) devote sufficient time and attention to directing and overseeing the Developer's performance



under this Agreement and (b) make themselves available to the Project Management Team and other Commission consultants and representatives for purposes of this Agreement. The Developer may change its Project Principals only with the prior written approval of the Commission.

9. Commission Personnel. The Commission designates Cheryl Openshaw to serve as its project manager. The Commission also designates Larry W. Davenport and Wright C. Parkes to serve along with Cheryl Openshaw on the Commission's Project Management Team. The Commission shall ensure that members of its Project Management Team, throughout the term hereof, (a) devote sufficient time and attention to directing and overseeing the Commission's performance under this Agreement and (b) make themselves available to the Project Principals and other Developer representatives for purposes of this Agreement.
10. Accuracy of Proposal. The Developer represents and warrants to the Commission that as of the date of this Agreement all factual statements relating to prior experience and capabilities and made in the Proposal to the Commission to provide the services in connection with the Proposed Project are in all material respects true, accurate, and not misleading.
11. Warranties. The Developer represents and warrants that all data provided to the Commission in the Deliverables shall be, to the greatest extent possible, accurate and complete. In preparing and submitting the Deliverables, the Developer may reasonably rely upon information provided by or on behalf of the Commission with respect to the Commission's size and space requirements and financial capacities.
12. Indemnification.
  - a. The Developer shall indemnify the Commission (and the members of its Board of Commissioners and its officers, employees and authorized representatives) from and against any loss, damage, expense or liability arising from bodily injury or property damage (excluding any consequential damages) to the extent caused by the negligent or wrongful act, error, or omission of the Developer or its employees, officers, contractors, agents or others acting on its behalf provided that claims are presented within twelve (12) months of completion of or termination of this Agreement. In no event shall this indemnification provision be construed as a limitation of liability.
  - b. The Commission shall indemnify the Developer (and its directors, officers, employees and authorized representatives) from and against any loss, damage, expense or liability arising from bodily injury or property damage (excluding any consequential damages)

to the extent caused by the negligent or wrongful act, error, or omission of the Commission or its employees, officers, contractors, agents or others acting on its behalf provided that claims are presented within twelve (12) months of completion of or termination of this Agreement and only to the extent permitted by applicable law. In no event shall this indemnification provision be construed as a limitation of liability.

13. Independent Contractors. Neither the Developer, nor any of its employees, agents, subsidiaries or subcontractors shall be considered employees, servants, agents, partners or joint venture partners of or with the Commission by reason of this Agreement. Neither the Commission, nor any of its employees, agents, or subcontractors shall be considered employees, servants, agents, partners or joint venture partners of or with the Developer by reason of this Agreement.
14. Non-liability of Officials and Employees. No director, officer, official, employee, agent or representative of the Commission shall be personally liable to the Developer or any successor in interest, in the event of any default or breach by the Commission for any amount which may become due to the Developer or any successor in interest, or on any obligation incurred under the terms of this Agreement. No officer, official, employee, agent or representative of the Developer shall be personally liable to the Commission or any successor in interest, in the event of any default or breach by Developer for any amount which may become due to the Commission or any successor in interest, or on any obligation incurred under the terms of this Agreement.
15. Insurance
  - a. The Developer agrees to (i) notify the Commission promptly after the Developer receives notice of any loss, damage or injury related to or in connection with the Proposed Project or the performance or non-performance of the scope of work hereunder; (ii) notify any insurance carrier of same as directed by the Commission, (iii) take no action (such as admission of liability) that might bar the Commission from obtaining any protection afforded by any policy the Commission may hold or which might prejudice the Commission in its defense to any claim, demand or suit within limits prescribed by the policy or policies of insurance; and (iv) aid and cooperate with the Commission in every reasonable respect with respect to such insurance and any loss thereunder.
  - b. The Developer, at its own expense, shall carry the following insurance coverages provided by insurance companies authorized to do business in the Commonwealth of Virginia (except as waived

by the Commission in its sole discretion): Workers' compensation insurance, commercial general liability insurance (on an occurrence basis), automobile liability insurance for any automobile owned or hired, and umbrella/excess liability insurance. The commercial general liability policy shall be for a combined single limit for personal injury and property damage of not less than Two Million Dollars (\$2,000,000), and shall provide coverage, at a minimum, for (i) broad form contractual liability with this Agreement endorsed, (ii) products liability and completed operations, and (iii) broad form property damage coverage. The automobile liability policy shall be written for a combined single limit for bodily injury and property damage of not less than One Million Dollars (\$1,000,000). The umbrella/excess liability policy shall be for a maximum single limit of Ten Million Dollars (\$10,000,000) for supplementing the commercial general liability policy, workers' compensation and automobile liability policy. In the case of workers' compensation coverage, insurance shall be in the amount statutorily required.

- c. The Developer's insurance policies shall be primary and non-contributory with any other insurance coverage or self insurance carried by the Commission with respect to any claims arising out of the performance or non-performance of the scope of work hereunder. The commercial general liability, automobile liability, and umbrella/excess liability insurance policies shall name the Commission, its officers, employees and agents as additional insureds.
- d. By requiring the minimum insurance amounts specified herein, the Commission shall not be deemed or construed to have assessed the risk that may be applicable to or incurred by the Developer, or to have represented in any fashion that such amounts are sufficient to protect the Developer's liabilities hereunder.
- e. The Developer shall furnish certificates of insurance evidencing the foregoing coverages. All insurance policies shall be in form, amounts and with such companies as are reasonably acceptable to the Commission, provided, however, that in no event shall any insurer have a Best's Insurance Rating of less than "A-".

16. Default. In the event either party shall fail in the performance of any term or condition of this Agreement ("Default"), the party not in Default shall provide the defaulting party written notice of default and demand of performance. The defaulting party shall have ten (10) days to cure said Default. Should the defaulting party not cure the Default by the end of the ten (10) day period, the non-defaulting party shall have the right to (a)

terminate this Agreement immediately upon written notice to the defaulting party and (b) pursue all other available remedies.

17. Notices. Notices may be delivered either by telecopy, private messenger service (including recognized overnight courier) or by mail addressed as provided below. Notices may also be delivered by electronic mail (email) provided that they are confirmed by hard copy, as described above, delivered within twenty-four (24) hours of the recipient's receipt of the email. Any notice or document required or permitted hereunder shall be in writing and shall be deemed to be given on the date received; provided, however, that all notices and documents mailed in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the respective address shown below, shall be deemed to have been received three (3) business days after mailing. Each address shall for all purposes be as set forth below unless otherwise changed by notice to the other parties as provided herein:

To the Commission: Transportation District Commission of Hampton Roads  
c/o Hampton Roads Transit  
Attention: Michael S. Townes, President/CEO  
3400 Victoria Boulevard  
Hampton, VA 23661  
Telephone: (757) 222-6000  
Facsimile: (757) 222-6195

with copy to: Charles E. Wall, Esquire  
Williams Mullen  
1021 East Cary Street  
17<sup>th</sup> Floor  
Richmond, Virginia 23218-1320  
Telephone: (804) 783-6498  
Facsimile: (804) 783-6507

To the Developer: Susan H. Eastridge, Chief Executive Officer  
Concord Eastridge, Inc.  
901 N. Glebe Road, #350  
Arlington, VA 22203  
Telephone: (202) 955-9200  
Facsimile: (202) 955-9255

with copy to: Lynda Keller, Chief Operating Officer  
Concord Eastridge, Inc.  
5685 N. Scottsdale Road  
Suite 150  
Scottsdale, AZ 85250

Telephone: (602) 266-1999  
Facsimile: (602) 266-9331

18. Executed in Virginia. This Agreement shall be deemed to have been fully made, executed and delivered by the parties hereto in the Commonwealth of Virginia for all purposes and intents and shall be governed by and subject to the laws of the Commonwealth of Virginia without giving effect to conflict of law principles.
19. No Third Party Rights. Nothing in this Agreement shall be construed to permit anyone other than the Commission and the Developer and their respective successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.
20. Non-Discrimination. During the performance of this Agreement, the Developer agrees that it shall at all times comply with the Commission's policy on nondiscrimination, and shall not discriminate on the basis of race, color, religion, national origin, sex, disability, veteran status, sexual orientation, or age, except where sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Developer.
21. Prior Agreements and Discussions. Any agreements between the Commission and the Developer before this Agreement and relating to the Proposed Project are superseded by this Agreement. All prior discussions and negotiations are merged into this Agreement. The submission of any unexecuted copy of this Agreement shall not constitute an offer to be legally bound by the provisions of the document submitted; and no party shall be bound by this Agreement until it is executed and delivered by both parties.
22. Authority. The Commission and the Developer both have full power and authority to enter into this Agreement. The persons signing this Agreement on behalf of the Commission and the Developer have full power and authority to bind their respective entities to the terms and conditions of this Agreement.
23. Assignment. This Agreement shall not be assigned by the Developer without the prior written consent of the Commission, which consent may be withheld in the Commission's sole discretion. The Commission shall have the right to assign this Agreement in whole or in part to an affiliate of the Commission, upon prior notice to the Developer. This Agreement

shall be binding upon and inure to the benefit of each of the parties hereto and their respective permitted legal successors and permitted assigns.

24. Dispute Resolution Process. In the event any claim, controversy or dispute arises between the Commission and the Developer with respect to this Agreement, the parties shall undertake in good faith to resolve the dispute. If the Commission and the Developer cannot resolve any disagreement within thirty (30) days after written notice of such claim, controversy or dispute, either the Commission or the Developer may pursue any remedies available to such party under this Agreement and at law or in equity, including, without limitation, specific performance of this Agreement. Any legal action shall be brought in the General District or Circuit Court of the City of Norfolk, Virginia. As long as the parties are attempting in good faith to resolve a dispute under this Agreement, the parties shall continue to perform their respective obligations under this Agreement.
25. Waiver. No waiver of any of the terms of this Agreement or of any breach of its terms shall be effective unless such waiver is in writing and signed by the waiving party. No waiver of any breach shall be deemed a waiver of any other subsequent breach.
26. Severability. If any term, covenant or condition contained herein is adjudged invalid or unenforceable to any extent, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
27. Entirety and Amendment. This Agreement constitutes the entire agreement of the parties, and no amendment or modification shall be effective until reduced to writing and signed by the Commission and the Developer.
28. Interpretation. The captions in this Agreement shall be of no force or effect in its interpretation. This Agreement shall not be construed against one Party or the other on the basis that its counsel drafted it or participated in its drafting. The words "include," including," or words to similar effect shall not be construed to be words of limitation.
29. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.

[Signatures appear on following page]

IN WITNESS WHEREOF the parties have executed this Agreement on the Effective Date.

TRANSPORTATION DISTRICT COMMISSION  
OF HAMPTON ROADS

By: Michael S. Townes  
Michael S. Townes, President/CEO

Date: 12-21-07

CONCORD EATRIDGE, INC.

By: \_\_\_\_\_  
Susan H. Eastridge, Chief Executive Officer

Date: \_\_\_\_\_

-1541401v6

IN WITNESS WHEREOF the parties have executed this Agreement on the Effective Date.

TRANSPORTATION DISTRICT COMMISSION  
OF HAMPTON ROADS

By: \_\_\_\_\_  
Michael S. Townes, President/CEO

Date: \_\_\_\_\_

CONCORD EATRIDGE, INC.

By: Susan H. Eastridge  
Susan H. Eastridge, Chief Executive Officer

Date: 12/21/07

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**EXHIBIT A**

**Deliverables, Schedule and Budget**

See attached.

**EXHIBIT 'A'**  
**Interim Milestones & Budget**  
Page 1 of 2

GOALS		FINAL DELIVERABLES		January 1-31	February 1-29	March 1-31	April 1-30
1. Comprehensive Agreement		Comprehensive Agreement completed ready for execution	1st draft of Comprehensive Agreement	CEI completes review of 1st draft provide by HRT	2nd draft submitted for review	Completed Comprehensive Agreement for execution	
2. Bus Maintenance Facility	Schematic design plans - Updated needs spreadsheet new facilities - Main Bldg Floor Plans @ 1/16"=10" - Mechanical, Electrical and Plumbing Narrative Reports and Major Equipment - Maintenance Building Equipment List - Maintenance Building Structural Plans - Framing plan for maintenance area	Programming / conceptual plan work sessions - finalize programming - equipment list - floor plans - circulation plans - structural load calculation	HRT reviews conceptual plan and provides comments - update floor plans - update equipment list - conceptual structural plans	Begins schematic design - update floor plans - update structural plans - MEP narrative & diagrams - conceptual elevation	Update schematic design - update floor plans - update structural plans - update MEP narrative & diagrams - update conceptual elevation		
3. Bus Maintenance Facility Pricing	Schematic design pricing	Pricing	Update pricing	Update pricing	Update pricing		
4. Administration Building	Schematic design plans - Updated needs spreadsheet new facilities - Admin Bldg Floor & Furniture Plans @ 1/16"=10" - Mechanical, Electrical and Plumbing Narrative Reports and Major Equipment - Building Elevations @ 1/16"=10" - Foundation/slab plan for parking area and administrative building - Administration Building Structural Plans - Framing plan for administrative building	Programming/conceptual plan work sessions - finalize programming - explore ownership structure - conceptual diagrams - massing studies - structural load calculation	HRT reviews conceptual plan and provides comments - floor plans - finalize ownership structure - conceptual structural plan - update massing studies	Begins schematic design - update floor plans - MEP narrative & diagrams - conceptual elevation - update massing studies - preliminary interior design	Update schematic design - update floor plan - update structure plan - update MEP narrative & diagrams - update conceptual elevation - update massing studies - update interior design		
5. Administration Building Pricing	Schematic design pricing	Pricing	Update pricing	Update pricing	Update pricing		
6. Siteplan / Masterplan	Schematic site plan and master plan - Updated needs spreadsheet new facilities - Site plan at a scale of 1"=100' - Utilities Diagrams - Floodplain management report	Programming work sessions - investigate floodplain issues - site plan - circulation plan - storm water management strategy	HRT reviews conceptual plan and provides comments - update site plan - update circulation plan - utilities calculations - utilities diagrams - storm water management plans	Begins schematic design - update site plan - update circulation plan - update utilities diagrams - storm water management plans	Update schematic design - update site plan - update circulation plan - update utilities diagrams - storm water management plans		
7. Project Schedule	Schedule incl. est. review & submission dates	Preliminary schedule	Update schedule	Update schedule	Update schedule		
8. Negotiation with the City for Land Transfer	Completed negotiation	Preliminary negotiation	On-going	Complete negotiation			
9. Temporary Facilities	Preliminary design & pricing	Temporary Facilities investigation	Continued investigation	Report submission			
10. Geotechnical Report	Geotechnical report	Establish limits of work	Geotechnical exploration - soil borings - lab tests - Commence - identify potential LEED points	Geotechnical report - complete report - footing recommendations - On-Going - update scorecard	On-Going - update scorecard		
11. LEED Certification	LEED scorecard - Preliminary LEED checklist		Submit & meet w/ City	On-Going	On-Going		
12. Re-Zoning Process	Initiate process		Refine preliminary design & pricing - update floor plans - update market study - update circulation plan				
13. Mixed Use Development	Develop & revise mixed-use conceptual plans - Building floor plans - Building elevations - Market study	Preliminary design - conceptual plans - market study - circulation plan					
Interim Budget	Total						
Architecture	135,000	33,750	33,750	33,750	33,750		
Structural engineering	45,000	11,250	11,250	11,250	11,250		
MEP	20,000	5,000	5,000	5,000	5,000		
Civil Engineering	36,000	9,000	9,000	9,000	9,000		
Legal/Insurance	4,000	1,000	1,000	1,000	1,000		
Geotechnical engineering	20,000	10,000	10,000	10,000	10,000		
Project management	120,000	30,000	30,000	30,000	30,000		
Expense allowance	12,000	3,000	3,000	3,000	3,000		
Cost Estimating	15,000	3,500	3,500	3,500	3,500		
Subtotal	407,000	94,000	105,500	108,000	98,500		
Temporary Facilities Investigation Including Consideration of Potential Alternate Permanent Sites	10,000	5,000	5,000				
Grand Total	417,000	99,000	111,500	108,000	98,500		

**EXHIBIT 'A'**  
Interim Milestones & Budget  
Page 2 of 2

January 1-31	February 1-29	March 1-31	April 1-30
<b>Architectural Design Services</b> 1. Architectural floor plans and elevations for the Administration and Maintenance Buildings further developed on the basis of the elevations depicted in Concord Eastridge's Proposal dated 7/24/07. 2. Prepare maintenance garage layout concept.  <b>Structural Design Services</b> 1. Review of the live load required to be carried by the 360' x 720' maintenance area for bus loading. 2. Preparation of preliminary structural steel framing and column design for the maintenance area. 3. Provide a range of footing loads for use in geotechnical report.  <b>Mechanical Design Services</b> 1. Code analysis for administration and maintenance buildings, including special provisions for the maintenance building.  <b>Electrical Design Services</b> 1. Code analysis for administration and maintenance buildings, including special provisions for the maintenance building.  <b>Site Design Services</b> 1. Preparation of master site plan sheet at a scale of 1" = 100' showing plan view of preliminary design including existing pavement to be removed, the location of proposed parking lots, paved areas including sidewalks, curb and gutter, storm drains, water mains, gravity sewer and stormwater management facilities, or structures. 2. Obtain input from the Federal Emergency Management Agency (FEMA) regarding federal requirements for construction within a floodplain. 3. Obtain input from The City of Norfolk on local requirements for construction within the floodplain. 4. Obtain mapping in AutoCad 2006 format from The City of Norfolk	<b>Architectural Design Services</b> 1. Ongoing 2. Ongoing  <b>Structural Design Services</b> 1. Ongoing 2. Ongoing 3. Completed 4. Maintenance garage structural design. 5. Provide estimated footing sizes for the column loads above  <b>Mechanical Design Services</b> 1. Ongoing 2. Preparation of preliminary load calculations for heating, cooling and ventilation loads  <b>Electrical Design Services</b> 1. Ongoing 2. Preparation of preliminary calculations for building and site lighting footcandle requirements.  <b>Site Design Services</b> 1. Ongoing 2. Ongoing 3. Ongoing 4. Ongoing 5. Calculations for determining the adequacy of existing water mains and locations of the hydrants will be performed based on test pressures provided by the City. 6. Calculations for identifying the adequacy of existing sanitary sewer lines will be performed. Proposed sanitary sewer lines will be sized if existing gravity sewer is inadequate. The adequacy of existing sewage pump stations will be considered based on discussions with City Utility staff, but a pump station study will not be performed. 7. Existing and proposed impervious area calculations will be performed. Preliminary drainage calculations and stormwater management calculations will be performed for the purpose of identifying conceptual drainage and stormwater management requirements.	<b>Architectural Design Services</b> 1. Ongoing 2. Ongoing  <b>Structural Design Services</b> 1. Ongoing 2. Ongoing 3. Completed 4. Ongoing 5. Ongoing 6. Ongoing 7. Ongoing 8. Prepare report documenting water, sewer and drainage calculations and floodplain management requirements  <b>Mechanical Design Services</b> 1. Ongoing 2. Ongoing 3. Narrative descriptions of preliminary mechanical systems for administration and maintenance buildings, and for site requirements 4. Preliminary sizing of electrical service to administration and maintenance buildings, and for site requirements 5. Preliminary narrative description of communication systems  <b>Electrical Design Services</b> 1. Ongoing 2. Ongoing 3. Narrative descriptions of preliminary electrical systems for administration and maintenance buildings, and for site requirements 4. Preliminary sizing of electrical service to administration and maintenance buildings, and for site requirements 5. Preliminary narrative description of communication systems  <b>Site Design Services</b> 1. Ongoing 2. Ongoing 3. Ongoing 4. Ongoing 5. Ongoing 6. Ongoing 7. Ongoing 8. Prepare report documenting water, sewer and drainage calculations and floodplain management requirements	<b>Architectural Design Services</b> 1. Completed 2. Completed  <b>Structural Design Services</b> 1. Completed 2. Completed 3. Completed 4. Completed 5. Completed 6. Completed 7. Completed 8. Completed  <b>Mechanical Design Services</b> 1. Completed 2. Completed 3. Completed 4. Completed  <b>Electrical Design Services</b> 1. Completed 2. Completed 3. Completed 4. Completed 5. Completed 6. Completed 7. Completed 8. Completed

**GENERAL QUALIFICATIONS AND CLARIFICATIONS**

- Architectural Design Services**
- Design drawings will be prepared in AutoCad 2006, Architectural Desktop (ADT).
  - Design will be done in accordance with Codes and Regulations in effect at the time of Contract award.
  - Design services for this project are to be performed only for the current HRT site and adjacent lands, with land configuration, location and configuration per CEI proposal dated 7/24/07.
  - Architectural design modifications will include one interim and one final revision during the course of the 120 day design period, modified on the basis of sponsor program refinements and identification of construction materials and methods that will achieve cost savings.
  - Interior Design services will include a maximum of two options for furniture layout, with one revision developed for the preferred option.
  - Program documentation will be provided at the end of each 30-day design period, to include drawings, reports and narratives developed toward the final deliverables. Information and feedback in accordance with the project schedule.
  - The design documentation to be produced are intended for identification of the preliminary scope and feasibility of the proposed public-private project.
  - It is the understanding that the documents to be produced are intended for preliminary pricing only, and that the documents will not be used for pricing that would result in a Guaranteed Maximum Price, Fixed Price, or other contractual guarantees of construction cost or scope.
  - Architectural programming and space planning design services will be based on client interviews, existing facility assessments and programming meetings with stakeholders to be scheduled in accordance with the attached project schedule. Services, including special presentations, beyond design and review services as listed in this Basis for Proposal may be provided for an additional fee and would be negotiated separately.

**Structural Design Services**

- It is assumed that spread footings will be used.
- Estimate of concrete slab-on-grade thickness for ground level of garage
- No design will be performed for the pre-engineered building in the maintenance area, except for consideration of requirements to support load by first floor structure
- No quantities will be prepared
- HRT and/or City comments on preliminary or revised structural plans will be considered for cost impact.
- Maintenance garage layout concept will be completed prior to structural design

**Mechanical Design Services**

- Fire suppression systems will not be design
- No quantities will be prepared

**Electrical Design Services**

- No quantities will be prepared

**Site Design Services**

- No grading or elevations will be shown on plans.
- No cross-sections or profiles will be provided.
- Attendance at coordination meetings
- No quantities will be prepared
- Proposed utilities and drainage system will identify proposed corridor/location but evaluation of existing underground conflicts will not be performed
- No floodplain modeling will be performed
- No survey or utility designation will be performed
- HRT and/or City comments on site plan will be considered for cost impact. After HRT review, the master site plan will be revised to address their comments. Only one set of review and plan revisions will be performed

## **EXHIBIT B**

### **Development Team Members**

Hayes, Seay, Mattern & Mattern, Inc.  
Rodriguez Ripley Maddux Motley  
Parsons Brinckerhoff  
InSites Landscape Architecture  
W.M. Jordan Company  
Bank of America  
DMJM HARRIS/AECOM  
McGuireWoods



3400 Victoria Boulevard, Hampton, Virginia 23661  
Phone: 757-222-6000 ~ Southside Fax: 757-222-6103  
Peninsula Fax: 757-222-6195 ~ [www.hrtransit.org](http://www.hrtransit.org)

May 7, 2008

Mr. Jeffrey Arnold  
Concord Eastridge, Inc.  
901 N. Glebe Road, Suite 350  
Arlington, VA 22203

RE: RFP #07-45506 New Southside Facility, A Public-Private Partnership  
Amendment #1 to Interim Agreement Dated January 2, 2008

Dear Mr. Arnold,

We are in receipt of revised Exhibit A-1 to the interim agreement dated May 7, 2008 for the continuation of conceptual design services from May 1, 2008 through May 16, 2008. You are hereby authorized perform the work outlined on revised Exhibit A-1 for the fixed price of \$48,525.00

HRT intends to issue another Amendment to the interim agreement authorizing the continuation of facility design and project management work, upon approval by HRT's Commission on May 15, 2008.

All terms and conditions of the Interim Agreement dated January 2, 2008 remain in effect.

Sincerely,

Michael S. Townes  
President and CEO

/enclosure

copy: ✓ Cheryl Openshaw  
Wright Parkes  
Larry Davenport  
Doc-Center

**EXHIBIT A-1 (dated May 7, 2008)**

**Additional Deliverables and Adjusted Budget**

<b>GOALS</b>	<b>May 1-16</b>
<b>1. Comprehensive Agreement</b>	Completed Comprehensive Agreement draft
<b>2. Bus Maintenance Facility</b>	Complete schematic design - update floor plans - update structural plans - update MEP narrative & diagrams - update conceptual elevation
<b>3. Bus Maintenance Facility Pricing</b>	Update Pricing
<b>4. Administration Building</b>	On hold
<b>5. Administration Building Pricing</b>	On hold
<b>6. Siteplan / Masterplan</b>	Complete schematic design - update site plan - update circulation plan - update utilities diagrams - storm water management plans
<b>7. Project Schedule</b>	Update schedule
<b>8. Negotiation with the City for Land Transfer</b>	Continue discussions
<b>9. Temporary Facilities</b>	Continue to support HRT in its search
<b>10. Geotechnical Report</b>	N/A
<b>11. LEED Certification</b>	On-Going - update scorecard
<b>12. Re-Zoning Process</b>	N/A
<b>13. Mixed Use Development</b>	On hold pending negotiation with City
<b>Interim budget</b>	
Architecture	19,900
Structural engineering	5,625
MEP	2,500
Civil Engineering	4,500
Project management	15,000
Expense allowance	1,000
<b>Total</b>	<b>48,525</b>

## SECOND AMENDMENT TO INTERIM AGREEMENT

THIS SECOND AMENDMENT TO INTERIM AGREEMENT (this "Second Amendment"), dated as of the 28th day of May 2008, is made and entered into by and between the **TRANSPORTATION DISTRICT COMMISSION OF HAMPTON ROADS** (the "Commission") and **CONCORD EASTRIDGE, INC.**, an Arizona corporation (the "Developer"). The Commission and the Developer are sometimes referred to herein collectively as the "Parties" and each individually as a "Party."

### RECITALS

A. The Commission and the Developer are parties to that certain Interim Agreement, dated January 2, 2008 (the "Agreement"), which allows the Parties to further explore the feasibility and desirability of the Proposed Project and to establish protocol for the negotiation of a comprehensive agreement.

B. Pursuant to Section 2 of the Agreement, the Agreement is only effective for one hundred twenty (120) days following the Effective Date; however, the Parties may extend the term of the Agreement if they mutually agree that such an extension is necessary to further the goals of the Agreement.

C. The Commission and the Developer entered into a letter agreement, dated May 7, 2008, referenced therein as "Amendment #1 to Interim Agreement Dated January 2, 2008" (the "First Amendment"), pursuant to which the Parties mutually agreed to extend the term of the Agreement through May 16, 2008, and to amend the Deliverables, the Budget and the Schedule, accordingly.

D. In accordance with Section 2 of the Agreement, both the Commission and the Developer agree that it is necessary to amend Section 2 of the Agreement and further extend the term of the Agreement in accordance with this Second Amendment.

E. The Parties acknowledge and agree that, in conjunction with an extension of the term of the Agreement, it is also necessary to further amend certain provisions in the Agreement, which relate to the Deliverables, the Budget, payment milestones, and the Schedule, in accordance with this Second Amendment.

### AGREEMENT

In consideration of the foregoing, the Parties hereby agree as follows:

1. Defined Terms. Unless otherwise defined in this Second Amendment, capitalized terms used in this Second Amendment shall have the meanings given to those terms in the Agreement.
2. Amendment to Section 2 of the Agreement. Section 2 of the Agreement is hereby amended to further extend the term of the Agreement from May 16, 2008 through

November 30, 2008 (the "Extension"). The Agreement shall continue until November 30, 2008 unless it is terminated at an earlier date pursuant to Section 6 of the Agreement. In accordance with Section 2 of the Agreement, the Parties may further extend the term of the Agreement if they mutually deem such an extension to be necessary, but neither Party shall be obligated to do so.

3. Amendment to Section 3 of the Agreement. Section 3 of the Agreement is hereby amended to require the Developer to deliver monthly written progress reports to the Commission's Project Manager on the last day of each month during the Extension or on such other day as the Parties may mutually agree; provided, however, that no monthly progress report shall be due for the month of May, 2008.
4. Amendment to Section 5 of the Agreement. Section 5 of the Agreement is hereby amended to increase the permissible total, not-to-exceed sum paid by the Commission to the Developer by \$4,515,121.00, payable in fixed monthly installments as set forth on Exhibit A-2 attached hereto.
5. Amendment to Exhibit A of the Agreement. Exhibit A of the Agreement is hereby further amended to include additional Deliverables, upward adjustments to the Budget, adjustments to the payment milestones, and extensions to the Schedule, all as set forth on Exhibit A-2 attached hereto.
6. Previous Deliverables and Budget. All of the Deliverables previously provided by the Developer, pursuant to Exhibit A of the Agreement, are hereby deemed to have been satisfactorily submitted and completed, although the Parties acknowledge that some of such Deliverables were substituted by alternative work product at the direction of the Commission's Project Management Team. Further, it is hereby agreed by the Parties that all of the Budget sums payable to the Developer by the Commission as provided in Exhibit A of the Agreement are deemed fully earned by the Developer and fully paid by the Commission.
7. Continuation of the Terms and Provisions of the Agreement. Except as specifically modified in this Second Amendment, the terms and provisions of the Agreement and the First Amendment are hereby ratified and shall continue in full force and effect.
8. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
9. Headings. The section headings contained in this Second Amendment are inserted for convenience only and shall not affect in any way the interpretation of this Second Amendment.

[Signatures appear on following page]



IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date first written above.

TRANSPORTATION DISTRICT COMMISSION OF  
HAMPTON ROADS

By: Michael S. Townes  
Michael S. Townes, President/CEO

CONCORD EATRIDGE, INC.

By: Susan H. Eastridge  
Susan H. Eastridge, Chief Executive Officer

**Exhibit A-2**

**Additional Deliverables, Upward Adjustments to the Budget, Adjustments to Payment  
Milestones and Extensions to the Schedule**

[See attached]

VAL DELIVERABLES Agreement completed	May 17-31 Review 3/14/08 draft	June Review 2nd draft as provided by HRT	July Continuing review	August Finalize draft by end of month	September NA	October Insert Contract Sum & O&O for review
Completed & ready for submission foundation permits, to include: drawings	Update Conceptual Drawings - update programming - update site plan - update architectural drawings - update MEP drawings - update project narratives - update equipment layout drawings	Complete Conceptual Drawings and Begin Design Development - Finalize Programming - update site plan - update architectural drawings - update MEP drawings - update project narratives - update equipment layout drawings	Update Design Development Drawings - update site plan - update architectural drawings - update structural drawings - update MEP drawings - update project narratives - update equipment layout drawings	Complete Design Development (35%) - update site plan - update architectural drawings - update structural drawings - update MEP drawings - update project narratives - update equipment layout drawings - submit drawings to City for preliminary review	Begin Construction Documents - update site plan - update architectural drawings - update structural drawings - update MEP drawings - update project narratives - update equipment layout drawings	Update Construction - update site plan - update architectural drawings - update structural drawings - update MEP drawings - update project narratives - update equipment layout drawings
Sum incl. all hard & soft costs	Revalidate pricing estimates	Update pricing	Update pricing	Update pricing	Update pricing	Obtain bids from key
tual design for Admin use private sector project	Continue discussions with City for potential development to include adjacent City parcels	Ongoing discussions and meetings	Ongoing discussions and meetings	Ongoing discussions and meetings	Generate draft concept drawings	Review draft concept
estimate (assuming Admin. fixed-use development)	NA	NA	NA	Update pricing	Update pricing	Update pricing
n for 18th Street project, ready :ity for site permit	Complete Schematic Drawings - update site plan - update utilities plan - update stormwater management plan - update circulation plan	Complete Conceptual Drawings and Begin Design Development - update site plan - update utilities plan - update stormwater management plan - update circulation plan	Update Design Development - update site plan - update utilities plan - update stormwater management plan - update circulation plan	Complete Design Development (35%) - update site plan - update utilities plan - update stormwater management plan - update circulation plan - submit drawings to City for preliminary review	Begin Construction Documents - update site plan - update utilities plan - update stormwater management plan - update circulation plan	Update Construction - update site plan - update utilities plan - update stormwater management plan - update circulation plan
review & submission dates	Update schedule	Update schedule	Update schedule	Update schedule	Update schedule	Update schedule
ions with the City to integrate d-use development	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing
e to HRT in the search :emporary facilities	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing
mental Phase II Report :phic and utilities surveys	Contract for topographic and utilities surveys	Complete Environmental Phase II Complete topographic and utilities surveys	NA	Submit 35% Drawings for City review	Track permitting	Track permitting
on	Update documentation	Update documentation Project registration	Update documentation	Update documentation	Update documentation	Update documentation
to process as may be necessary :ixed-use project	NA	NA	Initiate re-zoning, as necessary	Ongoing	Ongoing	Ongoing
tual plans for mixed-use project the City's land parcels, or on onticello property	Na	NA	Initiate drawings, as appropriate	Ongoing	Ongoing	Ongoing
Fixed Fees	May 17-31	June	July	August	September	October
1,542,000	\$ 22,000	\$ 85,000	\$ 265,000	\$ 250,000	\$ 300,000	\$ 300,000
349,000	-	52,000	53,000	50,000	67,000	67,000
180,000	3,000	19,000	27,000	29,000	32,000	32,000
595,000	2,000	55,000	103,000	120,000	95,000	95,000
525,000	5,000	46,000	95,000	89,000	94,000	94,000
289,000	-	22,000	44,000	45,000	56,000	56,000
358,000	-	43,000	61,000	64,000	59,000	59,000
41,000	1,000	6,000	7,000	7,000	6,000	6,000
175,000	-	33,000	22,000	20,000	25,000	25,000
195,000	15,000	30,000	30,000	30,000	30,000	30,000
132,000	2,000	17,000	22,000	16,000	22,000	22,000
32,000	2,000	3,000	3,000	7,000	3,000	3,000
102,121	-	9,121	25,000	25,000	25,000	25,000
4,515,121	\$ 52,000	\$ 420,121	\$ 757,000	\$ 752,000	\$ 814,000	\$ 814,000

**Exhibit A-2**  
**Hampton Roads Transit**  
**Bus Maintenance Facilities**  
**Design Development and Construction Documents**

a. **PROJECT DELIVERABLES:**

1. **Design Development (35%)**

a. **Title Sheet(s)**

1. Project Name
2. Location and vicinity maps.
3. Tabulation of floor areas (new and renovated), total area, volume.
4. Tabulation of units: Number of parking spaces, auditorium seats, bedrooms etc.
5. Listing of applicable codes with dates.
6. Building Purpose/Occupancy.
7. Use Group(s) per IBC.
8. IBC Construction Type
9. Occupancy Load(s) per IBC.
10. Index of drawings.

b. **Site Plans** (site improvement plan & composite utility plan minimum for new construction and additions; should be based on approved comprehensive Master Plan.)

1. Scale and north arrow.
2. New and existing contours affected by work.
3. Floor and contour elevations.
4. Dimensioned relationship of new work to boundaries and existing structures.
5. General parking and handicap parking.
6. Handicapped-accessible routes
7. Pedestrian traffic routes.
8. Demolitions: structures, walks, utilities, trees, etc.
9. Proposed landscaping (planting materials).
10. Existing and new utilities: storm sewers, sanitary sewers, water supply, hydrant locations and data on fire flow test (provided by City).
11. Preliminary Storm water management plans.
12. Preliminary erosion control plans.
13. Preliminary on-site traffic management and bus circulation plans and signage.
14. Site improvements such as fencing, lighting, etc.
15. Typical paving section for proposed types and thicknesses.
16. Identify/show special earthwork recommended and construction considerations noted in soils report.

c. **Architectural drawings**

**Floor Plans** (for each floor)

1. Plans of each floor at 1/16" = 1'-0"
2. Overall dimensions.
3. Space names and/or numbers
4. Indicate all openings, entrances, delivery areas.
5. Indicate handicap access and Areas of Rescue Assistance.
6. Show scale and north arrow.

#### Roof Plan

1. All proposed drains.
2. Roof slope: 1/4" per 1'-0" to drain minimum for all areas (unless waived for reroofing).
3. Indicate slope (high to low) with direction arrows
4. All new and existing equipment.
5. All significant roof penetrations and structures.

#### Exterior Elevations

1. Scale (1/16" = 1'-0" minimum).
2. All openings: windows, doors, louvers, vents.
3. Floor elevations (above sea level).
4. Identification of all major finishes.
5. All stairs, ramps, and railings.
6. Rooftop equipment and structures.
7. Expansion and control joints.
8. Grade at the face of the building wall.
9. Subsurface construction (dotted in).

#### Building Cross Sections (Scale: 1/16"=1'-0"minimum)

1. One longitudinal and one transverse section
2. Show all floor levels / elevations on sections.
3. Indicate ceilings in proper relation to floors.
4. Method and extent of insulating exterior envelope.

#### Detail Sections (Scale: 3/4" = 1'-0" minimum)

1. One section for each type of wall construction.
2. Identify all major materials and components.
3. Identify insulation and note R value.

#### Finish Schedule

1. Indicate tentative proposed finishes for all spaces.
2. Give ceiling heights of interior spaces.

#### Furnishing/Equipment Plans

1. Show outline of all major equipment to approximate scale.
2. Show outline of all built-in furnishings to scale.

#### Renderings

2. Two perspective renderings depicting the 35% design. The renderings will include one view from 18<sup>th</sup> Street and one aerial view of the facility, depicting building scale, materials and color, and site development including landscaping on the 18<sup>th</sup> Street site and adjacent south side of 18<sup>th</sup> Street.
3. Snapshots of 3D massing model will be provided.

#### **d. Structural Drawings**

1. Show Live Loads, Wind Loads, and Seismic Criteria used for structural design.
2. Show design bearing/support capacity (soil bearing, pile capacity, caisson capacity) for foundation system.
3. Foundation Plan indicating type & tentative sizes.
4. Foundation details of improved bearing strata and other special requirements.
5. Floor Framing Plans of each level indicating type of system and tentative member sizes/depths and column spacing.

**e. Industrial Engineered Systems**

1. Preliminary Maintenance Equipment Layout Drawings.
2. Maintenance equipment utility requirements drawings.
3. Draft maintenance equipment specifications.
4. Updated maintenance equipment layout drawings.
5. Quality control review comments, as required.
6. Preliminary process piping/special electrical design drawings and specifications.

**f. Plumbing Drawings**

1. Plans of each floor noting fixture locations and types. Indicate routing of main distribution lines with tentative sizes. - Show general or schematic arrangement of all piping systems. - Show location of water, sanitary sewer, storm sewer and sprinkler services to the building.
2. Show tentative fixture schedule. - Show location, sizes and types of Hot Water Heaters/Heat Exchangers: Storage Tanks, and other equipment as required.
3. Show gas piping layout and connected load, if applicable

**g. Mechanical (HVAC) Drawings**

1. Plans of each floor showing single line duct layouts, tentative air (supply, return, and exhaust) quantities, equipment locations, and layouts and general routing of heating/cooling piping.
2. Show equipment schedules with tentative sizes, capacities, ID #, features, etc.
3. Indicate locations and sizes of fans, pumps, compressors, conveyors, etc.
4. Schematic layout and elevation of equipment room and/or central system showing configuration, tie-ins, etc. as necessary to describe system.
5. Central heating or cooling plants, distribution piping, equipment.

**h. Electrical Drawings** (Power and lighting plans may be combined if product clearly conveys required information.)

1. Lighting plans for each floor showing approximate fixture location, type, and lighting level required (in foot-candles).
2. Power distribution plans showing location of incoming service, generators, and panel boards.
3. Show interface points for communications, fire alarm, EMCS and other pertinent systems.
4. Proposed floor locations for receptacles, telephone outlets and switches.

**2. Final Construction Documents (90%)**

**a. Title Sheet(s)**

1. Project Name
2. Location and vicinity maps noted to show project location.
3. Tabulation of floor areas (new and renovated), total area, volume.
4. Tabulation of units: Number of parking spaces, auditorium seats, bedrooms etc.
5. Listing of applicable codes with dates.
6. Building Purpose/Occupancy.
7. Use Group(s) per VUSBC.
8. Type of construction and WSBC Type #.
9. Occupancy Load(s) per VUSBC.
10. Design Floor Live Loads.
11. Index of drawings.

**b. Site Plans (1"=25')**

1. Based on approved comprehensive Design Development Plans.
2. Scale and north arrow.
3. New and existing contours affected by work.
4. Floor and contour elevations.
5. Dimensioned relationship of new work to boundaries and existing structures.
6. General parking and handicap parking.
7. Handicap accessible routes
8. Pedestrian traffic routes.
9. Demolitions: buildings, structures, walks, utilities, trees, etc.
10. Proposed landscaping (planting materials)
11. Existing and new utilities: storm sewers, sanitary sewers, water supply, and hydrant locations with data on fire flow test.
12. Storm water management plans and calculations
13. Erosion control plans
14. Preliminary on-site traffic management and bus circulation plans and signage.
15. Site improvements such as fencing, lighting, etc.
16. Typical paving section of each type and thickness required.
17. Identify/show special earthwork recommended and construction considerations noted in soils report.

**c. Architectural drawings**

Floor Plans (for each floor)

1. Plans of each floor at 1/8" = 1'-0"
2. Show room space numbers.
3. Overall dimensions.
4. Indicate all openings, entrances, delivery areas.
5. Indicate handicap access.
6. Show scale and north arrow.
7. How wall, roof window locations & types

Reflected Ceiling Plans

1. Ceiling tile / grid layout
2. Light fixture locations
3. Sprinkler head locations
4. HVAC diffuser and grille locations
5. Coffers, drop soffits, changes in height or materials

Roof Plan

1. All proposed drains.
2. Roof slope: 1/4" per 1'-0" to drains minimum
3. All new equipment.
4. All significant roof penetrations and structures.
5. Typical roofing section identifying materials.
6. Access to roof.
7. Indicate direction of slope (high to low) with arrows

#### Exterior Elevations

1. Scale (1/16" = 1'-0" minimum).
2. All openings: windows, doors, louvers, vents.
3. Floor elevations (above sea level).
4. Identification of all major finishes.
5. All stairs, ramps, and railings.
6. Rooftop equipment and structures.
7. Expansion and control joints.
8. Grade at the face of the building wall.
9. Subsurface construction (dotted in).

#### Building Cross Sections (Scale: 1/16"=1'-0"minimum)

1. One longitudinal and one transverse section
2. Show all floor levels /elevations on sections.
3. Indicate ceilings in proper relation to floors.
4. Method and extent of insulating exterior envelope.

#### Detail Sections (Scale: 3/4" = 1'-0" minimum)

1. One section for each type of wall construction.
2. Identify all major materials and components.
3. Identify insulation and note ORO value.
4. One section with dimensions and details for each stair configuration.

#### Finish Schedule

1. Indicate proposed finishes for all spaces.
2. Give ceiling heights of interior spaces.
3. Show (or specify) all finishes, textures, colors, etc., required to be provided by the Contractor

#### Furnishing/Equipment Plans

1. Show outline of all major equipment to approximate scale.
2. Show outline of all built-in furnishings to scale.
3. Provide elevations, sections and details as necessary to describe built-in equipment, casework and furnishings included in the work of this contractor.

#### Renderings

1. Two perspective renderings depicting the final design. The renderings will include one view from 18<sup>th</sup> Street and one aerial view of the facility, depicting building scale, materials and color, and site development including landscaping on the 18<sup>th</sup> Street site and adjacent south side of 18<sup>th</sup> Street.

#### **d. Structural Drawings**

1. Unless indicated otherwise below, the structural drawings shall provide complete details of all structural components so that no additional structural design will be required for the preparation of shop drawings except for standard connection details and fabrication calculations.
2. Show design bearing/support capacity (soil bearing, pile capacity, caisson capacity) for foundation system
3. Show design live loads, wind loads, and seismic criteria used for design of structural systems per IBC.
4. Engineered Design and details of engineered systems such as Cast-In-Place Post-Tensioned Concrete, Precast Concrete Components, Steel Joists and Joist Girders, Pre-Engineered Metal Structures, and Shop / Prefabricated Wood Components may be required to be provided by the



contractor. In this case, the structural drawings shall include complete loading information as well as all other performance or size constraints for the components.

5. Structural drawings shall include plans at the same scale as the architectural plans. Details and sections shall be at a scale of not less than 3/4" to 1'.
6. The plans, details and specifications shall completely define the structural system and any special conditions for the project.
7. Foundation Plan indicating type & sizes.
8. Foundation details of improved bearing strata and other special requirements.
9. Floor and Roof Framing Plans of each level indicating type of system and member Sizes/depths and column spacing.

**e. Industrial Engineered Systems**

1. Maintenance Equipment
2. Update maintenance equipment lists utility requirements and cost estimate as appropriate during Construction Documents.
3. Finalize maintenance equipment layout drawings on AutoCAD background files provided by the architect. All functional areas identified in the equipment list to be included.
4. Finalize shop equipment specifications.
5. Develop final maintenance equipment list and cost estimate for equipment.
6. Signage and graphics
7. Mark-up plans showing suggested locations and messages for signage and graphics in maintenance areas.
8. Construction Document quality control
9. Process piping/special electrical.
10. Prepare Bid Documents (drawings and specifications).
11. Develop system cost estimates

**f. Plumbing Drawings:**

1. Provide (here or on cross-referenced demolition plans) plans showing demolition in sufficient detail that the work may be bid from the drawings.
2. Plans of each floor noting fixture (including laboratory and compressed air outlet) locations and types of each.
3. Plumbing fixture schedules showing designations, connection sizes, and mounting heights of handicapped fixtures. (Note that flush valve handles shall be located on the wide side of the handicapped enclosure.)
4. Plans showing layouts and sizes of sanitary DWV piping, cold condensate drainage systems, floor drains, acid waste systems, neutralizing tanks, etc.
5. Plans showing roof drains and areas served by each in square feet, piping and sizes.
6. Show downspout boots and connections to foundation drains.
7. Plans showing domestic hot and cold water systems, including piping sizes, domestic water heaters with expansion and storage tanks, backflow preventers, water hammer arrestors, water meters, relief devices, and valves including pressure reducing, isolation and balancing.
8. Plans showing layouts and sizes of compressed air piping, air compressors, air dryers, drains, etc.
9. Plans showing deionized water systems.
10. Riser diagrams for sanitary drain, waste and vent; domestic hot and cold water; deionized water; and compressed air where the system is

extensive. Risers shall be designated and keyed to the plans. Show room numbers where the outlets/inlets occur and show drain fixture units at the base of each riser. Show sizes of water hammer arrestors.

11. Details of hookups at water heaters, air compressors, etc., and roof drain installation.
12. Schedules of water heaters, air compressors, air dryers, and drains.
13. Fire Protection and Suppressions Systems performance specification in accordance with local building codes

**g. Mechanical (HVAC) Drawings**

1. Plans of each floor and roof showing double line-duct layouts, mechanical equipment location and layouts. Plans shall show ceiling-mounted lighting fixtures.
2. Plans of each floor showing chilled water, heating hot water, steam and condensate piping and piping sizes. Show provisions for expansion. (This may be shown on ductwork plans where congestion is not a problem.)
3. Provide layouts of mechanical equipment and fan rooms to a scale not less than twice that of the floor plans. Show equipment, ducts, piping, etc. to coordinate the installation in tight areas. Show access and service space requirements such as that required for tube, coil, and fan removal.
4. Provide schedules for all mechanical equipment, steam traps, air devices, etc. showing sizes, capacities, HP, CFM, electrical characteristics, locations, features, etc.
5. Provide drawings showing control schematics, automation points, etc.
6. Provide schematic diagrams of chilled and heating water, steam, and condensate piping
7. Central heating and cooling plants, distribution piping, equipment, anchors, expansion joints, etc. shall be shown as necessary to clearly describe the work
8. Provide sections as required to clearly show the work in 3 dimensions
9. Show the building loads (in BTU or pounds of steam per hour) to include transmission plus infiltration, outside air, domestic hot water, and kitchen, laundry and hospital hot water and outside air loads that are supplemental to those mentioned where applicable
10. Indicate the sensible and total air conditioning load of the building in tons. Also show the outside air portion of the cooling load in tons
11. Provide details as necessary to show fittings for duct

**h. Electrical Drawings** (Power and lighting plans may be combined if the combined drawing clearly conveys required information.)

1. Lighting plans for each floor showing approximate fixture location, type, and lighting level required (in foot candles).
2. Power distribution plans showing location of incoming service, generators, and panel boards.
3. Show interface points for communications, fire alarm, EMCS and other pertinent systems.
4. Floor proposed locations for receptacles, telephone outlets and switches.
5. Electrical plans shall list in kilowatts, electrical load total, three-phase load, motor load, and size of largest motor in horsepower.
6. Show required lighting levels in foot candles for the various areas.
7. Provide control diagrams, panel board schedules and riser diagrams.
8. Provide Lighting Fixture Schedule on the drawings
9. Fire Detection and Alarm Systems plans, distribution and controls

**3. Control Systems**

- a. Provide a written sequence of operation for each mechanical and electrical control system stating explicitly how systems are to function. - Give all pertinent data regarding safety, alarms, indicators, and control parameters. - The sequence of operations may be shown on the control diagrams in lieu of in the specification.
- b. Provide control system diagrams. - Indicate point(s) of connection of new to existing system.
- c. Indicate or describe location of operator interface (PC) unit.

**4. Specifications**

- a. AIA Master Spec format.

**5. LEED**

- a. Completed LEED checklist with documentation and calculations of how each point will be achieved. Submittal of LEED application to USGBC.

**b. PROPOSAL CLARIFICATIONS:**

1. Design drawings will be prepared in AutoCad 2006, Architectural Desktop (ADT).
2. Design will be based upon 2006 International Building Code (IBC).
3. Progress documentation will be provided to HRT according to the Interim Monthly Milestone Dates and Deliverables table at least five business days before scheduled progress meetings. Progress documentation will include progress drawings and a project status report to include general progress of each design discipline, milestones met this period, upcoming milestones, action items, and schedule. It should be understood that progress on each building system may not always be at the same rate for each discipline at the monthly progress submission. The Architect will progress each design discipline according to his discretion in order to meet the overall Design Development and Construction Documents Project Deliverable requirements and Schedule as stated herein.
4. The schedule of project Phase deliverables is defined in Exhibit A-2, "Project Schedule," and will be based on written approval of the previous phase from HRT.
5. Design services will be provided for the Bus Maintenance Facility (Building 1), Employee/Bus Parking Deck and Fuel and Wash/Fare Retrieval/Buildings and Grounds Facility (Building 2) on the current HRT owned site along 18<sup>th</sup> Street in accordance with the Concept Site Plan shown in Exhibit B. Design services for planning and development, renovation or replacement of additional HRT owned properties or properties considered for purchase or lease by HRT are not included in this Basis of Proposal but may be provided as an additional service. Design of temporary facilities are not included in this Basis of Proposal but may be provided as an additional service.
6. Conceptual design services will be performed for the Administration Building as it relates to an integrated masterplan incorporating 1500 Monticello Avenue and the City of Norfolk properties.
7. Roadway widening, new turn lanes and traffic signaling for 18<sup>th</sup> Street or other streets bordering the HRT property are not included but may be provided as additional services. Design services for curb cuts along 18<sup>th</sup> Street and modifications to the 18<sup>th</sup> Street frontage associated with the site plan are included.

8. Building exterior facades will be based upon elevations depicted for the single story bus Maintenance Facility (Option 4) of the Monthly Progress Report dated May 12, 2008. Building facades and associated landscaping will be designed to meet Norfolk standards and guidelines that are in place on the date of this proposal. Design services for alternate exterior elevation concepts that generally conform to the May 12<sup>th</sup> 2008 elevations are included. Design services for alternate elevation concepts that deviate significantly from the abovementioned elevations shall be provided as additional services.
9. Design Development services will proceed based upon Concept Schematic floor plans, elevations and site plan that have been approved in writing by the Owner.
10. In order to advance the start of construction, the design may include preparation of separate site / civil and foundation design construction packages.
11. Seismic design will not be provided as recent shear wave velocity testing has classified the soils to match Site Class Type D in accordance with 2006 IBC.
12. Interior Design services will include conceptual furniture layout, finish selections and color selections. Furniture selections are not included.
13. Review of special inspection reports will be provided in order to submit a letter to the Building Inspector to obtain an Occupancy Permit.
14. Engineering, design for site approval by the City of Norfolk including for drainage, curb, entrance aprons, sidewalk, and landscaping along 18<sup>th</sup> Street and Armistead Ave. is included. Construction and Environmental permitting will be provided by the Contractor.
15. Engineering and design changes to construction packages to accommodate a staged construction sequence is included unless such staged construction requires modifications to utility or structural design elements.
16. Cost/benefit analyses for systems options and building materials/methods proposed for meeting LEED certification requirements, including maintenance and replacement costs will be provided to HRT. The documentation provided to HRT will be those required by the USGBC LEED Version 2.2 certification documentation requirements. It is anticipated that this project will become "Certified" (26 points) or Silver Certified (33 points). Additional cost benefit analyses that are not required by LEED to meet the two levels of certification noted above are not included in this Proposal but may be provided as an additional service. The Architect will assist the contractor with cost benefit analysis related to system and building materials for the purpose of value engineering the project to the established Construction Budget.
17. The scope of work includes providing responses to Requests for Information (RFI) from contractors during the bidding process.
18. A "rendering" consists of a detailed perspective view or views of the building exterior showing materials, doors, fenestrations and other exterior building elements to give a graphic representation of the building's appearance once it is built. Detailed to scale renderings will be progressively developed from the mass model starting with the 35% design phase. The detailed renderings will include one view from 18<sup>th</sup> Street and one aerial view of the facility, depicting building scale, materials and color, and site development including landscaping on the 18<sup>th</sup> Street site. Other less detailed views may be produced from "Sketchup" software snapshots. These less detail snapshots will have less application of exterior finish detail but will accurately show the scale of the building with changes in building materials, color, fenestrations, doorways and other

major exterior components of the façade as well as major landscape elements that view includes. In addition to the number of detailed renderings identified in the scope of work, less detailed sketch-ups, by Sketchup software, noted above of alternate design layouts and concepts may be provided in response to requests from the City of Norfolk.

19. The previous mass model will be revised for the completion of the Concept Schematic Phase. A mass model shows solids and volumes of the building and their relationships to the external environment. A mass model typically does not have building materials and fenestrations applied. The mass model will be further developed into detailed renderings for the DD and CD phases.

**c. Civil Engineering**

1. Site Design Development Services will include:
  - a. Preparation of site plans at a scale of 1" = 25' showing plan view of design including site demolition, proposed paved areas including sidewalks, curb and gutter, storm drains, water mains, gravity sewer and stormwater management facilities or structures.
  - b. Proposed grading will be shown on plans.
  - c. Calculations for determining the adequacy of existing water mains and locations of fire hydrants will be performed based on test pressures provided by the City.
  - d. Calculations for identifying the adequacy of existing sanitary sewer lines will be performed. Proposed sanitary sewer lines will be sized if existing gravity sewer is considered inadequate based on discussions with the City. No pump station design or analysis will be performed.
  - e. Stormwater management and drainage calculations will be performed. Separate calculations will be performed for a) minimum stormwater management to meet state and local requirements and b) stormwater management to meet LEED requirements
  - f. Obtain input from the Federal Emergency Management Agency (FEMA) regarding federal requirements for construction within a floodplain.
  - g. Obtain input from the City of Norfolk on local requirements for construction within the floodplain.
  - h. Specifications will reference Virginia Department of Transportation (VDOT) or Hampton Roads Regional standards. Special Provisions will be prepared for items not covered by either of these documents.
  - i. No floodplain modeling will be performed.

**d. Landscape Architecture**

1. Landscape Architectural Design Services will include:
  - a. Code analysis including percentage of green space, landscape buffers and canopy coverage.
  - b. Planting design of green space on 18<sup>th</sup> Street site.
  - c. Irrigation analysis and strategies.
  - d. Coordination on bioretention strategies for a proposed stormwater treatment element near Armistead and provide planting design services for the bioretention feature.
  - e. Streetscape design of Eighteenth Street, including planting areas between the curb and the property.
  - f. Schematic design of screening walls and fences along Eighteenth Street. Design of wall footings shall be in conjunction with paving and parking structure design.
  - g. Development of one color plan view rendering of site plan and one sheet of streetscape sections/elevations for presentation purposes.
  - h. Coordination on Sustainable Site and Water Efficiency items for LEED documentation and credits.

e. **Architecture**

1. Architectural Design Development Phase Services will include:
  - a. Complete design based upon 2006 Virginia Uniform Statewide Building Code and 2006 International Building Code.
  - b. Refine preliminary plan layout to incorporate revisions from Owner comments.
  - c. Provide dimensioned plans for each structure.
  - d. Coordinate with the General Contractor during construction cost development.
  - e. Design Development Submittal (35% completion level) to include floor plans, equipment plans, elevations, building sections and wall sections for each building.
  - f. Design Development Specifications List.
  - g. Four buildings are planned:
    1. Approximately 250 space precast employee parking garage
    2. Bus Maintenance Facility utilizing structural steel framing and masonry or precast tilt-up concrete exterior walls
    3. NRV Facility utilizing load bearing masonry walls with steel joists.
    4. Fuel and Wash Facility utilizing load bearing masonry walls with steel joists.
  - h. Architectural design will be based on design approach depicted in interim agreement concepts.
  - i. Signage and Graphics Requirements  
Properly designed signage and graphics are valuable tools for promoting a safe working environment including the following tasks:
    1. Establish signage and graphics requirements including safety, directional, informational, and traffic signs and pavement markings.
    2. Mark-up plans showing suggested locations and messages for signage and graphics in maintenance areas.
  - j. Construction Document Quality Control
    1. Coordinate operational and equipment related functional requirements for human engineering and building systems and components including architectural, structural, mechanical, electrical, and plumbing.
    2. Final coordination of utility requirements for all maintenance equipment.
    3. Review architectural and engineering (civil, structural, mechanical, electrical, plumbing) design for compliance with the approved design criteria, operational/maintenance concepts, and maintenance equipment requirements.
2. Architectural Construction Documents Phase Services will include:
  - a. Complete design and documentation of architectural elements.
  - b. Coordination with General Contractor to address refinements in architectural elements during design completion.
  - c. Construction Plans for each building:
    1. Parking Garage: floor plans, equipment plans, elevations, building sections wall sections and details for building, stairs and ramp. Details will be sufficient to allow the precast supplier to complete the detailed design, detailing and fabrication of the parking garage.
    2. Bus Maintenance Facility: floor plans, equipment plans, elevations, building sections wall sections and details for building.
    3. NRV Facility: floor plans, equipment plans, elevations, building sections wall sections and details for building, stairs and ramp.
    4. Fuel and Wash facility: floor plans, equipment plans, elevations, building sections wall sections and details for building, stairs and ramp.
  - d. Construction Specifications.

- e. Structures will utilize spread footings where appropriate. At a minimum the parking garage will be on driven precast concrete piles.

f. **Structural**

1. Structural Design Development Phase Services will include:
  - a. Complete loading criteria based upon 2006 Virginia Uniform Statewide Building Code and 2006 International Building Code.
  - b. Refine estimated column sizes, footing sizes and pile layouts where applicable.
  - c. Refine estimated concrete slab-on-grade thickness and reinforcing.
  - d. Design Development Plans (35% completion level) to include foundation/slab plan, with pile layouts where applicable, roof framing plan, and mezzanine framing where applicable, for each building.
  - e. Design Development Specifications list.
  - f. Site Classification is Class D.
  - g. Structures will utilize spread footings where appropriate. At a minimum the parking garage will be on driven precast concrete piles.
2. Structural Construction Document Phase services will include:
  - a. Complete analysis and design of structural elements based on loading criteria from design development phase.
  - b. Coordinate with the General Contractor to address refinements in structural elements during the design completion.
  - c. Resolve comments from 35% submittal.
  - d. Construction Plans for each building:
    1. Parking Garage: foundation, slab and pile plan, framing plan, pile cap schedule, sections and details for building, stairs, ramp and pedestrian bridge to adjacent facility. Details will be sufficient to allow the precast supplier to complete the detailed design, detailing and fabrication of the parking garage.
    2. Bus Maintenance Facility: foundation plan, slab plan, mezzanine framing plan, roof framing plan, sections and details for footings, slabs, lift pits, framing, panels, and hoists.
    3. NRV Facility: foundation/slab plan, roof framing plan, sections and details.
    4. Fuel and Wash Facility: foundation/slab plan, roof framing plan, sections and details.
  - e. Construction Specifications: technical specifications in MasterSpec format in single package for the entire facility.

g. **Industrial**

1. Industrial Design Development Services will include:
  - a. Maintenance Equipment:

The type, quantity, location, and utility requirements of maintenance equipment are critical to the design of the maintenance facility, PB will:

    1. Update the Maintenance Equipment List based on the Design Criteria and Schematic Design. Equipment shall be listed by functional area and include a description, price, quantity, and dimensions for each equipment item. Incorporate equipment items identified as reusable on the Equipment Inventory.
    2. Develop initial Maintenance Equipment Layout Drawings that provide an efficient, cost effective, safe industrial workflow through the facility. Layouts will be prepared on AutoCAD files provided by the architect. All functional areas identified in the Equipment List to be included.

3. Obtain brochures and cutsheets on maintenance equipment (approximately 80 items).
  4. Review equipment list, cutsheets, and layouts with the client and the design team to ensure that all maintenance requirements have been addressed.
  5. Update maintenance equipment list and cost estimate to be consistent with equipment layouts, facility design, and input received during the review session.
  6. Develop Utility Requirements drawing(s) based on information developed with the client. These will be drawn on a separate layer on AutoCAD and will include locations of air, electrical and water outlets not required for equipment, vehicle exhaust system outlets, drains, special grating, and overhead door controls.
  7. Develop an Equipment Utility Requirements Matrix to assure coordination of equipment utility requirements with mechanical and electrical disciplines.
  8. Develop draft Maintenance Equipment Specifications for approximately 80 maintenance equipment items. These draft specifications are to be reviewed by the various design team disciplines during the construction document phase to insure coordination between equipment and utility requirements.
- b. Quality Control
1. Coordinate operational and equipment related functional requirements for human engineering and building systems and components including architectural, structural, mechanical, electrical, and plumbing. Items to be addressed include:
    - a. Structural details for maintenance pits, vehicle lifts, and cranes.
    - b. Lubrication and compressed air system requirements.
    - c. Waste fluids, hazardous waste, and spill containment requirements.
    - d. Vehicle exhaust location and configuration.
  2. Review architectural and engineering (civil, structural, mechanical, electrical, plumbing) design for compliance with the Design Guideline, operational/maintenance concepts, and maintenance equipment requirements.
- c. Process Piping/Special Electrical
1. Prepare Preliminary Design drawings and specifications for the below listed systems (All drawings will be prepared in AutoCAD). The Preliminary Design will illustrate and describe the systems by means of plans, engineering details, typical construction details, and equipment layouts. The specifications will identify major materials and systems and establish their quality levels.
    - a. Diesel/Unleaded Fueling.
    - b. Compressed Air.
    - c. Lubricant Distribution.
    - d. CCTV, CATV, Fire Alarm, Public Address, Voice/Data, and Access Control systems.
  2. Develop a system cost estimate based on the Preliminary Design.
  3. Compare cost estimate with the construction budget and make any adjustments necessary to keep the project within the established budget.
  4. Review the drawings and specifications with Hampton Roads Transit, as schedule requires. This shall be an informal "over-the-shoulder" review.
- d. Process Piping/Special Electrical



Prepare Bid Documents (drawings and specifications). All drawings will be prepared in AutoCAD. Each system will be described in detail in the drawings and specifications.

1. Develop system cost estimates based on the Construction Documents (drawings and specifications), as required by schedule.
2. Review the drawings and specifications with Hampton Roads Transit, as schedule requires. This shall be an informal "over-the-shoulder" review.
3. Define bid conditions and contract conditions to comply with applicable laws and regulations.

**h. Mechanical Engineering**

1. Mechanical Design Development Services will include:
  - a. Code analysis including special provisions for the bus maintenance buildings.
  - b. Preparation of load calculations for heating, cooling and ventilation loads.
  - c. Sizing and scheduling of heating, cooling and ventilation equipment.
  - d. Fire suppressions systems will be performance be specified. Hydraulic analyses shall be performed by the Contractor's selected licensed fire protection engineer.
  - e. Cooperation with WM Jordan's efforts to develop construction cost estimates for the project.
  - f. Preparation of energy analysis for LEED documentation for energy credits.
  - g. Cooperation with commissioning agent in providing design criteria, calculations, plans and data as required for the agents review.

**i. Electrical Engineering**

1. Electrical Design Development Services will include:
  - a. Code analysis for the bus maintenance buildings, including special provisions for the maintenance building.
  - b. Preparation calculations for building and site lighting footcandle requirements.
  - c. Fire alarm system design.
  - d. Lighting control system design.
  - e. Sizing of electrical service to the maintenance buildings and for site requirements.
  - f. Layout and specification of infrastructure for telephone and communication systems. Communication system design and specifications to be provided by Owners vendor.
  - g. Layout and specification of infrastructure for security systems.

**j. LEED**

1. LEED Documentation and Application Services will include:
  - a. Preparation of the LEED registration form
  - b. Complete documentation of all LEED points with supporting information required by the LEED application that the project will be applying for. A preliminary analysis has determined that this project may achieve a LEED "Certified" level.
  - c. Review of projected LEED points for constructability and procurement feasibility.
  - d. Submit Credit Interpretations to USGBC for credits that may have specific issues that are not addressed in the LEED Reference Guide.
  - e. Preparation and submission of the formal LEED application and subsequent follow up with the USGBC regarding the application, its documentation and supporting calculations.

### **THIRD AMENDMENT TO INTERIM AGREEMENT**

THIS THIRD AMENDMENT TO INTERIM AGREEMENT (this "Third Amendment"), dated as of the 19th day of November 2008, is made and entered into by and between the **TRANSPORTATION DISTRICT COMMISSION OF HAMPTON ROADS** (the "Commission") and **CONCORD EASTRIDGE, INC.**, an Arizona corporation (the "Developer"). The Commission and the Developer are sometimes referred to herein collectively as the "Parties" and each individually as a "Party."

#### **RECITALS**

A. The Commission and the Developer are parties to that certain Interim Agreement, dated January 2, 2008 (the "Agreement"), which allows the Parties to further explore the feasibility and desirability of the Proposed Project and to establish protocol for the negotiation of a comprehensive agreement.

B. Pursuant to Section 2 of the Agreement, the Agreement is only effective for one hundred twenty (120) days following the Effective Date; however, the Parties may extend the term of the Agreement if they mutually agree that such an extension is necessary to further the goals of the Agreement.

C. The Commission and the Developer entered into a letter agreement, dated May 7, 2008, referenced therein as "Amendment #1 to Interim Agreement Dated January 2, 2008" (the "First Amendment"), pursuant to which the Parties mutually agreed to extend the term of the Agreement through May 16, 2008, and to amend the Deliverables, the Budget and the Schedule, accordingly.

D. The Commission and the Developer entered into a Second Amendment to this Agreement, dated May 28, 2008 (the "Second Amendment"), pursuant to which the Parties mutually agreed to further extend the term of the Agreement through November 30, 2008, and to further amend the Deliverables, the Budget and the Schedule, accordingly.

E. In accordance with Section 2 of the Agreement, both the Commission and the Developer agree that it is necessary to again amend Section 2 of the Agreement and further extend the term of the Agreement in accordance with this Third Amendment.

F. The Parties acknowledge and agree that, in conjunction with an extension of the term of the Agreement, it is also necessary to further amend certain provisions in the Agreement, which relate to the Deliverables, the Budget, payment milestones, the Schedule, and other matters, in accordance with this Third Amendment.

#### **AGREEMENT**

In consideration of the foregoing, the Parties hereby agree as follows:

1. Defined Terms. Unless otherwise defined in this Third Amendment, capitalized terms used in this Third Amendment shall have the meanings given to those terms in the Agreement.
2. Amendment to Section 2 of the Agreement. Section 2 of the Agreement is hereby amended to further extend the term of the Agreement from November 30, 2008 through March 31, 2009. The Agreement shall continue until March 31, 2009 unless it is terminated at an earlier date pursuant to Section 6 of the Agreement. In accordance with Section 2 of the Agreement, the Parties may further extend the term of the Agreement if they mutually deem such an extension to be necessary, but neither Party shall be obligated to do so.
3. Amendment to Section 5 of the Agreement. Section 5 of the Agreement is hereby amended to increase the permissible total, not-to-exceed sum paid by the Commission to the Developer by \$925,300.00, payable in fixed monthly installments as set forth on Exhibit A-3 attached hereto.
4. Amendment to Section 8 of the Agreement. Section 8 of the Agreement is hereby amended to (i) require the Developer to ensure that all architects, engineers and design consultants engaged by the Developer to perform services related to any of the Deliverables, along with all of the firms that employ any of them, (collectively, the "Design Professionals") have the necessary licenses, expertise and experience and (ii) prohibit the Developer from making or allowing any substitutions for the Design Professionals performing such services without the prior written approval of the Commission.
5. Amendment to Section 15 of the Agreement. Subsection b of Section 15 of the Agreement is hereby amended to require the Developer to cause all of the Design Professionals to obtain and maintain in force a professional liability and errors and omissions insurance policy in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) per claim occurrence and Three Million Dollars (\$3,000,000) aggregate minimum combined claims limit, which policy may be written on a claims made form. In addition:
  - (a) Each Design Professional shall indemnify the Commission and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent arising out of the manufacture or delivery of products hereunder. The foregoing indemnity shall not apply unless the relevant Design Professional shall have been informed as soon as practicable by the Commission of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to:
    1. an infringement resulting from compliance with specific written instructions of the Commission directing a change in the supplies to be delivered or in

the materials or equipment to be used, or directing a manner or performance hereunder not normally used by the Design Professional;

2. an infringement resulting from addition to, or change in, such supplies or components furnished which addition or change was made subsequent to delivery or performance by the Design Professional; or

3. a claimed infringement which is settled without the consent of the Design Professional, unless required by final decree of court of competent jurisdiction.

(b) Each Design Professional will hold harmless and indemnify the Commission, its officers, employees, agents or authorized representatives and/or their successors, assigns and/or heirs against any and all liability, including costs, arising for injury, including personal injury to or death of any person or persons, and for any loss or damage to any person or property whatsoever, to the extent attributable to the negligent performance on the part of such Design Professional, including the acts, errors or omissions of the Design Professional, any subconsultant, employee, agency or representative of the Design Professional or subconsultant.

6. Amendment to Exhibit A of the Agreement. Exhibit A of the Agreement is hereby further amended to include additional Deliverables, upward adjustments to the Budget, adjustments to the payment milestones, and extensions to the Schedule, all as set forth on Exhibit A-3 attached hereto. The aforementioned additional Deliverables include, but are in no manner limited to, certain work to be performed by the Developer related to facilities anticipated for use by the Commission on a temporary basis while the Proposed Project is under construction.
7. Continuation of the Terms and Provisions of the Agreement. Except as specifically modified in this Third Amendment, the terms and provisions of the Agreement, as modified by the First Amendment and the Second Amendment, are hereby ratified and shall continue in full force and effect.
8. Counterparts. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
9. Headings. The section headings contained in this Third Amendment are inserted for convenience only and shall not affect in any way the interpretation of this Third Amendment.

**Exhibit A-3**

**Additional Deliverables, Upward Adjustments to the Budget, Adjustments to Payment  
Milestones and Extensions to the Schedule**

[See attached]

SHG

# EXHIBIT A-3

## Interim Monthly Milestone Dates, Deliverables to HRT, and Fixed Fees to CEI for Period: 12/1/08 through 3/31/09

Revised 02/26/09

The information contained in the matrix below is further modified by the attached description of the deliverables and scheduled qualifications. The monthly targeted deliverables are dependent on timely inputs by all team members and the actual work achieved in the project may vary from the schedule. The deliverables and fees for October and November are included for reference only and are subject to the Interim Agreement.

ACTIVITY CATEGORIES	FINAL DELIVERABLES and ready for execution	December	January	February	March
		Generate final draft of CA by Dec 15th	Present CA to O&O	Issue Final Contract Sum to CA (Early Feb)	Execute CA
1. Comprehensive Agreement	Comprehensive Agreement completed and ready for execution				
2. HRT Bus Maintenance Facility (on 18th Street property)	100% Drawings completed & ready for submission to City for site and foundation permits. Includes: - site plan - foundation drawings - MEP drawings - project narratives - equipment layout drawings	Submit 50% drawings for permit. Track building permitting process. Respond to review comments. Refine 50% drawings towards 100% set.	Track building permitting process. Respond to review comments. Refine 50% drawings towards 100% set.	Complete 100% drawings for construction. Track building permitting process. Respond to contractor inquiries. Refine 100% drawings towards 100% set. Identify and track construction start date.	Issue 100% drawings for construction. Identify and track construction start date. Respond to contractor inquiries. Refine 100% drawings towards 100% set. Identify and track construction start date.
3. Bus Maintenance Facility Pricing	Finalized Contract Sum incl. all hard & soft costs	Begin final pricing process in Dec. 12th. Refine hard and soft costs.	Complete final bid process. Obtain hard bids from subcontractors. Finalize construction contract with WM Jordan. Finalize soft costs.	Execute construction contract. Complete construction contract. Complete construction contract.	Complete construction contract. Complete construction contract. Complete construction contract.
4. HRT Administration Building (on 1000 Monticello property and/or integrated with adjacent City parcels)	Completed conceptual design for Admin. as part of a mixed-use private sector project	Develop schematics based on conceptual design for Admin. as part of a mixed-use private sector project. Continue dialogue with City on mixed-use development. Determine if City parcels are to be included. Update estimated pricing if location is established.	Develop schematics based on conceptual design for Admin. as part of a mixed-use private sector project. Continue dialogue with City on mixed-use development. Determine if City parcels are to be included. Update estimated pricing if location is established.	Develop schematics based on conceptual design for Admin. as part of a mixed-use private sector project. Continue dialogue with City on mixed-use development. Determine if City parcels are to be included. Update estimated pricing if location is established.	Develop schematics based on conceptual design for Admin. as part of a mixed-use private sector project. Continue dialogue with City on mixed-use development. Determine if City parcels are to be included. Update estimated pricing if location is established.
5. Administration Building Pricing	Conceptual pricing estimate (excluding Admin. Bldg. as part of a mixed-use development)	Track site plan permitting process. Submit and track demolition permit plan. Respond to review comments. Refine and resubmit drawings. Coordinate with utility companies. Track site plan permitting process.	Track site plan permitting process. Submit and track demolition permit plan. Respond to review comments. Refine and resubmit drawings. Coordinate with utility companies. Track site plan permitting process.	Track site plan permitting process. Submit and track demolition permit plan. Respond to review comments. Refine and resubmit drawings. Coordinate with utility companies. Track site plan permitting process.	Track site plan permitting process. Submit and track demolition permit plan. Respond to review comments. Refine and resubmit drawings. Coordinate with utility companies. Track site plan permitting process.
6. Signage - Newspaper (for Bus Maintenance Facilities only)	Completed Site Plan for 18th Street project ready for submission to City for the permit	Update schedules. Included in item #4 above.	Update schedules. Included in item #4 above.	Update schedules. Included in item #4 above.	Update schedules. Included in item #4 above.
7. Project Schedules - Phases 1 & 2	Schedule incl. ent. review & transmission notes	Update schedules. Included in item #4 above.	Update schedules. Included in item #4 above.	Update schedules. Included in item #4 above.	Update schedules. Included in item #4 above.
8. Negotiation with the City for its land parcels as part of Phase 2 Mixed-Use Dev	Continued negotiations with the City to integrate its land into a mixed-use development	Services provided under a separate agreement.	Services provided under a separate agreement.	Services provided under a separate agreement.	Services provided under a separate agreement.
9. Temporary Facilities (for Initial Location of Maintenance Facilities)	Ongoing assistance to HRT in the search and relocation of temporary facilities	Refine scope of work for remediation.	Refine scope of work for remediation.	Refine scope of work for remediation.	Refine scope of work for remediation.
10. Environmental Survey, Permits (Phase 1 SNF only)	Completed Environmental Phase I Report. Completed landscape and street surveys.	Update documentation. Included in item #13 below.	Update documentation. Included in item #13 below.	Update documentation. Included in item #13 below.	Update documentation. Included in item #13 below.
11. LEED Certification (Phase 1 SNF only)	LEED documentation	Update documentation. Included in item #13 below.	Update documentation. Included in item #13 below.	Update documentation. Included in item #13 below.	Update documentation. Included in item #13 below.
12. Re-Zoning Process (Phase 2 Mixed-Use Dev, as needed)	Initiation of re-zoning process as may be necessary for private sector mixed-use project	Update documentation. Included in item #13 below.	Update documentation. Included in item #13 below.	Update documentation. Included in item #13 below.	Update documentation. Included in item #13 below.
13. Mixed-Use Development Phase 2 Dev	Completed conceptual design for mixed-use project for integration with the City's land parcels, or on just HRT's 1450 Monticello property	Update documentation. Included in item #13 below.	Update documentation. Included in item #13 below.	Update documentation. Included in item #13 below.	Update documentation. Included in item #13 below.
Categories of Services					
Architecture	191,000	80,000	80,000	80,000	80,000
Industrial Design	15,000	15,000	15,000	15,000	15,000
Structural Engineering	23,500	23,500	23,500	23,500	23,500
Mechanical Engineering	23,500	23,500	23,500	23,500	23,500
Electrical Engineering	23,500	23,500	23,500	23,500	23,500
LEED Documentation and Commissioning	23,500	23,500	23,500	23,500	23,500
AS/E Commissioning	23,500	23,500	23,500	23,500	23,500
AS/E Fees for Temporary Facilities	23,500	23,500	23,500	23,500	23,500
Legal/Insurance	23,500	23,500	23,500	23,500	23,500
Environmental, Survey, Permits	23,500	23,500	23,500	23,500	23,500
Project Management (CEI)	23,500	23,500	23,500	23,500	23,500
Expense Allocation***	23,500	23,500	23,500	23,500	23,500
Preconstruction Services**	23,500	23,500	23,500	23,500	23,500
Developer Contingency****	23,500	23,500	23,500	23,500	23,500
Subtotal	23,500	23,500	23,500	23,500	23,500

\* All permit fees shall be paid directly by HRT during the Interim Period (12/1/08 - 3/31/09). Any unspent amount in this item shall be applied to the overall Project Contingency under the Comprehensive Agreement.

\*\* Fees earned during the Interim Period (12/1/08 - 3/31/09) will be credited towards the respective overall Project Fees that will be defined under the Comprehensive Agreement.

\*\*\* Line items shall be reconciled at the end of the Interim Period (12/1/08 - 3/31/09) and any unspent amount will be applied to the overall Project Expense Allocations under the Comprehensive Agreement.

\*\*\*\* Line items shall be reconciled at the end of the Interim Period (12/1/08 - 3/31/09) and any unspent amount will be applied to the overall Developer Contingency under the Comprehensive Agreement.

SHS



3400 Victoria Boulevard, Hampton, Virginia 23661  
Phone: 757-222 6000 ~ Southside Fax: 757 222-6103  
Peninsula Fax: 757 222 6195 ~ [www.hrtransit.org](http://www.hrtransit.org)

March 31, 2009

Mr. Jeffrey Arnold  
Concord Eastridge, Inc.  
901 N. Glebe Road, Suite 350  
Arlington, VA 22203

RE: RFP #07-45506 New Southside Facility, A Public-Private Partnership  
Fourth Amendment to Interim Agreement dated January 2, 2008

Dear Mr. Arnold,

This letter shall serve as a fourth amendment (the "Fourth Amendment") to the Interim Agreement between the Transportation District Commission of Hampton Roads (the "Commission") and Concord Eastridge, Inc. (the "Developer"), dated January 2, 2008 (as amended, the "Interim Agreement").

The Third Amendment to Interim Agreement, dated November 19, 2008 (the "Third Amendment"), among other things, extended to March 31, 2009 the term of the Interim Agreement. Upon entering into the Third Amendment, the parties anticipated entering into a Comprehensive Agreement on or before the expiration of the extended term. However, due to factors beyond the control of the Commission and the Developer, entry into a Comprehensive Agreement has been delayed and is currently projected to occur in late May 2009. Therefore, it is necessary to further extend the term of the Interim Agreement to May 31, 2009, so that planning and design work related to the temporary facility and pre-construction activities for the new permanent facility can proceed. Accordingly, this Fourth Amendment extends the term of the Interim Agreement to May 31, 2009 and Exhibit A-4 (attached) outlines the additional work activities and payment schedule for April 2009 and May 2009, totaling \$624,835.

A reconciliation of payments made to date to the Developer under the Interim Agreement as of January 31, 2009, and attached as Schedule 1, has identified \$564,500 in unused contingency funds and other monies related to permits, fees, and expenses not incurred as anticipated. This Fourth Amendment reallocates this \$564,500 to the work detailed in Exhibit A-4, and increases the Interim Agreement by another \$60,335 to fully cover the \$624,835 per Exhibit A-4. The \$564,500 from Schedule 1 shall be applied to invoices submitted under this Amendment until exhausted.

The total contract sum under the Interim Agreement is therefore increased to \$5,966,281 and the completion date is extended to May 31, 2009. Furthermore, except as

Mr. Jeffery Arnold  
Fourth Amendment to Interim Agreement  
March 31, 2009  
Page Two

specifically modified in this Fourth Amendment, the terms and provisions of the Interim Agreement shall continue in full force and effect.

If the terms of this Fourth Amendment are acceptable, please have the enclosed copy of this letter executed on behalf of the Developer and returned to my attention.

Sincerely,

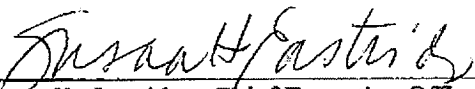
  
Michael S. Townes  
President/CEO

/enclosure

copy: Cheryl Openshaw  
Wright Parkes  
Larry Davenport  
Jayne Whitney  
Doc-Center

AGREED:

CONCORD EASTRIDGE, INC.

By:   
Susan H. Eastridge, Chief Executive Officer

Date: 3/31/2009

ED001



# **EXHIBIT A-4**

## **Interim Monthly Milestones Dates, Deliverables to HRT, and Fixed Fees to CEI for Period: 4/1/09 through 5/31/09**

The monthly targeted deliverables are dependent on timely inputs by all team members and the actual work achieved in the preceding month.

ACTIVITY CATEGORIES		April	May
1. Comprehensive Agreement		Finalize CA and Contract price Present CA to O&O Post CA for public comment	Execute CA at the end of May pending final approvals by O&O and Commission
2. HRT Bus Maintenance Facility (on 18th Street property)		Present 18th Street elevations to Design Review Committee (DRC) Incorporate DRC comments into design documents Subsequent presentations to DRC as necessary Incorporate 18th Street Enhancements into building plans pending requests approvals by HRT and the City	Subsequent presentations to DRC as necessary Incorporate DRC comments into design documents as necessary Follow up on the following tasks if not completed in April - Incorporate 18th Street Enhancements into building plans pending requests approvals by HRT and the City
3. Bus Maintenance Facility Pricing		Obtain Phase One 100% CO hard bid verifications from subcontractors	NA
4. HRT Administration Building (on 1888 Monticello property and/or integrated with adjacent City parcels)		Present conceptual design to Design Review Committee (DRC) Subsequent presentations to DRC as necessary Incorporate DRC comments into design documents Conduct design workshop to finalize programming	Follow-up presentations to DRC as necessary Incorporate DRC comments into design documents as necessary Develop conceptual / block floor plan layouts
5. Administration Building Pricing		NA	NA
6. Sitemap / Masterplan (for Bus Maintenance Facilities only)		Incorporate design impacts of Admin Bldg into the site plan Submit site permit pending design completion and timely and requests input and approvals by HRT and the City	Incorporate design impacts of Admin Bldg into the site plan if necessary, submit site permit pending design completion and timely and requests input and approvals by HRT and the City
7. Project Schedules - Phases 1 & 2		Update schedules	Update schedules
8. Negotiation with the City for its land parcels as part of Phase 2 Mixed-use Dev		NA	NA
9. Temporary Facilities (for interim relocation of Maintenance Facilities)		Complete site and building plans pending timely input and requests approvals by HRT Track status of site survey, scheduled for completion in April Begin competitive pricing Anticipated site and building permit submissions pending timely completion of design documents and requests input and approvals by HRT and the City	Track status of site survey, scheduled for completion in April Finalize Pricing Anticipated site and building permit submissions pending timely completion of design documents and requests input and approvals by HRT and the City
10. Environmental, Survey, Permits (Phase 1 BMAP only)		NA	NA
11. LEED Certification (Phase 1 BMAP only)		NA	NA
12. Rezoning Process (Phase 2 Mixed-use Dev, as needed)		NA	NA
13. Mixed-Use Development Phase 2 Dev		NA	NA
	Total Fixed Fees for April-May '09	April	May
Phase 1			
Design	30,000	5,000	5,000
FFR Scope (coordination)	15,000	15,000	-
Consulting	2,000	2,000	-
Permitting	30,000	-	10,000
Dev Mgmt	280,435	244,435	36,000
Overhead & Expenses	30,000	15,000	15,000
Subtotal Phase 1	348,435	280,435	66,000
Temp Facility			
Design	112,000	112,000	17,000
Dev Mgmt (prior to move)	30,000	30,000	-
Subtotal Temp Facility	142,000	142,000	17,000
18th Street Enhancements			
Design	60,000	40,000	20,000
Dev Mgmt	2,400	1,600	800
Subtotal 18th Street Enhancements	62,400	41,600	20,800
Admin Bldg			
Design	30,000	25,000	25,000
Dev Mgmt	2,000	1,000	1,000
Subtotal Admin Bldg	32,000	26,000	26,000
Total 4th Interim Period Budget	624,835	495,035	129,800

Hampton Roads Transit  
New Southside Bus Maintenance Facilities  
Updated 3/26/09

Fourth Amendment to the Interim Agreement; Schedule 1 - Reconciliation of Fees

	Thru End Jan Total Fixed Fees	Thru End Jan Total Actual	Variance	Feb 09 Fixed Fees	Mar 09 Fixed Fees
1 Architecture	1,820,900	1,759,016	61,884	62,000	5,000
2 Industrial Design	379,000	343,824	35,176	15,000	2,000
3 Structural Engineering	245,225	230,279	14,946	7,300	2,000
4 MEP	659,500	622,214	37,286	21,000	3,500
5 Civil Engineering	579,100	558,501	20,599	6,800	2,000
6 LEED Documentation and Commissioning	303,000	4,650	298,350	7,000	5,000
7 A/E Coordination	376,000	351,362	24,638	9,000	3,500
8 A/E for Temporary Facilities	35,000	61,004	(26,004)	12,500	12,500
9 Legal/Insurance	57,000	41,203	15,797	6,000	6,000
10 Geotech, Environmental, Survey, Permits	195,000	56,005	138,995	-	-
11 Project managemnt (CEI)	500,000	500,000	-	100,000	110,000
12 Direct Expenses & Overhead	147,000	215,528	(68,528)	1,000	1,000
13 Preconstruction Services	67,000	67,000	-	10,000	10,000
14 Developer Contingency	112,121	100,639	11,482	5,000	5,000
15 Subtotal	5,475,846	4,911,225	564,621	262,600	167,500

## **Exhibit R-L**

### **Commission Approval of Agreement**

**TRANSPORTATION DISTRICT COMMISSION OF HAMPTON ROADS**

**RESOLUTION NO. \_\_\_\_**

WHEREAS, on January 26, 2006, the Commission adopted and made publicly available guidelines (the "Guidelines") establishing procedures for the development of public facilities through public-private partnerships satisfying the Public-Private Education Facilities and Infrastructure Act of 2002, Virginia Code §§ 56-575.1, *et seq.* (as amended, the "PPEA");

WHEREAS, in adopting the Guidelines, the Commission acknowledged that (i) it had an urgent and high-priority need to replace its existing facilities at 509 E. 18<sup>th</sup> Street and 1500 Monticello Avenue (the "Norfolk Facilities") in the City of Norfolk, Virginia (the "City"); (ii) it lacked adequate financial resources to accomplish the replacements in a timely fashion under traditional procurement methodologies; and (iii) the Norfolk Facilities are situated on properties in an area of the City that may be suitable for private development in a manner that makes such properties attractive to private entities and that complements the City's land use plans;

WHEREAS, the Commission determined in writing by Resolution Number 03-2006, dated January 26, 2006, that proceeding with procurement of the new Southside administrative, operations and maintenance facility under the PPEA is likely to be advantageous to the public and that use of "competitive negotiation" procedures under the PPEA and the Guidelines for the new Southside administrative, operations and maintenance facility is likely to be more advantageous to the Commission and the public based upon (i) the probable scope, complexity or urgency of the new Southside administrative, operations and maintenance facility, or (ii) risk sharing, added value, an increase in funding or economic benefit from the new Southside administrative, operations and maintenance facility that would not otherwise be available;

WHEREAS, on May 22, 2007, the Commission issued a request for proposals for a public-private partnership for a new Southside administrative, operations and maintenance facility, RFP #07-45506 (the "RFP");

WHEREAS, at the direction of the Commission, the President/CEO engaged the services of qualified professionals not employed by the Commission to assist with conducting the solicitation and to provide independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any proposals received by the Commission in response to the RFP;

WHEREAS, on July 24, 2007, in response to the RFP, CEI Development, LLC (the "Developer"), a private entity, submitted to the Commission a proposal (the "Proposal") for the redevelopment of the aforementioned properties in the City. The Commission, after evaluation, considered the Proposal to be worthy of further investigation and detailed review;

WHEREAS, on January 2, 2008, the Commission and the Developer entered into an interim agreement (as amended from time to time, the "Interim Agreement") to allow the parties to further explore the feasibility and desirability of the proposed public-private partnership, to

establish rights and obligations of the parties related thereto, and to establish a process and timetable for next steps in the consideration of a possible comprehensive agreement between the parties. To allow additional time for negotiation of a possible comprehensive agreement and to permit project design and engineering to progress in timely fashion, the Interim Agreement was amended by the parties on May 7, 2008, again on May 28, 2008, again on November 19, 2008, and again on March 31, 2009;

WHEREAS, as a result of the Proposal and subsequent discussions, and in light of the work performed and analyses made pursuant to the Interim Agreement, the Commission waived the submission of a detailed proposal and negotiated with the Developer a comprehensive agreement pursuant to the PPEA and the Guidelines for the contemplated project;

WHEREAS, the Commission and the Developer have now negotiated a comprehensive agreement consistent with the PPEA, the Guidelines, and other applicable law and regulation; and

WHEREAS, the negotiated but unexecuted comprehensive agreement has been made publicly available by posting in the manner provided in Virginia Code §56-575.17(C), as amended.

NOW, THEREFORE, BE IT RESOLVED BY THE TRANSPORTATION DISTRICT COMMISSION OF HAMPTON ROADS THAT:

1. A new Southside facility to be developed, designed and constructed by the Developer on the Commission's real property situated at 509 East 18<sup>th</sup> Street in the City, along with the planned ground lease or sale of approximately 2.1 acres of the Commission's real property situated at 1500 Monticello Avenue in the City for development by the Developer for private purposes, all pursuant to a public-private partnership under the PPEA in accordance with the terms of a comprehensive agreement substantially in the form attached hereto as Exhibit A (the "Comprehensive Agreement"), serve the public purpose of the PPEA under the criteria of Virginia Code §56-575.4(C), as amended.

2. The Commission's entry into the Comprehensive Agreement with the Developer will serve the best interests of the Commission.

3. The Commission approves the Comprehensive Agreement for entry, execution and delivery on the part of the Commission, consistent with the terms hereof.

4. The President/CEO of the Commission is authorized and directed, on May \_\_, 2009, in the name and on behalf of the Commission, to execute and deliver the Comprehensive Agreement, along with all other agreements and documents referenced therein and contemplated thereby, and to take any and all other such actions as he shall deem necessary or advisable to carry out the purposes of the foregoing resolutions.

5. This Resolution is adopted and is effective as of May \_\_, 2009.

TRANSPORTATION DISTRICT COMMISSION  
OF HAMPTON ROADS

\_\_\_\_\_  
\_\_\_\_\_, Chairman

Attest:

\_\_\_\_\_  
Secretary

7052194\_3.DOC

## **Exhibit 1.2**

### **Definitions**

## EXHIBIT 1.2

### Definitions for Contract Documents

For the purposes of the Contract Documents, the following words and terms shall have the meanings specified below (other words and abbreviations that have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings), provided, however, that capitalized terms defined in other Contract Documents, including but not limited to the Agreement, shall have the meanings specified in such document.

1. “*Agreement*” means the executed Comprehensive Agreement between Commission and Developer, inclusive of all exhibits and attachments.
2. “*Agreement Date*” means the date referenced in the initial paragraph of the Agreement.
3. “*Application for Payment*” means an application for payment as defined in Section 6.2 of the General Conditions.
4. “*Authorized Commission Representative*” means any person designated in writing by the Commission’s President to act on behalf of Commission.
5. “*Authorized Developer Representative*” means any person designated to act on behalf of Developer by a certificate signed by its President and filed with Commission.
6. “*Business Day*” means a Day other than a Saturday, Sunday or any other Day that Commission’s administrative offices are not open for regular business.
7. “*Change Order*” means a written order to Developer signed by Commission, issued after execution of the Agreement, authorizing a change in the Work or an adjustment in the Contract Price and/or the Contract Time(s).
8. “*City*” means the City of Norfolk, Virginia.
9. “*Commission*” means The Transportation District Commission of Hampton Roads, a Transportation District Commission created pursuant to the Virginia Transportation District Act of 1964, its Governing Board of Commissioners, its employees and other duly authorized representatives, as the context may require.
10. “*Commission Indemnatee*” means and includes Commission and all of its elected representatives, appointed officials, officers, employees, authorized agents and authorized representatives.
11. “*Commission’s Project Criteria*” means the project criteria developed by or for Commission to describe Commission’s program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal



requirements and other requirements governing Developer's performance of the Work. Commission's Project Criteria are included in the RFP and may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

12. "*Commonwealth*" means the Commonwealth of Virginia.

13. "*Construction Documents*" means Developer's construction documents for Phase One dated March 1, 2009. A listing of the drawings included in the Construction Documents is set forth in Exhibit 4.2(a) of the Agreement

14. "*Contract Documents*" means the following, in the order of priority:

- (a) All written amendments to the Agreement;
- (b) Agreement;
- (c) All written modifications to the General Conditions;
- (d) All change orders issued in accordance with these General Conditions;
- (e) General Conditions;
- (f) Construction Documents;
- (g) RFP; and
- (h) Proposal.

15. "*Contract Price*" means the price that Commission will be obligated to pay Developer as full compensation for the Work associated with Phase One, subject to terms and conditions contained the Contract Documents. The Contract Price is set forth on Exhibit 5.1(a) to the Agreement.

16. "*Contract Time*" means any milestone date on the Project Schedule, including but not limited to the Guaranteed Completion Date.

17. "*Contractor*" means the Subcontractor with overall responsibility for the construction Work. Contractor shall be the Virginia-licensed General Contractor W.M. Jordan Company.

18. "*Critical Path*" means the longest continuous path between the first and the last event of the Project shown on the Payment Schedule (or, if more than one such path exists, each such path).

19. "*Day*" or "*Days*," whether capitalized or not, means calendar days unless otherwise specifically noted.

20. “*Developer*” means CEI Development, LLC, a Virginia limited liability company, which is a party to the Agreement and is acting as the private entity under the PPEA and the Guidelines.

21. “*Design Consultant*” means a qualified, licensed design professional, eligible to provide professional engineering, architectural and/or land surveying services in the Commonwealth, who is not an employee of Developer, but is retained by Developer, or employed or retained by anyone under contract with Developer or a Subcontractor, to furnish design services required under the Contract Documents.

22. “*Differing Site Condition*” shall have the meaning given to such term in Section 4.3.2 of the General Conditions.

23. “*Field Order*” means a written order to Developer signed by Commission directing Developer to perform minor changes in the Work.

24. “*Final Acceptance*” means final acceptance by Commission of the Work on the Project or a portion thereof.

25. “*Final Completion*” means Developer has completed all Work, to include punch list items and provision of operating manuals and as-built data, for the Work or a portion thereof, as completed and in place.

26. “*Force Majeure*” means any event (provided such event is beyond the control of Developer and is not due to an act or omission of Developer) which materially and adversely affects Developer’s obligations hereunder and which event (or the effects of such event) could not have been avoided by due diligence and use of reasonable efforts by Developer, including but not limited to the following:

(a) Any tidal wave, hurricane force wind, flood, tornado or earthquake or unusually severe and abnormal weather conditions, with such weather conditions being established pursuant to Section 8.4 of the General Conditions;

(b) Any epidemic, blockade, rebellion, war, riot or act of sabotage, terrorism or civil commotion;

(c) Any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence, except as excluded under subsection (i) below;

(d) Any unreasonable delay by a utility owner in connection with a utility connection;

(e) Any change in or new enactment of any written Legal Requirements, or change in the judicial or administrative interpretation of, or adoption of any new Legal Requirements which is materially inconsistent with Legal Requirements in effect on the Agreement Date (subject to the exclusions set forth below); and

(f) Any court order which restrains, enjoins, challenges or delays performance of the Work or the granting or renewal of any Governmental Approval, including any order delaying completion of condemnation proceedings or relocation beyond the time periods provided by law.

The term "Force Majeure" specifically excludes from its definition the following matters which might otherwise be considered force majeure:

(i) Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence particular to Developer, any Subcontractor or the Project except any such event affecting a supplier's work solely at locations other than the Site;

(ii) The presence at, near or on the Site of any Hazardous Materials;

(iii) Differing Site Conditions;

(iv) The suspension, termination, interruption, denial or failure to obtain or non-renewal of any permit, license, consent, authorization or approval which is necessary for the performance of the Work or the operation or maintenance of the Project;

(v) A change in any Legal Requirements (such as increase in tax rates) which causes an increase in amounts payable by Developer for deliverables but which does not change the obligations to be performed by Developer hereunder, provided however that this exclusion shall not apply with respect to any increase in the state sales tax enacted by the General Assembly or by local or regional referendum;

(vi) Any lawsuit relating to any Governmental Approval which is Developer's risk under the General Conditions, except as provided in subsection (f) above;

(vii) Directed Changes; and

(viii) Any cost risk (including cost of delay) for which coverage is to be provided through insurance required hereunder.

**27.** "FTA" means the Federal Transit Administration of the United States Department of Transportation.

**28.** "General Conditions" means Exhibit 1.3(a) to the Agreement.

**29.** "Governmental Approval" means any authorization, consent, approval, license, lease, ruling, permit, certification, exemption, or registration by or with any Governmental Unit.

**30.** "Governmental Unit" means any national, state or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other entity having jurisdiction over the performance of the Work, the Project or the parties, including but not limited to the Commission.

31. “*Guaranteed Completion Date*” means the guaranteed completion date of Phase One as reflected on the Project Schedule and as referenced in Section 3.4 of the Agreement.

32. “*Guarantor*” means Concord Eastridge, Inc., an Arizona corporation, which is a guarantor pursuant to the terms of the Guaranty.

33. “*Guaranty*” means the guaranty agreement executed by the Guarantor and referenced in Section 6.2(b) of the Agreement, the form of which is set forth as Exhibit 6.2(b) to the Agreement.

34. “*Guidelines*” means the PPEA Guidelines adopted and made publicly available by Commission on January 26, 2006.

35. “*Hazardous Materials*” means any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

36. “*HS&W Program*” means Developer’s health, safety and welfare program as described in Section 2.11 of the General Conditions.

37. “*Interim Agreement*” means the interim agreement between Commission and Concord Eastridge, Inc., an affiliate of Developer, dated January 2, 2008, as amended on May 7, 2008, again on May 28, 2008, again on November 19, 2008, and again on March 31, 2009, copies of all of which are attached to the Agreement as Exhibit R-I.

38. “*Interim Milestone*” means completion and delivery dates for parts of the Work specified by the Contract Documents.

39. “*Lead Designer*” means the Design Consultant engaged by Developer as the lead subcontracted professional design firm that will provide certain architectural and engineering services for the Project, including, without limitation, its design. The Lead Designer will serve as architect and engineer of record for the Project. The Virginia-licensed design firm Parsons Brinkerhoff shall serve as Lead Designer.

40. “*LEED*” means the Leadership in Energy and Environmental Design Green Building Rating System developed by the United States Green Building Council, pursuant to which structures may be certified at various levels.

41. “*Legal Requirements*” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any Governmental Unit.

42. “*New Southside Facility*” means the new operations and maintenance facility to be developed, designed and constructed at the Site as Phase One pursuant to the Contract Documents.

43. “*Notice to Proceed*” means Commission’s notice to Developer authorizing Developer to proceed with construction of Phase One.

44. “*Notice of Termination*” means a notice issued by Commission to terminate the Agreement and the performance of the Work or portions thereof by Developer pursuant to Article IX of the Agreement.

45. “*Payment Schedule*” means a payment schedule that is (i) derived from and is consistent with the Project Schedule and (ii) described in Section 6.1 of the General Conditions.

46. “*Person*” means any individual, public or private corporation, county, district, authority, municipality, political subdivision, commission or other entity of the Commonwealth or the United States of America, and any corporation, limited liability company, partnership, association, firm, trust, estate, or any other entity whatsoever.

47. “*Phase I Environmental Investigation Report*” means the Site study report dated March 16, 2006 that meets the requirements of 42 U.S.C. Section 96.01 (35)(B), as amended, and at a minimum, meets the requirements of ASTM Standard 1527-00.

48. “*Phase II Environmental Investigation Report*” means the Site study report dated September 18, 2008 that meets the requirements of 42 U.S.C. Section 96.01 (35)(B), as amended, and at a minimum, meets the requirements of ASTM Standard 1903-97.

49. “*Phase One*” means the first phase of the Project, which is described in Section 2.1 of the Agreement.

50. “*Phase One-A*” means the second phase of the Project, which is described in Section 2.2 of the Agreement.

51. “*Phase Two*” means the third phase of the Project, which is described in Section 2.3 of the Agreement.

52. “*PPEA*” means the Public-Private Education Facilities and Infrastructure Act of 2002, Virginia Code §§56-575.1, *et seq.*, as amended.

53. “*Project*” means the development, site design and development, and design and construction on the Site of Phase One, Phase One-A and Phase Two which Developer shall perform or cause to be performed in accordance with the Agreement. “Project” includes both the entirety of the Project or a part thereof, as the context may require.

54. “*Project Schedule*” means the schedule for the Project as described in Article III of the Agreement. The Project Schedule shall include, among other things, the Guaranteed Completion Date for Phase One.

55. “*Proposal*” means the proposal document and accompanying materials submitted to Commission by Developer pursuant to the RFP on July 24, 2007.

56. “*Proposed Change Order*” or “*PCO*” means a written proposed change order submitted by Developer to Commission in accordance with Article 9 of the General Conditions.

57. “*QA Manager*” or “*QAM*” means Developer’s designee responsible for providing quality assurance and quality control of the Work, and ensuring conformance with the Contract Documents.

58. “*QA/QC*” means quality control and quality assurance for both the design and construction elements of the Work and the Project.

59. “*QA/QC Plan*” means a plan that details how Developer will provide quality control (QC) and quality assurance (QA) for both the design and construction elements of the Work and the Project, obtain samples for Developer quality control testing, perform tests for Developer quality control, provide inspection, and exercise management control (e.g., quality assurance testing) to ensure the Work conforms to the requirements of the Contract Documents.

60. “*Request for Information*” or “*RFI*” means a Developer-initiated request, in writing, seeking a clarification or information.

61. “*Request for Proposals*” or “*RFP*” means the request for proposals #07-45506 issued by Commission on May 22, 2007, for a public-private partnership for a new Southside administrative, operations and maintenance facility.

62. “*RFP Documents*” means those documents identified in the RFP.

63. “*Separate Contractor*” means a contractor retained by Commission other than Developer to perform work or to provide services or materials in connection with the Project.

64. “*Site*” means the land or premises on which the Project (or a portion thereof, as the context may require) is located. The Site for each of Phase One, Phase One-A and Phase Two is identified in Article II of the Agreement.

65. “*Subcontract*” means any and all agreements between Developer and its Subcontractors and other agreements between Subcontractors and Sub-Subcontractors (and/or any other lower tier subcontractors), it being the intent that this term encompasses all agreements deriving directly or indirectly from Developer, in connection with the performance of the Work.

66. “*Subcontractor*” means any person or entity retained by Developer as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

67. “*Sub-Subcontractor*” means any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor’s Work and shall include materialmen and suppliers.

**68.**     “*Substantial Completion*” shall have the meaning given to such term in Section 6.6 of the General Conditions. It is intended that, as of Substantial Completion, Commission will have full and unrestricted use and benefit of the Work (or, if applicable, an agreed upon portion of the Work), from both an operational and safety standpoint, with only minor incidental Work remaining to be performed, corrected or repaired (*i.e.*, punch list items).

**69.**     “*Work*” means all of the development, design, pre-construction and construction for the Project as defined by the Agreement, including procuring and furnishing all materials, equipment, services, permits and the labor set out in the Contract Documents, or reasonably inferable therefrom, and not expressly excluded by the Agreement or its exhibits, all of which Developer shall perform or cause to be performed. “*Work*” includes the entirety of “*Work*” or any portion thereof, as applicable from the context. The parties acknowledge and agree that the Work shall be performed in stages as related to Phase One, Phase One-A and Phase Two. Accordingly, the term “*Work*” as used in the Contract Documents shall be deemed to apply to each applicable stage of the Project as such stage is designed and constructed. Without limitation the Work (i) for Phase One-A may be modified consistent with any amendment or Change Order to be agreed upon for the Phase One-A Work and (ii) shall not include any Phase Two Work until the final terms and conditions thereof have been expressly agreed upon as contemplated by Section 2.3 of the Agreement.

**70.**     “*Work Product*” means all designs, drawings, specifications, calculations, reports, and documentation, whether in paper copy or electronic format, produced by or through Developer that is furnished to Commission. “*Work Product*” shall include but not be limited to the Construction Documents.

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**Exhibit 1.3(a)**

**General Conditions**



## EXHIBIT 1.3(a)

### General Conditions

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## **Article 1**

### **General**

#### **1.1 Mutual Obligations**

**1.1.1** Commission and Developer commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents. To the extent requirements, rights and obligations have not been addressed in the Contract Documents, the parties agree to carry out their respective responsibilities in the spirit of cooperation contemplated by the PPEA, recognizing that they may not have defined in sufficient detail or anticipated fully all activities necessary for the full implementation of the Project.

#### **1.2 Definitions**

**1.2.1** All capitalized terms used in these General Conditions and the other Contract Documents shall have the meanings set forth in Exhibit 1.2 to the Agreement unless otherwise expressly defined within such Contract Document.

#### **1.3 Order of Precedence**

**1.3.1** All Work is to be performed in compliance with the Contract Documents, as they are intended to be complementary and together constitute a complete contract. Unless otherwise specified in the Contract Documents or by the Commission, any reference in the Contract Documents to a described publication affecting any portion of the Work shall be deemed to mean the latest edition or revision thereof and amendments and supplements thereto in effect on the Agreement Date.

**1.3.2** In the event of a conflict among the Contract Documents, the order of precedence as set forth in the definition of Contract Documents in Exhibit 1.2 to the Agreement shall prevail.

**1.3.3** Notwithstanding the order of precedence set forth above, Governmental Approvals obtained by the Commission which constitute contract requirements shall have the highest priority in the order of precedence.

**1.3.4** These General Conditions shall apply to the Phase One Work as defined in the Comprehensive Agreement and may be modified as needed and appropriate for Phase One-A and Phase Two.

**1.3.5** All parties acknowledge and agree that where the Developer is required to perform (or not perform) an act or otherwise comply with these general obligations, the Developer in many if not most instances will not perform that act directly, but shall cause others (such as the Contractor or Lead Designer) to accomplish such items, and that this shall constitute satisfactory compliance with Developer's obligations under this Agreement.

## **Article 2**

### **Developer's Services and Responsibilities**

#### **2.1 General**

**2.1.1** Developer shall furnish or cause to be furnished all design, engineering and other services, provide or cause to be provided all materials, equipment and labor and undertake or cause to be undertaken all efforts necessary or appropriate (excluding only those materials, equipment, labor, services and efforts which these General Conditions specify will be undertaken by other Persons) to design and construct the Project in accordance with the requirements of the Contract Documents, the Payment Schedule, all Governmental Approvals, the approved QA/QC Plan, the approved HS&W Program, and all other applicable safety, environmental and other requirements set forth in the Contract Documents, so as to achieve Final Acceptance by the Guaranteed Completion Date, and otherwise to do in a timely manner everything required by and in accordance with the Contract Documents.

**2.1.2** Developer shall at all times provide or cause to be provided an Authorized Developer Representative approved by the Commission who will have responsibility for the prosecution of the Work and who will act as a single point of contact in all matters on behalf of Developer. The Authorized Developer Representative shall be reasonably available to Commission and shall have the necessary expertise and experience required to supervise the Work. The Authorized Developer Representative shall communicate regularly with Commission and shall be vested with the authority to act on behalf of Developer. The Authorized Developer Representative may be replaced only by the mutual agreement of Commission and Developer, such consent of the Commission not to be unreasonably withheld.

**2.1.3** Developer shall provide or cause to be provided management for the Work in accordance with the terms of the Agreement and these General Conditions. Developer acknowledges the importance of its Project Manager, the Lead Designer's Project Manager, the Contractor's Project Manager, and its QA Manager.

**2.1.4** Developer shall cooperate with the Commission and all Governmental Units in all matters relating to the Project, including review of the design of the Project and conducting inspections during the construction of the Project.

**2.1.5** Developer shall be responsible to the Commission for acts and omissions of Developer's employees, agents, officers, Subcontractors and other Persons performing portions of the Work (except for those Persons employed by or acting as agents for the Commission).

**2.1.6** Developer shall pay or cause to be paid all sales, consumer, use and other similar taxes for the Work or portions thereof, unless Developer or a Subcontractor is otherwise exempt from any such tax pursuant to the provisions of other Contract Documents or any Legal Requirements.

**2.1.7** Developer shall submit or cause to be submitted a QA/QC Plan to Commission for review and acceptance at the meeting held after the Agreement Date. Along with the QA/QC Plan submittal, the QA Manager shall provide a presentation of the QA/QC Plan utilizing project related scenarios.

**2.1.8** Developer shall not commence construction Work or store materials or equipment on the Site until written Notice to Proceed is issued or until Developer otherwise receives Commission's written consent. Provided the Commission has adequately vacated the Site, Developer shall commence Work no later than ten (10) days after the Notice to Proceed.

**2.1.9** No Design Consultant or Subcontractor is intended to be, nor shall any Design Consultant or Subcontractor be deemed to be, a third party beneficiary of the Agreement. Commission is intended to be and shall be, to the full extent permitted by law, a third-party beneficiary of all contracts between Developer and any Design Consultant or Subcontractor and Commission shall be named as such in each such contract. In the event that this Agreement is terminated, Developer shall, upon the written demand of Commission, assign such contracts to Commission.

## **2.2 Meetings**

**2.2.1** Developer shall meet with Commission within seven (7) days after the Agreement Date to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents. This meeting shall be attended by (a) Developer's Project Manager, the Lead Designer's Project Manager, the Contractor's Project Manager, and its QA Manager; and (b) Commission's Project Manager and such other Commission representatives as the Commission shall desire.

**2.2.2** Developer shall participate in monthly progress meetings with Commission. During such meetings, progress during the prior month shall be reviewed. These meetings shall be attended by (a) Developer's Project Manager, the Lead Designer's Project Manager, the Contractor's Project Manager, and its QA Manager, as well as Developer's key Subcontractors and Design Consultants responsible for Work completed during the specified duration and Work scheduled during the upcoming reporting duration; and (b) Commission representatives designated by the Authorized Commission Representative. Meetings will occur monthly beginning the month after the issuance of the Notice to Proceed. Developer shall be responsible for preparing, maintaining and distributing minutes of the meetings to all attendees for review. The meeting minutes shall be provided to Commission for review and comment within five (5) Business Days of the monthly progress meeting. Any comments or corrections to the minutes will be incorporated promptly into a revised set of minutes and distributed at the next progress meeting. Meetings may be conducted by video conferencing or conference call when approved by the Commission.

## **2.3 Design Professional Services**

**2.3.1** Developer shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Developer, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering, surveying, and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Developer to complete the Work consistent with the Contract Documents. Developer shall require that all design Work shall be performed by or under the supervision of Persons licensed to practice architecture, engineering or surveying (as applicable) in the Commonwealth, and by personnel with demonstrated competence, integrity, responsibility and professional qualifications necessary for the satisfactory performance of the Work in accordance with the Contract Documents. Developer shall require that such Persons shall assume professional responsibility for the accuracy and completeness of the Construction

Documents prepared by them and shall exercise their skill, ability and judgment reasonably for the Commission's benefit. Notwithstanding these requirements, Developer shall be responsible to the Commission for their work.

**2.3.2** The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the Contract Documents establish a specific performance standard for any aspect of the Work, the design professional services shall be performed to achieve such standards.

**2.3.3** Developer shall incorporate all obligations and understandings of the Contract Documents applicable to design services in its respective contracts with any Design Consultant, and require that such obligations be flowed down to lower-tiered Design Consultants, including the obligations relative to ownership of the Work Product set forth in Article XII of the Agreement.

## **2.4 Limitations on Developer's Right to Rely**

**2.4.1** Developer expressly agrees that the Commission's rights under the Contract Documents, including but not limited to any such rights afforded in the past, whether under the Interim Agreement or otherwise, (a) to review, comment on, approve, disapprove and/or accept the Construction Documents, designs, plans, specifications, work plans, construction, equipment, installation, books, records, reports or statements, and (b) to review, comment on and approve or disapprove qualifications and performance of, and to communicate with, Subcontractors, Design Consultants or other consultants of Developer (i) exist solely for the benefit and protection of the Commission, (ii) do not create or impose upon the Commission any standard or duty of care toward any of the foregoing, all of which are hereby disclaimed, other than a duty to act in good faith, (iii) may not be relied upon, nor may the Commission's exercise or failure to exercise any such rights be relied upon, by Developer in determining whether Developer has satisfied the standards and requirements set forth in these General Conditions or any other Contract Document, and (iv) may not be asserted, nor may the Commission's exercise or failure to exercise any such rights be asserted, against the Commission by Developer as a defense, legal or equitable, to Developer's obligation to fulfill such standards and requirements.

**2.4.2** No rights of the Commission described in Section 2.4.1, no exercise or failure to exercise such rights, no failure of the Commission to meet any particular standard of care in the exercise of such rights, and no issuance of permits or certificates of completion or acceptance shall:

1. relieve Developer of its responsibility for the selection and the competent performance of all Subcontractors, Design Consultants and other consultants (except those hired by the Commission);
2. relieve Developer of any of its obligations or liabilities under the Contract Documents;
3. be deemed or construed to waive any of the Commission's rights and remedies under the Contract Documents; or
4. be deemed or construed as any kind of representation or warranty, express or implied, by the Commission.

**2.4.3** Notwithstanding anything else contained in this Section 2.4, (i) Developer shall be entitled to rely on specific written deviations the Authorized Commission Representative gives under the Contract Documents, (ii) the Commission is not relieved from any liability arising out of a knowingly intentional misrepresentation under any written statement the Authorized Commission Representative delivers, and (iii) the Commission is not relieved from its obligations under the Contract Documents.

## **2.5 Design Development Services**

**2.5.1** Developer shall proceed with construction in accordance with the approved Construction Documents and shall submit eight (8) sets of hard copies and eight (8) electronic versions of approved Construction Documents to Commission prior to commencement of construction. Any uncompleted work under the Interim Agreement shall promptly be completed by the Developer or its Subcontractors, at no additional cost to the Commission.

**2.5.2** On or about the time of any scheduled design submissions, Developer and Commission shall meet and confer about the submissions, with Developer identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previous design submissions. Notes of the meetings will be maintained by Developer and provided to all attendees for review. Following the design review meeting, Commission shall review and provide comments on the interim design submissions within twenty-one (21) days after receipt of the required submissions. Developer shall promptly revise and modify all such submittals so as to fully reflect all comments and shall deliver to Commission revised submittals for review and comment (and approval as the case may be).

**2.5.3** Commission's prior or future review, comment and/or approval of any of Developer's design submissions (including but not limited to the Construction Documents developed and approved pursuant to the Interim Agreement) are for the purpose of establishing Developer's compliance with the requirements of the Contract Documents and mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Developer shall have full responsibility for the design of the Project, and Commission's review, comment and/or approval of any such design submission (including but not limited to said Construction Documents) shall not be deemed to transfer any liability from Developer to Commission.

## **2.6 Legal Requirements**

**2.6.1** Developer represents and warrants that it has familiarized itself with the requirements of any applicable Legal Requirements and the conditions of all Governmental Approvals prior to entering into the Agreement. In performing the Work, Developer shall (i) comply with, and shall use reasonable commercial efforts to ensure that all Subcontractors comply with, all applicable Legal Requirements and the conditions and requirements of all Governmental Approvals; and (ii) provide or cause to be provided all notices applicable to the Work as required by the Legal Requirements.

## **2.7 Permits and Governmental Approvals**

**2.7.1** Developer shall obtain or cause to obtain, and pay for all necessary permits and other Governmental Approvals from or by any Governmental Unit that may be required for the proper prosecution and execution of the Work except with respect to any permit fully secured and paid for

by Commission prior to the Agreement Date. If any such Governmental Approval is required to be formally issued in the name of Commission, Developer shall undertake all efforts to obtain such Governmental Approvals subject to Commission's reasonable cooperation with Developer, including execution and delivery of appropriate applications and other documentation in forms approved by Commission. Developer shall deliver to Commission, promptly after Developer's receipt, a copy of each such Governmental Approval, with a listing of the status of all such Governmental Approvals included in the monthly reports required by Section 10.8.1 hereof. Commission agrees to reasonably cooperate with Developer in obtaining these permits.

**2.7.2** No construction activity will commence until: (i) all Governmental Approvals required for such contemplated stage of development for the relevant construction activity (including any activity that may disturb the Site) have been obtained; (ii) Commission has been notified that such Governmental Approvals have been obtained; (iii) Commission has issued the Notice to Proceed; and (iv) Commission or other parties in possession have vacated the Site.

**2.7.3** Developer shall ensure that the Work conforms to the requirements and stipulations of all Governmental Approvals in all material respects. Any violations of or noncompliance with any Governmental Approval, including but not limited to suspensions caused by Developer violating or not being in compliance with a Governmental Approval, shall be at the sole risk of Developer, and shall not be a basis for adjusting the Contract Price and/or Contract Time(s) unless caused by the Commission, its agents or employees.

## **2.8 Developer's Construction Phase Services**

**2.8.1** Unless otherwise provided in the Contract Documents to be the responsibility of Commission or a Separate Contractor, Developer shall provide or cause to be provided through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, commissioning, material, equipment, machinery, temporary utilities and other temporary facilities to permit Developer to complete construction of the Project consistent with the Contract Documents.

**2.8.2** Developer shall perform or cause to be performed all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents, and shall maintain or cause to be maintained all licenses required of Developer or its employees and Subcontractors in connection with the Work. Developer shall ensure that it or its Contractor exercises complete and exclusive control over the means, methods, sequences and techniques of construction at all times.

**2.8.3** Developer shall employ only Subcontractors who are duly licensed and qualified to perform the Work lawfully in the Commonwealth and consistent with the Contract Documents. Developer shall not use any Subcontractor to whom Commission has a reasonable objection, and shall obtain Commission's written consent (not to be unreasonably withheld) before making any substitutions or additions to Subcontractors previously identified to Commission as being members of Developer's Project team, including those who may have been identified in the Proposal.

**2.8.4** Developer shall coordinate the activities of all Subcontractors, and Developer assumes responsibility to Commission for the proper performance of the Work of Subcontractors.

**2.8.5** The Commission acknowledges that Developer does not plan to carry errors and omissions insurance. However, Developer shall require all Design Consultants to maintain such insurance in amounts and under terms as required by the Agreement and these General Conditions, and the Developer and the Contractor shall carry such insurance as required by Article 5 hereof.

## **2.9 Conditions Precedent to Commencement of Construction Work**

**2.9.1** No Notice to Proceed for any construction Work shall be issued until such time as the following conditions are satisfied, unless waived by Commission in its sole discretion in writing:

1. The Commission shall have approved in writing the Project's HS&W Program, as provided by the Developer or its Contractor, relating to the portion of the Work to be commenced;
2. Developer shall not then be in breach of any material requirement of the Contract Documents, including requirements regarding non-discrimination, minority employment and disadvantaged business enterprises;
3. All required insurance policies and bonds shall have been received and accepted by the Commission;
4. There exists no court order that restrains, enjoins, challenges or delays performance of the Work or, to the best of Developer's knowledge and belief, after due investigation, the granting or renewal of any Governmental Approval; and
5. Such Governmental Approvals necessary for the commencement of the construction Work shall have been obtained in accordance with these General Conditions.

## **2.10 Conditions Precedent for Commission's Benefit**

**2.10.1** All the conditions precedent set forth above are for the sole benefit of the Commission. Any condition precedent may be waived by the Commission; provided, however, that no person or entity shall be entitled to assume that the Commission will waive or refuse to waive any condition precedent in the absence of strict compliance therewith. No waiver of any condition precedent shall be enforceable unless signed by the Commission in writing. Unless the Commission waives a condition precedent which requires action by Developer to be satisfied, Developer shall remain bound to satisfy the condition precedent.

**2.10.2** Developer shall keep, or cause to be kept, the Site reasonably free from debris, trash and construction wastes to permit Developer to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas or any Commission plant operations. Upon Substantial Completion of the Work, or a portion of the Work, Developer shall remove or caused to be removed all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Commission to occupy the Project or a portion of the Project for its intended use.

**2.10.3** Upon commencement of construction, Developer shall be responsible for the security of the Site until Substantial Completion of the Work, or a portion of the Work.

## **2.11 Developer's Responsibility for Project Safety**



**2.11.1** Developer recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to: (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto. Developer shall provide in its general contract with the Contractor procedures for implementing and monitoring all safety precautions and programs related to the performance of the Work. Developer shall, prior to commencing construction, designate, or cause to be designated, a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Developer's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Developer's personnel, Subcontractors and others as applicable. Developer shall provide or cause to be provided minutes of each safety meeting to Commission within five (5) Business Days of such meeting.

**2.11.2** Developer shall take or cause to be taken all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

1. All employees on the Site and all other persons who may be affected thereby;
2. All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody or control of Developer or any of its Subcontractors or Sub-Subcontractors; and
3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**2.11.3** Developer shall provide or cause to be provided, for Commission's review and comment, an HS&W Program at least twenty-one (21) Days before Developer intends to commence any construction-related activities at the Site. The HS&W Program shall include but not be limited to electrical safety, lock-out/tag-out, arc flash safety – personal protection equipment while working in vicinity of energized electrical equipment, hazard communication, fire protection plan, emergency access plan, safety inspections of mechanized equipment, machinery, hoists, cranes, scaffolding, excavations, shoring, and related items. Developer shall ensure that no construction-related activity occurs (including any activity that disturbs the Site) until Commission has had an opportunity to review and comment on the HS&W Program in accordance with the timeframes set forth above.

**2.11.4** Developer and Subcontractors shall comply with: (i) all Legal Requirements relating to safety; (ii) Developer's HS&W Program; and (iii) any Commission-specific safety requirements set forth in the Contract Documents, provided that such Commission-specific requirements do not violate any applicable Legal Requirement. Developer will immediately report or cause to be reported in writing any safety-related injury, loss, damage or accident arising from the Work to the Authorized Commission Representative and, to the extent mandated by Legal Requirements, to all Governmental Units having jurisdiction over safety-related matters involving the Project or the Work. Commission shall have the right to suspend any or all Work if Developer fails to comply with its obligations hereunder.

**2.11.5** In case of an emergency which threatens immediate loss or damage to property and/or safety of life, Developer shall act (or cause Contractor to act), at its discretion and risk, to prevent threatened loss, damage, injury or death. Developer shall notify Commission of the situation and all actions taken immediately thereafter. If, in the opinion of Developer, immediate action is not required, Developer shall notify Commission of the emergency situation and proceed in accordance with Commission's instructions. However, if any loss, damage, injury or death occurs that could have been prevented by Developer's prompt and immediate action, Developer shall be fully liable for all costs, damages, claims, actions, suits, attorneys' fees and all other expenses arising therefrom or relating thereto. Prior to commencing its Work and at all times during the performance of the Work, Developer shall provide Commission two (2) twenty-four (24) hour emergency phone numbers where its representatives can be contacted.

**2.11.6** Developer's responsibility for safety under this Section 2.11 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for: (i) complying with all Legal Requirements, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

## **2.12 Uncovering of Work**

**2.12.1** If any portion of the Work should be covered contrary to: (1) the request of Commission; (2) requirements specifically expressed in the Contract Documents; or (3) the requirements of applicable construction permits, it must, if required in writing by Commission, be uncovered for Commission's observation and shall be replaced at Developer's expense.

**2.12.2** If any other portion of the Work has been covered which Commission has not specifically requested to observe prior to being covered, Commission may request to see such Work and it shall be uncovered by Developer. If such Work is found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to Commission. If such Work is found not in accordance with the Contract Documents, Developer shall pay such costs unless it is found that this condition was caused solely by Commission, in which event Commission shall be responsible for the payment of such costs. If such Work is found not in accordance with the Contract Documents and the condition was caused by a Separate Contractor, Developer may proceed against said Separate Contractor as provided in Section 2.13 below.

## **2.13 Work by Commission or Separate Contractors**

**2.13.1** If Commission performs other work on the Project or at the Site, either through its own employees or agents or through Separate Contractors under Commission's control, Commission shall provide two (2) Days advance notice of the presence of such employees, agents or Separate Contractors where practicable. Developer agrees to reasonably cooperate and coordinate its activities with those of such employees, agents or Separate Contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

**2.13.2** Developer shall afford Commission and any Separate Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and shall properly connect and coordinate the Work with such other work. Developer shall

coordinate the Work with Commission and any Separate Contractors to store apparatus, materials, supplies and equipment in such orderly fashion at the Site as will not unduly interfere with the progress of the Work or the work of Commission or any Separate Contractors.

**2.13.3** If the execution or result of any part of the Work depends upon any work of Commission or of any Separate Contractor, Developer shall, prior to proceeding with the Work, inspect and promptly notify Commission of any apparent discrepancies or defects in such work that render it unsuitable for the proper execution or result of any part of the Work.

**2.13.4** Failure of Developer to so inspect and report shall constitute an acceptance of Commission's or such Separate Contractor's work as fit and proper to receive the Work, except as to defects which may develop in Commission's or such Separate Contractor's work after completion of the Work and which Developer could not have discovered by its inspection prior to completion of the Work.

**2.13.5** Should Developer cause damage to the work or property of Commission or of any Separate Contractor, or delay or interfere with Commission's work on ongoing operations or facilities, Developer shall be liable for the same; and, in the case of a Separate Contractor, Developer shall attempt to settle said claim with such Separate Contractor prior to such Separate Contractor's institution of litigation or other proceedings against Developer.

**2.13.6** If such Separate Contractor sues Commission on account of any damage, delay or interference caused or alleged to have been so caused by Developer, Commission shall notify Developer, who shall defend Commission in such proceedings at Developer's expense. If any judgment or award is entered against Commission, Developer shall satisfy the same and shall reimburse Commission for all damages, expenses, attorneys' fees and other costs which Commission incurs as a result thereof.

**2.13.7** Should Developer have a dispute with a Separate Contractor with whom Commission has contracted regarding damage to the Work or the property of Developer or to the work or property of said Separate Contractor or with regard to any delays or interferences which either Developer or said Separate Contractor has caused to the performance of the other, Developer agrees to attempt to settle such dispute directly with said Separate Contractor. If such dispute cannot be settled, Developer agrees to arbitrate such dispute directly with said Separate Contractor in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in force. Developer agrees that Commission shall not be a party to any such arbitration and that in no event shall Developer seek to recover from Commission, and Developer hereby represents to Commission, that it will not seek to recover from Commission any damages, costs, expenses (including, but not limited to, attorneys' fees) or loss of profit incurred by Developer as a result of any damage to the Work or property of Developer or any delay or interference caused or allegedly caused by any Separate Contractor and not caused by the acts or omissions of Commission, its agents or employees or which arise from or out of (or due to) causes not within the control of Commission, its agents or employees.

### **Article 3**

#### **Commission's Services and Responsibilities**

##### **3.1 Duty to Cooperate**

**3.1.1** Commission shall, throughout the performance of the Work, cooperate with Developer and perform its responsibilities, obligations and services in a timely manner to facilitate Developer's timely and efficient performance of the Work and so as not to delay or interfere with Developer's performance of its obligations under the Contract Documents.

**3.1.2** Commission shall provide timely reviews and (where required) approvals of Developer's submittals consistent with the turnaround times set forth in the Project Schedule; provided, however, that unless stated otherwise in the Contract Documents, Commission shall have fourteen (14) days after receipt of such submissions to act upon such submissions. Should the Commission fail to act upon such submissions within the time stipulated above, Developer shall submit a second request to the Commission. If Commission fails to respond within three (3) days of receipt of this second request, the submittal shall be "deemed" approved. In the event (i) the Commission fails to respond within the timeframes set forth above to a submittal that clearly was submitted by Developer in a timely manner and (ii) such failure results in a material delay to the critical path of the Project Schedule, then the Developer shall be entitled to submit a request for a Change Order in accordance with these General Conditions for an adjustment in the Contract Time(s) to the extent the Developer's time of performance is adversely impacted by such failure. The Commission, in its reasonable discretion, shall consider an equitable adjustment to the Contract Times(s) as appropriate to the circumstances surrounding such request for Change Order.

**3.1.3** Commission's Project Manager shall be responsible for coordinating and participating in the monthly progress meeting, as referenced in Section 2.2, for the duration of the Project.

**3.1.4** Commission shall consider all of Developer's Proposed Change Orders and other requests for approvals and consents required under this Agreement (including these General Conditions) in good faith consistent with the intent of this Agreement and shall not be arbitrary or capricious in denying the same. Any denial shall be accompanied by a brief written explanation as to the reason for such denial. In the event the parties are unable to agree as to the appropriateness of a Change Order or the scope, time or cost of a Change Order, then the parties shall proceed in accordance with the terms of Sections 9.8 and 9.9 of these General Conditions. In the event the parties are unable to agree as to the appropriateness of a denial of any other Developer request for Commission approval or consent, then the procedure for resolution shall be as described in Article XI of the Agreement.

##### **3.2 Furnishing of Information**

**3.2.1** Commission has provided the RFP Documents for Developer to consider in developing the Proposal and for executing the Work.

##### **3.3 Commission Representative**

**3.3.1** Commission shall designate the Authorized Commission Representative. The Authorized Commission Representative shall give direction to Developer, which shall accept and follow such direction except as otherwise provided by the terms of the Contract Documents (in which event, unless a formal Change Order, is executed the terms and conditions of the Contract Documents shall govern and control). The Authorized Commission Representative shall be responsible for providing Commission-supplied information and approvals in a timely manner to permit Developer to fulfill its obligations under the Contract Documents. The Authorized Commission Representative shall also notify Developer if it observes any failure on the part of Developer to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

### **3.4 Governmental Approvals**

**3.4.1** Commission shall provide reasonable assistance to Developer in obtaining those Governmental Approvals that are Developer's responsibility, but responsibility shall remain with Developer, provided Developer shall not be responsible for any delay in the Work or the inability to complete a portion of the Work by reason of the denial of a permit, license and/or approval if Developer has made all commercially reasonable efforts to obtain such permit, license or approval.

### **3.5 Separate Contractors**

**3.5.1** Commission is responsible for coordinating all work performed on the Project or at the Site by Separate Contractors or Commission's employees or other agents under Commission's control. Commission shall contractually require its Separate Contractors to cooperate with, and coordinate their activities so as not to interfere with, Developer in order to enable Developer to timely complete the Work consistent with the Contract Documents.

**3.5.2** Commission is responsible for ensuring Separate Contractors have appropriate levels of insurance and that Developer is named as an additional insured when applicable.

## **Article 4**

### **Hazardous Materials and Differing Site Conditions**

#### **4.1 Hazardous Materials**

**4.1.1** Unless otherwise expressly provided in the Contract Documents to be part of the Work, Developer is not responsible for any Hazardous Materials encountered at the Site. Upon encountering any Hazardous Materials, Developer will stop Work immediately in the affected area and duly notify Commission and, if required by Legal Requirements, all Governmental Units with jurisdiction over the Project or Site.

**4.1.2** Upon receiving notice of the presence of suspected Hazardous Materials, Commission shall take the necessary measures required to ensure that the Hazardous Materials are remediated or rendered harmless. Such necessary measures shall include Commission retaining qualified independent experts to: (i) ascertain whether Hazardous Materials have actually been encountered; and, if they have been encountered, (ii) prescribe the remedial measures that Commission must take either to remove the Hazardous Materials or render the Hazardous Materials harmless.

**4.1.3** Developer shall be obligated to resume Work at the affected area of the Project only after Commission's expert provides it with written certification that: (i) the Hazardous Materials have been removed or rendered harmless; and (ii) all necessary Governmental Approvals have been obtained.

**4.1.4** Developer will be entitled to (i) submit a request for a Change Order in accordance with these General Conditions, for an adjustment in its Contract Price and/or Contract Time(s) to the extent Developer's cost and/or time of performance have been adversely impacted by the presence, removal or remediation of Hazardous Materials at the Site; and (ii) receive equitable compensation for costs and equitable adjustment to the Project Schedule as appropriate to the circumstances surrounding such request for Change Order.

**4.1.5** Notwithstanding the preceding provisions of this Section 4.1, Commission is not responsible for Hazardous Materials introduced to the Site by Developer, Subcontractors or anyone for whose acts they may be liable.

**4.1.6** Developer shall indemnify, defend and hold harmless each Commission Indemnitee from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from:

1. Those Hazardous Materials introduced to the Site by Developer, Subcontractors or anyone for whose acts they may be liable;
2. The spreading, migration, release, remediation, storing, transportation or disposal by Developer, Subcontractors or anyone for whose acts they may be liable, of pre-existing Hazardous Materials; and
3. Exacerbation, due to negligence, recklessness or willful misconduct of Developer, Subcontractors, or anyone for whose acts they may be liable of the release, spreading, migration or toxicity of Hazardous Materials at the Site which are known by Developer to exist.

## **4.2 Inspection of Site Conditions**

**4.2.1** Developer represents and warrants that it has, as of the Agreement Date, ascertained the nature and location of the Work, the character and accessibility of the Site, the existence of obstacles to construction, the availability of facilities and utilities, the location and character of existing or adjacent work or structures, the surface conditions, and other general and local conditions (including labor) which might affect its performance of the Work or the cost thereof. Except as otherwise expressly provided herein, Developer assumes full responsibility for inspection of the Site and for the means and methods of construction that it employs when performing the Work.

**4.2.2** Developer will undertake or cause to be undertaken such testing, inspections and investigations as may be necessary to perform its obligations under the Contract Documents, including but not limited to additional geotechnical evaluations or Hazardous Materials studies. All reports or analyses generated by Developer's testing, inspections and investigations, including but not limited to additional geotechnical testing, shall be furnished to Commission promptly after such reports or analyses are generated.

### **4.3 Differing Site Conditions**

**4.3.1** Developer represents that it has made careful examination of the Site and informed itself as to the difficulties to be encountered in the performance of the Work, the facilities for delivering, storing and placing materials and equipment, and other conditions relating to construction of the Project. Except where concealed or latent physical conditions or subsurface conditions at the Site are shown, in accordance with Section 4.3.2 below, to materially differ from the conditions indicated in the RFP Documents, the Phase I Environmental Investigation, or the Phase II Environmental Investigation, Developer shall assume all risk as to the nature and behavior of the soil or subsurface conditions which underlie the Work or is adjacent thereto, or difficulties that may be due to any unfavorable conditions that may be encountered in the Work, whether apparent on surface inspection or disclosed after construction begins, unless any such condition constitutes a Differing Site Condition (in which event Section 4.3.2 shall control).

**4.3.2** Subject to the provisions of Section 4.3.1 above, if Developer encounters a Differing Site Condition, Developer will be entitled to (i) submit a request for a Change Order for an adjustment in the Contract Price and/or Contract Time(s) to the extent Developer's cost and/or time of performance are adversely impacted by the Differing Site Condition as allowed for herein, and (ii) receive equitable compensation for costs and equitable adjustment to the Project Schedule as appropriate to the circumstances surrounding such request for a Change Order. Differing Site Condition means any pre-existing condition or conditions encountered during the Work on, within, under or of the Site not apparent from a reasonable visual inspection and that materially differ from the conditions indicated in the RFP Documents, the Phase I Environmental Investigation, and the Phase II Environmental Investigation, consisting of (i) cemeteries, endangered species, cultural resources and non-apparent historical, paleontological or archaeological areas, and (ii) with respect to miscellaneous underground conditions, unusual rock formations, unusual soils not reflected in any soil reports unless Developer reasonably should have been aware of such unusual soils, or underground water conditions that affect wells or other sources of water supplies. A Differing Site Condition shall be deemed to include all manifestations of the same condition.

**4.3.3** In the event Developer discovers a Differing Site Condition, Developer shall, within the close of the third (3<sup>rd</sup>) Business Day following such discovery or immediately in the case of cemeteries, endangered species, cultural resources and non-apparent historical, paleontological or archeological areas, notify the Commission thereof telephonically or in person, to be followed immediately by written notification.

**4.3.4** Developer shall immediately stop or cause to be stopped Work in and secure the affected area. The Commission shall have the right, but not the obligation, to view the location and Developer shall waive the right to collect any costs incurred or to request an extension of time in connection with the Differing Site Condition if the Commission is not afforded the opportunity to inspect such material or condition before it is disturbed.

**4.3.5** At any time after the second (2<sup>nd</sup>) Business Day following written notice to the Commission, Developer may proceed with the Work, provided it can do so in compliance with all applicable requirements of the Contract Documents.

**4.3.6** Developer shall keep the Commission apprised regarding its actions to comply with such requirements.

**4.3.7** The notification and work stoppage described above constitute a condition precedent to Developer's right to seek a Change Order for Work performed prior to such notification.

## **Article 5**

### **Risk, Insurance and Bonds**

#### **5.1 Risk**

**5.1.1** Developer shall be responsible for the Work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. Developer assumes all risk of damage or injury to the property or persons used or employed on or in connection with the Work, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Agreement, excluding the negligence or willful misconduct or the Commission, its agents, contractors and employees. The Commission acknowledges that Developer intends to impose the assumption of such risks upon the Contractor who will be taking control of the Site and be responsible for all Site and construction activities and who shall carry all of the insurance coverage as set forth in Sections 5.1 and 5.4.

#### **5.2 General and Auto Liability Insurance**

**5.2.1** For so long as any Work is being performed, including any work performed during all warranty periods, Developer shall procure or cause to be procured and kept in force an adequate policy or policies, written on an occurrence basis, of commercial general liability insurance (form number CG 00 01 12 07 or successor form), including premises/operations and products/completed operations. Such insurance policy shall contain coverage for bodily injury, broad form property damage, personal injury, blanket contractual liability (either by its original form or by endorsement) and liability insurance (either by its original form or by endorsement), providing coverage for claims related to the Work and related construction and staging areas. Such insurance policy shall provide minimum coverage of Five Million Dollars (\$5,000,000) combined single limit of liability for bodily injury, property damage and personal injury per occurrence, with a general aggregate limit of Ten Million Dollars (\$10,000,000) per policy period. The amount of the deductible applicable to such policy or policies shall be subject to the Commission's reasonable approval. The required coverage may be obtained through a combination of primary and excess insurance policies.

**5.2.2** Developer shall maintain or caused to be maintained a policy or policies of insurance written on an occurrence basis specifically for providing liability coverage for claims of bodily injury and property damage arising from the use of motor vehicles including owned, non-owned and hired vehicles. Such insurance policy shall provide minimum coverage of One Million Dollars (\$1,000,000) combined single limit of liability for bodily injury and property damage per accident and no policy aggregate.

#### **5.3 Professional Liability Insurance**

**5.3.1** Developer shall require the Lead Designer and all other Design or service Consultants to procure and keep in force, a policy or policies of professional liability or errors and omissions coverage. Such insurance shall contain "claims made" coverage of no less than Three Million



Dollars (\$3,000,000) per occurrence and in the annual aggregate. The insurance shall include a deductible not greater than Twenty-Five Thousand Dollars (\$25,000) for each claim. The professional liability insurance shall contain prior acts coverage sufficient to cover all services performed by each entity rendering design services for the Project. The Lead Designer and all other Design Consultants shall comply with Virginia Code §8.01-250 by maintaining their professional liability coverage. Developer shall require the Lead Designer to indemnify the Commission and the Developer against any negligent errors or omissions in Developer's Subcontract with the Lead Designer and the Commission shall be made an express third-party beneficiary of such indemnity.

## **5.4 Workers' Compensation Insurance**

**5.4.1** At all times required by law, Developer shall cause the Contractor to maintain in full force and effect insurance coverage for all employees suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of the Contract Documents and provide a waiver of subrogation to the Commission and Developer. Satisfaction of these requirements shall include:

1. purchase of workers' compensation and occupational disease insurance providing statutory entitlements to employees in full compliance with all applicable Legal Requirements of the Commonwealth and the Virginia Workers' Compensation Act to include all other jurisdictions where Work is being performed; or

2. maintenance and demonstration prior to commencement of a fully-funded and Commonwealth-approved self-insurance program with a waiver of subrogation providing all statutory entitlements and occupational disease coverage in full compliance with all Legal Requirements of the Commonwealth including but not limited to the Virginia Workers' Compensation Act and of all other jurisdictions where Work is being performed.

**5.4.2** If Developer fails to effect and maintain or cause to be effected and maintained a program of entitlements in compliance with applicable worker's compensation and occupational disease in accordance with applicable Legal Requirements and a Commission Indemnatee incurs fines or is required by law to provide benefits to such employees, or to obtain coverage for such employees, Developer shall reimburse or cause to be reimbursed the Commission Indemnatee for such fines, payment of benefits to Developer's or Subcontractor's employees or their heirs or legal representatives, and/or the cost of effecting coverage on behalf of such employees. Any reimbursement Developer owes to the Commission Indemnatee may be deducted from any payments the Commission owes Developer pursuant to these General Conditions.

**5.4.3** In addition to complying with the provisions for workers' compensation above, Developer shall at all times cause Contractor to provide coverage for employer's liability and occupational disease coverage with annual policy limits of One Million Dollars (\$1,000,000) per accident and in the aggregate per coverage during the policy period.

## **5.5 Builder's Risk**

**5.5.1** The Commission shall procure and maintain builder's risk insurance policy on an "all risk of loss" and completed value form to protect the Commission and Developer against loss caused by the perils insured in the amount of one hundred percent (100%) of the insurable value of the construction cost of the Project in a form reasonably acceptable to the Developer. Such insurable

value shall reflect any increases to the Contract Price amount through Change Orders. Such policy shall be in builder's risk completed value forms, and shall:

1. Name the Commission as the named insured and the Developer as an additional insured as their interest may appear;
2. Be in effect on or before the date when construction Work is to commence; and
3. Be maintained in full force and effect until the Project is accepted by Commission.

The Developer shall cause the Contractor on behalf of itself and all of its subcontractors, to acknowledge to the Developer and the Commission the builder's risk coverage does not include any type of insurance coverage for their construction equipment, tools or other business equipment located at, on or near the construction site.

**5.5.2** Any loss insured under this Section 5.5 is to be adjusted with the builder's risk insurer by the Commission and Developer with the final approval of the Commission not to be unreasonably withheld. All insurance proceeds will be made payable to Commission as named insured and as trustee for the requirements of any applicable mortgagee clause. The Developer shall be solely responsible, or it shall cause the Contractor to be solely responsible, for all policy deductibles, and said deductibles shall not be the responsibility of the Commission. Developer shall pay each Subcontractor a just share of any insurance monies received by Developer, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to its Sub-Subcontractors in similar manner.

## **5.6 Other Insurance Covenants**

**5.6.1** Each insurance policy provided for these General Conditions shall:

1. be in form and substance acceptable to the Virginia State Corporation Commission, Bureau of Insurance and the Commission;
2. be issued by insurers authorized to do business in the Commonwealth and having an A. M. Best rating of not less than A- or its equivalent Standard & Poor's, Moody's Investors Service or Duff & Phelps Credit Rating or as approved by the Commission;
3. be primary and provide coverage on an "occurrence" basis and not a "claims made" basis with the exception of professional liability and errors and omissions policies;
4. provide that no deductibles or self-insured retentions shall be applied against the Commission;
5. provide that no policy can be canceled, suspended, lapsed or materially modified without at least thirty (30) Days prior written notice by registered or certified mail to the Commission;
6. with respect to the insurance policies described in Section 5.2 (both primary and excess):

(a) provide that the coverage thereof is primary and non-contributory coverage with respect to all named or additional insureds to the extent of the liability assumed by Developer; and

(b) provide on endorsement forms acceptable to the Commission that the Commission and all officials and employees are named as additional insureds as to any claims or liability arising out of or related in any way to the Project except with respect to the insurance under Section 5.3;

7. contain no supervision, inspection or engineering services exclusion that would preclude Commission from supervising and/or inspecting the Project as to the end result;

8. contain no design-build or similar exclusions that could compromise coverage because of the nature of delivery of the Project; and

9. contain no provisions or exclusions inconsistent in any material respect with the Contract Documents.

**5.6.2** Developer shall deliver, or cause to be delivered, to the Commission prior to the commencement of construction of the Work a binder or certificate of insurance from the agent, broker or insurer demonstrating the identity of all insurers, named and additional insureds, type of coverage, endorsements, policy limits and deductibles, and other essential terms and statement of non-cancellation consistent with Section 5.6.1.

1. Each binder or certificate with respect to project-specific insurance shall have attached to it (to the extent then available), a copy of the declaration sheet of each policy of insurance with the name of the contract and contract number specifically identified and referenced on it (or, if not then available, Developer shall furnish such declaration sheet to the Commission promptly after receipt).

2. No later than thirty (30) Days prior to the expiration of any insurance policy, a binder or certificate must be submitted demonstrating renewal or continuation of the policy. All binders or certificates of insurance shall be in a form acceptable to the Commission.

**5.6.3** Developer shall procure or cause to be procured insurance meeting or exceeding all of the terms and conditions required by this Article 5. Should an adverse insurance market prohibit the purchase of any policy of insurance meeting or exceeding the General Conditions required by this Article 5, Developer shall have the agent, broker or insurer provide evidence to the Commission of such lack of availability by submitting written evidence of all markets approached and their response. If such insurance is not available and cannot be obtained through the use of higher deductibles and retention, Developer and the Commission shall consult about acceptable alternatives for protecting against loss.

**5.6.4** Developer shall observe and comply (or cause observance and compliance) with the lawful requirements of all insurance policies. Developer also shall perform and satisfy the commercially reasonable requirements of insurance companies writing such types of insurance policies so that at all times companies of good standing and meeting the requirements of Section 5.6.1.2 shall be willing to write or to continue such coverage.

**5.6.5** Any insurance coverage required herein may be procured by a policy or policies of blanket insurance, provided that (i) the Project and related construction and staging areas are specifically identified therein, by endorsement or otherwise, as included in the coverage provided; (ii) the amount of the total insurance allocated to the Project and related construction and staging areas shall be such as to furnish protection equivalent to that which would be afforded by separate insurance policies in the amounts herein required; and (iii) in all other respects the blanket policy or policies shall comply with all other provisions of this Article 5.

**5.6.6** The Commission makes no representation that the types of insurance or limits of liability specified for the insurance policies Developer is required to carry or cause to be carried are adequate to protect Developer or its Subcontractors against its undertakings under the Contract Documents or preclude the Commission from taking any actions as are available to it under these General Conditions or otherwise at law. The Commission shall not be limited to the amount of the insurance premium not paid in the proof of any damages it may claim against Developer or any other person arising out of or by reason of failure of Developer to provide and keep in force the insurance policies required herein; but the Commission shall instead be entitled to recover the full amount of damages, subject to the provisions of Article XIV of the Agreement.

**5.6.7** Developer shall be responsible for administering the filing and settling of claims and for serving as liaison with insurance adjusters with the exception of the builder's risk policy or shall cause others to do so on its behalf. If the insurance carriers for any insurance policy described herein deny coverage to Developer or the Commission with respect to any Developer claims reported to such carriers, Developer and the Commission shall cooperate in good faith to establish whether and to what extent to contest the denial of coverage. If Developer and the Commission elect to contest the denial of coverage, Developer shall fund the related costs. Developer shall not be relieved of any obligations under these General Conditions because of a carrier's denial of coverage.

## **5.7 Performance and Payment Bonds**

**5.7.1** Prior to commencement of construction of the Work, Developer shall deliver or cause to be delivered to the Commission a performance bond and a payment bond, each in the amount of the construction cost component of the Contract Price and in the forms acceptable to the Commission. Each bond shall remain in full force and effect until Final Acceptance. If and when additional portions of the Work are authorized, prior to commencement of construction of such additional Work, Developer shall deliver or cause to be delivered to the Commission amendments to such bonds increasing the amounts thereof by the construction cost components of the Contract Price of the additional Work. Actions against the payment and performance bonds will be in accordance with the requirements of Sections 2.2-4340 and 2.2-4341 of the Code of Virginia, and nothing contained herein shall be construed as limiting or otherwise reducing the applicable statutes of limitations applicable to enforcement of bonds provided in accordance with this section.

**5.7.2** Developer shall cause the payment and performance bonds to be executed by Contractor and a surety company (i) authorized to do business in the Commonwealth in accordance with the laws of the Commonwealth and the files and regulations of the State Corporation Commission and (ii) listed on the Department of the Treasury's Listing of Approved Sureties (Circular 570). In order to be considered properly executed, the payment and performance bonds shall include authorized signatures and titles.

## **Article 6**

### **Payment**

#### **6.1 Payment Schedule**

**6.1.1** At least sixty (60) days prior to the anticipated date of issuance of Notice to Proceed, Developer shall provide or cause to be provided to Commission for its review and approval, the initial Payment Schedule, which shall set forth activities and allocated costs for the Work initially authorized hereunder. Developer or its designee shall develop the Payment Schedule by allocating the total Contract Price among the major work activities on the Project Schedule, including design and other similar professional and development fees. The sum of the prices in the Payment Schedule, including hard costs, soft costs, allowances and contingencies, shall equal the total Contract Price.

**6.1.2** For Work that is the subject of a Change Order in excess of \$50,000, to the extent it may affect the Project and Payment Schedules, a revised Payment Schedule shall be submitted in advance by the Developer for approval by the Commission and shall become part of the Change Order documents once approved. No changes to the Payment Schedule may be made without Commission approval, except as otherwise provided in the Contract Documents.

**6.1.3** Developer shall update, or cause the Contractor to update, the Payment Schedule on a monthly basis as required, to stay in reasonable agreement with the Project Schedule. In no case shall the percentage of work completed for any major work activity be materially less than the percentage of contract value billed for that major work activity. Should the Commission, in its reasonable judgment, determine that the value of work being invoiced is materially different from the amount of work completed, the Commission shall notify the Developer in writing that an adjustment to the Payment Schedule is necessary and shall be entitled to unilaterally make reasonable adjustments to invoiced amounts, until the Developer can submit and the Commission can approve an appropriately revised Payment Schedule.

**6.1.4** The term "Payment Schedule" as used herein shall mean the most recent payment schedule provided hereunder that has been reviewed and approved by the Commission. The Payment Schedule shall, among other things, provide that the Project shall be completed by the Guaranteed Completion Date, as such date may be adjusted pursuant to Section 8.2, and shall be subject to the Commission's reasonable approval. In the event any delay in excess of one (1) month is reflected in the approved Payment Schedule, Developer shall prepare and provide to the Commission a recovery plan and revised schedule.

#### **6.2 Application for Payment**

**6.2.1** Developer shall submit to Commission four (4) originally executed, itemized Applications for Payment on or before the tenth (10<sup>th</sup>) day of each month. The Application for Payment shall be notarized, indicate in complete detail all services and material incorporated in the Work during the month prior to submission coinciding with the progress reflected in the monthly Project Schedule update, and supported by such data substantiating Developer's payment request as Commission may require. Developer shall also certify that due and payable amounts and bills have been paid by Developer for Work for which previous payments have been issued by Commission.

**6.2.2** Applications for Payment may include the value of materials, which are to be incorporated into the finished Work, and which are delivered to and suitably stored and protected on the Site. Developer shall provide or cause to be provided releases or paid invoices from the seller to establish, to Commission's reasonable satisfaction, that Commission has title to said material. Stored materials shall be in addition to the Work completed and shall be subject to the same retainage provisions as the completed Work. Material once paid for by Commission becomes the property of Commission and may not be removed from the Work site without Commission's written permission.

**6.2.3** Unless otherwise provided for in the Contract Documents or approved in advance by the Commission in writing, no payment will be made for any materials stored off or away from the Site unless stored offsite in a bonded warehouse approved in advance by the Commission.

**6.2.4** Developer warrants that title to all Work covered by an Application for Payment will pass to Commission either by incorporation into the Project or upon the receipt of payment by Developer, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances; and that no Work covered by an Application for Payment will have been acquired by Developer or by any other person performing Work for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by Developer or such other person. Developer remains responsible for all such materials and Work pursuant to Section 5.1.

**6.2.5** Developer's Application for Payment shall provide that the payment request attests that all Work for which the request is made has been completed in full according to the terms of the Contract Documents. By submitting an Application for Payment, Developer also represents that it has no knowledge that any Subcontractor, Design Consultant or supplier has not been fully and timely paid and that, insofar as it knows, the only outstanding items for payment with respect to the Agreement are those to be paid from the funds for which Application for Payment is being made. Each Application for Payment shall include a current lien waiver executed by each relevant Subcontractor.

**6.2.6** QA/QC shall be an integral part of each Work package. As part of each Application for Payment that includes completed Work packages, Developer's designated QA Manager shall certify that each Work package has been completed in accordance with the Contract Documents, and that all required QA/QC tests, measurements, permits or other requirements have been completed and all non-conformance reports relative to the respective Work package have been resolved.

### **6.3 Progress Payments and Retainage**

**6.3.1** Commission shall make payment within thirty (30) days after Commission's receipt of each properly submitted and accurate Application for Payment in accordance with this Article 6, but in each case less the total of payments previously made. Commission may retain five percent (5%) of the construction costs and cost of stored materials (but excluding design professional and development fees) included in each application for payment by Developer. Upon (i) Substantial Completion of the Work or any portion thereof as defined in Section 6.6 and (ii) occupation or partial occupation of the Phase One facility by Commission's employees for thirty (30) days beyond Substantial Completion, but in no event later than sixty (60) days beyond Substantial

Completion, the Commission shall pay to Developer an amount equal to the lesser of (A) sixty percent (60%) of all sums retained for Phase One and (B) sixty percent (60%) of all sums retained in relation to the completed portions thereof (on a proportional basis) if less than the whole is completed at one time. Commission may withhold an additional amount which is one and a half (1.5) times the cost reasonably estimated by Commission to complete or correct punch list items or defective Work and for any liquidated damages for delay. All remaining retainage and all withholdings shall be paid by Commission to Developer within ninety (90) days following Final Acceptance unless Developer is in breach of any warranty or has failed to correct in a timely fashion any punch list items or defective Work in a manner reasonably acceptable to Commission. All payments to Developer that relate to construction shall be made by the Commission by issuance of a check or checks made payable jointly to Developer and Contractor, unless the Commission in its sole discretion elects otherwise; provided, however, that the Commission shall have no obligation to pay or to see to the payment of any monies to Contractor or any other Subcontractor except as may otherwise be required by law consistent with the terms of Section 6.3.4.

**6.3.2** Pursuant to Va. Code §2.2-4354, Developer agrees that, within seven (7) days following receipt of monies from Commission for work performed by any Design Consultant or Subcontractor, Developer shall either: (a) pay the Design Consultant or Subcontractor for the proportionate share of the total payment received from Commission attributable to the work performed by the Design Consultant or Subcontractor; or (b) notify Commission and Design Consultant or Subcontractor, in writing, of Developer's intention to withhold all or a part of the Design Consultant's or Subcontractor's payment, specifying the reason for the non-payment. Each payment to a Design Consultant or Subcontractor shall reflect the percentage actually retained by Commission, if any, from payments to Developer on account of such Design Consultant's or Subcontractor's Work. Developer also agrees that it shall include in all of its consulting agreements and Subcontracts a provision that: (a) obligates Developer to pay interest to Design Consultants or Subcontractors on all amounts owed by Developer that remain unpaid after seven (7) days following receipt of monies from Commission for Work performed by any Design Consultant or Subcontractor, except for amounts withheld as allowed in the preceding sentence; (b) states, "Unless otherwise provided under the terms of this Agreement, interest shall accrue at the rate of one percent per month."; and (c) obligates each Design Consultant or Subcontractor to include or otherwise be subject to the same payment and interest requirements as specified in this Section 6.3.2 with respect to each lower-tier Design Consultant or Subcontractor.

**6.3.3** Developer's obligations to pay an interest charge to a Design Consultant or Subcontractor pursuant to Section 6.3.2 above shall not be construed to be an obligation of Commission, nor shall any modification to the Agreement be allowed for the purpose of providing reimbursement for the interest charge. Cost reimbursement claims shall not include any amount for reimbursement for the interest charge.

**6.3.4** Commission may, upon written request, furnish to any Design Consultant or Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by Developer and the action taken thereon by Commission on account of Work performed by such Design Consultant or Subcontractor. However, Commission shall have no obligation to pay or to see to the payment of any monies to any Design Consultant or Subcontractor except as may otherwise be required by law.

**6.3.5** No progress payment nor any partial or entire use or occupancy of the Project by Commission shall constitute an acceptance of any Work not in accordance with the Contract Documents.

**6.3.6** Developer will pay Subcontractors and Design Consultants with which it contracts directly, in accordance with its contractual obligations to such parties, all the amounts Developer has received from Commission on account of their work. Developer will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Developer will indemnify and defend Commission against any claims for payment and mechanic's liens as set forth herein.

**6.3.7** Pursuant to Va. Code §2.2-4354, Developer agrees to provide Commission, within five (5) days of the Agreement Date, its federal employer identification number.

#### **6.4 Withholding of Payments**

**6.4.1** On or before the date established herein, Commission shall pay Developer all amounts properly due. If Commission reasonably determines that Developer is not entitled to all or part of an Application for Payment, it will notify Developer in writing at least seven (7) days prior to the date payment is due. The notice shall indicate the specific amounts Commission intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Developer must take to rectify Commission's concerns. Developer and Commission will attempt to resolve Commission's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Developer may pursue its rights under the Contract Documents, including Article XI of the Agreement.

**6.4.2** Notwithstanding anything to the contrary in the Contract Documents, Commission shall pay Developer all undisputed amounts in an Application for Payment within the times required by the Agreement.

#### **6.5 Failure of Payment**

**6.5.1** If Commission wrongfully fails to pay Developer any amount that becomes due through no fault of Developer, and Commission is not otherwise entitled to withhold payment under the Contract Documents or any Legal Requirements, Developer, in addition to all other remedies provided in the Contract Documents, may stop Work upon seven (7) days written notice to Commission, until payment of the amount owing has been paid. In addition, in the event of such circumstances, Developer shall be entitled to (i) submit a request for a Change Order for an adjustment in the Contract Time(s) to the extent Developer's time of performance is adversely impacted and (ii) receive equitable adjustment to the Project Schedule as appropriate to the circumstances surrounding such request for a Change Order.

#### **6.6 Substantial Completion**

**6.6.1** Unless otherwise specified in Section 6.7, when Developer considers that the Work, or a designated portion thereof which is acceptable to Commission, is substantially complete, the Developer shall request in writing that Commission perform a Substantial Completion inspection. Prior to such inspection the Developer shall complete or cause to be completed to Commission's satisfaction all prerequisites to Substantial Completion as required in the Contract Documents.



**6.6.2** "Substantial Completion," or "substantial completion" with respect to the Work or to any severable part of the Work means the date determined, in good faith, by inspection and mutual agreement of the Commission and the Developer when the Work is sufficiently complete so that the Commission can fully or partially occupy or utilize the Work or part of the Work, as may be applicable, for its intended purpose, with parts and systems reasonably and customarily needed to operate new facilities as contemplated hereby, operable as required by this Agreement, when a temporary or permanent certificate of occupancy has been issued, and when all the following requirements of this subparagraph have been met. Commission shall engage the services of its third party construction management and engineering support consultant reasonably acceptable to Developer to participate in the inspection process should Commission and Developer be unable to mutually agree that Substantial Completion has or has not been obtained. In the event of such engagement, the determination of the consultant on the issue of achievement of Substantial Completion shall be final.

1. Before the Developer requests inspection by the Commission for determining the date of Substantial Completion, the Developer shall take or cause to be taken all actions required for Substantial Completion and the following actions below:

(a) Prepare a list of items to be completed and corrected (punch list) based on a joint walk-through by the Commission, the Developer, the Lead Designer and the Contractor, the value of items on the punch list, and a description of why the Work is required for completion. Substantial Completion shall be for the entire scope of Work (for example, both building and Site Work) unless the Commission agrees to an alternative arrangement. The failure to include any items on the punch list does not alter the responsibility of Developer to complete all Work in accordance with the Contract Documents.

(b) Advise the Commission of all pending insurance changeover requirements.

(c) Submit or cause to be submitted specific warranties, workmanship bonds, maintenance service agreements, final certifications, and similar agreements and all operating and maintenance manuals, parts lists, etc., and complete (or arrange for completion of) all necessary training of Commission personnel.

(d) Obtain and submit releases permitting the Commission use of the Work and access to services and utilities, including occupancy permits, operating certificates, and similar releases.

(e) Make final changeover of permanent locks, and deliver keys to the Commission. Advise the Commission's personnel of the changeover in security provisions.

(f) Complete startup of systems. Demonstrate that HVAC and water systems have been tested and balanced. Developer will engage ARAMARK Management Services Limited Partnership for certain commissioning services. Appendix 1 hereto sets forth Developer's contractual arrangements with ARAMARK as well as the arrangements for ARAMARK's commissioning services following Substantial Completion of Phase One.

(g) Remove or cause to be removed temporary facilities from the Project Site, along with mockups, construction tools, and similar items.

(h) Advise the Commission of changeover in heat and other utilities.

(i) Submit changeover information related to the Commission's occupancy, use, operation, and maintenance.

(j) Complete final cleaning requirements, including touch-up painting.

(k) Touch up and otherwise repair and restore marred exposed finishes to eliminate visual defects.

2. The Developer shall submit to the Commission a written request for inspection for Substantial Completion of the Work. Within five (5) Business Days of receipt of this request, the Commission will either proceed with inspection or notify the Developer of unfulfilled requirements. The Commission will prepare an acknowledgement of Substantial Completion after inspection or will notify the Developer of items either on the Developer's list or additional items identified by the Commission that must be completed or corrected before the acknowledgment will be issued. The acknowledgment of Substantial Completion may be in such form as Commission reasonably chooses, such as a modified version of an AIA or DBIA form.

(a) The Developer will request reinspection when the Work identified in previous inspections as incomplete is completed or corrected.

(b) The results of completed inspections will form the basis of requirements for Final Completion.

3. If a request for inspection for Substantial Completion of the Work results in issuance of a certificate of Substantial Completion, then the date of Substantial Completion of the Work will be deemed to be the date the inspection is completed.

**6.6.3** When Commission on the basis of its inspection determines that the Work or a designated portion thereof has achieved Substantial Completion, Commission will then prepare a certificate of Substantial Completion which shall establish the date of Substantial Completion and shall state the responsibilities of Commission and the Developer for security, maintenance, heat, utilities and damage to the Work and insurance. The certificate of Substantial Completion shall be submitted to Developer for its written acceptance of the responsibilities assigned to it in such certificate.

**6.6.4** Developer shall have forty-five (45) days from the date of Substantial Completion to complete or cause to be completed all items on the punch list to the satisfaction of Commission. Commission shall have the option to correct or otherwise resolve any and all punch list items not completed by the Developer within forty-five (45) days from the date of Substantial Completion by utilizing its own forces or by hiring others. The cost of such correction or resolution of remaining punch list items by Commission or others shall be deducted from the final payment to Developer.

## **6.7 Final Acceptance and Final Payment**

**6.7.1** Developer shall notify Commission when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is finally complete. Within seven (7) Days of Commission's receipt of Developer's notice, Commission and Developer will jointly inspect such Work to verify that it is complete in accordance with the requirements of the Contract Documents. Upon Commission's Final Acceptance of the Work, Commission will issue a certificate of Final Acceptance dated as of the date of the inspection, and Developer will provide Commission with a final Application for Payment. Commission shall make final payment by the time required in the

Agreement, provided that Developer has completed all of the Work in conformance with the Contract Documents.

**6.7.2** At the time of submission of its final Application for Payment, Developer shall provide the following information:

1. An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Commission's interests;
2. A general release executed by Developer waiving, upon receipt of final payment by Developer, all claims, except those claims previously made in writing to Commission and remaining unsettled at the time of final payment, which claims shall be specifically listed in an attachment to the general release;
3. Consent of surety to final payment;
4. All deliverables required by the Contract Documents, including the project records required by Section 6.9 below; and
5. Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

## **6.8 Record Maintenance and Retention of Records**

**6.8.1** Developer shall keep, and cause its Subcontractors to keep, full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents.

## **Article 7**

### **Warranty and Correction of Work**

#### **7.1 Warranty and Correction of Work**

**7.1.1** Developer guarantees and warrants all Work to Commission as follows:

1. That all materials, components and equipment furnished under the Contract Documents will be new (excluding recycled materials that meet the technical requirements of the Contract Documents and are approved in advance by the Commission) and the best of its respective kind unless otherwise specified;
2. That all Work will be of first-class quality and free of omissions and faulty, poor quality, imperfect or defective material or workmanship;
3. That the Work shall be entirely watertight and leakproof in accordance with all applicable industry customs and practices, and shall be free of shrinkage and settlement which are attributable to defective materials or workmanship;

4. That the Work, including but not limited to mechanical and electrical machines, devices and equipment, shall be fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care;

5. That consistent with requirements of the Contract Documents the Work shall be installed and oriented in such a manner as to facilitate unrestricted access for the operation and maintenance of fixed equipment; and

6. That the Work will be free of abnormal or unusual deterioration which occurs because of poor quality materials or workmanship.

7.1.2 All Work not conforming to guarantees and warranties specified in the Contract Documents, including products not properly approved and authorized, may be considered defective. If required by Commission, Developer shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

7.1.3 Developer shall within five (5) Business Days after receipt of written notice from Commission during the performance of the Work, reconstruct, replace or correct (or commence to do so and continue to pursue diligently and expeditiously to completion if completion is unachievable within such timeframe) all Work reasonably rejected by Commission as defective, as failing to conform to the Contract Documents, or as not in accordance with the guarantees and warranties specified in the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. Developer shall bear all costs of inspection and/or testing required to verify such rejected work. Developer shall bear all costs of reconstructing, replacing or correcting, reinspecting and/or retesting such rejected Work, including compensation for Commission's consultant's additional services made necessary thereby.

7.1.4 If, within thirty-eight (38) months after the date of Substantial Completion of the Work or designated portion thereof or within thirty-eight (38) months after acceptance by Commission of designated equipment or within such longer period of time as may be set forth on Appendix 2 hereto, expressly required by any Legal Requirements, or otherwise expressly prescribed by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective, not in accordance with the Contract Documents, or not in accordance with the guarantees and warranties specified in the Contract Documents, Developer shall correct it or cause it to be corrected within five (5) Business Days after receipt of a written notice from Commission to do so (or commence to do so and continue to pursue diligently and expeditiously to completion if completion is unachievable within such timeframe) unless Commission has previously given Developer a written acceptance of such condition. This obligation shall survive termination of the Agreement. Commission shall give such notice promptly after discovery of the condition. In the event that the correction of the condition is deemed by Commission to impact the operation of the facility, Developer shall initiate the correction immediately after receipt of a written notice from Commission. Following Substantial Completion of the Work or a designated portion thereof, the Commission shall maintain such portions of the Project in a good and orderly condition consistent with the prevailing industry standards for similar type facilities as may exist within the transit industry. In the event the Commission fails to comply with the provisions of the preceding sentence with respect to a particular warranty item (a "Warranty Item") and such failure causes such Warranty Item to be in need of correction, then the Developer shall be released from its obligations under this Section 7.1.4 as they relate to such Warranty Item, but only to the extent that the Commission's failure caused the need for correction. Upon the written assignment to the

Commission of an express written warranty by the proper equipment vendor (or related company) for a clearly-defined aspect of the Work (e.g., HVAC equipment, roof, etc.) and written acceptance by the Commission of such written warranty, Developer shall be released from its obligations under this Section 7.1.4 but only as to the portions of the Work expressly covered by such written warranty and the Commission's sole remedy with respect to the equipment covered by such written warranty shall be to pursue such remedies as are available under the warranty.

**7.1.5** Subject to limitation as prescribed by law, if at any time deficiencies in the Work are discovered which are found to have resulted from fraud or misrepresentation, or an intent or attempt to defraud Commission by Developer, any Design Consultant, Subcontractor or supplier, Developer will be liable for replacement or correction of such Work and any damages which Commission has incurred related thereto, regardless of the time limit of any guarantee or warranty.

**7.1.6** Any materials or other portions of the Work, installed, furnished or stored on Site which are not of the character or quality required by the specifications, or are otherwise not acceptable to Commission, shall be immediately removed and replaced by Developer to the satisfaction of Commission, when notified to do so by Commission.

**7.1.7** If Developer fails to correct defective or nonconforming Work as required by Sections 7.1.3 and 7.1.4 above, or if Developer fails to remove defective or nonconforming Work from the Site, as required by Section 7.1.6 above, Commission may elect to either correct such Work or remove and store materials and equipment at the expense of Developer. If Developer does not pay the cost of such removal and storage within ten (10) days thereafter, Commission may upon ten (10) additional days written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by Developer, including compensation for Commission's consultant's additional services made necessary thereby. If such proceeds of sale do not cover all costs which Developer should have borne, the difference shall be charged to the Developer and an appropriate Change Order shall be issued. If the payments then or thereafter due Developer are not sufficient to cover such amount, Developer shall pay the difference to Commission.

**7.1.8** Developer shall bear the cost of making good all work of Commission, Separate Contractors or others, destroyed or damaged by such correction or removal required under this Section 7.1.

**7.1.9** If Commission prefers to accept faulty, defective or nonconforming Work, it may do so instead of requiring its removal and correction, in which case a Change Order will be issued at Commission's option, to reflect a reduction in the Contract Price in an amount to be determined by Commission.

**7.1.10** Subject to limitation as prescribed by law, nothing contained in this Section 7.1 shall be construed to establish a period of limitation with respect to any other obligation which Developer might have under the Contract Documents. The establishment of the time period of thirty-eight (38) months after the date of Substantial Completion or such longer period of time as may be set forth on Appendix 2 hereto, expressly required by any Legal Requirements, or otherwise prescribed by the terms of any warranty not set forth in this Article 7 but otherwise expressly required by the Contract Documents relates only to the specific obligations of Developer to correct the Work, and has no relationship to the time within which its obligation to comply with the other provisions of the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Developer's liability with respect to its obligations other than

specifically to correct the Work as provided in this Article 7.

**7.1.11** With respect to water tightness, installation and finish of all roofing, the thirty-eight (38) month period referenced above shall be deemed to be a twenty (20) year period.

**7.1.12** Nothing in this Section 7.1 is intended to limit any manufacturer's warranty which provides Commission with greater warranty rights than set forth in this Section 7.1 or the Contract Documents. Developer will provide Commission with all manufacturers' warranties upon Substantial Completion, and Commission shall be named on each as an intended third-party beneficiary.

## **Article 8**

### **Time**

#### **8.1 Obligation to Achieve the Contract Times**

**8.1.1** Developer agrees that it will commence or caused to be commenced performance of the Work and achieve the Contract Time(s) in accordance with Article III of the Agreement, subject to Section 8.2.1.

#### **8.2 Delays to the Work**

**8.2.1** If Developer is delayed in the performance of the Work due to acts or omissions of Commission or its employees or agents, or a Force Majeure event, and due to no fault of its own, Subcontractors, Design Consultants, or those for whom Developer, Subcontractors, or Design Consultants are responsible, Developer (i) may submit a request for a Change Order that the Contract Time(s) for performance be reasonably extended by Change Order and (ii) shall be entitled to receive equitable adjustment to the Contract Time(s) as appropriate to the circumstances surrounding such request for a Change Order. No request for a Change Order to extend a Contract Time shall be considered unless made in compliance with the requirements of this Article 8 and other provisions of the Contract Documents.

**8.2.2** Commission shall not be obligated or liable to Developer for, and Developer hereby expressly waives any claims against Commission on account of any indirect or direct damages, costs or expenses of any nature which Developer, its Subcontractors or Design Consultants or any other person may incur as a result of (a) any delays, reasonable or unreasonable, foreseeable or unforeseeable, which are either not caused by the acts or omissions of Commission, its agents or employees or which arise from or out of (or due to) causes not within the control of Commission, its agents or employees; or (b) any reasonable delay regardless of its cause; it being understood and agreed that Developer's sole and exclusive remedy in any such events shall be an extension of the Contract Time(s) and equitable compensation for unavoidable "remobilization" costs incurred by Developer upon submission of a request for Change Order, but only as determined in accordance with the provisions of the Contract Documents.

**8.2.3** The burden of proof to substantiate a claim for an extension of any Contract Time shall rest with Developer, including evidence that the cause was beyond its control. It shall be deemed that Developer or its Contractor has control over the supply of labor, materials, equipment, methods and techniques of design and construction, unless otherwise specified in the Contract Documents.

**8.2.4** In the event of changes in the Work, any consideration by Commission for a time extension will be made no later than when the Change Order is prepared or within such longer periods as Commission may agree in writing to allow.

**8.2.5** No time extensions will be granted as a result of Developer's improper or unreasonable scheduling or for Developer's failure to have submissions to Commission submitted in time for review under a reasonable and agreed-upon schedule.

**8.2.6** Delays by Subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated herein.

**8.2.7** Developer acknowledges and agrees that actual delays due to changes, suspension of work or excusable delays, and activities which according to the Project Schedule do not affect any Contract Time will not be considered to have any effect upon such Contract Time and therefore will not be the basis for a time extension.

**8.2.8** Developer acknowledges and agrees that time extensions will be granted only to the extent that: (1) excusable delays exceed the available flexibility in Developer's schedule; and (2) Developer can demonstrate that such excusable delay actually caused, or will cause, delay to Developer's schedule that will extend the Contract Time.

**8.2.9** With respect to suspensions of work by Commission, Developer shall be entitled to an extension of the Contract Time(s) not to exceed the length of time that the Work was suspended (unless as determined under this Article 8 and the other requirements of the Contract Documents that a further extension is justified and warranted) together with reasonable "remobilization" time if the claim is submitted in accordance with the requirements of this Article 8, and if the suspension is not due to any act or omission of Developer, any Subcontractor, Sub-Subcontractor or any other person or organization for whose acts or omission Developer may be liable. Developer's claim will be evaluated in accordance with the terms of this Article 8.

**8.2.10** Developer shall not be entitled to any extension of time for delays resulting from any conditions or other causes unless it shall have given written notice to Commission, within thirty (30) Days after the Developer became aware or reasonably should have become aware of each such condition or cause, describing the occurrence, the activities impacted and the probable duration of the delay. Developer's complete claim submittal for a time extension shall be submitted no later than thirty (30) days after cessation of the delay or within such other longer period as Commission may agree in writing to allow.

**8.2.11** No extension of time shall be deemed a waiver by Commission of its right to terminate the Agreement for abandonment or delay by Developer as provided in the Contract Documents or to relieve Developer from full responsibility for performance of its obligations thereunder.

### **8.3 Change Order Work**

**8.3.1** Developer shall make every reasonable effort to perform Change Order Work within the Contract Time(s) and in such manner as to have minimum delaying effects on all remaining Work to be performed. If, however, the Change Order Work results in an unavoidable increase in the time required to complete the Project, an extension of the Contract Time(s) may be granted to

Developer for the Change Order Work. Developer's request therefore shall be determined in accordance with the provisions of Section 8.2 above and as follows:

1. If the time required for performance of the Change Order work has an unavoidable direct delaying effect on the critical path of Work activities remaining after rescheduling, the overall Contract Time(s) may be extended by the minimum number of days required for the Change Order Work as mutually agreed upon by Commission and Developer.

2. If the time required for performance of the Change Order Work does not have an unavoidable direct delaying effect on the primary sequence of Work activities but is ordered by Commission at a time such that insufficient Contract Time(s) remain for completion of the Change Order Work (and any limited number of contingent Work activities), the Contract Time(s) may be extended by the minimum number of days required for the Change Order Work as mutually agreed upon by Commission and Developer but only for the Change Order Work and contingent activities; all other unaffected Work shall be performed within the Contract Time(s).

3. Failure of Commission and Developer to agree on a Contract Time(s) extension as specified in items 1 and 2 above shall not relieve Developer from proceeding with and performing the Change Order Work promptly, as well as in such manner as to have minimal delaying effects on all remaining Work to be performed under the Contract Documents. In such event, parties shall resolve their disagreement through the dispute resolution process as set forth in Article XI of the Comprehensive Agreement.

#### **8.4 Time Extensions for Weather**

**8.4.1** Contract Time(s) will not be extended due to inclement weather conditions which are normal to the general locality of the Site. The time for performance of the Work includes an allowance for work days (based on a five (5) day work week) which, according to historical data, may not be suitable for construction work.

**8.4.2** Developer, in its planning and scheduling of the Work as required by the Contract Documents, shall allow for the normal inclement weather for the locality of the Site. If Developer believes that the progress of the Work has been adversely affected and that it will directly result in a failure to meet any Contract Time, by weather conditions above and beyond the amount normally expected, Developer shall submit a written request to Commission for an extension of the Contract Time(s), pursuant to Section 8.2 above. Such request for time extension must clearly demonstrate that the adverse weather conditions were more severe than allowed in Section 8.4.1 above and constitute adverse weather conditions not reasonably anticipated as judged from weather data of the National Weather Service/NOAA for the last five (5) years for the locale, and that weather conditions actually caused a delay beyond Developer's control and prevented work on critical path activities. Any time extension request must also include detailed reports documenting adverse weather conditions and resulting impact on critical path of the Project Schedule.

**8.4.3** Developer shall not be entitled to any money damages whatsoever for any delays resulting from inclement weather, whether normal or abnormal, foreseeable or unforeseeable. Developer and Commission stipulate and agree that for delays due to weather as determined in Section 8.4.3, Developer's sole relief is a time extension granted in accordance with this Section 8.4.

#### **8.5 Additional Provisions Regarding Time and Extensions**



**8.5.1** As a condition precedent to Developer receiving an extension of the Contract Time(s), Developer shall demonstrate that: (i) notice has been given by Developer as provided in these General Conditions; (ii) the delay impacts the critical path (as reflected on the most recent monthly Project Schedule update) and is outside the reasonable control of Developer; (iii) Developer's performance would not have been concurrently delayed or interrupted by any event other than those identified in Section 8.2.1 above; (iv) Developer, in view of all the circumstances, has exercised reasonable efforts to avoid the delay and did not cause the delay; and (v) Developer has complied with the requirements of Section 8.3 above. Delays of Design Consultants or Subcontractors shall be deemed to be within the reasonable control of Developer, unless such delays are themselves excusable in accordance with the provisions of Section 8.2.1 above.

**8.5.2** Should Commission have a reasonable belief that the Contract Time(s) will not be met for causes that do not constitute an excusable delay under Section 8.2.1 above, Commission has the right, but not the obligation, to so notify Developer, and Developer shall then work additional overtime, engage additional personnel and take such other measures as necessary to complete the Work within the Contract Time(s). Developer shall bear all costs related to such overtime, additional personnel and other measures.

**8.5.3** Notwithstanding the right of Developer to receive a time extension pursuant to Section 8.2.1, Developer agrees that if it encounters an excusable delay, it will, if directed by Commission, develop and implement a recovery schedule and plan to improve progress and take such measures to overcome such delay.

## **Article 9**

### **Changes to the Contract Price and Times**

#### **9.1 Contract Price**

**9.1.1** The Contract Price is stated in the Agreement and, including authorized adjustments thereto, (i) is the total amount payable by Commission to Developer for the performance of the Work in Phase One under the Contract Documents, and (ii) constitutes full compensation for Developer's performance of all the Work in Phase One.

**9.1.2** The Contract Price includes, but is not limited to, Developer's profit and general overhead and all costs and expenses of any nature whatsoever (including, without limitation, taxes, labor and materials), foreseen or unforeseen, and any increases in said costs and expenses, foreseen or unforeseen, incurred by Developer in the connection with the performance of the Work, all of which costs and expenses shall be borne solely by Developer, except as otherwise provided for in the Contract Documents.

**9.1.3** Developer shall assume all increases and costs of any nature whatsoever that may develop during the performance of the Work, except as otherwise provided for in the Contract Documents.

#### **9.2 Contract Times**

**9.2.1** Unless otherwise provided in the Contract Documents, the Contract Times shall be as set forth in the Agreement. Developer shall complete the Work within the Contract Times, subject to Section 8.2.1.

### **9.3 Changes in the Work**

**9.3.1** Commission, without invalidating any Contract Documents and without notice to the surety, may order a change or modification in the Work consisting of additions, deletions or other revisions to the general scope of the Agreement, or changes in the sequence of the performance of the Work. The Contract Price and the Contract Time(s) shall be adjusted accordingly. All such modifications in the Work shall be authorized by a written Change Order, and all Work involved in a change shall be performed in accordance with the terms and conditions of the Contract Documents.

**9.3.2** When Commission and Developer have agreed upon a modification in the Work, but a Change Order has not yet been executed, Commission may, at its reasonable discretion and option, direct in writing Developer to proceed with the change in the Work pending the execution of the formal Change Order. Developer shall proceed in accordance with such direction.

### **9.4 Clarifications by Field Order**

**9.4.1** Any Work relating to the issuance of a Field Order shall be performed promptly and expeditiously and without additional cost to Commission and within the Contract Time(s), unless Developer submits a Proposed Change Order which is approved by Commission. Field Orders shall be numbered consecutively by date of issuance by Commission.

### **9.5 Request for Information**

**9.5.1** An RFI shall address the specific plan detail/drawing number and/or pertinent specification paragraph and section that relate to the question. Commission will respond in a reasonable period of time. If Developer considers the response a change to the Agreement, Developer shall submit a Proposed Change Order within twenty (20) days of receipt of this response. If Commission considers the response a change to the Agreement, a request for proposal will be issued.

### **9.6 Request for proposal**

**9.6.1** A request for proposal, issued by Commission, describes a proposed change in the Work. Developer is required to submit a complete proposal within twenty (20) days of issuance of the request for proposal for the total cost and additional time, if any, necessary to perform the proposed change in the Work. Whenever practical, Developer shall cause the Contractor to obtain competitive bids for all or a portion of the work contemplated under the Commission's request for proposal. Requests for proposals shall be numbered consecutively by date of issuance by Commission.

### **9.7 Proposed Change Order**

**9.7.1** A Proposed Change Order is a written request from Developer to Commission requesting a change in the Contract Price and/or Contract Time(s). A Proposed Change Order is submitted as a proposal for an adjustment in the Contract Price or Contract Time(s) in response to a request for proposal, a Field Order or a Request for Information. A Proposed Change Order must identify all

cost and time increases requested by the Developer and shall be submitted in writing within twenty (20) days, or within such other longer period as Commission may agree, in writing to allow. Developer shall not be entitled to time and/or costs of any nature from Commission as a result of its failure to comply with this provision. Proposed Change Orders shall be numbered consecutively by date of issuance by Developer. Developer shall also indicate on the Proposed Change Order the number of the request for proposal, Field Order or Request for Information to which it responds.

**9.7.2** In the case of unit pricing, it is understood and agreed by Developer that such unit prices shall constitute full payment for the extra Work performed, including consultant services, plant, materials, labor, equipment, overhead, profit, and safety requirements.

**9.7.3** If the Contractor proposes to have any portion of the changed work performed by subcontractors, Developer's Proposed Change Order shall identify whether or not competitive bids were solicited by the Contractor in preparing its price proposal. In cases where competitive bids were not solicited, the Developer shall cause the Contractor to provide its reasons for not soliciting competitive bids. When competitive bids were solicited, a brief summary of the solicitation process and response shall be provided together with the recommended subcontractor(s) and/or supplier(s).

**9.7.4** In cases other than unit pricing, and unless otherwise approved by Commission, Developer's proposal shall be on a lump sum basis and shall be itemized and segregated by consultant services, labor, equipment, materials and direct costs for the various components of the change in the Work (no aggregate services or labor total will be acceptable) and shall be accompanied by signed proposals of any Design Consultants or Subcontractors who will perform any portion of the change in the Work and of any persons who will furnish materials or equipment for incorporation therein.

1. The portion of the proposal relating to construction labor, whether by Developer's forces or the forces of any of its Subcontractors, may include reasonably anticipated gross wages of job site labor and in conformance with the Davis-Bacon Wage Decision found in Appendix 3, including foremen, who will be directly involved in the change in the Work (for such time as they will be so involved), plus payroll costs (including premium costs of overtime labor, if overtime is authorized, Social Security, federal or state unemployment insurance taxes and documented fringe benefits in connection with such labor).

2. The portion of the proposal relating to construction materials may include the reasonably anticipated direct costs to Developer or to any of its Subcontractors of materials to be purchased for incorporation in the change in the Work, plus transportation and applicable sales or use taxes.

3. The proposal may further include Developer's and any of its Subcontractors' reasonably anticipated equipment rental costs, except small hand tools, in connection with the change in the Work. For rented equipment an hourly rental rate will be used which will be determined by using the monthly rental rates taken from the current edition of the Rental Rate Blue Book for Construction Equipment and dividing it by 176. An allowance will be made for operating costs for each and every hour the equipment is actually operating in accordance with the rates listed in the aforesaid Rental Book. Developer will be allowed only sixty-five percent (65%) of the rental rate on Developer owned equipment.

4. As full compensation for overhead, indirect costs including, but not limited to, labor and/or equipment inefficiency, changes in sequence, delays, interferences, impact on unchanged work, state and local or any other gross receipts taxes, any use tax, additional premiums for increases in all bonds, additional insurance premiums, supervision, field engineering and coordination, superintendent, small tools, reproduction, administration, schedule adjustments and updates, as-built documentation and updates, safety requirements, temporary structures and offices, all other general and administrative, home office and field office expenses, and profit, the entity or entities performing the work shall be entitled to markups of no more than 20% of direct labor costs including payroll burdens and 5% of all material costs including sales tax and delivery fees.

**9.7.5** For construction changes, Base Cost is defined as the total of labor, material and equipment rentals, including allowable markups, as described in Section 9.7.4.

1. Once the Base Cost of the Proposed Change Order work has been evaluated, negotiated and agreed upon by the Developer and the Commission, the actual net cost in money to Commission for the Change in the Work shall be computed as follows:

(a) The Contractor, when not the entity performing the work, shall be entitled to add 8% to the Base Cost as full compensation for all home office overhead, field overhead, bonds, insurance, safety, profit and all incidentals associated with managing the Change in the Work. When the Contractor is the entity performing the work, its markup is to be included in the Base Cost as outlined in Section 9.7.4.

(b) The Developer shall be entitled to add 4% to the Base Cost as full compensation for all work associated with administering the Change in the Work.

2. When the Developer and the Commission are unable to negotiate and agree upon the Base Cost for a Change in the Work, Commission shall be entitled to direct the Developer to proceed with the work as outlined in Section 9.8 and Section 9.9.

**9.7.6** Any unspent allowances and contingencies, as outlined in Exhibit 5.1(a) of the Agreement, which remain at the time of Final Completion, shall be refunded 100% to the Commission as a deductive Change Order to the Contract Price.

**9.7.7** The mark-up on the Base Cost described in Section 9.7.5 shall also compensate Developer and Contractor for all indirect costs including, but not limited to, labor and/or equipment inefficiency, changes in sequence, delays, interferences, impact on unchanged work, state and local or any other gross receipts taxes, any use tax, additional premiums for increases in all bonds, additional insurance premiums, supervision, field engineering and coordination, superintendent, small tools, reproduction, administration, schedule adjustments and updates, as-built documentation and updates, safety requirements, temporary structures and all other general and administrative, home expenses associated with or relating to the change in the Work

**9.7.8** In event of a Contract Time(s) extension of unreasonable duration caused by the acts or omissions of Commission, its agents or employees or which arise from or out of (or due to) causes within the control of Commission, its agents or employees, Developer shall be compensated for the additional cost of superintendent, field office, and safety requirements without mark-up. The parties agree that the term "unreasonable delay" as used herein shall mean only a period of time

which singularly and in itself exceeds ten percent (10%) of the remaining Contract Time including any agreed-upon time extensions, or thirty (30) days, whichever is greater.

**9.7.9** In the event that it is necessary to increase the Contract Time in order to perform the Change in the Work, Developer shall provide an estimate of the increase in the Contract Time which shall be negotiated in good faith by Commission and Developer. Developer's request for a time extension shall be evaluated in accordance with the criteria described in Article 8 above.

**9.7.10** If Developer's Proposed Change Order is rejected by Commission as being within the scope of the Work required by the Contract Documents Commission may, at its reasonable discretion, direct Developer to perform the Work which is the subject of the said Proposed Change Order; Developer shall then promptly proceed with said Work. Nothing herein shall excuse the timely performance by Developer of the Work because any Proposed Change Order is pending.

**9.7.11** Based on the complexity and magnitude of the Change, the Developer reserves the right to request an adjustment in the Developer Fees, and the Commission shall reasonable review and consider it.

## **9.8 Change Order**

**9.8.1** The Contract Price and the Contract Time(s) may be changed only by Change Order. A Change Order signed by Developer indicates its agreement therewith, including the adjustment in the Contract Price and/or the Contract Time(s). Change Orders shall be numbered consecutively by date of issuance by Commission and shall, if applicable, indicate the number of the Field Order(s), request for proposal(s) and/or Proposed Change Order(s) to which it relates. If Commission determines that Developer's Proposed Change Order, submitted pursuant to Section 9.7.1 above for a change in the Contract Price or Contract Time(s), is acceptable, the Commission shall prepare and issue, or cause to be prepared and issued, a Change Order which will authorize Developer to proceed with the change in the Work for the cost and time stated in the Proposed Change Order, or as otherwise may be agreed upon by the parties. The amounts stated in the Change Order for the cost and time to perform the change in the Work shall be binding on the parties.

**9.8.2** After issuance of the Change Order, Developer shall ensure that the amount of the performance and payment bond coverage has been revised to reflect the increase in the Contract Price due to the Change Order.

**9.8.3** If Developer's Proposed Change Order is not acceptable to Commission or if the parties are unable to otherwise agree as to the cost and time necessary to perform the change in the Work, Commission may, at its sole option and discretion, direct Developer to perform the Work on a time and material basis. Developer shall then promptly proceed with the Work.

**9.8.4** If Commission elects to have the Change in the Work performed on a time and material basis, the same shall be performed, whether by Developer's forces or the forces of any of its Subcontractors or Sub-Subcontractors, at actual cost to the entity performing the Change in the Work (without any charge for administration, clerical expense, supervision or superintendent of any nature whatsoever). The percent mark-ups for Developer, Subcontractors and Sub-Subcontractors shall be as described in Sections 9.7.4 and 9.7.5 above.

1. Prior to starting the work on a time and material basis, Developer shall notify

Commission in writing as to what consultant services, labor, materials, equipment or rentals are to be used for the change in the Work. During the performance of the change, Developer shall submit to Commission daily time sheets and material tickets, which shall list the categories and amounts of services, labor and equipment for which Change Order compensation is to be charged for the previous work day. Such tickets shall specifically include the following information: location and description of the change in the Work, consulting services performed and associated direct costs, the classification of labor employed, including names and social security numbers of laborers, labor trades used, man-hours, wage rates, insurance, taxes and fringe benefits, equipment and materials suppliers' quotations with detailed break-out and pricing, rental equipment hours and rates, and materials quantities and unit prices and such other evidence of cost as Commission may require.

2. Developer shall commence submission of daily time sheets and material (or other direct cost) tickets immediately upon commencement of the Change Order Work and continue to submit them until completion of the Change Order Work. Commission may require authentication of all time and material tickets and invoices by persons designated by Commission for such purpose.

3. The failure of Developer to provide any required authentication shall, if Commission elects to treat it as such, constitute a waiver by Developer of any claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by Commission shall not constitute an acknowledgment by Commission that the items thereon were reasonably required for the Change in the Work.

4. For any work performed on a time and material basis, Developer shall submit its complete submission of the reasonable actual cost and time to perform the Change in the Work within twenty (20) days after such Work has been completed or within such other longer period as Commission may agree in writing to allow. Commission shall review the costs and time submitted by Developer on the basis of reasonable expenditures and savings of those performing the change in the Work. If such costs and time are acceptable to Commission, or if the parties otherwise agree to the actual reasonable cost to perform the change in the Work, a Change Order will be issued for the cost and time agreed upon. The amounts stated in the Change Order for the cost and time to perform the change in the Work shall be binding upon the parties.

9.8.5 Developer shall be entitled to costs as provided for in Section 9.7 above which Developer, its Subcontractors, or Sub-Subcontractors may incur as a result of delays, interferences, suspensions, changes in sequence or the like, which are unreasonable, as defined in Section 9.7.6 above arising from the performance of any and all changes in the Work, caused by acts or omissions of Commission, performed pursuant to this Article 9.

## **9.9 Directed Change Order**

9.9.1 In the event that the parties are unable to agree as to the reasonable cost and time to perform the change in the Work and Commission does not elect to have the change in the Work performed on a time and material basis, Commission shall, in good faith, make a determination of the reasonable cost and time to perform the change in the Work, based upon his own estimates, Developer's submission or a combination thereof. A Change Order shall be issued for the amounts of cost and time determined by Commission and shall become binding upon Developer unless Developer submits its protest in writing to Commission within thirty (30) Days of the issuance of

the Change Order. The procedure for the resolution of Developer's protest shall be as described in Article XI of the Agreement. Commission has the right to direct in writing Developer to perform the change in the Work, which is the subject of such Directed Change Order. Failure of the parties to reach agreement regarding the cost and time of performing the Change in the Work, or any pending protest, shall not relieve Developer from performing the Change in the Work promptly and expeditiously.

#### **9.10 Decreases and Work Not Performed**

**9.10.1** Should it be deemed expedient by Commission at any time that the works are in progress to decrease the dimensions, quantity of material or work, or vary in any other way the work herein contracted for, Commission shall have the full power to do so, and shall order and direct, in writing, such decreases to be made or performed without in any way affecting the enforcement of the Contract Documents. Developer shall, in pursuance of such written orders and directions from the said Commission, execute the work thereby ordered and directed, and the difference in expense occasioned by such decrease or diminution so ordered shall be deducted from the amount payable under the Contract Documents.

**9.10.2** If work is not performed and such deletion of work is not approved by Commission, Commission shall ascertain the amount of the credit due Commission based on the reasonable value of the services, labor and materials so deleted.

**9.10.3** If work is deleted from the Agreement by Change Order, the amounts to be credited to Commission shall reflect the same current pricing as if the work were being added to the Contract Documents at the time the deletion is ordered, and documentation will be required for a credit as specified in Section 9.7.4. If such deleted materials and equipment shall have already been purchased and stored on the Site and cannot be used in other projects, returned for credit or cannot be returned for credit at the price paid by Developer at the time of purchase, Developer shall be entitled, upon proper documentation and certification, to an adjustment in the pricing of the credit to avoid hardship to Developer. If necessary in order to establish such reasonable value, Developer may be required to submit a detailed breakdown of its original proposal for the items or work involved.

#### **9.11 Claims for Additional Cost and/or Time**

**9.11.1** If Developer wishes to make a claim for an increase in the Contract Price and/or Contract Time(s) that is not related to a request for proposal or Field Order, it shall give Commission written notice thereof within seven (7) Days after the commencement of the event giving rise to such claim. This notice shall be given by Developer before proceeding to execute the Work, except in an emergency endangering life or property in which case Developer shall proceed as provided in Section 9.13. No claim shall be allowed and no amounts paid for any and all costs incurred if notice is not given to Commission as herein provided. Any change in the Contract Price and/or Contract Time(s) resulting from such claim shall be authorized by Change Order. Developer's complete claim submittal for an increase in the Contract Price and/or Contract Time(s) shall be submitted no later than twenty (20) Days after the Work for which the claim is made has been completed or within such other longer period as Commission may agree in writing to allow.

#### **9.12 Minor Changes in the Work**

**9.12.1** Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Developer may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Developer shall promptly inform Commission and the QAM, in writing, of any such changes and record such changes on the documents maintained by Developer.

### **9.13 Emergencies**

**9.13.1** In any emergency affecting the safety of persons and/or property, Developer shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

## **Article 10**

### **Project Management and Reporting Requirements**

#### **10.1 Schedule**

**10.1.1** The Project Schedule has been developed and shall be the basis for monitoring Developer's performance of the Work.

#### **10.2 Schedule Updates**

**10.2.1** As part of, and in conjunction with, its monthly reports required by Section 10.8 below, Developer shall provide Commission with any proposed update of the Project Schedule for Commission's review and approval and a progress narrative that describes, at a minimum, the overall progress for the preceding month, a critical path analysis, a discussion of problems encountered and proposed solutions thereof, work calendars, constraints, delays experienced and any pending float consumption as a result of either Commission and/or Developer delays, documentation of any logic changes, duration changes, resource changes or other relevant changes. The monthly progress narrative shall also include the following:

1. Comparisons of actual and planned progress, including graphic illustrations of schedule variance by major Work category;
2. Statement by the Developer that this is the only schedule being executed to perform the Work;
3. Details of any aspects of the Work which may jeopardize the completion in accordance with the Contract Documents; and
4. Measures being (or to be) adopted to overcome such aspects and a list of approvals needed to adopt such measures.

#### **10.3 Schedule Revisions**

**10.3.1** If Commission reasonably believes that the Project Schedule needs a specific revision, either in logic, activity duration, manpower or cost, it will be requested from Developer in writing.



Developer shall respond in writing within seven (7) Days, either agreeing with Commission's proposed revision, and henceforth including it in the next Project Schedule update, or providing justification why it should not be accomplished. If revisions cannot be agreed upon either through written correspondence or subsequent meetings, Commission and Developer shall agree to attempt to resolve the issues through the dispute resolution process of Article XI of the Agreement. If Commission and Developer cannot resolve the dispute, Developer shall proceed under the previously approved Project Schedule. At no time shall Developer continue to reflect items of non-concurrence from Commission in Project Schedule updates.

#### **10.4 Schedule Format**

**10.4.1** Developer shall submit or cause to be submitted two (2) copies in electronic format of the Project Schedule, including updates and narratives. A CD-ROM containing the latest Project Schedule update in electronic format shall be submitted for each schedule iteration along with two (2) color coded plots of the current Time Scaled Logic Diagram, which shall be neatly organized and plotted time scaled from left to right on 24"x36" sheets with suitable notation relating the interface points among sheets, unless otherwise agreed to by the parties. Time Scaled Logic Diagrams shall clearly depict the critical path, as well as activity identifications, activity descriptions, original durations, early start, early finish, late start, late finish, and actual dates as applicable. This process shall continue until Final Completion. The first day of the month of each Project Schedule update shall coincide with Developer's Application for Payment. Developer shall use the latest version of Primavera PG from Primavera Systems, Inc. as the format for the Project Schedule and all updates, unless otherwise agreed to by the parties.

#### **10.5 Other Information and Alteration**

**10.5.1** Developer shall, whenever required by Commission, provide or cause to be provided in writing a general description of the arrangements and methods which Developer proposes to adopt for the execution of the Work. No significant alteration to the Project Schedule, or to such arrangements and methods, shall be made without informing Commission and any alterations made shall reflect the requirement for coordination of the Work with the actions and obligations of Commission and the work to be carried out by Commission's Separate Contractors. If any alteration affects any such actions, obligations or Work, it shall not be made without the prior approval of Commission. If the progress of the Work does not conform to the Project Schedule, as updated herein, Commission may instruct Developer to revise the Project Schedule, showing the modifications necessary to achieve completion within the Contract Time(s).

**10.5.2** The Project Schedule shall encompass all of the consultants and trades necessary for design and construction of the Project and shall be sufficiently complete and comprehensive to enable progress to be monitored on a day-to-day basis.

**10.5.3** It is the sole responsibility of Developer to ensure that the Project Schedule is prepared, maintained, updated, revised and utilized as outlined in this Article 10. The Project Schedule shall be the sole overall schedule utilized by Developer in managing this Project, provided, however, that Developer may at its option employ and utilize other schedules based upon and consistent with the Project Schedule. In general, it is the intent of this Article 10 to allow Developer to choose its own means, methods and procedures consistent with good practice and the Contract Documents.

**10.5.4** Approval by Commission of the Project Schedule is advisory only and shall not relieve Developer of the responsibility for accomplishing the Work within each and every required Contract Time. Omissions and errors in the approved Project Schedule shall not excuse performance which is not in compliance with the Contract Documents. Approval by Commission in no way makes the Commission an insurer of the Project Schedule's success or liable for time or cost overruns flowing from its shortcomings. Commission hereby disclaims any obligation or liability by reason of Commission approval of the Project Schedule.

**10.5.5** Developer shall consult with and obtain information from principal Design Consultants and Subcontractors necessary in preparation of the schedules, updates and revisions required herein. Developer shall provide each principal Design Consultant and Subcontractor with copies of the Project Schedule and any revisions or updates affecting a Design Consultant's or Subcontractor's Work. Developer shall hold appropriate progress meetings with Design Consultants and Subcontractors and shall direct and coordinate the Work of Subcontractors consistent with and as required herein. Commission shall have the right to attend Design Consultant or Subcontractor progress meetings but shall not be required to participate in such meetings or provide information to Design Consultant or Subcontractors, except through Developer. Developer shall keep up-to-date minutes of Design Consultant and Subcontractor progress meetings and shall provide same to Commission. Developer shall ensure that each Design Consultant, Subcontractor, Sub-Subcontractor or supplier acknowledges and accepts the requirements of the Project Schedule relating to its part of the Work.

**10.5.6** Contractor's superintendent shall maintain at the job site, an approved Project Schedule, indicating actual monthly progress for those portions of the Project on which Work has been or is being performed.

**10.5.7** If an extension or contraction of any Contract Time is authorized by any Change Order, Developer shall revise its Project Schedule accordingly.

**10.5.8** If, in the reasonable opinion of Commission, the Project Schedule does not accurately reflect the actual progress and sequence of the Developer's performance of the Work, Developer shall revise the Project Schedule, upon Commission's request, and submit a revised Project Schedule that accurately represents the progress and sequence of Developer's performance of the Work.

**10.5.9** Commission shall have the right to approve any scheduling consultant that may be selected or retained by Developer, such approval not to be unreasonably delayed or denied.

**10.5.10** Developer covenants and guarantees that Developer will not:

1. Misrepresent to Commission its planning and scheduling of the Work.
2. Utilize schedules materially different from those made available to the Commission or any Design Consultants or Subcontractors for the direction, execution and coordination of the Work, or which are not feasible or realistic.
3. Prepare schedules, updates, revisions or reports which do not accurately reflect Developer's actual intent or Developer's reasonable and actual expectations as to:

- (a) The sequences of activities,
- (b) The duration of activities,
- (c) The responsibility for activities,
- (d) Resource availability,
- (e) Labor availability or efficiency,
- (f) Expected weather conditions,
- (g) The value associated with the activity,
- (h) The percentage complete of any activity,
- (i) Completion of any item of work or activity,
- (j) Project completion,
- (k) Delays, slippages, or problems encountered or expected,
- (l) Design Consultant or Subcontractor requests for time extension or delay claims, and
- (m) If applicable, the float time available.

**10.5.11** Should Developer fail to substantially comply with the provisions of the Contract Documents relating to scheduling and execution of the Work by the overall Project Schedule, Commission shall have the right, at its option and in its reasonable discretion, to retain the services of scheduling consultants or experts (including attorneys if necessary in the opinion of the Commission) to prepare schedules, reports, updates and revisions of the schedule in accordance with the Contract Documents and to review and analyze same, in order to allow Commission to evaluate the program of the Work by Developer, to determine whether Developer is substantially complying with the Contract Documents, and to direct such action of the part of Developer, as permitted by the Contract Documents, as required to ensure, under the Commission's schedule prepared hereunder, that Developer will complete the Work within the Contract Time(s). All costs and expenses and fees incurred by Commission in preparing the schedule hereunder may, at the Commission's reasonable discretion, be charged to Developer's account. If Developer fails to substantially comply with the scheduling and execution of the Work requirements of the Contract Documents, Developer hereby agrees, in such instance, to comply with such Commission-prepared schedules, if any, or directions, and activity sequences and durations as Commission may reasonably require, without additional cost to Commission (subject only to cost adjustments for such changes in the Work as Commission may direct), to ensure completion within the Contract Time(s).

## **10.6 Commission's Separate Contractors**

**10.6.1** Developer agrees to include the activities of Commission's Separate Contractors into the Project Schedule.

## **10.7 Commission's Review and Approval of Project Schedule**

**10.7.1** Commission's review and approval of the Project Schedule or subsequent updates shall not be construed as relieving Developer of its complete and exclusive control and responsibility over the means, methods, sequences and techniques for executing the Work and does not constitute approval or acceptance of Developer's ability to complete the Work within the Contract Time(s).

## **10.8 Monthly Reports**

**10.8.1** After receiving Notice to Proceed, monthly reports shall be prepared by Developer and submitted to Commission in three (3) hard copies and one (1) electronic copy. The first report shall cover the period up to the end of the calendar month after that in which the Agreement Date occurred; reports shall be submitted monthly thereafter, on or before the tenth (10<sup>th</sup>) day of each month. Reporting shall continue until Commission's determination that the Project has achieved Final Completion. Each report shall include:

1. Photographs and detailed descriptions of progress, including each stage of design, Governmental Approvals (including but not limited to permit acquisition), procurement, delivery to Site, and construction;
2. Charts showing the status of all design documents, purchase orders, Governmental Approvals (including but not limited to permit acquisition) and construction;
3. Records of personnel and Developer's equipment;
4. Copies of quality assurance documents, and test results;
5. Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;
6. Status of approvals for Governmental Approvals, as required by Section 2.7.1 above;
7. Monthly updates to the Project Schedule and the narrative as set forth in Section 10.2.1 above; and
8. Unresolved claims or disputes that involve requests for extension to the Contract Time(s) or adjustment to any other date or milestone set forth in the Contract Documents or increases in the Contract Price.

Failure of Developer to provide complete monthly reports, including but not limited to the monthly schedule updates, shall be grounds for Commission to withhold approval for all or part of Developer's Applications for Payment until such time Developer furnishes such complete reports.

## **10.9 Project Records**

**10.9.1** Developer shall organize and maintain its project records in a manner that allows such project records to be filed by Work packages, as applicable. Additionally, Developer shall propose for Commission approval, and utilize a tracking log wherein the project records are provided chronologically, with the file type, description, date received/sent, entity the documentation is from/to, pay package reference, status and electronic location. If the project record relates to changes in the Work, preferably only one (1) Work package shall be referenced in such project record. If a project record relates to multiple Work packages, then all related Work packages shall be referenced in such project record. As a condition of final payment, Developer shall provide Commission with a complete set of all project records by and between Developer and Commission exchanged on the Project.

## **Article 11**

### **Contracting Provisions**

#### **11.1 Civil Rights Requirements**

**11.1.1** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Developer agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Developer agrees to comply with applicable Federal implementing regulations and other implementing requirements that the FTA may issue.

**11.1.2** The following equal employment opportunity requirements shall apply:

1. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Developer agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60, *et seq.* (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Developer agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Developer agrees to comply with any implementing requirements FTA may issue.

2. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Developer agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Developer agrees to comply with any implementing requirements FTA may issue.

3. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Developer agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Developer agrees to comply with any implementing requirements FTA may issue.

**11.1.3** No otherwise qualified handicapped individual in the United States, shall solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

**11.1.4** The Developer also agrees to include these requirements in each Subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

**11.4.5** In accordance with the Code of Virginia, the Developer agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex or national origin 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. The Developer, in all solicitations or advertisements for employees placed by or on behalf of the Developer, will state that such Developer is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purposes of meeting the requirements of this section.

## **11.2 Sustainability**

**11.2.1** Commission is a signatory to the International Association of Public Transport charter on sustainable development. As a result, Commission encourages its contractors and suppliers to perform their services in an environmentally-responsible manner. This includes, among other things, maximizing the use of recycled and recyclable materials, utilizing energy-efficient and non-polluting facilities and vehicles, and encouraging employee consciousness of environmentally-sensitive activities and lifestyles.

## **11.3 False or Fraudulent Statements**

**11.3.1** The Developer acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Agreement. Upon execution, the Developer certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the this Agreement. In addition to other penalties that may be applicable, the Developer further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Developer to the extent the Federal Government deems appropriate.

**11.3.2** The Developer also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under

the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Developer, to the extent the Federal Government deems appropriate.

**11.3.3** The Developer agrees to include the above two paragraphs in each Subcontract. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

#### **11.4 Officials Not To Benefit**

**11.4.1** No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of the Agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to the Agreement if made with a corporation for its general benefit.

**11.4.2** No member, officer, or employee of the Commission or of a local public body during his/her tenure or one (1) year thereafter shall have any interest, direct or indirect, in the Agreement or the proceeds thereof.

#### **11.5 Covenant Against Contingent Fees**

**11.5.1** The Developer warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Developer for the purpose of securing business. For breach or violation of this warranty, the Commission shall have the right to annul the Agreement without liability or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### **11.6 Gratuities**

**11.6.1** In connection with performance of Work required under the Agreement, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Developer, or any agent, representative or other person deemed to be acting on behalf of the Developer, or any supplier or Subcontractor furnishing material to or performing work under this Developer, or any agent, representative or other person deemed to be acting on behalf of such supplier or Subcontractor, to any director, officer or employee of the Commission; or to any director, officer, employee or agent of any of the Commission's agents, contractors, representatives or other persons deemed to be acting for or on behalf of the Commission with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract is expressly prohibited and Developer agrees to abide by this prohibition. "Commission" as used herein shall include the member communities of the Transportation District.

#### **11.7 Federal Requirements and Changes**

**11.7.1** Developer shall at all times comply with all applicable FTA regulations, policies, procedures and directives, as they may be amended or promulgated from time to time during the term of the Agreement. Developer's failure to so comply shall constitute a material breach of the Agreement.

## **11.8 Audit and Inspection of Records**

**11.8.1** The Developer agrees to provide the Commission, the Commonwealth, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Developer which are directly pertinent to the Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The Developer also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any Project Management Oversight Contractor access to Developer's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

**11.8.2** The Developer agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

**11.8.3** The Developer agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of the Agreement, except in the event of litigation or settlement of claims arising from the performance of the Agreement, in which case Developer agrees to maintain same until the Commission, the Commonwealth, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto [49 CFR 18.39(i)(11)].

**11.8.4.** The Developer agrees to include the above clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

## **11.9 Energy Conservation**

**11.9.1** The Developer agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **11.10 No Federal Government Obligation**

**11.10.1** The Commission and Developer acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to the Agreement and shall not be subject to any obligations or liabilities to the Commission, Developer, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the Agreement.

**11.10.2** The Developer agrees to include the above clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

## **11.11 Fly America**



**11.11.1** The Commission shall not fund the costs of international air transportation of any persons involved in or property acquired for the Agreement unless that air transportation is provided by U.S.-flag carriers to the extent service by these carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. paragraph 40118, and with U.S. General Services Administration regulations pertaining to the use of United States air carriers, 41 C.F.R. 301-3.61(b), and any later regulations at 41 C.F.R. 301-10.131 *et seq.*

## **11.12 Cost or Pricing Data**

**11.12.1** The Developer shall submit to the Commission upon request cost or pricing data under the conditions described in this paragraph and certify that, to the best of its knowledge and belief, the cost or pricing data submitted is current, accurate, and complete. The Developer shall also certify that costs proposed hereunder are allocable, allowable, and reasonable in accordance with cost principles and practices under OMB Circular A-87. This requirement shall apply to any change order or other modification to the Agreement for which a modification in the Contract Price is requested.

**11.12.2** Cost or pricing data consists of all facts existing up to the time of agreement on price which prudent buyers and sellers would reasonably expect to have a significant effect on the price negotiations for the modification. The definition of cost or pricing data embraces more than historical accounting data; it also includes, where applicable, such factors as subcontractor, supplier and vendor quotations, nonrecurring costs, changes in construction methods, unit cost trends such as those associated with labor efficiency and any management decisions which could reasonably be expected to have a significant bearing on costs. Cost or pricing data consists of all facts which can reasonably be expected to contribute to sound estimates of future costs as well as to the validity of costs already incurred. Cost or pricing data, being factual, is that type of information which can be verified. Because the certificate pertains to cost or pricing data, it does not make representations as to the accuracy of the Developer's judgment on the estimated portion of future cost or projections. The certificate does, however, apply to the data upon which the Developer's judgment is based.

**11.12.3** If the Developer or any Subcontractor submits defective cost or pricing data, a reduction in Contract Price shall be made by that amount deemed defective.

## **11.13 Federal Terms**

**11.13.1** These General Conditions include certain terms and conditions required by the FTA, or by Federal law or regulation, whether or not expressly set forth in these preceding contract provisions. All contractual provisions required as set forth in FTA Circular 4220.1E, dated June 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all Federally-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Agreement. The Developer shall not perform any act, fail to perform any act, or refuse to comply with any Commission requests which would cause the Commission to be in violation of the federal terms and conditions.

## **11.14 Buy America Act**

**11.14.1** The Developer agrees to comply with 49 U.S.C. 5323(j), and its implementing regulations at 49 C.F.R. Part 661, any amendments thereto, and any implementing guidance issued by FTA.

## **11.15 Clean Air and Water**

**11.15.1** The Developer agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Developer agrees to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency regional office.

**11.15.2** The Developer also agrees to include these requirements in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **11.16 Contract Work Hours and Safety Standards Act**

**11.16.1** No Developer or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**11.16.2** In the event of any violation of the clause set forth in paragraph (1) of this section the Developer and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Developer and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in Section 11.16.1, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in Section 11.16.1.

**11.16.3** The Commission shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Developer or Subcontractor under any such contract or any other Federal contract with the same prime developer, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime developer, such sums as may be determined to be necessary to satisfy any liabilities of such Developer or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Section 11.16.2.

**11.16.4** The Developer or Subcontractor shall insert in any Subcontracts the clauses set forth in this Section 11.16 and also a clause requiring the Subcontractor to include these clauses in any lower tier subcontracts. The Developer shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in this section.

**11.16.5** Payrolls and basic records relating thereto shall be maintained by the Developer during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records

shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Developer shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

#### **11.17 Recovered Materials**

**11.17.1** The Developer agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

#### **11.18 Davis-Bacon and Copeland Anti-Kickback Acts**

**11.18.1** The Developer shall comply with the provisions of the Davis-Bacon and Copeland Anti-Kickback Acts consistent with the terms set forth in Appendix 3 hereto.

#### **11.19 Disadvantaged Business Enterprises**

**11.19.1** The Developer shall comply with the provisions relating to disadvantaged business enterprises set forth in Appendix 4 hereto.

### **Article 12**

#### **Responsibilities Upon Termination**

##### **12.1 Developer's Responsibilities after Receipt of Notice of Termination**

After receipt of a Notice of Termination, and except as directed by the Commission, Developer shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due:

**12.1.1** Stop Work as specified in the notice;

**12.1.2** Enter into no further Subcontracts and place no further orders for materials, services or facilities, except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages;

**12.1.3** Terminate all Subcontracts to the extent they relate to the Work terminated except to the extent that continuation of the Subcontract is necessary in order to mitigate damages;

**12.1.4** Assign to the Commission or its designee in the manner, at the times, and to the extent directed by the Commission, all of the right, title, and interest of Developer under the Subcontracts so terminated, in which case the Commission will have the right, in its sole discretion, to accept performance, settle or pay any or all claims under or arising out of the termination of such Subcontracts;

**12.1.5** Settle outstanding liabilities and claims arising out of such termination of Subcontracts, with the approval or ratification of the Commission, to the extent it may require, which approval or ratification shall be final;

**12.1.6** Transfer and deliver to the Commission or its designee, as directed by the Commission, (a) possession and control of the Project, and (b) all right, title and interest of Developer in and to (i) the Work in process, completed Work, supplies and other materials produced or acquired for the Work terminated, and (ii) the Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, reports, books, samples, information and other Work Product that would have been required to be furnished to the Commission if the Work had been completed;

**12.1.7** Complete performance in accordance with the Contract Documents of all Work not terminated;

**12.1.8** Take all action that may be necessary, or that the Commission may direct, for the protection and preservation of the property related to the Contract Documents that is in the possession of Developer and in which the Commission has or may acquire an interest; and

**12.1.9** As authorized by the Commission, use its best efforts to sell at reasonable prices any property of the types referred to in Section 12.1.6; provided, however, that Developer (a) shall not take any such action with respect to any items for which title has previously transferred to the Commission, (b) is not required to extend credit to any purchaser, and (c) may acquire the property itself, under the conditions prescribed and at prices approved by the Commission. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Commission under the Contract Documents or paid in any other manner directed by the Commission.

## **12.2 Inventory**

**12.2.1** Developer shall submit to the Commission a list of termination inventory not previously disposed of and excluding items authorized for disposition by the Commission; and within thirty (30) Days of receipt of the list, Developer shall deliver such inventory to the Commission and the Commission shall accept title to such inventory as appropriate.

## **12.3 Settlement Proposal**

**12.3.1** After termination, Developer shall submit a final termination settlement proposal to the Commission in the form and with the certification prescribed by the Commission. Developer shall submit the proposal promptly, but no later than sixty (60) Days from the effective date of

termination unless Developer has requested a time extension in writing within such sixty (60) Day period and the Commission has agreed in writing to allow such an extension.

## **12.4 Amount of Termination Settlement**

**12.4.1** Developer and the Commission may agree upon the whole or any part of the amount or amounts to be paid to Developer by reason of the termination of Work. Such negotiated settlement may include an allowance for profit solely on Work which has been completed as of the termination date. In addition, Developer shall be paid its reasonable costs of termination of Subcontracts and otherwise winding down the terminated Work. Such agreed amount or amounts payable for the terminated Work, exclusive of costs described in the prior sentence, shall not exceed the total Contract Price as reduced by the Contract Price of Work not terminated. Nothing in Section 12.5, shall be deemed to limit, restrict or prevent the parties from agreeing to a partial settlement. The Commission's execution and delivery of any settlement agreement shall not affect or be deemed to affect any of its rights to require compliance of the completed Work, any of its rights under the Performance Bond or any of its rights against Subcontractors except to the extent expressly addressed in such settlement agreement. Upon determination of the amount of the termination payment, the Agreement shall be amended to reflect the agreed termination payment, Developer shall be paid the agreed amount, subject to the limitations contained herein on the Commission's obligations to make payments, and the Contract Price shall be adjusted to deduct the portion thereof which is allocable to the terminated Work.

## **12.5 No Agreement as to Amount of Claim**

**12.5.1** In the event Developer and the Commission are unable to agree upon the amount to be paid Developer by reason of the termination of Work pursuant to this Article 12, the amount payable (exclusive of interest charges) shall be determined in accordance with the dispute resolution procedures contained in Article XI of the Agreement.

## **12.6 Reduction in Amount of Claim**

**12.6.1** The amount otherwise due Developer under this Article 12 shall be reduced by (a) the amount of any bona fide claim which the Commission may have against Developer provided that the Commission has delivered to Developer written notice thereof setting forth the specific grounds therefor and (b) the agreed price for, or the proceeds of sale of, materials, supplies or other things acquired by Developer or sold, pursuant to the provisions of this Article 12, and not otherwise recovered by or credited to Commission.

## **12.7 Payment**

**12.7.1** The Commission may from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by Developer in connection with the terminated portion of the Work, whenever in the opinion of the Commission the aggregate of such payments shall be within the amount to which Developer will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article 12, such excess shall be payable by Developer to the Commission upon demand together with interest at a variable rate per annum equal to the reference rate announced by SunTrust in Norfolk, Virginia, from time to time, plus one percent (1%).

## **12.8 Inclusion in Subcontracts**

**12.8.1** Developer shall insert in all Subcontracts that the Subcontractor shall stop Work on the date of and to the extent specified in a Notice of Termination from the Commission and shall require that Subcontractors insert the same provision in each Subcontract at all tiers. Developer shall communicate, immediately upon receipt thereof, any Notice of Termination issued by the Commission to all affected Subcontractors.

## **12.9 Limitation on Compensation**

**12.9.1** In the event of a termination by the Commission under the Agreement, Developer agrees that it shall not be entitled to any compensation in excess of the value of the Work performed. Under no circumstances shall Developer or any Subcontractor be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs or consequential or other damages as a result of a termination by Commission under the Agreement. The payment to Developer determined in accordance with this Article 12 constitutes Developer's exclusive remedy for such a termination.

## **12.10 No Waiver**

**12.10.1** Any termination for convenience by Commission pursuant to Section 9.3 of the Agreement shall not waive any right or claim to damages which the Commission may have with respect to Work which has achieved Final Acceptance prior to the date of termination, and the Commission may pursue any cause of action which it may have by law or under the Contract Documents on account of such completed Work. Developer makes no warranties with respect to Work which has not achieved Final Acceptance prior to the date of termination.

## **12.11 Dispute Resolution**

**12.11.1** The failure of the parties to agree on amounts due under this Article 12 shall be subject to the dispute resolution process set forth in Article XI of the Agreement.

# **Article 13**

## **Miscellaneous**

## **13.1 No Waiver**

**13.1.1** The failure of either Developer or Commission to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

## **13.6 Headings**

**13.6.1** The headings used in these General Conditions, the Agreement or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

## **13.7 Notice**

**13.7.1** Unless otherwise specified in a particular Contract Document, whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given: (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient, provided, however, that the intended recipient is present to receive the facsimile and the transmittal is immediately followed by a hard copy delivered in accordance with (i) or (ii) above.

### **Appendices:**

Appendix 1 – Building Commissioning

Appendix 2 – Special Warranties

Appendix 3 – Davis-Bacon and Copeland Anti-Kickback Acts

Appendix 4 – Disadvantaged Business Enterprises

## **Appendix 1**

### **Building Commissioning**

See attached.



## **Appendix 1**

### **Building Commissioning**

**1. Assignment of Contract** – The Commissioning Contract between ARAMARK and Development Manager will be assigned to Owner upon Substantial Completion. The Commissioning Contract between Commissioning Agent and Development Manager is enclosed as part of this Appendix 1.

**2. Remaining Commissioning Fee** - After Substantial Completion, the remaining fee payable to ARAMARK for the tasks below listed is \$35,000. This amount is not included in the Contract Price and Owner shall be responsible for the payment of this amount for services rendered.

**3. Commissioning Tasks** - The following tasks are scheduled to be completed by ARAMARK after Substantial Completion.

- a. Commissioning Report** – Incorporate into the commissioning report summaries of the following: the design review process, the submittal review process, and the O&M documentation and training process. Complete a summary commissioning report that must include confirmation from the Commissioning Agent stating whether individual systems meet the requirements of the Project. This will also include an executive summary of the commissioning process, a history of any deficiencies and how they were corrected, and the functional performance test results and evaluation.
- b. Performance** – Verify the performance of the systems to be commissioned by conducting functional performance testing, and comparison of the results with the design intent and documents. Testing shall be performed once except on HVAC equipment which shall be tested once during both the heating and cooling seasons. Maintain a master issue log as well as a record of the functional testing results.
- c. Systems Manual** – In addition to the O&M manuals provided by the contractor, the commissioning agent will develop a systems manual that provides future operations staff the information needed to understand and optimally operate the commissioned systems.
- d. Training** – Verify that the training of operations staff and building occupants is completed according to the contract documents.
- e. Testing** – Complete any remaining testing not completed prior to substantial completion and assist with close out of unresolved issues.
- f. Review Building Operation** – Between 8 and 10 months after substantial completion, the commissioning agent will review building operation with operations staff and building occupants. The review will include a plan for the resolution of outstanding commissioning related activities.

**AGREEMENT BETWEEN  
CEI DEVELOPMENT, LLC  
AND  
ARAMARK MANAGEMENT SERVICES LIMITED PARTNERSHIP**

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THIS AGREEMENT ("Agreement") is made on this 27th day of March, 2008, by and between CEI Development, LLC, a Virginia Limited Liability Corporation (the "Client"), and ARAMARK Management Services Limited Partnership, a Delaware limited partnership ("ARAMARK").

The Client and ARAMARK desire to enter into this Agreement, pursuant to which ARAMARK shall perform certain services for the Client in connection with the LEED Enhanced Building System and Emergency and Uninterruptible Power commissioning services for the Hampton Roads Transit New Southside Bus Maintenance Facilities (the "Project"), as hereinafter provided. In consideration of the performance of services by ARAMARK and the payment for those services by the Client, the parties agree as follows:

1. Services of ARAMARK. ARAMARK shall perform commissioning services for the Client (the "Services") in connection with the Project in accordance with Sections D, E, F, and G of ARAMARK's Proposal dated July, 2008 (the "Proposal"), a copy of which is attached hereto as Exhibit A. Such Services shall include design review and recommendations during the Design Development phase of the project. ARAMARK shall perform the Services hereunder with the degree of professional care, skill and diligence normally exercised by professional consultants in similar circumstances and as expeditiously as is consistent with such professional skill and care and the orderly progress of the Services. ARAMARK shall at no time be acting as an architect, engineer or other design professional, and shall not be required to carry out duties requiring the services of a design professional. ARAMARK shall maintain sufficient staff to perform the Services in the most expeditious and economical manner consistent with the interests of the Client. ARAMARK shall notify the Client immediately in writing: (i) of any information required from the Client so ARAMARK can complete the Services in a timely manner; and (ii) of any work requested by the Client that is not included in the scope of work. ARAMARK shall be entitled to rely upon the completeness and accuracy of all information provided by the Client. ARAMARK will perform the Services hereunder as an independent contractor, not as an employee or joint venturer with the Client.

2. Payment to ARAMARK. The Client shall pay ARAMARK One Hundred and Twenty Thousand Seven Hundred and Ninety-Eight Dollars (\$120,798) for these Services (the "ARAMARK Fee"). Should the scope of the Services to be provided to the Client increase beyond the scope of work set forth in the Proposal or should the Client request that ARAMARK perform any services beyond the scope of Services set forth in ARAMARK's Proposal, ARAMARK's Fee will be adjusted as mutually agreed to by the Client and ARAMARK. ARAMARK shall submit monthly statements for services rendered. The statements will be based upon the Services completed at the time of billing on the basis of actual work performed. The Client shall make payments to ARAMARK thirty (30) days after receipt of ARAMARK's statements properly submitted.

3. Indemnification. Each party hereto agrees to indemnify and hold harmless the other party and its officers, directors, agents and employees from and against claims, actions, causes of action, costs, injuries, damages, liabilities and expenses, including

reasonable attorney's fees and court costs (collectively, "Losses"), for bodily injury, including death, or property damage, arising directly out of any solely negligent act or failure to act, or willful misconduct of the indemnifying party or any of its officers, directors, agents or employees in performing its obligations under this Agreement. In addition, each party agrees to indemnify and hold harmless the other party from and against all Losses arising or allegedly arising from any services performed by other persons or entities for the Project. Each party agrees to provide the other party with prompt written notice of all losses or claims for which it will seek indemnity under this Agreement. Each party agrees not to incur any cost or expense with respect to any loss or claim for which it seeks indemnity under this Paragraph without the other party's prior written approval; provided, however, that the foregoing shall not apply in the event that the other party has in writing rejected, denied or otherwise declined the indemnification request with respect to such loss or claim. Each party agrees to cooperate fully with the other party in the investigation, defense and settlement of all such losses and claims.

4. Termination. Either party may terminate this Agreement at any time, in whole or in part, with or without cause, upon thirty days' written notice to the other party. In the event this Agreement is terminated pursuant to this paragraph, ARAMARK shall be compensated for services properly rendered through the date of termination.

5. Documents. All documents, drawings and surveys (including those in electronic form) prepared by ARAMARK pursuant to this Agreement are the property of the Client; provided, however, that any use of such documents, drawings and surveys, other than for the Services, shall be at the Client's sole risk and without liability to the ARAMARK.

6. Confidentiality. All financial, statistical, operating and personnel materials and information, including but not limited to, technical manuals, plans, policy and procedure manuals and computer programs relative to or utilized in ARAMARK's business or the business of any subsidiary or affiliate of ARAMARK, shall be the property of ARAMARK and shall be confidential. ARAMARK shall keep such information confidential and shall so instruct its agents, employees and independent contractors, and the use of such information by the Client in any manner shall not affect ARAMARK's ownership or the confidential nature of such information. The Client shall not photocopy or otherwise duplicate any such materials without the prior written consent of ARAMARK.

Client agrees that all proprietary computer software, signage, and marketing and promotional literature and material used by ARAMARK in providing services pursuant to this Agreement (the "Proprietary Material") shall remain the property of ARAMARK. ARAMARK grants Client a non-exclusive right to use the Proprietary Material for the Term of this Agreement.

7. Hazardous Substances; Pre-Existing Conditions. ARAMARK has no duty to investigate, detect, prevent, handle, encapsulate, remove, or dispose of, and will have no responsibility to Client or others for any exposure of persons or property to, asbestos, lead, fuel storage tanks or contents, indoor air pollutants or contaminants, poor air quality, or hazardous, toxic, or regulated waste substances, pollutants, or contaminants (collectively, the "Hazardous Substances") at the Client's facilities or their surrounding premises; and such duties have not been included in the ARAMARK Fee. To the extent the Client has knowledge of such Hazardous Substances, the Client will inform ARAMARK of the presence of such Hazardous Substances and acknowledges that ARAMARK employees will not be required to work in any location where they could be exposed to such Hazardous Substances.

8. Changes in Scope of Work. The Client may, without invalidating this Agreement, request changes in the scope of the work, whether taking the form of additions, deletions, or other revisions, but no such work shall be performed unless and until such change is in writing and signed by the Client. In the event any such changes cause an increase or decrease in the cost of performing services hereunder, an appropriate price adjustment shall be included in the written change order signed by Client.

9. Late Payments. If any amount due to ARAMARK under this Agreement is not paid in full within thirty (30) days after its due date, then the unpaid portion will bear interest, from the due date until paid, at a rate of 1.5% compounded monthly.

10. Force Majeure. If either party is rendered unable to perform its duties under this Agreement, in whole or in part, by reason of any event that is not reasonably under its control (including, but not limited to, Acts of God, fires, floods, earthquakes, accidents, strikes, riots, national emergencies, and other such force majeure events), then any duty so impacted will be suspended during such event. The party rendered unable to perform due to force majeure must notify the other party immediately. If either party's inability to perform exceeds 120 days, then either party may terminate this Agreement by written notice, effective upon the other party's receipt.

11. Attorneys' Fees. In any action at law or in equity to enforce any of the provisions or rights arising under this Agreement, the prevailing party in such litigation, as determined by a court of proper jurisdiction in a final judgment or decree, shall be entitled to its costs, expenses and reasonable attorneys' fees incurred therein.

12. Assignment; Successors and Assigns. Upon Substantial Completion of the Project, this agreement shall be assigned to Hampton Roads Transit Commission (HRT). As of the 3/27/09, the estimated date for Substantial Completion is 1/11/11. ARAMARK has identified that \$35,000 out of the \$120,798 total commissioning fee, per Section 2 above, shall be the entire fee sufficient to complete the remaining ARAMARK's scope of services, as described herein, beyond the date of Substantial Completion. HRT shall be responsible for this remaining fee payable to ARAMARK upon Assignment of this Agreement. A document titled "Exhibit 6.6.2.1(f) Building Commissioning," pursuant a separate agreement between HRT and the Client, is attached hereto as Exhibit B. ARAMARK has reviewed and approved Exhibit B for accuracy and completeness of the remaining scope of services to be provided by ARAMARK upon Assignment through completion of the full scope of services as described herein.

Neither party may assign this Agreement without the other party's prior written consent; provided, however, that either party may assign the Agreement to an Affiliate (including an Affiliate of its ultimate parent corporation) without the consent of the other party. For purposes of this Agreement, "Affiliate" shall mean a company which controls, is controlled by or is under common control with the assigning party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns which shall not be unreasonably withheld.

13. Controlling Law; Construction. This Agreement is to be governed by the laws of the Commonwealth of Virginia. Each party has reviewed and approved this Agreement and the rule of construction that resolves ambiguities against the drafting party shall not be employed in the interpretation of this Agreement.

14. Entire Agreement; Conflict. This Agreement represents the entire agreement between ARAMARK and the Client and supersedes all prior negotiations or agreements, written or oral, which are not included herein. This Agreement may only be amended by written instrument executed by the Client and ARAMARK. In the event of a conflict between this Agreement and a proposal from ARAMARK or any exhibits hereto, this Agreement shall control.

15. Insurance; Waiver of Subrogation. ARAMARK will provide, or cause to be provided, workers' compensation insurance as required by law. Additionally, ARAMARK will carry comprehensive general liability insurance (including coverage for products liability, negligent acts, and broad form vendors' coverage), with limits of no less than One Million Dollars (\$1,000,000) combined single limit per occurrence. ARAMARK will furnish to Client, upon request, a certificate of insurance which states that such coverage is in effect. Both Parties waive all rights of recovery from each other for property damage or loss of use thereof, however occurring, to the extent covered by insurance. The foregoing waiver includes, but is not limited to, waiver of losses covered by fire, extended coverage, boiler explosion and sprinkler leakage policies, but does not waive personal injury or death claims. A waiver of subrogation shall be effective as to a person or entity even though he, she, or it would otherwise have a duty of indemnity, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

16. Waiver of Consequential Damages. In no case shall either Party be liable for any loss of business, business interruption, consequential or indirect damages.

17. Limitation of Liability. ARAMARK's liability for services rendered pursuant to this Agreement shall not under any circumstances exceed the amount of ARAMARK's Fee. ARAMARK shall not be responsible in any way for errors or omissions contained in any drawings, specifications, or other documents prepared by other persons or entities for the Project, or for errors or omissions by others in incorporating ARAMARK's recommendations into drawings, specifications, or other documents prepared by other persons or entities for the Project.

18. Notice. Any notice under this Agreement must be in writing, and will be effective when delivered personally, delivered by a national overnight delivery service, or three (3) business days after being deposited in the United States mail (postage prepaid, registered or certified). All notices will be addressed to the receiving Party at the following address (or such other address of which that Party has given proper notice):

If to Client:

CEI Development, LLC  
901 North Glebe Road, Suite 350  
Arlington, VA 22203  
Attn: R. Jeffrey Arnold, Manager

If to ARAMARK:

ARAMARK Management Services Limited Partnership  
ARAMARK Tower  
1101 Market Street

Philadelphia, PA 19107  
Attn: ARAMARK Higher Education, Chief Financial Officer

[SIGNATURES ON FOLLOWING PAGE]

This Agreement has been executed on the date provided above.

**CLIENT:**

**CEI DEVELOPMENT, LLC**

By: \_\_\_\_\_  
Name: R. Jeffery Arnold  
Title: Manager

**ARAMARK:**

**ARAMARK MANAGEMENT SERVICES LP**  
By: Its General Partner, ARAMARK SMMS LLC

By: \_\_\_\_\_  
Name: Jeffrey Tushar  
Title: Authorized Signatory

By: \_\_\_\_\_  
Name: Paul Justen  
Title: Authorized Signatory

**EXHIBIT A**

**PROPOSAL**

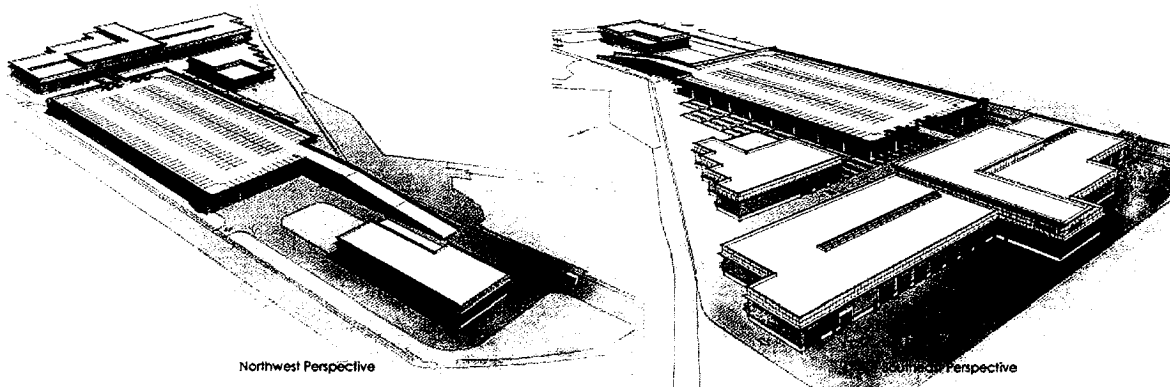
See attached Proposal dated July, 2008.





# HAMPTON ROADS TRANSIT

## Southside Operations Center



## Building Commissioning

**July 2008**

**Submitted by:**  
**ARAMARK**  
1717 Arch Street  
Philadelphia, PA 19103  
Matthew Judge, LEED AP, CPQ  
Director, Technical Services  
(610) 299-7954





# **HAMPTON ROADS TRANSIT**

**Building Commissioning Services**

**July 2008**

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- E. PROJECT TEAM AND ORGANIZATION CHART**
- F. PROJECT APPROACH**
- G. FEE PROPOSAL**



## A. EXECUTIVE SUMMARY

By issuing its request for commissioning services Concord Eastridge and the Owner have taken a proactive step in assuring that the new Hampton Roads Transit meets and sustains performance expectations. We understand that Concord Eastridge wishes to ensure that the success of this capital construction continues after occupancy, that the complex meets user expectations, minimizes energy consumption and costs, is easy to maintain, stays free from mechanical problems and, most importantly, supports the institutional program.

ARAMARK Management Services Limited Partnership, located at 1717 Arch Street in Philadelphia, PA is very pleased to submit this proposal to provide commissioning services for the new Hampton Roads Transit.

ARAMARK has extensive experience and technical capacity to meet and exceed the required needs for commissioning this building. ARAMARK has been commissioning buildings and their increasingly complex systems for more than 25 years. **We have commissioned more than \$9.3 billion and 59.7 million GSF of new and renovated facilities.** Our technical credibility, operator's perspective and construction experience has and will continue to aid in the satisfaction of each commissioning project's many objectives.

We truly believe that ARAMARK is the most qualified firm for this important project and commit that we will exceed the expectations of Concord Eastridge. All of ARAMARK's engagements rely on our seasoned professional staff to function as catalyst and initiator, providing significant commissioning knowledge and experience for the clients we serve.



## **B. FIRM HISTORY AND OVERVIEW**

**Name of firm:** ARAMARK Management Services Limited Partnership

**Address of firm:**

Corporate Office:  
1101 Market Street  
Philadelphia, PA 19107

**Local Address:**

1717 Arch Street  
Philadelphia, PA 19103

**Telephone number and fax number:**

Phone: (610) 299-7954  
Fax: (215) 413-8832

**Name, title, and email address of contact person:**

Matt Judge  
Director, Technical Services  
judge-matthew@aramark.com

**Number of years firm has been providing commissioning services:**

With over 25 years of commissioning experience, ARAMARK is the commissioning partner of choice for many institutions seeking successful delivery of signature projects. Building on our extensive facility management experience, we bring a distinct and valuable operational perspective to any engagement. Our comprehensive range of technical and operational skills allow us to approach each project from a holistic perspective including design, engineering, construction, troubleshooting, operation, maintenance, and training.



## C. BUILDING COMMISSIONING EXPERIENCE

### Selected ARAMARK Commissioning Clients

American Museum Nat History  
Drew University  
Duke University  
East Stroudsburg University  
Franklin & Marshall College  
George Washington University  
George Mason University  
Hamden School District  
Harvard University  
Immaculata University  
Lincoln University  
Loomis Chaffee School  
Millcreek School District  
MIT  
Muhlenberg College  
Neumann College  
New York State  
PA School for the Deaf  
Penn State University  
Rutgers University  
Rye School District  
State of Pennsylvania  
Swarthmore College  
The Episcopal Academy  
University of Pittsburgh  
University of Pennsylvania  
University of the Sciences in PA  
Volusia County Schools  
Washington National Cathedral  
Washington College  
World Trade Centers

### Technical Services

ARAMARK is a national leader in providing complete facility management solutions in higher education. Our dedicated Technical Services include:

- Building Commissioning
- Energy Management
- Utility Master Planning
- Deferred Needs Assessment
- Engineering Design Review
- Primary Systems Management

### A History of Excellence

ARAMARK was founded in 1959 and has a long history as a provider of facility services. ARAMARK is the commissioning partner of choice for many institutions seeking successful delivery of signature projects. Building on our extensive facility management experience, we bring a distinct and valuable operational perspective to any engagement. Our comprehensive range of technical and operational skills allows us to approach each project from a holistic perspective including design, engineering, construction, troubleshooting, operation, maintenance and training.

### Commissioning Experience

Constructed Value of Commissioned Projects	No. of Projects	Sq. Ft. (Millions)	
Total Commissioning Experience	\$9.3 Billion	309+	59.7
Educational Facilities	\$6.3 Billion	234	23.2
Government	\$3.5 Billion	50	14.2
Commercial/Industrial	\$2.8 Billion	69	7.4

#### 25 Years of Commissioning Experience

ARAMARK has saved its clients over \$75,000,000 through commissioning



### Facilities Commissioned

- Recreation centers (athletic and aquatics)
- Campus and performing arts centers
- Large classroom, academic, and computer facilities
- Science, research, vivarium, BSL3, and laboratory
- Heating, cooling plants and major electric infrastructure
- Retro-commissioning of existing buildings and systems
- Residential facilities
- Hospitals and mission critical facilities
- Museums and cultural institutions

### Exceptional People

ARAMARK professionals have expertise in the following areas: boiler and chilled water systems, laboratory controls, testing and balancing, environmental controls, HVAC, and electric and plumbing systems. Equally important is the 'hands-on' practical training provided to a client's operations and maintenance staff. Our staff oversees the functional performance verification of building systems by actively employing its own state-of-the-art test equipment, metering and measuring devices, and trend logging systems.



## LEED® QUALIFICATIONS AND “GREEN” BUILDING EXPERIENCE

ARAMARK has extensive familiarity and experience commissioning sustainable design or “Green” buildings. We are dedicated not only to supporting our client’s holistic goals to support sustainability, but also their practical need to meet LEED (Leadership in Energy and Environmental Design) requirements and deliver functional facilities.



For those clients seeking formal **LEED** certification, we are a trusted companion in the need to satisfy the commissioning pre-requisite, as well as the opportunity to achieve an additional commissioning point credit. ARAMARK is a certified member of the **U.S. Green Building Council (USGBC)**, promoting the design, construction, and operation of buildings that are environmentally responsible and healthy places to live and work.

To fully appreciate ARAMARK’s proficiency in this area, please consider the following:

- ARAMARK has commissioned roughly 51 Green or LEED projects including \$3.5 billion in project costs.
- ARAMARK currently retains a staff of **10 LEED Accredited Professionals** for sustainable design and construction.
- Selected to serve as one of the six core committee members of the USGBC’s New Construction Committee (NC), ARAMARK has been a leader in developing, guiding and defining the requirements for the future of LEED-NC.
- Recognized as a thought leader in sustainable design and commissioning through industry presentations and publications. ARAMARK recently co-presented with Oberlin College and Middlebury College on the topic of Green Buildings at the **National Association of College and University Business Officers (NACUBO)** annual conference. Additionally, we have twice presented on the specific topic of commissioning higher education green facilities at **Green Build**, the U.S. Green Building Council’s annual meeting and conference.



## LIST OF RECENTLY COMMISSIONED OR CONTRACTED GREEN PROJECTS

Client Site	ST	Facility	USGBC Level	Status	GSF
Loomis Chaffee School	CT	Clark Science Center	*	Green	44,000
Middlebury College	VT	Bicentennial Hall Science Building	*	Green	215,000
Middlebury College	VT	Ross Commons	*	Green	70,000
Middlebury College	VT	New Library	*	Green	138,000
New Haven Public Schools	CT	Fair Haven School	*	Green - High Performance	180,362
New Haven Public Schools	CT	HVAC Upgrades	*	Green - High Performance	-
New Haven Public Schools	CT	Co Op High School	*	Green - High Performance	145,000
New Haven Public Schools	CT	John Martinez School	*	Green - High Performance	101,000
Oberlin College	OH	Adam Lewis Center for Environmental Studies	*	Green	14,000
University of Arkansas	AR	Duncan Residence Hall	*	Green Globe	70,000
Andover Phillips Academy	MA	Commons Dining	Certified	Registered	46,419
Full Spectrum	NY	1400 on 5th Avenue	Certified	Certified	250,000
George Mason University	VA	Conference Center	Certified	Registered	145,000
Immaculata University	PA	Student Union Center	Certified	Registered	62,000
Indiana University of Pennsylvania	PA	Convocation Center	Certified	Registered	164,000
PA Dept. of Conservation	PA	Jacobsonburg Environmental Education Ctr.	Certified	Registered	24,000
Penn State Univ. - Scranton	PA	New Business Classroom Building	Certified	Registered	9,060
Penn State Univ. - Wilkes Barre	PA	Nesbitt Academic Commons Building	Certified	Registered	33,000
Penn State Univ. - Berks	PA	Business, Engineering, and Information Sciences &	Certified	Certified	60,000
Penn State University	PA	Forest Resources Building	Certified	Certified	98,450
Penn State University	PA	Borland Labs	Certified	Registered	80,000
Penn State University	PA	Health Services Building	Certified	Registered	65,000
Penn State University	PA	North Frear	Certified	Registered	60,000
Philadelphia University	PA	Residence Hall	Certified	Certified	55,880
Rensselaer Polytechnic Institute	NY	Center for Biotechnology	Certified	Certified	218,000
Rensselaer Polytechnic Institute	NY	Athletic Village	Certified	Registered	150,000
Swarthmore College	PA	Unified Science Complex	Certified	Certified	160,000
University of Pittsburgh	PA	Benedum Hall	Certified	Registered	209,000
Washington & Jefferson Col.	PA	New Science Facility	Certified	Registered	115,000
Washington University	MO	University Center	Certified	Registered	130,000
Wheelock College	MA	Campus Center & Student Residence	Certified	Registered	65,508
Fairlane Green Retail Center	MI	Fairlane Green Retail Center	Gold	Certified	1,000,000
Penn State University	PA	School of Architecture and Landscape Arch	Gold	Certified	111,000
Penn State University	PA	SALA Building	Gold	Certified	111,000
University of Michigan	MI	S.T. Dana Hall	Gold	Certified	104,000
World Trade Center LLC	NY	Towers 2, 3, 4	Gold	Registered	8,000,000
University of Pennsylvania	PA	Morris Arboretum	Platinum	Registered	20,800
Cheltenham School District	PA	Myers Elementary School	Silver	Registered	68,200
Detroit Public Schools	MI	Renaissance High School	Silver	Registered	400,000
Drew University	NJ	New Residence Hall	Silver	Registered	54,519
Georgia Tech	GA	Technology Square Project	Silver	Certified	125,000
Hamilton College	NY	Unified Science Center	Silver	Certified	106,192
Muhlenberg College	PA	Science Addition & Seegers Union	Silver	Certified	49,000
Neumann College	PA	Athletic Facility	Silver	Registered	95,000
Philadelphia University	PA	Science Building	Silver	Registered	52,880
Rensselaer Polytechnic Institute	NY	Experimental Media and Performing Arts	Silver	Registered	206,000
Tufts University	MA	Gordon / Solar Residence Hall	Silver	Certified	61,100
University of Vermont	VT	Plant Sciences Building	Silver	Registered	12,000
Upper Dublin School District	PA	High School	Silver	Registered	363,000
Duke University	NC	Steam Plant	Silver	Registered	6,600
Williams College	MA	Stetson Library	Silver	Registered	160,000

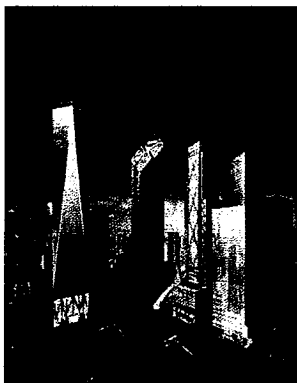
51 Projects

Total GSF: 14,283,970



## DEMONSTRATED PERFORMANCE AS LEAD CX PROVIDER

### World Trade Center



**Towers 2, 3, and 4**  
**8 Million GSF - \$2 Billion**

- Commissioning agent, design review, installation inspections, performance verification, and operations training.
- LEED Gold registered.

### George Washington University



**Elliott School of International Affairs**  
**200,000 GSF - \$35 Million**

- Commissioning agent, design review, installation inspections, performance verification, and operations training.

### Washington College

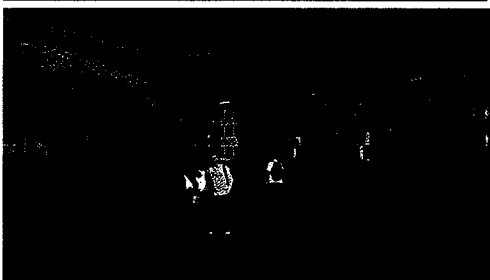


**Gibson Performing Arts**  
**70,000 GSF – \$24.4 Million**

**Residence Hall**  
**60,000 GSF – \$15.1 Million**

**Dining Hall**  
**35,000 GSF – \$16.5 Million**

- Commissioning agent, design review, installation inspections, performance verification, and operations training.
- LEED Certified



### Virginia Department of General Services



- Approved statewide commissioning vendor for the state of Virginia.





#### **D. PROPOSED COMMISSIONING AUTHORITY**

The commissioning team leader will be supported by a core team of ARAMARK's commissioning professionals during all phases of the process. This staff will serve when their respective skills are most appropriate.

The team will be led by Mr. Mark Hollopeter. Mark will be supported by the following individuals who include:

<b>Team Member</b>	<b>Experience</b>	<b>Areas of Expertise</b>
Brian Lee, P.E.	10+ years	HVAC, Controls
Matt Judge, LEED AP	20+ years	Electrical, Lighting Systems
Neville Clark	13+ years	HVAC
Steve Hadyniak	35+ years	Electrical, Lighting Systems
Chris Skalski	5+ years	ATC Controls





## **MARK HOLLOPETER, LEED AP Manager, Technical Services**

Mr. Hollopeter possesses more than 25 years of commissioning, facilities management, application engineering and maintenance management experience. On behalf of ARAMARK, Mr. Hollopeter is responsible for managing building commissioning projects at numerous educational facilities and department of general services managed construction projects. In addition, Mr. Hollopeter is a key member of our design review team for K-12 and higher education clients.

Prior to joining ARAMARK, Mr. Hollopeter served as a facilities manager and commissioning consultant in the Pennsylvania area. His responsibilities included developing and implementing computerized facility-management systems in conjunction with providing commissioning services including Leadership in Energy and Environmental Design (LEED) building commissioning. Several of Mr. Hollopeter's projects included the Department of General Service projects throughout the Commonwealth of Pennsylvania, **New York Transit Bus maintenance facilities new construction (LEED)**, Metro North Railroad maintenance facilities new construction (LEED), Harrisburg Area Community College new construction (LEED), **Greater Richmond Transit Authority Bus Maintenance Facility (LEED)** and commissioning services for the first LEED certified water treatment plant for Northampton County Pennsylvania. Mr. Hollopeter also has made formal presentations on commissioning at ASHE (American Society of Healthcare Engineering) and AIA (American Institute of Architects) conferences.

Mr. Hollopeter's employment history includes engineering support for Lucent Technologies and Agere Systems. His responsibilities included application engineering for integrated circuit design as part of the microelectronics group including project management for software development, architecture and testing in support of new technology deployment for product manufacturing.

In addition, Mr. Hollopeter has extensive experience in maintenance management and has been involved in the industry for several years. His responsibilities included managing a multi-skilled maintenance department responsible for mechanical, electrical and instrumentation maintenance of PC/PLC-integrated manufacturing equipment and facilities.

Mr. Hollopeter provided project engineering support for capital appropriations to improve quality, safety and process automation to manufacturing and facilities including chiller systems, compressed air systems, electric furnace controls, AC/DC motor controls and plant power systems.

<b>EDUCATION:</b>	(B.S.) Computer Science – Muhlenberg College Associate of Applied Science in Electronics and Heating – Lehigh Carbon Community College
<b>CERTIFICATION:</b>	LEED Accredited Professional (LEED AP)
<b>ASSOCIATIONS:</b>	Building Commissioning Association (BCxA)



## **MARK HOLLOPETER, LEED AP (continued)**

### **Current and Recent Project Experience:**

#### **Commissioning Project Manager Experience:**

DGS – Army National Guard Combined Readiness & Field Maintenance Center  
DGS – Jacobsburg New Environmental Center – \$3.5M, 11K GSF  
East Stroudsburg University – Life Sciences Building & Technology Center – \$27M, 124K GSF  
Penn State University – *LEED Certified* – New Business Classroom Building – \$2.5M, 9K GSF

#### **Commissioning Agent Experience:**

Baylor University – Brooks Village Residence Hall – \$42.8M, 252K GSF  
Franklin & Marshall College – Barshinger Life Sciences & Philosophy Building – \$45M, 110K GSF  
PSU Wilkes-Barre – *LEED Certified* – Nesbitt Academic Commons – \$8.5M, 33K GSF  
PSU Wilkes-Barre – John R. Murphy Student Services Center – \$900K, 7K GSF  
St. Jude Children's Hospital – 2 Megawatt Generator Upgrade  
University of Michigan Ann Arbor – Solid State Electronics Lab – \$28M, 37K GSF  
University of Michigan Ann Arbor – Phoenix Lab  
Washington University - St Louis – University Center – \$30M, 117K GSF

#### **Commissioning Agent Experience: (Design Review Only)**

Bard College - Graduate Center – \$5M, 15K GSF  
DGS – Indiana University of Philadelphia – Convocation Ctr. – \$38M, 164K GSF  
DGS – Waynesburg  
Harvard University Law School – Northwest Corner Project – \$135M, 450K GSF  
Harvard H Ellis Technical High School  
Oberlin College – Phyllis Littoff Jazz Center – \$22M, 36K GSF  
Oberlin College – Chiller Replacement  
NYS Office of Mental Health – Creedmoor Building – \$15M, 100K GSF  
NYS Office of Mental Health – Rockland Children's Psychiatric Center – \$40M, 160K GSF  
Pennsylvania School of the Deaf – Early Childhood Center – \$4.9M, 24K GSF  
Penn State University – *LEED Certified* – North Frear Building – \$70M, 60K GSF  
Penn State University – John R. Murphy Student Center – \$900K, 7K GSF  
Andover Phillips Academy – *LEED Certified* – Commons Dining Hall – \$13M, 46K GSF  
Penn State University Scranton – *LEED Certified* – Business Classroom Building – \$2.5M, 9K GSF  
RPI – *LEED Certified* – East Campus Athletic Village – \$45M, 150K GSF  
University of Pittsburg – *LEED Certified* – Benedum Hall – \$40M, 209K GSF  
University of Arkansas – *Green Globe* – Duncan Residence Hall – \$14M, 70K GSF  
Wheelock College – *LEED Registered* – Campus Center & Student Residence – 65K GSF  
World Trade Center LLC. – *LEED Gold* – Towers 2, 3, 4 – \$2B, 8M GSF



**MATTHEW P. JUDGE, LEED AP, C.P.Q.**  
**Director Technical Services, Mid-Atlantic Region**

Mr. Judge possesses more than 20 years of experience in building systems, and in particular, LEED consultation, design-build, cost estimating, strategic planning/scheduling, project management, building commissioning, deferred needs assessments, asset management solutions, engineering design reviews, training and supervision, subcontractor negotiations, purchasing, environmental systems, sustainability studies and client service.

On behalf of ARAMARK, Mr. Judge has a direct responsibility for development, implementation and quality control of strategic utility infrastructure master plans, engineering design reviews, building commissioning, facility condition assessments, LEED consultation and sustainability studies.

***Design Reviews*** – As a director for ARAMARK Technical Services group, Mr. Judge is responsible for the oversight, management and quality control of providing design review assessments on the electrical, mechanical and temperature control systems for academic, science, research, educational, performing arts, athletic and resident housing type projects for various K-12 and higher educational institutions. The design review team under the direction and oversight of Mr. Judge has reviewed over 50 designs annually for a multiple range of clients.

***Building System Commissioning*** – Mr. Judge has served on building commissioning engagements for various types of educational projects and most notably for institutions such as Baylor University, Franklin & Marshall College, Washington College, Penn State University, Rensselaer Polytechnic Institute, Swarthmore College, University of Chicago, Harvard University and the University of Pittsburgh.

***Facility Condition Assessments*** – Mr. Judge has also served as a key member of strategic facility condition assessment programs and life cycle analysis for such clients as Albert Einstein Medical Center, Community College of Allegheny County and Harvard University.

***Sustainable Consulting Services*** – Mr. Judge has provided LEED certification consulting and/or commissioning services for over 20 projects pursuing the “green” and/or a LEED building rating status. The successful projects have led to many awards and Mr. Judge recently presented at two local Delaware Valley Chapters of the Green Building Council to educate other professionals on the success and barriers of building a LEED certified building.

<b>EDUCATION:</b>	IBEW Program - Temple University
<b>CERTIFICATION:</b>	Power Quality (CPQ) LEED Accredited Professional (LEED AP)
<b>ASSOCIATIONS:</b>	Association of Energy Engineers (AEE) United States Green Building Council (USGBC) Delaware Valley Green Building Council (DVGBC)
<b>COMMITTEES:</b>	Active member of the ARAMARK Corporate Sustainability and Social Responsibility Committee



**BRIAN LEE, P.E.**  
**Senior Manager, Technical Services**

Mr. Lee possesses more than 10 years of building commissioning, operational management, energy management, troubleshooting and engineering experience. Mr. Lee is the program manager and active mechanical systems reviewer for our design review team for K-12 and higher education clients. He performs nearly 30 HVAC design reviews each year for commissioning engagements across the country. Additionally, Mr. Lee is responsible for leading and managing building commissioning projects at numerous educational facilities. Finally, Mr. Lee serves as a member of our facility condition assessment team and has experience working at facilities such as Harvard University and Neumann College.

Prior to joining ARAMARK, Mr. Lee served as a building systems lead engineer, project manager and controls engineer in the New York area. His responsibilities varied from conceptual design to the commissioning of numerous mechanical and control system installations for state-of-the-art high-tech cleanroom facilities. As the building systems lead engineer for the International Business Machines Corporation he was the lead engineer for a \$3.2 million cleanroom air handler replacement project. He also led the effort for a chilled water storage application that provided a \$12 million capital savings to IBM.

Mr. Lee also worked as a project manager across numerous locations both stateside and abroad on the United States Air Force healthcare building infrastructure. As such, he has served a wide array of technically complex facilities in the medical and research environment. Healthcare facilities served include: Wright-Patterson AFB Medical Center & Occupational/Physical Therapy Building, Lajes AB Medical Treatment Facility, Patrick AFB Life Skills Enhancement Center, Scott AFB Medical Center, Pope AFB Aeromedical Evacuation Squadron Facility, Spangdahlem AB Hospital/Acute Care Facility, Aviano AB Medical Treatment Facility, Ramstein AB Dental Clinic, Izmir AB Medical Clinic, Keesler AFB Medical Center and Thule AB Medical Treatment Facility.

**EDUCATION:** (M.S.) Architectural Engineering - Penn State University  
**CERTIFICATION:** Registered Professional Engineer in the State of New York  
**ASSOCIATIONS:** ASHRAE

**Current and Recent Project Experience:**

**Commissioning Project Manager Experience:**

Franklin & Marshall College – Barshinger Life Sciences & Philosophy Building – \$45M, 110K GSF  
Immaculata University – Chilled Water Plant Upgrade – \$1.5M  
Immaculata University – Residence Hall – \$11.5M, 97K GSF  
Immaculata University – Student Union Center – \$23M, 62K GSF  
Lincoln University – Library Renovation – \$5M, 73K GSF  
Lincoln University – International Cultural Center – \$17M, 56K GSF  
Episcopal Academy – Student Center – \$212M, 380K GSF  
East Stroudsburg University – Science and Technology Center – \$27M, 124K GSF  
Drew University – New Residence Hall – \$13M, 44K GSF  
Centenary College – Lackland Center – \$25M, 70K GSF  
Hamilton College – New Science Center – \$40M, 106K GSF



## **BRIAN LEE, P.E. (continued)**

### **Commissioning Agent Experience:**

University of the Sciences – Science and Technology Center – \$33.4M, 78K GSF  
University of the Sciences – Boiler #3 – \$5M, 5K GSF  
Muhlenberg College – New Science Addition – \$21M, 40K GSF  
Jacobsburg Environmental Center – Visitor Education and Administrative Facility  
Cheltenham School District – Myers Elementary School – \$13.7M, 56K GSF  
Pennsylvania School for the Deaf – HVAC Upgrade  
George Washington University – School of Business – \$56M, 167K GSF  
Rutgers University – Camden Law School – \$24M, 60K GSF  
Neumann College – New Athletic Facility – \$18M, 95K GSF  
Southern Orange Performing Arts Center – \$11.6M, 45K GSF

### **Commissioning Agent Experience: (Design Review Only)**

Pennsylvania State University – *LEED Certified* - Borland Labs Renovation – \$25M, 80K GSF  
Washington & Jefferson College – *LEED Certified* – Science Building – \$24M, 115K GSF  
Pennsylvania State University – *LEED Certified* – Health Services Building – \$15M, 65K GSF  
Penn State University – Wilkes-Barre – *LEED Certified* – Academic Commons – \$8.5M, 33K GSF  
Loomis Chaffee – *Green* – Clark Science Center – \$13M, 40K GSF  
RPI – *LEED Certified* – East Campus Athletic Village – \$45M, 150K GSF  
World Trade Center LLC. – *LEED Gold* – Towers 2, 3 and 4 – \$2B, 8M GSF  
University of Arkansas – *Green Globe* – Duncan Residence Hall – \$14M, 70K GSF  
Andover Phillips Academy – *LEED Certified* – Commons Dining Renovations – \$13M, 46K GSF  
Washington University – *LEED Certified* – University Center – \$30M, 117K GSF  
New Haven Board of Education – *Green HP* – Co-Op School – \$17M, 140K GSF  
New Haven Board of Education – Troup Magnet School – \$52M, 113K GSF  
Drew University – Hall of Science Renovation – \$22M, 105K GSF  
University of Massachusetts – Integrated Science Building – \$70M, 155K GSF  
Indiana University of Pennsylvania – Fisher Auditorium – \$12.6M, 20K GSF  
Indiana University of Pennsylvania – *LEED Certified* – Convocation Center – \$38M, 164K GSF  
Randolph Macon College – PERC Project  
Oberlin College – Chiller Upgrade  
Immaculata University – New Residence Hall – \$11.5M, 97K GSF  
Harvard University – Law School – \$135M, 450K GSF  
Centenary College – Reeves Student Recreation Center – \$5M, 30K GSF  
Grace College – Orthopedic Capital Center – \$9.1M, 60K GSF  
Indian Prairie School District – New High School  
College of Saint Rose – Massry Center for the Arts – \$13.9M, 32K GSF  
Franklin and Marshall College – Fackenthal Renovations – \$11M, 42K GSF  
Oberlin College – Phyllis Litoff Jazz Center – \$22M, 36K GSF  
Washington College – Gibson Performing Arts Center – \$24.4M, 70K GSF  
Washington College – Residence Hall – \$15.1M, 60K GSF



**NEVILLE CLARKE, CEM**  
**Manager, Technical Services**

Mr. Clarke possesses more than 13 years of experience in building system design, project management, diagnostics, energy and commissioning.

On behalf of ARAMARK, Mr. Clarke is currently a project engineer manager providing oversight for education and higher education clients for energy and building system commissioning programs.

Mr. Clarke is a building system commissioning program manager and an active mechanical system design reviewer for education and higher education projects. He conducts over 20 HVAC design reviews annually for commissioning and energy engagements. Additionally, Mr. Clarke is responsible for leading and managing multiple commissioning engagements. Mr. Clarke is currently our lead commissioning agent for Drew University's new LEED Residence Hall.

Prior to joining ARAMARK, Mr. Clarke worked as a senior project engineer for Realwinwin Inc. His responsibilities included identifying the demand side management opportunities for clients through benchmarking, drawings and site evaluation. He also performed energy saving and payback analysis on client capital improvement projects targeting regions of the country for best retrofit/re-commissioning opportunities. Mr. Clarke also coordinated with utility companies across the nation securing rebates and incentives for clients. He was also responsible for evaluating electrical and mechanical drawings and systems to identify load curtailment opportunities.

Mr. Clarke also worked as the lead design engineer for Quad Three Group, Inc. where he provided engineering support for an architectural office and functioned as inter-office engineering coordinator. He designed and provided construction administration support for local MEP projects. He also worked with the K-12 group managing and overseeing designs for large boiler and ventilation systems. Mr. Clarke was also responsible for designing department of health-compliant HVAC and plumbing systems for healthcare facilities.

**EDUCATION:** (B.S.) Mechanical Engineering – Temple University

**CERTIFICATION:** ASHRAE  
Certified Energy Manager (CEM)

**ASSOCIATIONS:** AEE

**Current and Recent Project Experience:**

**Commissioning Project Manager Experience:**

Drew University – Residence Halls

**Commissioning Agent Experience: (Worked on Project)**

Franklin and Marshall College - Barsinger Life Sciences & Philosophy Building

Rutgers University - Camden Law School

Episcopal Academy - Campus Center





**NEVILLE CLARKE, CEM (continued)**

**Commissioning Agent Experience: (Design Review Only)**

Drew University - Tolley-Brown

Drew University - Suites

Drew University - New Residence

Baylor University - Truett Seminary

University Southern Mississippi - New Residential Community



## **CHRISTOPHER SKALSKI, LEED AP Manager, Technical Services**

Mr. Skalski is a mechanical engineer and LEED Accredited Professional with 5 years of experience as a building commissioning agent including extensive experience in HVAC systems design, building automation and DDC systems. On behalf of ARAMARK, Mr. Skalski is currently the commissioning team leader for several of ARAMARK's higher education clients and his responsibilities include engineering design reviews, installation quality assurance, pre-functional/performance testing, initiation of corrective actions and operator training. Chris is also a key member of our design review team for K-12 and higher education clients.

Mr. Skalski previously served as the commissioning team leader for such LEED projects as Pennsylvania State University Forest Resources Building, Pennsylvania State University School of Architecture and Landscape Design which recently received LEED Gold certification and Muhlenberg College Science Center.

Additionally, Mr. Skalski serves as a member of our facility condition assessment team focusing on HVAC and control systems, most recently at Babson College and Centenary College. His experience also includes participating in strategic master plans for campus utilities at various higher education institutions including Franklin and Marshall College. Chris also has worked as lead manager in an energy assessment at Trinity University identifying and documenting energy conservation measures.

Prior to joining ARAMARK, Mr. Skalski served as project engineer for Dana Corporation, where he worked designing HVAC systems for automotive frame manufacturing plants.

**EDUCATION:** (B.S.) Mechanical Engineering – Penn State University  
(B.A.) Physics – Bloomsburg University  
**CERTIFICATION:** LEED Accredited Professional, Engineer in Training (EIT)  
**ASSOCIATIONS:** Delaware Valley Green Building Council (DVGBC)

## **Current and Recent Project Experience:**

### **Commissioning Project Manager Experience:**

Cheltenham School District – *LEED Silver* - Myer's Elementary School – \$13.7, 56K GSF  
Muhlenberg College – *LEED Silver* – Science Center – \$21M, 49K GSF  
Penn State University – *LEED Gold* – School of Arch. and Landscape Design – \$27M, 111K GSF  
Penn State University – *LEED Certified* - Forest Resources Building – \$27.5M, 98K GSF  
Rutgers University – Camden Law School – \$24M, 60K GSF  
The Episcopal Academy – Campus Center  
University of the Sciences in Philadelphia – Science & Technology Center – \$33.4M, 78K GSF

### **Commissioning Agent Experience:**

Tufts University – *LEED Silver* – Sophia Gordon Residence Hall – \$22M, 61K GSF  
RPI – *LEED Silver* – Experimental Media and Performing Arts Center – \$142M, 206K GSF  
Babson College – Undergraduate Residence Hall  
Baylor University – Brooks Village Residential College – \$42.8M, 252K GSF  
Berklee College of Music – 1140 Boylston Ave, Basement, 4<sup>th</sup> floor renovation – \$6M, 9K GSF  
Franklin & Marshall – Barshinger Life Science Building – \$45M, 110K GSF



## **CHRISTOPHER SKALSKI, LEED AP (continued)**

George Washington University – School of Business & Public Management – \$56M, 167 GSF  
Hamden Public Schools – Hamden Middle School – \$54M, 197K GSF  
New Haven Public Schools – Beecher Pre K-8 School – \$40.3M, 91K GSF  
Penn State University – Life Sciences Building – \$41M, 152K GSF  
Penn State University – Outreach Innovation Building – \$27M, 96K GSF  
Penn State University Worthington Scranton – Business Classroom Building – \$2.5M, 9K GSF  
The Pennsylvania School for the Deaf – HVAC Installation Project – \$4.9M, 24K GSF

### **Commissioning Agent Experience: (Design Review Only)**

Bard College – The Bard Graduate Center – \$3M, 15K GSF  
Berklee College of Music – 150 Mass Ave – \$5M, 5K GSF  
Berklee College of Music – 939 Boylston Street – \$9M, 14K GSF  
College of Saint Rose – Massry Center of the Arts – \$13.9M, 32K GSF  
Harvard Law School – NW Corner Project – \$135M, 450K GSF  
Loomis Chaffee School – Clark Science Center – \$13M, 44K GSF  
Neumann College – Center for Sport, Spirituality and Character Development – \$18M, 95K GSF  
Grace College – Orthopaedic Capital Center – \$9.1M, 60K GSF  
O&G Industries – Harvard H. Ellis Technical High School  
Oberlin College – Allen Memorial Art Museum  
Oberlin College – Phyllis Litoff Jazz Building – \$22M, 36K GSF  
Penn State University – Health Services buildings – \$15M, 65K GSF  
Penn State University – North Frear building – \$70M, 60K GSF  
Indiana University of Pennsylvania – Convocation Center – \$38M, 164K GSF  
Andover Phillips Academy – Commons Dining Renovations – \$13M, 46K GSF  
Rockland Children's Psychiatric Center – New 56 Bed Inpatient Building – \$180M, 620K GSF  
University of Arkansas – *Green Globe* – Duncan Residence Hall – \$14M, 70K GSF  
University of Hartford – New Residence Hall – \$23.5M, 55K GSF  
University of Pittsburgh – *LEED Certified* – Benedum Hall Renovation – \$40M, 209K GSF  
Washington & Jefferson College – Dieter Porter Building Renovation  
Washington & Jefferson College – New Science Building  
Washington University – University Center – \$30M, 117K GSF  
Wheelock College – Campus Center & Student Residence – 66K GSF  
World Trade Center Towers 2, 3, 4 – \$2B, 8M GSF



## **STEPHEN HADYNIK**

### **Manager, Technical Services**

Mr. Hadyniak possesses over 35 years of experience in the electrical industry, with particular expertise in the estimating, planning, commissioning and execution of construction projects for data centers, health care facilities, universities, laboratories, schools, utility companies as well as business and industry. System experience includes generating stations and encompassed electrical power systems, lighting, fire alarms, building management systems and security systems. Utilizing his considerable experience in power systems, he has managed designs, construction, commissioning and testing of low, medium, and high voltage systems. These systems include but are not limited to transformers, switchgear, protective relays and devices, UPS systems and generators. Additionally, Mr. Hadyniak is also experienced in power and control systems start up.

On behalf of ARAMARK, Mr. Hadyniak is responsible for the implementation of electrical system and fire protection commissioning services and condition assessments for many of our clients. He is also skilled in facility condition assessment and electrical system life cycle engagements.

Before joining ARAMARK, Mr. Hadyniak served as an estimator, project manager and electrical system design coordinator in the major electrical construction market. His responsibilities included estimating, project specification review and the management of design build projects for clients such as LaSalle University, Temple University, University of Pennsylvania, Verizon and Kvaerner Ship Yard.

**EDUCATION:** Penn State University (No degree, mechanical engineering major)  
**CERTIFICATION:** Electrical Contractor Licenses – New Jersey and Philadelphia

### **Current and Recent Project Experience:**

#### **Commissioning Project Manager Experience:**

Florida State Hospital: (regular on site engineering support)

#### **Commissioning Agent Experience:**

George Washington University – School of Business – \$56M, 167K GSF  
University of Pittsburgh – Children's Hospital Expansion  
University of the Sciences in Philadelphia – Science Building & Central Plant – \$33.4M, 78K GSF  
Albert Einstein College of Medicine – Yeshiva College of Medicine  
Penn State University – Outreach Innovation Building – \$27M, 96K GSF  
Penn State University – Life Sciences Building – \$41M, 152K GSF  
Penn State University – *LEED Certified* – Forest Resources Building – \$27.5M, 98K GSF  
Penn State University – Food Service Building – \$45M, 130K GSF  
Penn State University – Hazelton Campus – Teaching and Learning Resource Center  
Penn State University – Wilkes-Barre Campus - Academic Commons – \$8.5M, 33K GSF  
Rutgers University Camden Campus Law School – \$24M, 60K GSF  
The Related Properties – 96<sup>th</sup> Street NYC  
Baylor University – Baylor Brooks Village – \$42.8M, 252K GSF  
Baylor University – Sid Richardson Building  
University of Arkansas – Chemistry Lab – \$17.7M, 77K GSF  
University of Arkansas – Lefler Law School Renovation – \$16M, 49K GSF



## **STEPHEN HADYNIAK (continued)**

Kings County Hospital – Bronx, NY  
Centenary College – Lackland Center - \$25M, 70K GSF  
OMRDD – Brooklyn – Creedmoor  
Franklin & Marshall College – Fackenthal Labs – \$11M, 44K GSF  
New Haven Public Schools – Green High Performance – John Martinez School – \$11M, 110K GSF  
Pennsylvania School for the Deaf – Early Childhood Center – \$4.9M, 24K GSF  
Immaculata College – Student Union Center – \$23M, 62K GSF

### **Commissioning Agent Experience: (Design Review Only)**

World Trade Center – *LEED Gold* – Towers 2, 3, 4 – \$2B, 8M GSF  
RPI – LEED Certified – East Campus Athletic Village – \$45M, 150K GSF  
Washington University – University Center – \$30M, 117K GSF  
MIT – Dreyfus Chemistry Building – \$40M, 132K GSF  
Loomis Chaffee – *Green* – Clark Science Center - \$13M, 44K GSF

### **Facilities Needs Assessments:**

Berklee College of Music  
Babson College  
Bluefield College  
Community College of Allegheny County  
Harvard University  
Mill Creek School District  
Oyster Creek School District  
Monmouth College  
Park Forrest School District  
Park University



## F. PROJECT APPROACH

### Project Understanding

ARAMARK understands that the new Hampton Transit involves the design and construction of a new enclosed 109,551 square foot one and two story building. The new building will contain: an executive department, bus transportation, security, a training center, bus maintenance, parts warehouse, building and grounds, NRV maintenance, fleet support services, fare retrieval, fuel and a wash center.

The overall project budget is approximately \$36 million.

ARAMARK would be honored to have an opportunity to ensure the success of this great project for the long-term and sustaining an efficient operation of the building systems.

### PROFESSIONAL COMMISSIONING SERVICES – PHASE APPROACH

#### **PRE-CONSTRUCTION PHASE - Design Development/Contract Documents**

Past experience has demonstrated that collaboration, communication, and proper planning are the keys to ensuring that the commissioning program is fully integrated into the normal design and construction process. This integration process for the program begins very early by initially employing a carefully prepared kick-off meeting, commissioning plan and schedule that will guide the effort in and around the construction schedule. The commissioning team leader will develop, organize, implement, observe, document and lead the commissioning effort in a manner that furthers the success of the project. This effort will not only minimize impact on the project schedule, but also promote efficient system startup and turnover. A summary of activities in this phase consists of:

1. Fundamental Commissioning:
  - a. **Design Team Meetings** – Attend select design team meetings in the architect's office. At a minimum, plan for one meeting during design development, two meetings during construction documentation, and one pre-bid meeting.
  - b. **Owner's Project Requirements** – Assist the design team in developing the Owner's Project Requirements (OPR) document that details the functional requirements of the project and the expectations of the building's use and operation for the systems being commissioned.
  - c. **Basis of Design** – Assist the design team with the development of the Basis of Design (BOD) document that describes the primary design assumptions, standards, and system descriptions, including performance criteria, for systems to be commissioned.
  - d. **Preparation** – Assemble a commissioning team to hold a scoping meeting and identify responsibilities.
  - e. **Commissioning Specifications** – Prepare all required specification sections for commissioning and submit to the design professionals for inclusion in their final submission. The focus of the commissioning specification shall be to provide enough information to the bidding contractors, about the commissioning process and their expected involvement in it, so that they can include this work in their bid. Specifications shall be provided in standard



CSI/GSA format and shall be based generally on ASHRAE Guideline No. 1-1996.

- f. **Commissioning Plan** – Develop draft design phase commissioning plan that outlines the process, schedule, organization, responsibilities, and documentation requirements of the commissioning process.
2. Enhanced Commissioning:
    - a. **Design and Construction Document Review** – At 90% completion, review and comment on mechanical, electrical, plumbing, and energy related documents and specifications during construction development for completeness and adherence to the Owner's design intent requirements. Conduct a focused design review of the design intent, sequences of operation for energy efficiency, proper functioning, ability for access, clarity and completeness. We will review the latest set of documents and then follow up and review the permit set of documents.
    - b. **Commissioning Plan** – The procedures for the following activities: documenting the commissioning review process, reviewing contractor submittals, developing the systems manual, the training requirements of operations personnel, and reviewing the building operation after acceptance.

## CONSTRUCTION PHASE

A pivotal aspect of our commissioning program is enabling team reviews of the systems and inspections in the areas of their expertise (i.e. mechanical, electrical, and plumbing). Deficiencies and outstanding issues are documented in the commissioning database. The intent of the database is to generate a comprehensive list for the project manager to distribute to the design and construction teams for response and action. Subsequent to each focused inspection, a progress report will be issued detailing the deficiencies, resolution actions and status of each item. We will maintain a current status for each item on the deficiency list, as well as document the resolution actions in the final report. The commissioning team leader will act as the point person and bring up issues to the construction and design teams. The focus of the construction installation phase will include the following:

1. Fundamental Commissioning:
  - a. **Commissioning Kick-Off Meeting** – Conduct a scoping meeting to present the process, protocols and responsibilities for the commissioning agent and each key member of the project team including the construction team. Discuss the commissioning plan, coordination and schedule activities.
  - b. **Construction Phase Commissioning** – Assist contractors in incorporating construction phase commissioning into the construction schedule.
  - c. **Meetings** – Chair and coordinate commissioning meetings as needed and prepare and distribute minutes.
  - d. **Commissioning Tasks** – Review information required to perform commissioning tasks, including product submittals, O&M materials, contractor start-up, and checkout procedures. Before start-up, gather and review the current control sequences and interlocks, and work with the contractors and design team until sufficient clarity has been archived, in writing, to be able to write detailed testing procedures.
  - e. **Pre-Functional Test Forms** – Create and prepare blank construction pre-functional checklists for all equipment to be commissioned prior to initial start-up and distribute to contractors for completion.



2. Enhanced Commissioning:
  - a. **Contractor Submittals** – Review contractor submittals applicable to systems being commissioned. Reviews should take place at the same time as the design team with a one week response time and comments returned to the design team for final review. Review to focus on commissioned features and conformance with OPR and BOD, with particular attention to substitutions, operability, and maintainability.

## ACCEPTANCE PHASE

1. Fundamental Commissioning:
  - a. **Installation and Performance** – Verify the installation and performance of the systems to be commissioned by conducting installation inspections functional performance testing, and comparison of the results with the OPR and BOD. Testing shall be performed once except on HVAC equipment which shall be tested once during both the heating and cooling seasons. Maintain a master issue log as well as a record of the functional testing results.
  - b. **Commissioning Report** – Complete a summary commissioning report that must include confirmation from the commissioning agent stating whether individual systems meet the requirements of the OPR, BOD, and the contract documents. This should also include an executive summary of the commissioning process, a history of any deficiencies and how they were corrected, and the functional performance test results and evaluation.
2. Enhanced Commissioning:
  - a. **Commissioning Report** – Incorporate into the commissioning report summaries of the following: the design review process, the submittal review process, and the O&M documentation and training process.
  - b. **Systems Manual** – In addition to the O&M manuals provided by the contractor, the commissioning agent must develop a systems manual that provides future operations staff the information needed to understand and optimally operate the commissioned systems.
  - c. **Training** – Verify that the training of operations staff and building occupants is completed according to the contract documents.

## WARRANTY PHASE

1. Fundamental Commissioning:
  - a. **Testing** – Complete any remaining testing and assist with close out of unresolved issues.
2. Enhanced Commissioning:
  - a. **Review Building Operation** – Between 8 and 10 months after substantial completion, review building operation with operations staff and building occupants. Include a plan for the resolution of outstanding commissioning related activities.





## **SYSTEMS TO BE COMMISSIONED**

### **MECHANICAL**

Building Automatic Temperature Control Systems  
Energy Related Systems  
Condensing Boilers (2)  
Heating & Ventilation Units (4)  
Split Systems (3)  
Air Terminal Units

HVAC Systems  
Heating Pumping Systems  
Roof Top Air Handler Unit (4)  
Make Up Air Handler Unit  
Supply Fans

### **ELECTRICAL**

Lighting Control Systems  
Occupancy Sensors

Variable Frequency Drives  
Day Light Controls

### **PLUMBING**

Domestic Hot Water Systems



## PROJECT COMMUNICATIONS AND REPORTING



A key component of the building commissioning process is our unique web-based Commissioning Management System, CxMS.

CxMS is a web application, providing instant and simultaneous access to building owners, contractors, and commissioning agents. This platform allows us to effectively centralize, integrate and communicate our commissioning program.

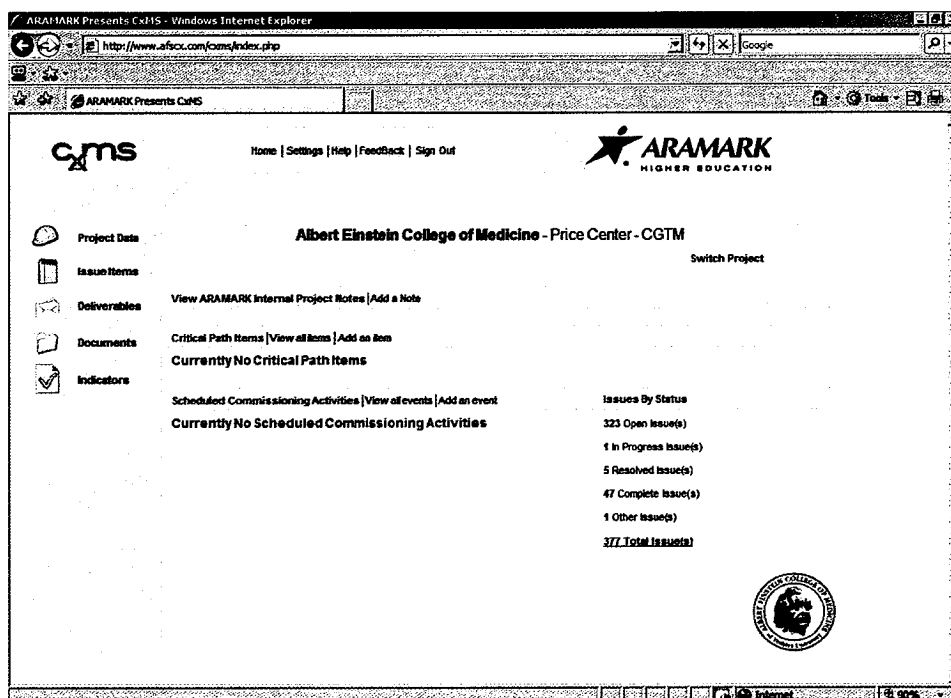
CxMS centralizes the commissioning process by proactively tracking key project information, including:

- Project scope
- Systems to be commissioned
- Contact information of all involved personnel
- Key project aspects

CxMS fosters communication throughout the building commissioning process by:

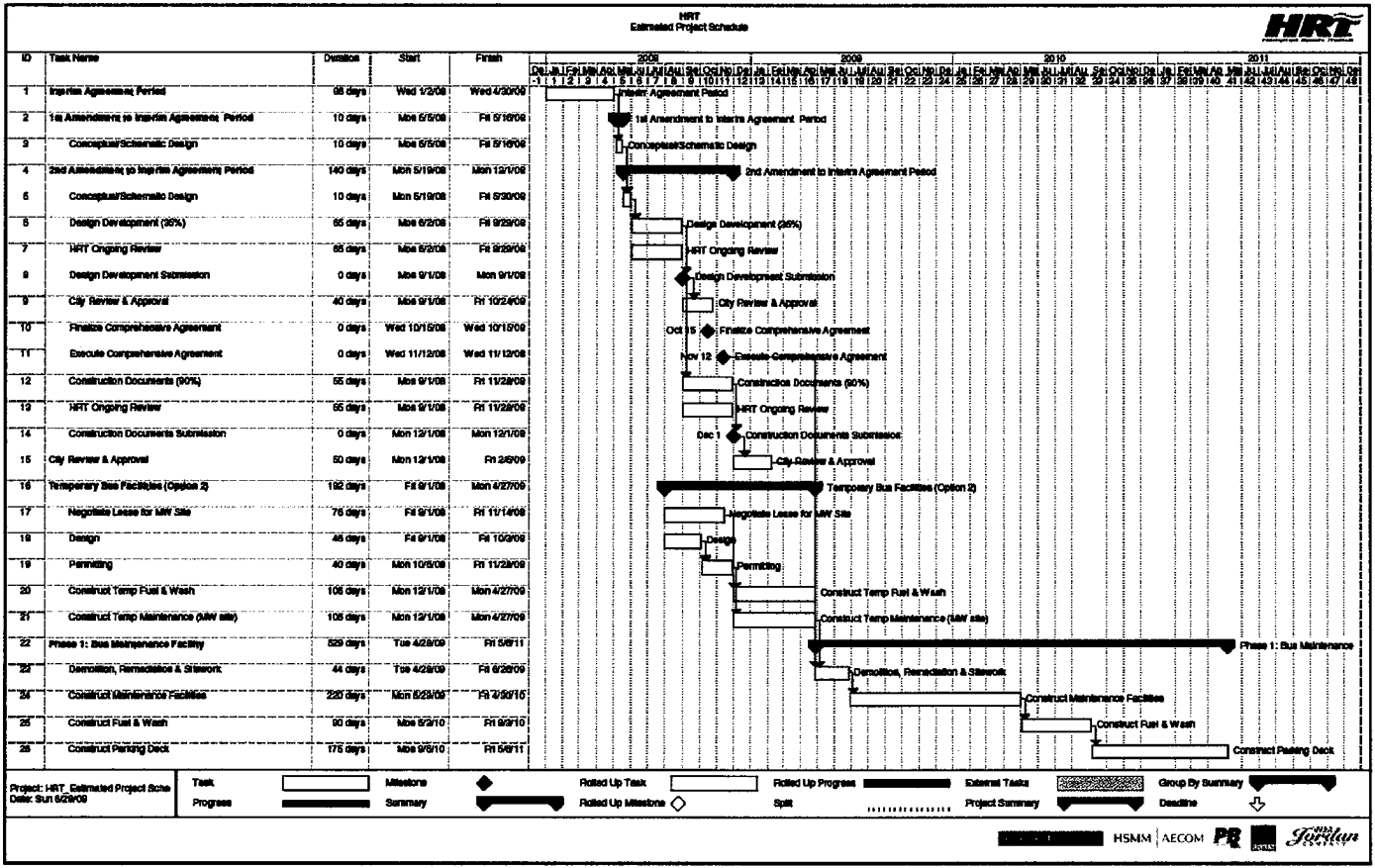
- Effectively relaying issue items to their appropriate persons
- Developing a status log for every issue
- Providing a project issues summary
- Proactively identifying any critical path items which may have a negative impact on testing or construction
- Posting any scheduled testing or events

CxMS provides a solid foundation for the management of details associated with commissioning a complex facility. Accurate, up-to-date information ensures priorities are identified and resolved, helping to proactively secure successful building development and turn over.





PROJECT SCHEDULE





## G. FEE PROPOSAL

LEED NC v2.2 Pr1 Fundamental Commissioning:	\$ 78,007
LEED NC v2.2 Cr3 Enhanced Commissioning:	<u>\$ 29,890</u>
Total Cost:	\$ 107,897

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Optional Add Alternate:	Emergency & Uninterruptible Power	\$12,901.00
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Perform the following commissioning services for the emergency, uninterruptible power system and associated loads:

1. Design Review
2. Static Inspection
3. Pre-Functional Testing
4. Functional Test – Black Start Test – Simulate Loss of Normal Power

Reimbursable expenses for direct costs such as travel, telephone charges, meals and lodging on behalf of this engagement are included in the above base commissioning service fees.

### ***Considerations, Terms and Conditions:***

- ARAMARK's professional staff will be "hands-on", assisting on all performance verification tests with the subcontractor. We will have our own test equipment, such as data logger, voltage meters, and flow hoods available as needed.
- ARAMARK will provide all equipment and supplies necessary to perform its commissioning duties.
- The automatic temperature control (ATC) contractor will provide access to the control system through both the system's front end computer, as well as through local connection via portable operator terminals (or laptop computer). We are prepared to utilize our own laptops for this purpose as long as the ATC contractor provides the appropriate software and connection hardware.
- This cost proposal is based upon a fixed term engagement, as determined from the project documentation received at the time of proposal development. Should this project extend significantly beyond this original schedule, the proposal will require an appropriate cost adjustment as mutually agreed to by Concord Eastridge and ARAMARK. If additional testing is necessary, Concord Eastridge and the Owner will be notified, in writing, by ARAMARK for authorization to continue beyond the negotiated scope. ARAMARK will segregate additional testing costs and bill the owner according to their direction. These additional costs may then be billed to the contractor.
- This proposal assumes a construction end date the June 6, 2011 and completing post occupancy reviews in February of 2012.
- This proposal is conditioned upon and subject to the negotiation and execution of a definitive agreement.



## **Hourly Rate Schedule for Additional Services**

### **ARAMARK Technical Services**

#### **Hourly Rates for Proposed Team Members**

**Year 2008**

<b><u>PROFESSIONAL DISCIPLINE</u></b>	<b><u>HOURLY RATE</u></b>
• Senior Technical/Engineering	\$125.00
• Commissioning Project Manager	\$120.00
• Technical/Engineering	\$115.00
• Technical Staff	\$105.00
• Director	\$130.00
• Financial/Analytical	\$90.00
• Administration	\$25.00
• Engineering Intern	No Charge

**NOTE: Reimbursable expenses are not included in the hourly rates listed above.  
These hourly rates are subject to a CPI escalation in 2009.**

## **EXHIBIT B**

Exhibit 6.6.2.1(f) Building Commissioning pursuant to a separate agreement between HRT and the Client.

## **Appendix 1**

### **Building Commissioning**

**1. Assignment of Contract** – The Commissioning Contract between ARAMARK and Development Manager will be assigned to Owner upon Substantial Completion. The Commissioning Contract between Commissioning Agent and Development Manager is enclosed as part of this Appendix 1.

**2. Remaining Commissioning Fee** - After Substantial Completion, the remaining fee payable to ARAMARK for the tasks below listed is \$35,000. This amount is not included in the Contract Price and Owner shall be responsible for the payment of this amount for services rendered.

**3. Commissioning Tasks** - The following tasks are scheduled to be completed by ARAMARK after Substantial Completion.

- a. Commissioning Report** – Incorporate into the commissioning report summaries of the following: the design review process, the submittal review process, and the O&M documentation and training process. Complete a summary commissioning report that must include confirmation from the Commissioning Agent stating whether individual systems meet the requirements of the Project. This will also include an executive summary of the commissioning process, a history of any deficiencies and how they were corrected, and the functional performance test results and evaluation.
- b. Performance** – Verify the performance of the systems to be commissioned by conducting functional performance testing, and comparison of the results with the design intent and documents. Testing shall be performed once except on HVAC equipment which shall be tested once during both the heating and cooling seasons. Maintain a master issue log as well as a record of the functional testing results.
- c. Systems Manual** – In addition to the O&M manuals provided by the contractor, the commissioning agent will develop a systems manual that provides future operations staff the information needed to understand and optimally operate the commissioned systems.
- d. Training** – Verify that the training of operations staff and building occupants is completed according to the contract documents.
- e. Testing** – Complete any remaining testing not completed prior to substantial completion and assist with close out of unresolved issues.
- f. Review Building Operation** – Between 8 and 10 months after substantial completion, the commissioning agent will review building operation with operations staff and building occupants. The review will include a plan for the resolution of outstanding commissioning related activities.

## **Appendix 2**

### **Special Warranties**

See attached.



**Civil Warranty Summary****50389 HRT Bus Station**

Special Warranty:

Manufacturer's standard form in which manufacturer agrees to repair or replace components of specified equipment that fails in materials or workmanship within specified warranty period.

Spec Number	Spec Name	Equipment	Component/Damage	Warranty Period (from date of substantial completion)
31 3116	TERMITE CONTROL		Damage to building caused by termites	5 years
32 9300	PLANTS		Plant material / Supplies	1 year

**Architectural Warranty Summary**
**50389 HRT Bus Station**

Special Warranty:

Manufacturer's standard form in which manufacturer agrees to repair or replace components of specified equipment that fails in materials or workmanship within specified warranty period.

Spec Number	Spec Name	Equipment	Material/Workmanship	Warranty Period (from date of substantial completion)
07 1300	SHEET WATERPROOFING		Defective work Membrane	Contractor 5 years Manufacturer 5 years
07 4113	METAL ROOF PANELS		Finish Warranty Waterproofing Warranty	5 years 5 years
07 4214	INSULATED METAL WALL PANELS		Finish Warranty Waterproofing Warranty	5 years 5 years
07 5400	THERMOPLASTIC MEMBRANE ROOFING		Material defects	20 years
07 8100	APPLIED FIREPROOFING		Defective work	5 years
07 9005	JOINT SEALERS		Defective work	5 years
08 1416	FLUSH WOOD DOORS		Delamination of veneer, warping, defective materials, telegraphing core construction	Life of Installation
08 3313	COILING COUNTER DOORS		Defective work	5 years
08 3323	OVERHEAD COILING DOORS		Defective work	5 years
08 3613	SECTIONAL DOORS	Electric motors as applicable	Defective work	5 years 5 years
08 4313	ALUMINUM-FRAMED STOREFRONTS		Defective work Materials	5 years 5 years
08 4500	TRANSLUCENT ROOF ASSEMBLIES		Workmanship Materials	5 years 5 years
08 5654	SECURITY AND DETENTION WINDOWS		Workmanship Failure of glazing	3 years 3 years
08 7100	DOOR HARDWARE		Workmanship Locks Manual Closers Exit devices	3 years 7 years 10 years 3 years
08 8000	GLAZING		Seal failure Delamination	5 years 5 years
08 8300	MIRRORS		Materials	5 years
08 9100	LOUVERS		Distortion, metal degradation and failure of connections Finish	20 years 20 years
09 9600	HIGH-PERFORMANCE COATINGS		Defective work	5 years
142010	PASSENGER ELEVATORS	Operating Equipment and Devices		1 year

**Mechanical Warranty Summary****50389 HRT Bus Station**

Special Warranty: Manufacturer's standard form in which manufacturer agrees to repair or replace components of specified equipment that fails in materials or workmanship within specified warranty period.

Spec Number	Spec Name	Equipment	Component/Damage	Warranty Period (from date of substantial completion)
23 5216	Condensing Boilers	Pulse-Combustion Boiler	Heat Exchanger Damaged by Thermal Shock	10 years
			Heat Exchanger Corrosion	Prorated for 5 years
		Water-Tube Condensing Boilers		10 years
23 7200	Air-to-Air Energy Recovery Equipment	Packaged Energy Recovery Units		2 years
23 7413	Packaged, Outdoor, Central-Station Air-Handling Units	Packaged, Outdoor, Central-Station Air-Handling Units	Compressors	Manufacturer's Standard, but not less than 5 years
			Gas Furnace Heat Exchangers	Manufacturer's Standard, but not less than 10 years
			Solid-State Ignition Modules	Manufacturer's Standard, but not less than 3 years
			Control Boards	Manufacturer's Standard, but not less than 3 years
23 8113	Packaged Terminal Air-Conditioners	Packaged Terminal Air-Conditioners	Sealed Refrigeration System	Manufacturer's Standard, but not less than 5 years; including components and labor.
23 8126	Split-System Air-Conditioners	Split-System Air-Conditioners	Compressors	5 years
			Parts	1 year
			Labor	1 year

## 50389 HRT Bus Maint. Facility

Manufacturer's standard form in which manufacturer agrees to repair or replace components of specified equipment that fails in materials or workmanship within specified warranty period.

[illegible]

**Plumbing Warranty Summary****50389 HRT Bus Station**

Special Warranty: Manufacturer's standard form in which manufacturer agrees to repair or replace components of specified equipment that fails in materials or workmanship within specified warranty period.

Spec Number	Spec Name	Equipment	Component/Damage	Warranty Period (from date of substantial completion)
22 4000	Plumbing Fixtures		Unit failure/Control Failure Deterioration of Finish	3 years 3 years
223400	Fuel-Fired Domestic Water Heater	Heat Exchanger	Controls	1 year
			Heat Exchanger	5 years
		Storage Tank		3 years
		Compression tank		5 years
N/A	Specified on drawings	Rainwater Storage Tank		2 years with extended warranty available at extra cost
N/A	Specified on drawing schedule	Oil Water Separator		10 years with extended warranty available at extra cost

**Communications Warranty Summary****50389 HRT Bus Station**

Special Warranty:

Manufacturer's standard form in which manufacturer agrees to repair or replace components of specified equipment that fails in materials or workmanship within specified warranty period.

Spec Number	Spec Name	Equipment	Component/Damage	Warranty Period (from date of substantial completion)
27 1000	STRUCTURED CABLING SYSTEM		Labor, Workmanship Materials	1 year 20 years
27 3000	EMERGENCY SPEAKERPHONE SYSTEM		Labor, Workmanship Materials	1 year 1 year

**Electronic Safety and Security Warranty****50389 HRT Bus Station**

Special Warranty:

Manufacturer's standard form in which manufacturer agrees to repair or replace components of specified equipment that fails in materials or workmanship within specified warranty period.

Spec Number	Spec Name	Equipment	Component/Damage	Warranty Period (from date of substantial completion)
28 1300	ACCESS CONTROL SYSTEMS	Equipment	System and Software	2 years
28 2300	CCTV SYSTEM	Equipment	System and Software	1 year
		Equipment	System and Software	5 year extended warranty (renewable)

**Process Equipment Warranty Summary****50389 HRT Bus Station**

Special Warranty:

Manufacturer's standard form in which manufacturer agrees to repair or replace components of specified equipment that fails in materials or workmanship within specified warranty period.

Spec Number	Spec Name	Equipment	Component/Damage	Warranty Period (from date of substantial completion)
40 1219	Air Compressors		Defects	1 year
40 2019	Service Fluid Equipment		Defects	1 year
40 2150	Submersible Fuel Pumps		Defects	1 year
41 2213	Crane-Hoist		Defects	1 year
41 3423	Paint Booths		Defects	1 year
13 177	Fiberglass Underground Storage tanks		Defects External Corrosion Internal Corrosion	1 year 30 years 30 years
13144	Fuel Dispensers		Defects	1 year



### Appendix 3

#### **Davis-Bacon and Copeland Anti-Kickback Acts**

##### **Background and Application**

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

##### **Clause Language**

##### ***Davis-Bacon and Copeland Anti-Kickback Acts***

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the

contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably

anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** – The commission shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or

any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Commission may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**(3) Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Commission for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained

under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**(4) Apprentices and trainees -** (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program

shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.<sup>+</sup> Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## **Appendix 4**

### **Disadvantaged Business Enterprises**

The Transportation District Commission of Hampton Roads (HRT) has established a fair and objective HRT program within which Disadvantaged Business Enterprises (DBEs) can compete for HRT contracts involving U.S. Department of Transportation funding as prime contractors, joint venture partners, or subcontractors and suppliers. This Appendix provides offerors (bidders and proposers) with information about the DBE program requirements and the responsibilities of offerors and their potential subcontractors in the solicitation process and during contract performance. Clarification of the DBE requirements and assistance in completing the forms can be obtained by contacting the HRT's DBE Compliance Officer, at (757) 222-6000, ext. 6257.

The USDOT program requires that, when a contract goal for DBE participation is established, offerors must manifest a commitment either to attain or exceed the goal, or to attain the maximum level of DBE participation available which is less than the goal. If the level attained is less than the goal, the offeror must demonstrate that, prior to submittal of the bid or proposal, it exerted good faith efforts to attain the goal. A full discussion of what constitutes good faith efforts is contained in 49 CFR Part 26. Methods of demonstrating good faith efforts may include, as appropriate, the following (the list is not exhaustive or exclusive):

- Soliciting in a timely fashion through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capacity to perform the work of the contract.
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested DBEs. It is the offeror's responsibility to make a portion of the work available to DBE contractors and suppliers. The selected portions of work or material needs should also be consistent with the available DBE contractors and suppliers, so as to facilitate DBE participation.
- Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.



- An offeror using good business judgment should consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and should take a firm's price and capabilities, as well as contract goals into consideration.
- However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- Not rejecting DBEs as being unqualified without sound reasons based on an investigation of their capabilities. The contractor's standing within the industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- Making efforts to assist DBEs in obtaining bonding, lines of credit, or insurance as required by the Commission or the contractor.
- Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, etc.
- Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and federal minority/women business assistance offices; and other private or non-profit organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

General information on the USDOT DBE program, including a discussion of good faith efforts, can be found on the website of the U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization (OSDBU), <http://www.osdbu.dot.gov/>. The governing regulation, 49 C.F.R. Part 26, can be found at:

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=61a820bbb46834bbba094449e7679020;rgn=div5;view=text;node=49:1.0.1.1.19;idno=49;cc=ecfr>

## **POLICY**

It is the policy of the Commission that Disadvantaged Business Enterprises as defined in the U.S. DOT Regulations codified at 49 CFR Part 26 shall have the opportunity to fairly compete for and participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds.

## **INELIGIBLE FIRMS**

If at any time, an offeror or contractor believes or has reason to believe that a proposed DBE has become ineligible due to change in ownership, management, personal net worth or size of the business, the offeror or contractor shall, within 10 days, notify the

Commission of that fact in writing. When a commitment has been made to use an ineligible firm, but a subcontract or contract has not been executed before the ineligibility is identified, the firm's participation will not count toward the DBE contract goal. The offeror or contractor must then attain the solicitation goal or contract commitment through use of one or more eligible DBE firms or demonstrate that it has made a good faith effort to do so, within 10 days after its notification to the Commission. Efforts to replace an ineligible DBE firm shall be coordinated with HRT's DBE Compliance Officer. If a contractor has executed a subcontract with the firm before the ineligibility is identified, the prime contractor may continue to use the firm on the contract and will continue to receive credit toward its DBE goal for the firm's work; so long as the firm is eligible and receives its certification within 45 days. Determination of such should be rendered within the 45 days, failure to obtain DBE certification, within the required timeframe, will result in no DBE participation credit for a Virginia non-DBE certified firm. If certification is completed and firm is deemed ineligible, no participation credit will be rendered for services and supplies rendered for work on contract. The Contractor assumes this risk when they utilize a non-certified DBE firm.

#### **SOLICITATION REQUIREMENTS:**

The DBE goal for this contract is 22%.

In soliciting DBE subcontractors or suppliers, prime contractors may not enter into an agreement with any DBE by which the DBE promises not to offer to participate in other offers.

For an offer to be considered acceptable, the following documents shall be completed and submitted as specified below.

#### **With the submittal of a bid or proposal:**

**Form A - Schedule of DBE Participation.** This represents a promise by the bidder or proposer that, upon award of a contract as the result of this solicitation, it will attain the specified level of DBE participation over the course of performance of the contract. All DBE firms scheduled to participate in the contract, including the scope of work to be performed and the dollar value of the services, supplies or equipment should be included on this form. Upon execution of a contract with the Commission, the Contractor must enter into a formal agreement with the DBE(s) listed within thirty (30) days. This information is also located at the bottom of the attached Form A – Schedule of DBE Participation. The level specified may be above or equal to the goal established for this solicitation. Failure to submit this form with a bid or proposal will render the offeror non-responsive and ineligible for further consideration for contract award. There can be no substitution of the DBE(s) listed on Form A without prior written approval of HRT's DBE Compliance Officer.

**Form B – Vendor Profile.** All DBE firms shown on Form A, as well as non-DBE firms, that have bid/quote or submitted proposals to participate (regardless of the tier, size of contract/purchase order, or duration), even if they were not successful, shall complete Form B, which should be updated annually. Completed forms shall be included with each bid package.

**Form C – DBE Firms Unavailability to Perform as a Supplier/Subcontractor**

**Certification** (if applicable). This information should be completed by DBEs invited to quote, but who decline to do so. In the event that the DBE failed to sign the form for any reason, the unsigned form should be submitted.

**Form D – Letter of Intent to Perform As a Subcontractor.** This manifests the agreement of the prime contractor and the agreement of the Contractor and the subcontractor/supplier that the aforementioned will perform the services identified at the price specified. It commits the parties that, upon execution of a contract with the Commission, the Contractor will enter into a formal agreement with the subcontractor/supplier on the basis indicated in the Letter of Intent.

**\*\*\*\*Documentation of Good Faith Efforts.** If the offeror has demonstrated good faith efforts, but has been unable to attain the specified goal, it shall provide documentation of such items as contacts with potential DBEs or community organizations, advertisements in appropriate media, other correspondence, records of negotiations, etc. If a DBE was tendered a Letter of Intent (Form C) but failed to sign and return the form for any reason, the unsigned form should be included.

It is the obligation of the offeror to verify the certification status of the DBEs it intends to include in its bid or proposal. To be considered as a DBE, a firm must be certified with the Virginia Department of Minority Business Enterprise (<http://www.dmbc.state.va.us/>) or the Metropolitan Washington Airport Authority (<http://www.metwashairports.com/>), which is designated by the USDOT as the certifying agencies for the State of Virginia., prior to the submission of the bid or proposal. Certification through another state program may be accepted providing that the firm has submitted an application for Virginia certification, which is needed to qualify for HRT contracts.

If this procurement is an Invitation for Bids (IFB), all certifications must be completed at the time of bid submittal. If this is a Request for Proposals (RFP) the certification process must be completed prior to contract award. Since RFPs are negotiated procurements, the potential exists for the DBE participation level and makeup to change in negotiations; however, this does not relieve proposers from the requirement to submit an initial commitment for DBE participation (Form A) with the original proposal, and to update that commitment with every proposal revision, an/or addition of DBE firms.

In general DBE participation shall be counted in terms of the percentage of gross contract dollars, including relevant modification and limited notices to proceed (LNTP), that are committed to be paid to DBE firms, for performing a commercially useful function. Work that is subcontracted to non-DBE firms, or work which would not be necessary in the usual performance of the scope of the contract, is not considered commercially useful. Special rules apply to calculation of the participation by trucking firms. If the materials or supplies are purchased from a DBE which is a regular dealer in such items, 60% of the cost of the materials or supplies is counted toward the DBE goal. If materials or supplies are acquired from a DBE which is neither a manufacturer nor a regular dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for delivery of the items are counted, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. However, no portion of the cost of the materials and supplies themselves are counted. There is a full discussion of how

participation is counted at 49 CFR Part 26, § 26.55.

If the Commission makes a determination that an offeror is non-responsive or otherwise ineligible for contract award due to failure to comply with the above requirements, the offeror shall have an opportunity for administrative reconsideration. A letter requesting reconsideration shall be sent to the HRT's DBE Compliance Officer, with a copy to the Contracting Officer, and shall provide documentary support for the request. The request will be reviewed and decided by a reconsideration official who did not participate in the initial determination. The offeror may also request a meeting with the reconsideration official to discuss the issues. The reconsideration official shall send the offeror a written decision on its request. The result of the reconsideration process is not administratively appealable to USDOT.

#### **CONTRACT REQUIREMENTS:**

Each contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Commission contracts. Failure to carry out these or any other DBE-related requirement is a material breach, which may result in the termination of the contract or such other remedy as the Commission deems appropriate.

Participation by DBE firms toward the contractor's committed level of DBE activity is calculated on the actual amount paid to the contractor and the actual amount paid to the participating DBE firm(s). As a result, it is important that, in proposing any contract change order, the contractor identify any impact the change will have on the DBE participation level, and request any appropriate change in the DBE commitment. If the change will involve any elimination of or change in the activity of current DBE firms, or the addition of new DBE firms, the change must be identified by the contractor in its proposal.

The contractor shall submit signed copies of subcontracts or purchase orders with DBE subcontractors and suppliers to the HRT Project Manager and the HRT DBE Compliance Officer no later than thirty (30) business days after execution of its contract with the Commission, pursuant to the assurance listed on the Form A – Schedule of DBE Participation.

#### **CONTRACT CLAUSE**

The prime contractor shall include in each subcontract or purchase order issued under its contract with the Commission the following clause and require that each subcontractor or supplier include it in any subcontracts or purchase orders it issues hereunder:

“The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Commission deems appropriate.”

#### **CHANGE ORDERS**

Should the actual contract amount increase or decrease (through approved change orders) the DBE Compliance Officer will determine if any adjustment to the level and nature of

DBE participation is appropriate. Unless a change in the goal is specifically included in a change order, the initial DBE participation goal applies to the total value of the contract, including change orders.

## **REPORTING REQUIREMENTS**

The contractor is responsible for documenting to the Commission the participation of and payments to DBE subcontractors as part of each invoice submittal, monthly. For this purpose, the Contractor shall submit Form E - Contractor's Monthly DBE Payment Report. Form E should be submitted to HRT's DBE Compliance Officer no later than the 7th of each month, as a part of the submitted invoice. Since the Form E is used solely by the DBE office, that information should be forwarded directly to the HRT DBE Compliance Officer for review and filing purposes. Information recorded on Form E should address those payments made to DBE firms. No invoice will be processed unless a properly executed Form E is attached and submitted to the HRT DBE Compliance Officer. In order for Form E to be deemed compliant, all required information must be completed in its entirety. It is important to ensure that all information reflects accurate payment and task information relevant to the month prior. In an effort to expedite submission of the document, the form may be emailed or faxed to the office of the HRT DBE Compliance Officer at (757) 222-6195, with a hard copy to follow within five (5) business days. The form may not be altered or changed in any manner other than official modifications completed by the DBE Compliance Officer. If the original document is not received within five (5) business days, the documentation shall be deemed non-compliant.

Each DBE subcontractor is responsible for completing the Form E-2 - Subcontractor's Monthly DBE Payment Report, which verifies receipt of payment from the Contractor, and as such should be submitted by the 7th of each month following the start of work. This form is submitted directly to the HRT DBE compliance Officer and should, at no time, be shared with the Contractor.

Failure to submit Form E may result in delay or suspension of payments to the contractor or such other remedies as the Commission deems appropriate. If at any time the Commission has reason to believe that any person or firm has willfully and knowingly failed to submit any required forms, provided incorrect information or made false statements, it may utilize such remedies as may be provided by the contract, up to and including termination for default. It may also refer the matter to USDOT for further action.

## **PROMPT PAYMENT**

The contractor shall strictly comply with the provisions of the Contract governing prompt payment to subcontractors.

### **Substitution of DBEs:**

Except as provided herein, the contractor shall not have work identified as to be performed by DBEs performed by any firm other than that identified in its Form B - Schedule of DBE Participation. However, the contractor may, in unusual situations, be permitted to replace a DBE subcontractor or supplier. No substitution may be made either prior to or after award of the contract, without the Commission's prior written

approval. A request for substitution must be made in writing, with appropriate documentation supporting the request. The request must include evidence that the contractor has made every effort to continue with the current DBE firm; if the replacement is not a DBE, the contractor must document its good faith efforts to find another DBE subcontractor to replace the original DBE and to replace the portion of DBE participation lost by the substitution. The term "unusual situation," includes but is not limited to a DBE's:

- Failure to qualify as a DBE, or to maintain DBE certification status.
- Death or physical disability, if the DBE is an individual.
- Dissolution, if the DBE is a corporation or partnership.
- Bankruptcy of the DBE, only in instances where the bankruptcy affects the DBE's ability to perform.
- Inability to obtain, or loss of, a license, permit or other requirement of law or regulation necessary for the performance of the particular category of work.
- Material failure to comply with the terms and conditions of this contract or those of its subcontractor or joint venture agreement.
- Demonstrated material failure or inability to successfully perform the contract tasks.

The prime contractor cannot terminate for convenience a DBE subcontractor listed on Form B and perform the work of the terminated DBE with its own forces or those of an affiliate without the prior written consent of the Commission's DBE Liaison Officer.

#### **Audit and Penalties**

During the performance of any contract and for a period of up to three years following completion of the contract, the Commission, the State of Virginia or the U.S. Department of Transportation may conduct reviews for compliance with the requirements of the DBE program. Such reviews may include the evaluation of monthly reports, desk audits and site visits. Additionally, the records of non-DBE subcontractors may also be reviewed and inspected.

Where a prime contractor is found to be in noncompliance with the requirements of the DBE program during the performance of the contract, it will be required to take corrective action. If the noncompliant contractor does not promptly take action to come into compliance, the Commission may, in its discretion, take any or all of the following actions, in addition to any other contractual remedies otherwise provided by law:

- The prime contractor may be ordered to suspend work without cost or liability to the Commission until compliance with the program is achieved.
- The contract may be terminated for default.
- Suspension or debarment proceedings may be commenced in accordance with Virginia Law.

- The matter may be referred to the U.S. Department of Transportation for possible suspension or debarment action under 40 CFR Part 29.
- Any performance bond may be enforced.

#### **FAILURE TO MEET GOAL COMMITMENT**

During the course of performance of the contract, the Commission will monitor the level of actual DBE participation against the commitment (whether by attaining the goal or committing to a lesser participation) made by the Developer on behalf of the Contractor. If at any time, it appears likely that the Contractor is not maintaining the promised level of DBE participation, the Commission may request from the Developer assurances that it will in fact attain the promised level, and, if appropriate, a plan for doing so.

Should the Developer identify any change in circumstances which adversely affects the Developer and the Contractor's ability to attain the promised commitment, the Developer shall promptly notify the Commission, identifying the amount of the anticipated shortfall and the reasons for it, and requesting a reduction. The Commission may thereafter approve the requested reduction, deny the reduction, or reach another mutually acceptable solution with the Developer.

In the event that the Developer and Contractor fail to remedy a deficiency and at Substantial Completion have not attained the level of DBE participation committed to in the contract, the Commission may assess liquidated damages resulting from the shortfall. Damages will be calculated in an amount equal to the dollar difference between the total construction portion of the contract amount multiplied by the DBE percentage commitment and the actual amount of documented DBE participation in the contract. Any such liquidated damages may be deducted from amounts due and unpaid to the Developer for the construction portion of the contract price; if such amounts are not sufficient, the Developer will be required to remit the difference to the Commission. The Commission shall waive liquidated damages where the shortfall is deemed beyond the Developer's reasonable control and the Developer is judged to have exerted good faith efforts to attain the commitment, or when good cause is shown for the deficiency.

## **Exhibit 2.1**

### **Property Description of Site for Phases One and One-A**



# LAWYERS TITLE INSURANCE CORPORATION

National Headquarters

Richmond, Virginia

## SOUTHEASTERN VIRGINIA BRANCH OFFICE

World Trade Center, East Lobby, Suite 1100 (23510)  
P. O. Box 3296 (23514)  
Norfolk, VA  
(757) 321-8100

February 3, 2006

Williams Mullen  
Two James Center  
1021 East Cary Street  
Richmond, VA 23210

Re: Transportation District Commission of Hampton Roads  
Our File Number 0035931

Dear Mr. Wall:

*18th St. Property*

At your request, Lawyers Title Insurance Corporation has conducted an examination of the public records affecting real estate in the Clerk's Office of the Circuit Court of Norfolk, Virginia, for that property commonly described as:

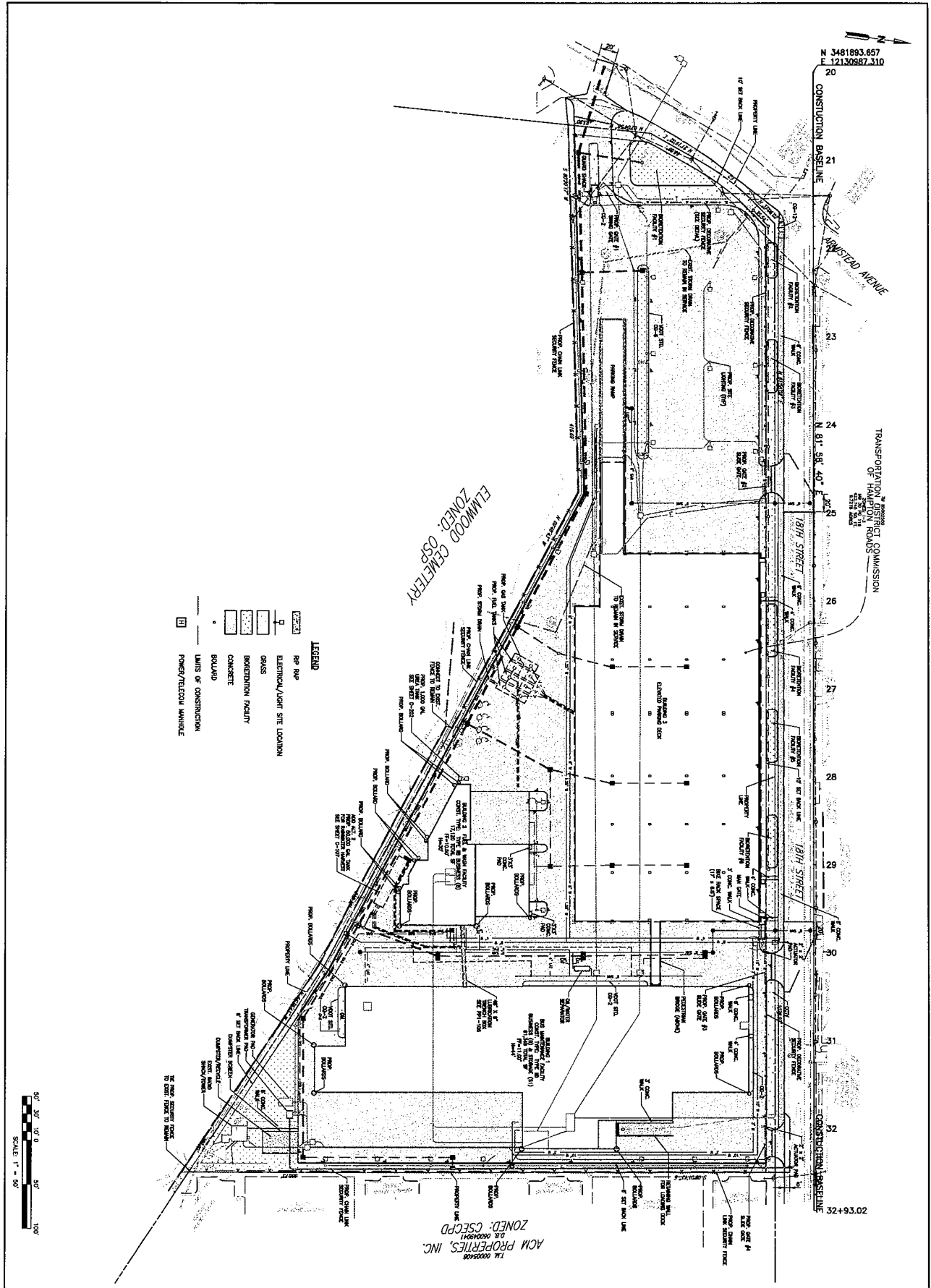
ALL THAT certain lot, piece, or parcel of land, together with the improvements thereon and the appurtenances thereunto belonging, lying, situate and being in the City of Norfolk, Virginia, shown as 424,008 square feet (9.7339 Ac.) on a certain plat entitled "PHYSICAL SURVEY OF VIRGINIA TRANSIT COMPANY PROPERTY," dated February, 1973, made by the Division of Surveys, Department of Public Works, Norfolk, Virginia, and recorded in Map Book 27 at page 108 in the Clerk's Office of the Circuit Court of the City of Norfolk and as shown on the plat entitled, "PHYSICAL SURVEY OF PROPERTY TO BE CONVEYED TO TIDEWATER TRANSPORTATION DISTRICT COMMISSION BY THE CITY OF NORFOLK," dated March 1977, made by Division of Surveys, Department of Public Works and recorded in the aforesaid Clerk's Office in Map Book 30, at page 118, which property is more particularly described as follows:



BEGINNING at a point which is the point of intersection of the South side of 18th Street and the Southeast side of Armistead Avenue; thence N. 87°50'E., a distance of 1,078.07 feet along the Southern side of 18th Street to a pin; thence S. 2°9'45"E., a distance of 667.0 feet to a pin; thence N. 58°47'45"W., a distance of 280.0 feet to a pin; thence N. 63°56'45" W., a distance of 612.7 feet to a point; thence S. 86°12'15"W., a distance of 416.5 feet to a pin; thence N. 3°47'E., a distance of 93.9 feet to a pin in the Southeast side of Armistead Avenue; thence along the Southeast Side of Armistead Avenue N. 27°11' E., a distance of 67.05 feet to a pin; thence following a curve to the right with a radius of 266.16 feet, along the Southeast side of Armistead Avenue, an arc distance of 73.32 feet to a pin;

Continued

## **Exhibit 2.1(a)**

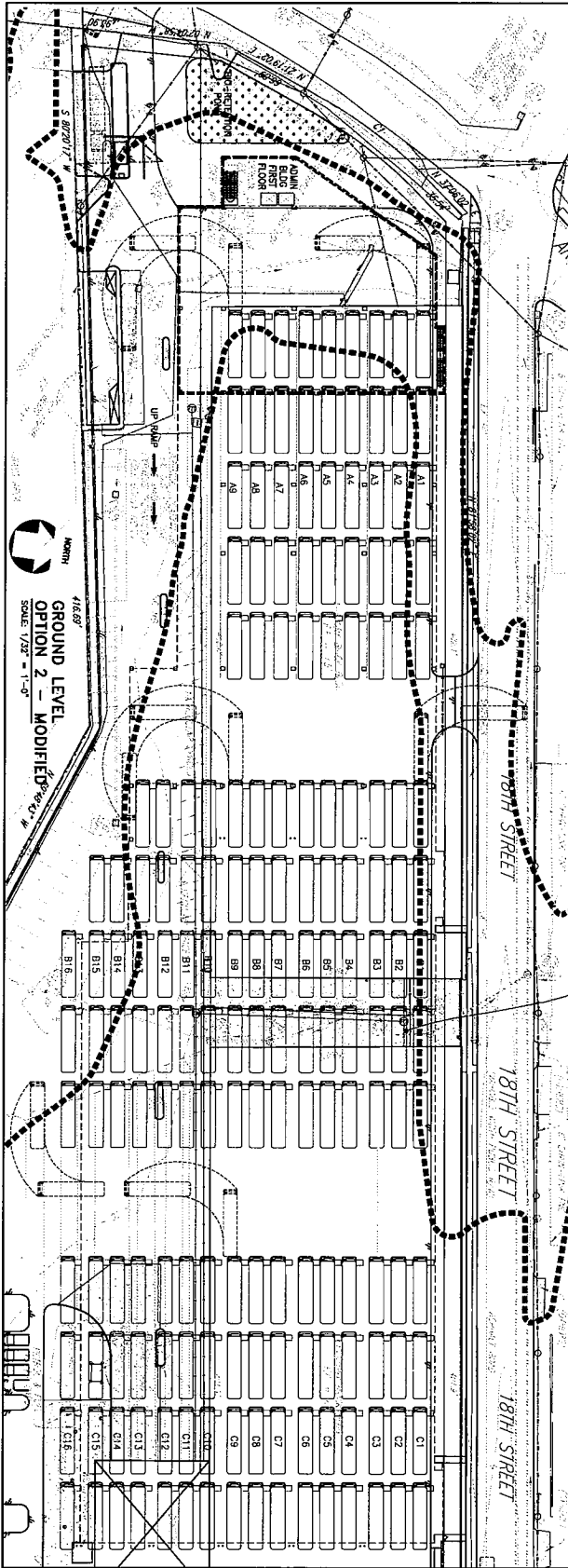
### **Phase One Property Delineation**



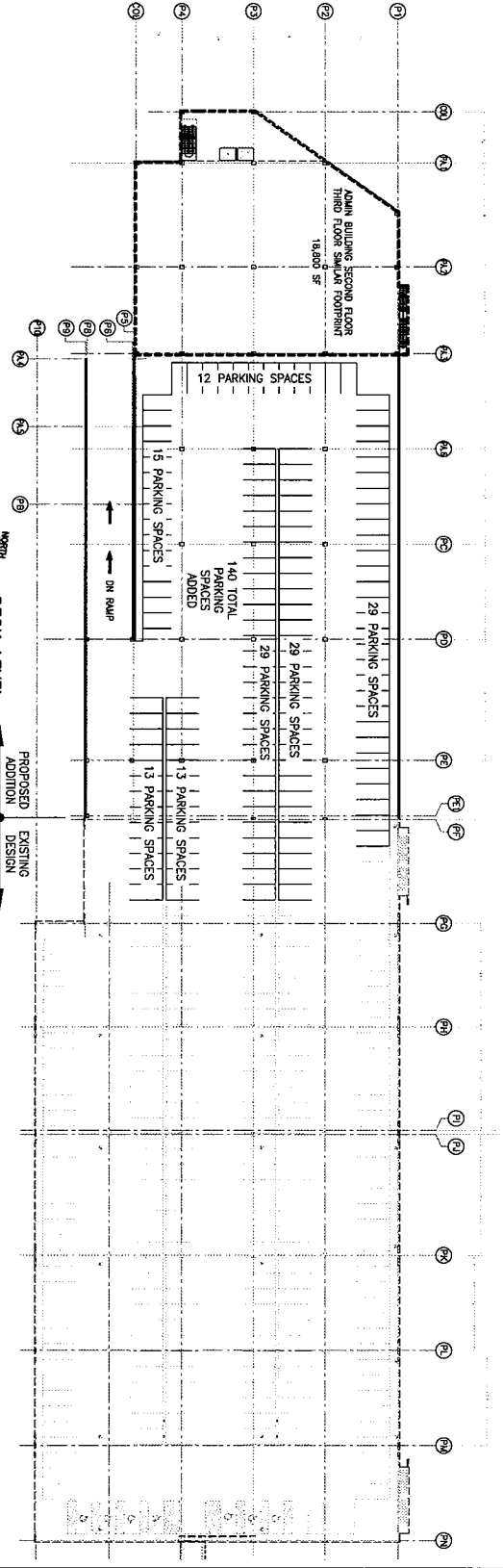
<b>C-006</b>	<b>SITE PLAN OVERALL</b>	<b>PROJECT NO. 173086A</b>	<b>APPROVED BY: B. ARNOLD</b>	 <b>HRT</b> Hampton Roads Transit	<b>500 EAST 15TH ST.</b> <b>NORFOLK, VIRGINIA</b> <b>23510</b>		<b>HSMI   AECOM</b>	<b>PR</b> <b>100 YEARS</b>	<b>Parsons Brinckerhoff</b> <b>Engineering</b> 6161 Kempsville Circle Norfolk, Virginia 23502 Phone: 757.465.1732 Fax: 757.465.1483
		<b>NO. DATE</b> 1. 10/27/08 35% SUBMITTAL 2. 10/27/08 FOR REVIEW 3. 11/25/08 OK'D 4. 12/10/08 REVISION A 5. 12/10/08 REVISION A 6. 12/10/08 REVISION A 7. 12/10/08 REVISION A 8. 12/10/08 REVISION A 9. 12/10/08 REVISION A 10. 12/10/08 REVISION A	<b>NEW SOUTHSIDE BUS MAINTENANCE FACILITY</b>	<b>NOT FOR CONSTRUCTION</b>					

## **Exhibit 2.2**

### **Phase One-A Property Delineation**



GROUND LEVEL  
OPTION 2 - MODIFIED  
SCALE 1/32" = 1'-0"



DECK LEVEL  
OPTION 2 - MODIFIED  
SCALE 1/32" = 1'-0"

<b>A-101</b>	<b>CONCEPTUAL ADDITION OPTION 2</b>	<b>HRT</b> Hampton Roads Transit	505 EAST 18TH ST. NORFOLK, VIRGINIA 23510	<b>PARSONS BRINCKERHOFF</b> engineering architecture 6151 Kenbridge Circle Norfolk, Virginia 23502 Phone: 757.656.1732 Fax: 757.656.1445	<b>HSNM</b> <b>AECOM</b>
		APPROVED BY: Gary E. Arnold PROJECT NO.: 172008A	<b>NEW SOUTHSIDE BUS MAINTENANCE FACILITY</b>	DATE: 03/23/09 DRAWN BY: BT	

## **Exhibit 2.3**

### **Phase Two Property Description**

Virginia in Map Book 35, at page 17, and being more particularly bounded and described as follows:

400

BEGINNING at the intersection of the northern line of 14th Street with the eastern line of Monticello Avenue, as the same was located in June, 1980, and thence running northerly along the eastern line of Monticello Avenue, a distance of 500 feet, more or less, to the southern line of 16th Street as the same was located in June, 1980; thence running easterly along the southern line of 16th Street a distance of 186 feet, more or less, to the western line of Armistead Avenue, as the same was located in June, 1980; thence running southerly along the western line of Armistead Avenue a distance of 500 feet, more or less, to the northern line of 14th Street; thence running easterly along the northern line of 14th Street a distance of 186 feet, more or less, to the point of beginning.

IT BEING the same property conveyed to Grantor by deed from Sue J. Wilkins, H. Lee Wilkins, W. Jon Wilkins and Judith B. Wilkins dated July 23, 1980, recorded in the aforesaid Clerk's Office in Deed Book 1547, Page 171.

The Property is conveyed subject to the conditions, restrictions, reservations, easements and encumbrances, if any, duly recorded affecting the Property and constituting constructive notice.

WITNESS the following signature:

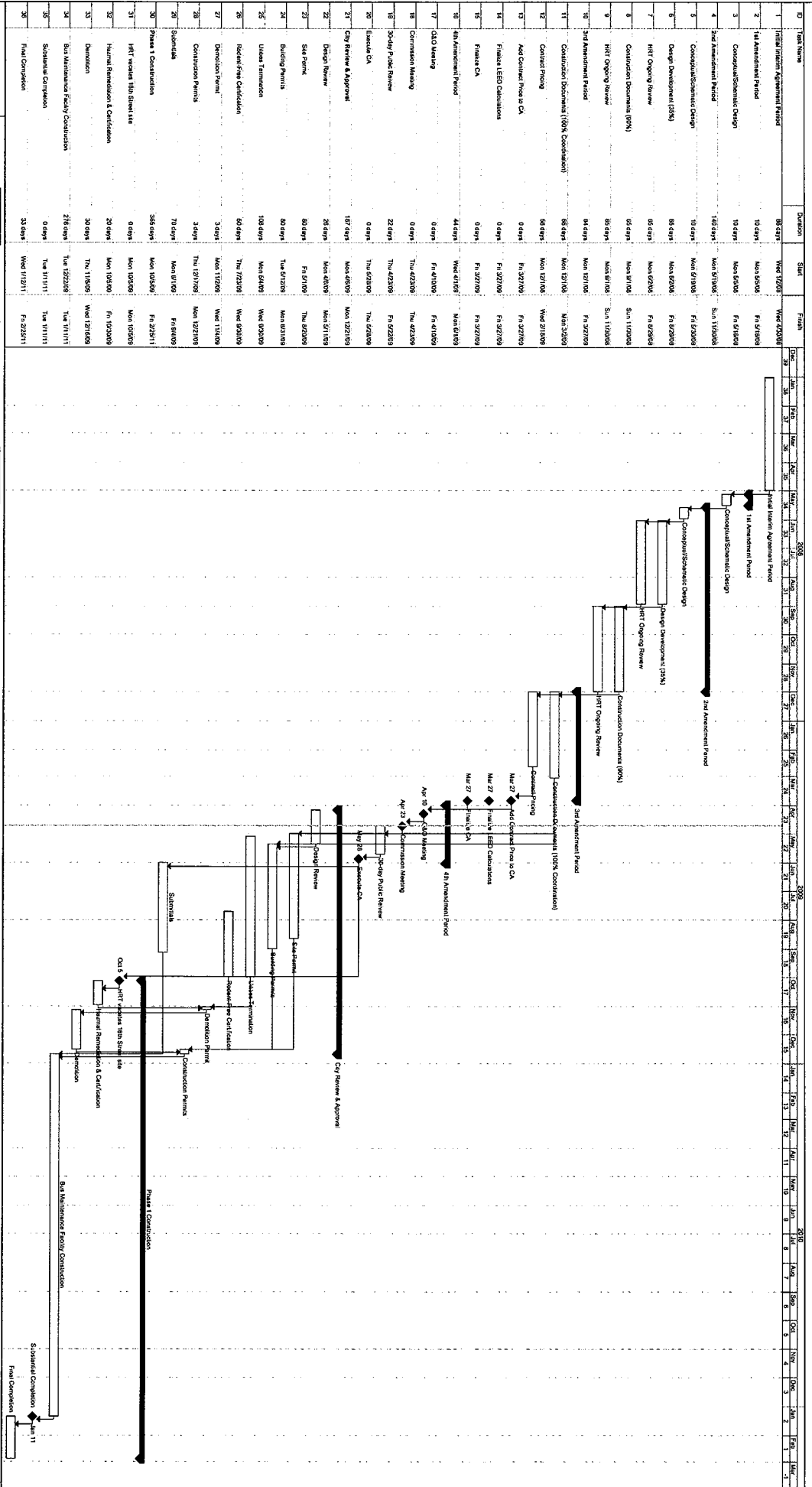
TIDEWATER TRANSPORTATION DISTRICT  
COMMISSION, a body corporate and politic of the  
Commonwealth of Virginia created pursuant to the  
Transportation District Act of 1964

By Michael S. Townes  
Michael S. Townes, Executive Director

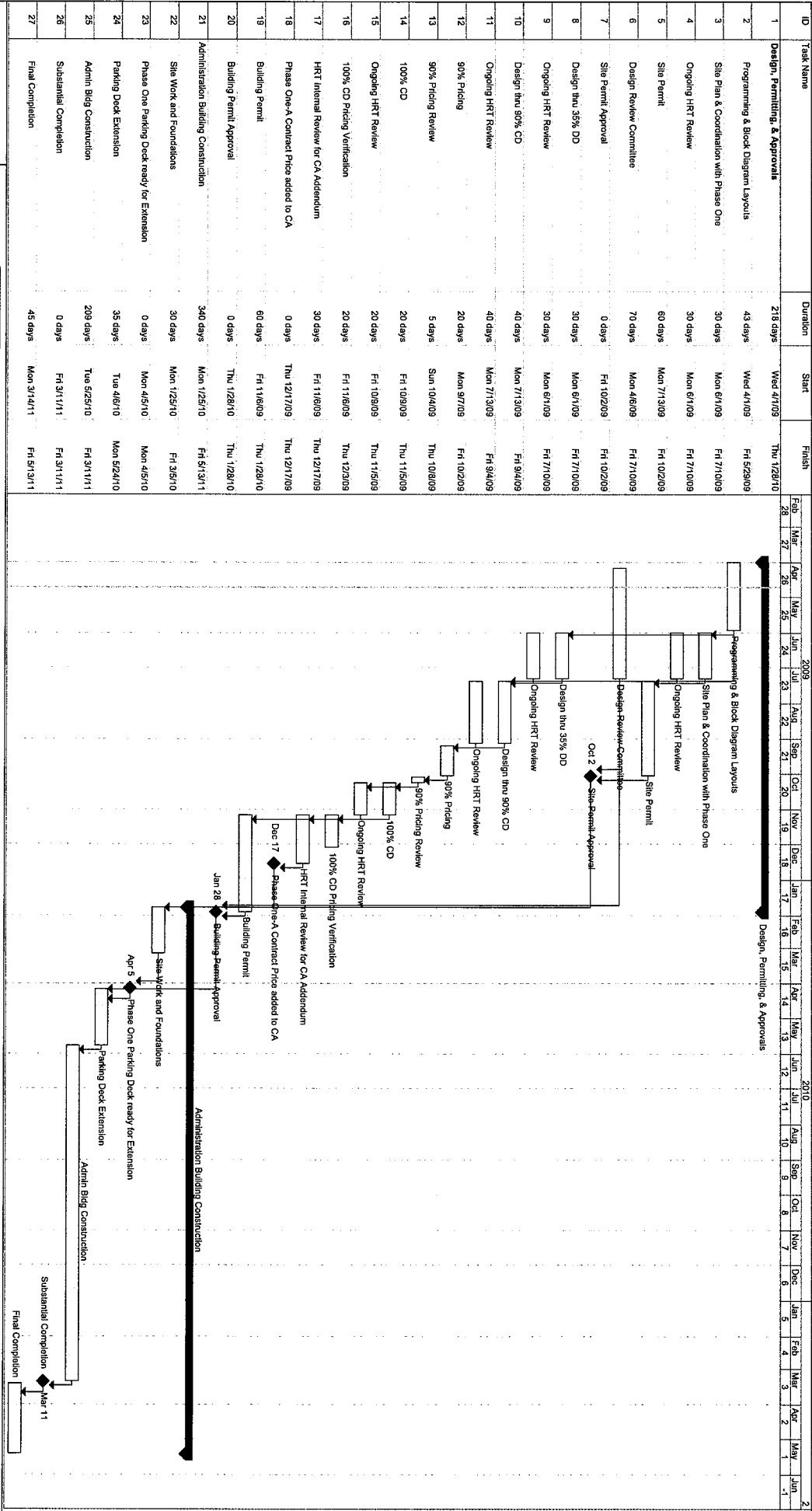
## **Exhibit 3.1**

### **Project Schedule**





**EXHIBIT 3.1**  
**PHASE ONE-A: ADMINISTRATION BUILDING (Preliminary)**



Project: HRT - Estimated Project Sched  
 Date: Wed 4/22/09

Task:  Milestone:  Summary:

Rolled Up Task:  Rolled Up Milestone:

Rolled Up Progress:  Spill:

External Tasks:  Project Summary:

Group By Summary:  Deadline:

**EXHIBIT 3.1**  
**PHASE TWO: PRIVATE DEVELOPMENT**



ID	Task Name	Duration	Start	Finish	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
1	Site Investigations by HRT	43 days	Mon 8/30/09	Wed 9/30/09																
2	Conceptual Design Phase	125 days	Thu 10/1/09	Wed 3/24/10																
3	Conceptual Design Iteration #4	20 days	Thu 10/1/09	Wed 10/28/09																
4	Approval by HRT & City of Norfolk	40 days	Thu 10/29/09	Wed 12/23/09																
5	Schematic Design	20 days	Thu 12/24/09	Wed 1/20/10																
6	Approval by HRT and City of Norfolk	30 days	Thu 1/21/10	Wed 3/3/10																
7	Schematic Pricing	15 days	Thu 3/4/10	Wed 3/24/10																
8	Lease Negotiations & Rezoning	120 days	Thu 3/4/10	Wed 6/16/10																
9	Negotiate Ground Leases with HRT & City of Norfolk	60 days	Thu 3/4/10	Wed 5/26/10																
10	Negotiation Office Lease with City of Norfolk	60 days	Thu 3/4/10	Wed 5/26/10																
11	Obtain Letter of Intent for Retail Space	60 days	Thu 3/4/10	Wed 5/26/10																
12	Rezoning	120 days	Thu 3/4/10	Wed 6/16/10																
13	Design Development Phase	85 days	Thu 5/27/10	Wed 9/22/10																
14	Debt Financing / Equity Sourcing	80 days	Thu 5/27/10	Wed 9/15/10																
15	Design Development	65 days	Thu 5/27/10	Wed 8/25/10																
16	Design Development Pricing	20 days	Thu 8/26/10	Wed 9/22/10																
17	Construction Document Phase	160 days	Thu 9/23/10	Wed 5/4/11																
18	Construction Documents	80 days	Thu 9/23/10	Wed 1/12/11																
19	Construction Documents Pricing	25 days	Thu 1/13/11	Wed 2/16/11																
20	Permitting	80 days	Thu 1/13/11	Wed 5/4/11																
21	Close on Financing	20 days	Mon 3/21/11	Fri 4/15/11																
22	Construction Phase	360 days	Thu 5/5/11	Wed 9/19/12																
23	Demolition & Environmental Remediation	40 days	Thu 5/5/11	Wed 6/29/11																
24	Construction	320 days	Thu 6/30/11	Wed 9/19/12																

Project Exhibit 3.1 Project Schedule  
 Date: Wed 4/22/09

Task Progress ☐ Milestone Summary ☐

Rolled Up Task ☐ Rolled Up Milestone ☐

Rolled Up Progress ☐ External Tasks ☐

Group By Summary ☐ Deadline ☐

## **Exhibit 3.3**

### **Pre-construction Services**

## EXHIBIT 3.3 PHASE ONE

### Pre-construction Services

Updated 4/23/09

**Note: The monthly targets are dependent on timely inputs by all team members, actual work achieved in the preceeding month, and timely permit approvals by the relevant permitting agencies.**

<b>Categories</b>	<b>June</b>	<b>July</b>	<b>August</b>	<b>September</b>	<b>October</b>
<b>Permitting</b>	-Respond to Norfolk Site & Building permits review comments and resubmit as necessary.	-Respond to Norfolk Site & Building permits review comments and resubmit as necessary.	-Respond to Norfolk Site & Building permits review comments and resubmit as necessary.	-Respond to Norfolk Site & Building permits review comments and resubmit as necessary.	-Respond to Norfolk Site & Building permits review comments and resubmit as necessary. -Anticipated resolution to any remaining site permit comments. Norfolk will approve site plan after building demolition is complete. -Obtain Rodent-free certification
<b>Preconstruction</b>	-Execute contracts with selected subcontractors  -Secure Streets & Bridges site for laydown area	-Begin Rodent-free certification process	-Follow-up	-Follow-up  -Submit Demo permit	-Anticipated Demo permit  -Take possession of Streets and Bridges site for laydown area
<b>Activities</b>	-Begin submittal and procurement process	-Continuing submittal and procurement process	-Continuing submittal and procurement process	-Continuing submittal and procurement process	-Conduct Environmental survey/probes to isolate and minimize contaminated soils haul off -Continuing submittal and procurement process -Begin selective HazMat removal
<b>Utilities</b>	-Contact utility companies to schedule termination date, set up temporary services, and coordinate design and installation of new services	-Follow-up with utility companies	-Follow-up with utility companies	-Follow-up with utility companies	-Terminate Utilities; Coordination for upcoming utility installation
<b>Project Reporting</b>	-Update project & draw schedules -Prepare Monthly Report	-Update project & draw schedules -Prepare Monthly Report	-Update project & draw schedules -Prepare Monthly Report	-Update project & draw schedules -Prepare Monthly Report	-Update project & draw schedules -Prepare Monthly Report

**Exhibit 4.1(d)**

**LEED Checklist**

# Exhibit 4.1(d) LEED Checklist



LEED-NC

## LEED-NC Version 2.2 Registered Project Checklist

Hampton Roads Transit Southside Administration Operations & Maintenance Facility  
509 East 18th Street, Norfolk, VA 23504

Yes ? No

10	1	3	<b>Sustainable Sites</b>	<b>14 Points</b>
----	---	---	--------------------------	------------------

<b>Y</b>						
1				Prereq 1	<b>Construction Activity Pollution Prevention</b>	Required
1				Credit 1	<b>Site Selection</b>	1
1				Credit 2	<b>Development Density &amp; Community Connectivity</b>	1
1				Credit 3	<b>Brownfield Redevelopment</b>	1
1				Credit 4.1	<b>Alternative Transportation, Public Transportation Access</b>	1
1				Credit 4.2	<b>Alternative Transportation, Bicycle Storage &amp; Changing Rooms</b>	1
1				Credit 4.3	<b>Alternative Transportation, Low-Emitting and Fuel-Efficient Vehicles</b>	1
1				Credit 4.4	<b>Alternative Transportation, Parking Capacity</b>	1
			1	Credit 5.1	<b>Site Development, Protect or Restore Habitat</b>	1
1				Credit 5.2	<b>Site Development, Maximize Open Space</b>	1
			1	Credit 6.1	<b>Stormwater Design, Quantity Control</b>	1
			1	Credit 6.2	<b>Stormwater Design, Quality Control</b>	1
1				Credit 7.1	<b>Heat Island Effect, Non-Roof</b>	1
1				Credit 7.2	<b>Heat Island Effect, Roof</b>	1
		1		Credit 8	<b>Light Pollution Reduction</b>	1

Yes ? No

4	1	1	<b>Water Efficiency</b>	<b>5 Points</b>
---	---	---	-------------------------	-----------------

1						
1				Credit 1.1	<b>Water Efficient Landscaping, Reduce by 50%</b>	1
1				Credit 1.2	<b>Water Efficient Landscaping, No Potable Use or No Irrigation</b>	1
			1	Credit 2	<b>Innovative Wastewater Technologies</b>	1
1				Credit 3.1	<b>Water Use Reduction, 20% Reduction</b>	1
1				Credit 3.2	<b>Water Use Reduction, 30% Reduction</b>	1

Yes ? No

6	1	10	<b>Energy &amp; Atmosphere</b>	<b>17 Points</b>
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<b>Y</b>						
<b>Y</b>				Prereq 1	<b>Fundamental Commissioning of the Building Energy Systems</b>	Required
<b>Y</b>				Prereq 2	<b>Minimum Energy Performance</b>	Required
<b>Y</b>				Prereq 3	<b>Fundamental Refrigerant Management</b>	Required
2	1	7		Credit 1	<b>Optimize Energy Performance</b>	1 to 10
			3	Credit 2	<b>On-Site Renewable Energy</b>	1 to 3
1				Credit 3	<b>Enhanced Commissioning</b>	1
1				Credit 4	<b>Enhanced Refrigerant Management</b>	1
1				Credit 5	<b>Measurement &amp; Verification</b>	1
1				Credit 6	<b>Green Power</b>	1

continued...

Yes ? No

<b>7</b>	<b>1</b>	<b>5</b>	<b>Materials &amp; Resources</b>	<b>13 Points</b>
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<b>Y</b>			Prereq 1 <b>Storage &amp; Collection of Recyclables</b>	Required
		1	Credit 1.1 <b>Building Reuse</b> , Maintain 75% of Existing Walls, Floors & Roof	1
		1	Credit 1.2 <b>Building Reuse</b> , Maintain 100% of Existing Walls, Floors & Roof	1
		1	Credit 1.3 <b>Building Reuse</b> , Maintain 50% of Interior Non-Structural Elements	1
1			Credit 2.1 <b>Construction Waste Management</b> , Divert 50% from Disposal	1
1			Credit 2.2 <b>Construction Waste Management</b> , Divert 75% from Disposal	1
	1		Credit 3.1 <b>Materials Reuse</b> , 5%	1
		1	Credit 3.2 <b>Materials Reuse</b> , 10%	1
1			Credit 4.1 <b>Recycled Content</b> , 10% (post-consumer + ½ pre-consumer)	1
1			Credit 4.2 <b>Recycled Content</b> , 20% (post-consumer + ½ pre-consumer)	1
1			Credit 5.1 <b>Regional Materials</b> , 10% Extracted, Processed & Manufactured Regic	1
1			Credit 5.2 <b>Regional Materials</b> , 20% Extracted, Processed & Manufactured Regic	1
		1	Credit 6 <b>Rapidly Renewable Materials</b>	1
1			Credit 7 <b>Certified Wood</b>	1

Yes ? No

<b>10</b>	<b>5</b>	<b>Indoor Environmental Quality</b>	<b>15 Points</b>
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<b>Y</b>			Prereq 1 <b>Minimum IAQ Performance</b>	Required
<b>Y</b>			Prereq 2 <b>Environmental Tobacco Smoke (ETS) Control</b>	Required
1			Credit 1 <b>Outdoor Air Delivery Monitoring</b>	1
		1	Credit 2 <b>Increased Ventilation</b>	1
1			Credit 3.1 <b>Construction IAQ Management Plan</b> , During Construction	1
1			Credit 3.2 <b>Construction IAQ Management Plan</b> , Before Occupancy	1
1			Credit 4.1 <b>Low-Emitting Materials</b> , Adhesives & Sealants	1
1			Credit 4.2 <b>Low-Emitting Materials</b> , Paints & Coatings	1
1			Credit 4.3 <b>Low-Emitting Materials</b> , Carpet Systems	1
1			Credit 4.4 <b>Low-Emitting Materials</b> , Composite Wood & Agrifiber Products	1
		1	Credit 5 <b>Indoor Chemical &amp; Pollutant Source Control</b>	1
1			Credit 6.1 <b>Controllability of Systems</b> , Lighting	1
1			Credit 6.2 <b>Controllability of Systems</b> , Thermal Comfort	1
		1	Credit 7.1 <b>Thermal Comfort</b> , Design	1
		1	Credit 7.2 <b>Thermal Comfort</b> , Verification	1
1			Credit 8.1 <b>Daylight &amp; Views</b> , Daylight 75% of Spaces	1
		1	Credit 8.2 <b>Daylight &amp; Views</b> , Views for 90% of Spaces	1

Yes ? No

<b>5</b>			<b>Innovation &amp; Design Process</b>	<b>5 Points</b>
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1			Credit 1.1 <b>Innovation in Design</b> : Exemplary Performance for SS 4.1	1
1			Credit 1.2 <b>Innovation in Design</b> : Educational Outreach	1
1			Credit 1.3 <b>Innovation in Design</b> : Green Housekeeping	1
1			Credit 1.4 <b>Innovation in Design</b> : Sustainable FF& E OR Exemplary for WE Cr 3	1
1			Credit 2 <b>LEED® Accredited Professional</b>	1

Yes ? No

<b>42</b>	<b>3</b>	<b>24</b>	<b>Project Totals (pre-certification estimates)</b>	<b>69 Points</b>
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**Certified** 26-32 points   **Silver** 33-38 points   **Gold** 39-51 points   **Platinum** 52-69 points



## **Exhibit 4.2(a)**

### **Design and Construction Services for Phase One**

## **Exhibit 4.2(a)**

### **Design & Construction for Phase 1**

The bus maintenance functions are located on the ground level in Buildings #1 and #2. HRT's administrative and operations office space, including dispatch, training center, drivers' room, are located on the 2<sup>nd</sup> floor of Building #1. A pedestrian bridge provides access from the parking deck to the 2<sup>nd</sup> floor space of Building #1. The design program consists of 185 bus parking spaces and a 235-space parking deck for use by employees located above the bus parking area. An additional 10 car-parking spaces are located adjacent to Building #2 for NRVs.

<b><u>Functional Category</u></b>	<b><u>Approx. GSF</u></b>
Operations Building Space	16,000
<u>Bus Maintenance Building Space</u>	<u>81,000</u>
Total	97,000

<b><u>Parking</u></b>	<b><u>No. of Spaces</u></b>
Bus	185
Employee and staff	245

The scope of work for Phase 1 is fully described in the project drawings and specifications. A List of Drawings and Specifications dated 3/1/09 is attached as part of this Exhibit 4.2(a). These Drawings and Specifications represent the basis of Developer's Contract Price, and Owner has reviewed and accepted these Drawings and Specifications as representative of the Project to be built and delivered by Developer.

**List of Drawings  
for Phase I Project  
(All sheets are dated 3/1/09)**

**CIVIL**

T-001 COVER SHEET  
C-001 GENERAL NOTES  
C-002 LEGEND  
C-003 SITE PLAN EXISTING CONDITIONS  
C-004 EXISTING BOUNDARIES SURVEY  
C-005 SITE PLAN DEMOLITION  
C-006 SITE PLAN OVERALL  
  
C-101 EROSION & SEDIMENT CONTROL PLAN  
C-102 DIMENSION PLAN & SITE PLAN 1 OF 2  
C-103 DIMENSION PLAN & SITE PLAN 2 OF 2  
C-104 SPECIAL DESIGN ITEMS 1 OF 2  
C-105 SPECIAL DESIGN ITEMS 2 OF 2  
C-106 GRADING & STORM DRAINAGE 1 OF 2  
C-107 GRADING & STORM DRAINAGE 2 OF 2  
C-108 DRAINAGE DESCRIPTIONS  
C-110 STORM DRAINAGE PROFILES 1 OF 3  
C-111 STORM DRAINAGE PROFILES 2 OF 3  
C-112 STORM DRAINAGE PROFILES 3 OF 3  
  
C-120 EROSION CONTROL NOTES & DETAILS  
C-121 MISCELLANEOUS SITE DETAILS  
C-122 MISCELLANEOUS SITE DETAILS  
C-123 MISCELLANEOUS SITE DETAILS  
C-124 MISCELLANEOUS SITE DETAILS  
C-125 MISCELLANEOUS SITE DETAILS  
C-126 MISCELLANEOUS SITE DETAILS  
C-127 MISCELLANEOUS SITE DETAILS  
C-128 MISCELLANEOUS SITE DETAILS  
  
C-201 UTILITIES PLAN 1 OF 2  
C-202 UTILITIES PLAN 2 OF 2  
C-203 UTILITY PROFILES 1 OF 2  
C-204 UTILITY PROFILES 2 OF 2  
  
C-220 UTILITIES DETAILS  
  
C-401 STRIPING & SIGNAGE PLAN  
C-420 STRIPING & SIGNAGE DETAILS  
C-421 STRIPING & SIGNAGE DETAILS  
  
ES1-001 SITE LEGEND AND GENERAL NOTES  
  
ESD1-101 ELECTRICAL SITE DEMOLITION PLAN  
ESD1-102 ELECTRICAL SITE DEMOLITION PLAN  
  
ES1-101 ELECTRICAL SITE PLAN  
ES1-102 ELECTRICAL SITE PLAN  
ES1-501 ELECTRICAL SITE DETAILS  
ES1-502 ELECTRICAL SITE DETAILS

YS-01 LEGEND AND GENERAL NOTES  
YS-02 SECURITY SITE PLAN OVERALL  
YS-03 ACCESS CONTROL ONE LINE DIAGRAM  
YS-04 CCTV SYSTEM ONE LINE DIAGRAM  
YS-05 MISCELLANEOUS SITE DETAILS  
YS-06 STRUCTURED CABLING SYSTEM ONE LINE DIAGRAM

LA-001 LANDSCAPE PLAN  
LA-002 LANDSCAPE PLAN  
LA-003 PLANT SCHEDULE & DETAILS  
LA-004 LANDSCAPE PLAN & DETAILS  
LA-005 PLANT SCHEDULE & DETAILS

## **BUILDING 1**

### **GENERAL**

T1-001 COVER SHEET  
G1-002 PERSPECTIVE/VICINITY MAP  
G1-003 PROJECT INFORMATION  
G1-004 DRAWING INDEX  
G1-005 ABBREVIATIONS & SYMBOLS

### **STRUCTURAL**

S1-001 GENERAL NOTES  
S1-101 FOUNDATION PLAN - PART A  
S1-102 FOUNDATION PLAN - PART B  
S1-103 FOUNDATION PLAN - PART C  
S1-104 FOUNDATION PLAN - PART D  
S1-105 FOUNDATION PLAN - PART E  
S1-106 SLAB PLAN - PART A  
S1-107 SLAB PLAN - PART B  
S1-108 SLAB PLAN - PART C  
S1-109 SLAB PLAN - PART D  
S1-110 SLAB PLAN - PART E  
S1-111 FRAMING PLAN 2ND FLR - PART B  
S1-112 ROOF FRAMING PLAN - PART A  
S1-113 ROOF FRAMING PLAN - PART B  
S1-114 ROOF FRAMING PLAN - PART C  
S1-115 ROOF FRAMING PLAN - PART D  
S1-116 ROOF FRAMING PLAN - PART E  
  
S1-301 FOUNDATION SECTIONS  
S1-302 PIT SECTIONS - MISCELLANEOUS  
S1-303 PIT SECTIONS - COMPONENT CLEAN  
S1-304 PIT SECTIONS - CHASSIS WASH & PILE CAPS  
S1-305 LOADING DOCK SECTIONS  
S1-306 FRAMING SECTIONS  
S1-307 FRAMING SECTIONS  
S1-308 TRUSS ELEVATIONS & DETAILS  
S1-309 TYPICAL CMU WALL SECTIONS & DETAILS  
S1-310 TYPICAL CMU WALL SECTIONS & DETAILS  
S1-311 FOUNDATIONS SECTION DETAILS

## S1-401 MEZZANINE ENLARGED PLANS

S1-501 STANDARD DETAILS  
S1-502 STANDARD DETAILS  
S1-503 STANDARD DETAILS  
S1-504 STANDARD DETAILS

## ARCHITECTURAL

A1-103 FIRST FLOOR LIFE SAFETY PLANS  
A1-104 SECOND FLOOR LIFE SAFETY PLANS  
A1-105 FIRST FLOOR COMPOSITE PLAN  
A1-106 SECOND FLOOR COMPOSITE PLAN  
A1-107 FIRST FLOOR PLAN - PART A  
A1-108 FIRST FLOOR PLAN - PART B  
A1-109 FIRST FLOOR PLAN - PART C  
A1-110 FIRST FLOOR PLAN - PART D  
A1-111 FIRST FLOOR PLAN - PART E  
A1-112 SECOND FLOOR PLAN - PART B

A1-113 FIRST FLOOR RCP - PART A  
A1-114 FIRST FLOOR RCP - PART B  
A1-115 FIRST FLOOR RCP - PART C  
A1-116 FIRST FLOOR RCP - PART D  
A1-117 FIRST FLOOR RCP - PART E  
A1-118 SECOND FLOOR RCP - PART B

A1-119 COMPOSITE ROOF PLAN  
A1-120 ROOF PLAN - PART A  
A1-121 ROOF PLAN - PART B  
A1-122 ROOF PLAN - PART C  
A1-123 ROOF PLAN - PART D  
A1-124 ROOF PLAN - PART E  
A1-125 ENLARGED PLAN 1ST & 2ND FLR RESTROOMS  
A1-126 TOILET FIXTURE PLANS 1ST & 2ND FLOOR

A1-131 ENLARGED OPEN PATIO PLANS  
A1-132 LOADING DOCK DETAILS  
A1-133 ENLARGED MEZZANINE PLANS & DETAILS  
A1-135 OPERABLE PARTITION DETAILS  
A1-140 PARTITION TYPES (1 OF 2)  
A1-141 PARTITION TYPES (2 OF 2)

A1-201 COMPOSITE ELEVATIONS  
A1-202 WEST ELEVATION - PART A & B  
A1-203 WEST ELEVATION - PARTS D & E  
A1-204 NORTH & SOUTH ELEVATIONS  
A1-205 EAST ELEVATION - PARTS A & C  
A1-206 EAST ELEVATION - PARTS D & E

A1-301 COMPOSITE SECTIONS  
A1-302 BUILDING SECTIONS - PARTS A & B  
A1-303 BUILDING SECTIONS - PARTS D & E  
A1-304 BUILDING SECTIONS  
A1-305 BUILDING SECTIONS  
A1-306 BUILDING SECTIONS

A1-307 BUILDING SECTIONS  
A1-308 OPEN PATIO SECTIONS  
A1-309 WALL SECTIONS  
A1-310 WALL SECTIONS  
A1-311 WALL SECTIONS  
A1-312 WALL SECTIONS  
A1-313 STAIR 1 PLANS AND SECTIONS  
A1-314 STAIR 2 PLANS AND SECTIONS  
  
A1-401 FIRST FLOOR DOOR & WINDOW SCHEDULE  
A1-402 SECOND FLOOR DOOR & WINDOW SCHEDULE  
A1-403 DOORS, WINDOWS & FRAMES  
A1-404 INTERIOR DOORS AND WINDOW DETAILS  
A1-405 INTERIOR DOORS AND WINDOW DETAILS  
A1-406 EXTERIOR DOOR DETAILS  
A1-407 EXTERIOR DOOR DETAILS  
A1-408 EXTERIOR WINDOW DETAILS  
A1-409 ROOF DETAILS  
A1-410 ROOF DETAILS  
  
A1-501 EYE WASH STATION DETAILS  
A1-502 BREAK ROOM & PARTS COUNTER DETAILS  
A1-503 DISPATCH COUNTER & DETAILS  
A1-504 INTERIOR SECTIONS & DETAILS  
A1-505 INTERIOR SECTIONS & DETAILS  
A1-507 EXTERIOR PLAN DETAILS  
A1-508 CLERESTORY PLANS  
A1-511 EXTERIOR SECTION DETAILS  
A1-512 OPEN PATIO DETAILS  
A1-513 MISCELLANEOUS DETAILS  
  
I1-100 FINISH LEGEND  
I1-101 FINISH SCHEDULE 1ST FLOOR  
I1-102 FINISH SCHEDULE 2ND FLOOR  
I1-103 FURNITURE PLAN 1ST FLOOR  
I1-104 FURNITURE PLAN 2ND FLOOR  
  
MECHANICAL  
  
M1-001 LEGEND AND GENERAL NOTES  
M1-002 HVAC SCHEDULES  
M1-003 HVAC SCHEDULES  
M1-004 HVAC SCHEDULES  
  
MH1-101 HVAC PLAN 1ST FLOOR - PART A  
MH1-102 HVAC PLAN 1ST FLOOR - PART B  
MH1-103 HVAC PLAN 1ST FLOOR - PART C  
MH1-104 HVAC PLAN 1ST FLOOR - PART D  
MH1-105 HVAC PLAN 1ST FLOOR - PART E  
MH1-106 PLAN 2ND FLOOR - PART B  
MH1-107 HVAC ROOF PLAN - PART A  
MH1-108 HVAC ROOF PLAN - PART B  
MH1-109 HVAC ROOF PLAN - PART C  
MH1-110 HVAC ROOF PLAN - PART D  
MH1-111 HVAC ROOF PLAN - PART E

MP1-101 PIPING PLAN 1ST FLOOR - PART A  
MP1-102 PIPING PLAN 1ST FLOOR - PART B  
MP1-103 PIPING PLAN 1ST FLOOR - PART C  
MP1-104 PIPING PLAN 1ST FLOOR - PART D  
MP1-105 PIPING PLAN 1ST FLOOR - PART E  
MP1-106 PIPING PLAN 2ND FLOOR - PART B

M1-301 BUILDING 1 SECTIONS  
M1-302 BUILDING 1 SECTIONS

M1-401 HVAC ENLARGED PLANS  
M1-402 HVAC ENLARGED PLANS

M1-501 HVAC DETAILS  
M1-502 HVAC DETAILS  
M1-503 HVAC DETAILS

M1-601 HVAC SCHEMATICS

M1-701 TEMPERATURE CONTROLS  
M1-702 TEMPERATURE CONTROLS  
M1-703 TEMPERATURE CONTROLS  
M1-704 TEMPERATURE CONTROLS  
M1-705 TEMPERATURE CONTROLS

#### PLUMBING

FP1-001 BLDG #1 FIRE PROTECTION SCHEDULES, NOTES & DETAILS

P1-001 PLUMBING SCHEDULES

PW1-101 WASTE PLAN 1ST FLOOR - PART A  
PW1-102 WASTE PLAN 1ST FLOOR - PART B  
PW1-103 WASTE PLAN 1ST FLOOR - PART C  
PW1-104 WASTE PLAN 1ST FLOOR - PART D  
PW1-105 WASTE PLAN 1ST FLOOR - PART E  
PW1-106 WASTE PLAN 2ND FLOOR - PART B  
PW1-107 WASTE PLAN ROOF - PART A  
PW1-108 WASTE PLAN ROOF - PART B  
PW1-109 WASTE PLAN ROOF - PART C  
PW1-110 WASTE PLAN ROOF - PART D  
PW1-111 WASTE PLAN ROOF - PART E

PL1-101 SUPPLY PLAN 1ST FLOOR - PART A  
PL1-102 SUPPLY PLAN 1ST FLOOR - PART B  
PL1-103 SUPPLY PLAN 1ST FLOOR - PART C  
PL1-104 SUPPLY PLAN 1ST FLOOR - PART D  
PL1-105 SUPPLY PLAN 1ST FLOOR - PART E  
PL1-106 SUPPLY PLAN 2ND FLOOR - PART B

P1-501 BLDG 1 DETAILS  
P1-502 BLDG 1 DETAILS

P1-701 RISER DIAGRAMS  
P1-702 BLDG 1 SIPHONIC ROOF PIPING DIAGRAM  
P1-703 BLDG 1 SIPHONIC ROOF PIPING DIAGRAM

## P1-704 BLDG 1 SECOND FLOOR SIPHONIC ROOF PIPING DIAGRAM

## ELECTRICAL

## E1-001 LEGEND AND GENERAL NOTES

## EG1-101 GROUNDING &amp; LIGHTNING PROTECTION PLAN

## EG1-102 GROUNDING &amp; LIGHTNING PROTECTION PLAN

## EL1-101 LIGHTING PLAN 1ST FLOOR - PART A

## EL1-102 LIGHTING PLAN 1ST FLOOR - PART B

## EL1-103 LIGHTING PLAN 1ST FLOOR - PART C

## EL1-104 LIGHTING PLAN 1ST FLOOR - PART D

## EL1-105 LIGHTING PLAN 1ST FLOOR - PART E

## EL1-106 LIGHTING PLAN 2ND FLOOR - PART B

## EP1-101 POWER PLAN 1ST FLOOR - PART A

## EP1-102 POWER PLAN 1ST FLOOR - PART B

## EP1-103 POWER PLAN 1ST FLOOR - PART C

## EP1-104 POWER PLAN 1ST FLOOR - PART D

## EP1-106 POWER PLAN MEZZANINE LEVEL

## EP1-106 POWER PLAN 2ND FLOOR - PART B

## EP1-107 POWER PLAN ROOF - PART A

## EP1-108 POWER PLAN ROOF - PART B

## EP1-109 POWER PLAN ROOF - PART C

## EP1-110 POWER PLAN ROOF - PART D

## EP1-111 POWER PLAN ROOF - PART E

## E1-401 ENLARGED PLANS

## E1-402 ENLARGED PLANS

## E1-403 ENLARGED PLANS

## E1-501 LIGHTNING PROTECTION &amp; GROUNDING DETAILS

## E1-502 LIGHTNING PROTECTION DETAILS

## E1-503 ELECTRICAL DETAILS

## E1-504 ELECTRICAL DETAILS

## E1-505 ELECTRICAL DETAILS

## E1-601 ONE-LINE DIAGRAM

## E1-602 DIAGRAMS &amp; SCHEDULES

## E1-603 LIGHTING CONTROL DIAGRAMS &amp; SCHEDULES

## E1-701 LIGHTING FIXTURE SCHEDULE

## E1-702 PANELBOARD SCHEDULES

## E1-703 PANELBOARD SCHEDULES

## E1-704 PANELBOARD SCHEDULES

## E1-705 PANELBOARD SCHEDULES

## E1-706 PANELBOARD SCHEDULES

## E1-707 PANELBOARD SCHEDULES

## E1-708 LIGHTING CONTROL PANELS

## E1-709 LIGHTING CONTROL PANELS

## E1-710 LIGHTING CONTROL PANELS

## E1-711 LIGHTING CONTROL PANELS

## FIRE ALARM



FA1-001 LEGEND AND GENERAL NOTES  
FA1-002 FIRE ALARM RISER DIAGRAM

FA1-101 FIRE ALARM PLAN 1ST FLOOR - PART A  
FA1-102 FIRE ALARM PLAN 1ST FLOOR - PART B  
FA1-103 FIRE ALARM PLAN 1ST FLOOR - PART C  
FA1-104 FIRE ALARM PLAN 1ST FLOOR - PART D  
FA1-105 FIRE ALARM PLAN 1ST FLOOR - PART E  
FA1-106 FIRE ALARM PLAN 2ND FLOOR - PART B

FA1-501 FIRE ALARM DETAILS

#### EQUIPMENT

Q1-001 SCHEDULE EQUIPMENT PLAN  
Q1-002 DETAILS EQUIPMENT PLAN

Q1-101 EQUIPMENT PLAN - PART A  
Q1-102 EQUIPMENT PLAN - PART B  
Q1-103 EQUIPMENT PLAN - PART C  
Q1-104 EQUIPMENT PLAN - PART D  
Q1-105 EQUIPMENT PLAN - PART E

#### PROCESS PIPING

PP0-001 PROCESS PIPING LEGEND & GENERAL NOTES  
PP0-002 PROCESS PIPING DETAILS  
PP0-003 PROCESS PIPING DETAILS  
PP0-004 PROCESS PIPING DETAILS  
PP0-005 LEAK DETECTION SCHEMATIC

PP1-101 PROCESS PIPING PLAN - PART A  
PP1-102 PROCESS PIPING PLAN - PART B  
PP1-103 PROCESS PIPING PLAN - PART C  
PP1-104 PROCESS PIPING PLAN - PART D  
PP1-105 PROCESS PIPING PLAN - PART E  
PP1-106 PROCESS PIPING SECTIONS & ELEVATIONS

#### SECURITY

Y1-01 LEGEND  
Y1-02 FIRST FLOOR PLAN - AREA A  
Y1-03 FIRST FLOOR PLAN - AREA B  
Y1-04 FIRST FLOOR PLAN - AREA C  
Y1-05 FIRST FLOOR PLAN - AREA D  
Y1-06 FIRST FLOOR PLAN - AREA E  
Y1-07 SECOND FLOOR PLAN - AREA B  
Y1-08 ACS ONE LINE DIAGRAM  
Y1-09 DOOR SCHEDULE  
Y1-10 DOOR DETAILS  
Y1-11 CCTV ONE LINE DIAGRAM  
Y1-12 CCTV CAMERA SCHEDULE  
Y1-13 CAMERA DETAILS  
Y1-14 STRUCTURED CABLING SYSTEM ONE LINE DIAGRAM  
Y1-15 STRUCTURED CABLING SYSTEM DETAILS

Y1-16 STRUCTURED CABLING SYSTEM DETAILS  
Y1-17 ENLARGED FLOOR PLANS  
Y1-18 ENLARGED FLOOR PLANS

## **BUILDING 2**

### **GENERAL**

G2-001 COVER SHEET  
G2-002 PERSPECTIVE /VICINITY MAP  
G2-003 DRAWING INDEX  
G2-004 ABBREVIATIONS AND SYMBOLS  
G2-101 LIFE SAFETY PLAN

### **STRUCTURAL**

#### **S2-001 GENERAL NOTES**

S2-101 FOUNDATION AND SLAB PLAN – PART A  
S2-102 FOUNDATION AND SLAB PLAN – PART B  
S2-103 ROOF FRAMING PLAN - PART A  
S2-104 ROOF FRAMING PLAN - PART B

S2-301 FOUNDATION SECTIONS  
S2-302 SECTIONS & DETAILS I  
S2-303 SECTIONS & DETAILS II

S2-501 STANDARD DETAILS  
S2-502 STANDARD DETAILS  
S2-503 STANDARD DETAILS

### **ARCHITECTURAL**

A2-102 COMPOSITE PLAN  
A2-103 FLOOR PLAN-PART A  
A2-104 FLOOR PLAN-PART B  
A2-105 REFLECTED CEILING PLAN-PART A  
A2-106 REFLECTED CEILING PLAN-PART B  
A2-107 ROOF PLAN - PART A  
A2-108 ROOF PLAN - PART B

A2-201 BUILDING ELEVATIONS  
A2-202 BUILDING ELEVATIONS  
A2-203 PARTIAL BUILDING ELEVATIONS

A2-301 BUILDING SECTIONS  
A2-302 BUILDING SECTIONS  
A2-303 WALL SECTIONS  
A2-304 WALL SECTIONS  
A2-305 WALL SECTIONS

A2-401 DOORS, WINDOWS, AND FRAMES

A2-501 PARTITION TYPES  
A2-502 PARTITION TYPES

A2-503 EXTERIOR WALL AND COLUMN DETAILS  
A2-504 ENLARGED PLANS, INTERIOR ELEVATIONS  
A2-505 BREAK ROOM PLAN, ELEVATION AND DETAILS  
A2-506 TOILET ROOM PLANS, SECTIONS, ELEVATIONS  
A2-507 INTERIOR ELEVATIONS, DETAILS  
A2-508 INTERIOR DOORS AND WINDOW DETAILS  
A2-509 INTERIOR DOOR AND WINDOW DETAILS  
A2-510 EXTERIOR DOOR DETAILS  
A2-511 EXTERIOR DOOR DETAILS  
A2-512 EXTERIOR WINDOW DETAILS  
A2-513 ROOF DETAILS  
A2-514 ROOF DETAILS  
A2-515 EYE WASH STATION ENLARGED PLAN, SECTION AND ELEVATION

I2-001 FINISH LEGEND  
I2-101 FURNITURE PLAN  
I2-102 FINISH SCHEDULE

#### MECHANICAL

M2-001 LEGEND AND GENERAL NOTES  
M2-002 SCHEDULES  
M2-003 SCHEDULES  
M2-004 BLDG 2 SCHEDULES

MH2-101 FIRST FLOOR PLAN HVAC  
MH2-102 ROOF PLAN HVAC  
MP2-101 FIRST FLOOR PLAN PIPING

M2-501 DETAILS  
M2-502 DETAILS

M2-601 SCHEMATICS

M2-701 TEMPERATURE CONTROLS  
M2-702 TEMPERATURE CONTROLS  
M2-703 TEMPERATURE CONTROLS

#### PLUMBING

P2-001 SCHEDULES

PW2-101 FIRST FLOOR PLAN - WASTE  
PW2-102 ROOF PLAN - WASTE

P2-501 DETAILS  
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- 23 3600 - Air Terminal Units
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**Exhibit 4.2(c)**

**Key Design Consultants**

## **Exhibit 4.2(c)**

### **Key Design Consultants**

#### **Concord Eastridge, Inc.** (Development Manager)

**R Jeffery Arnold**

President

**Chee Kung**

Development Manager

**(TBD)**

Project Manager

#### **Parsons Brinckerhoff** (Lead Architect, Structural Engineer)

**Gary F. Arnold, AIA**

Senior Architectural Manager, Project Manager

**Elizabeth Arnold**

Assistant Vice President, Lead Civil Engineer

**Mark Probst, AIA**

Manager of Fleet & Facilities Division, Lead Programmer

**Rex Gilley, PE**

Lead Structural Engineer

**Patricia Cole**

Senior Supervising Designer, Architecture Lead

**Charles Smith**

Program Manager, Task Manager

#### **AECOM** (MEP Engineer, LEED Consultant)

**Belinda Redd, PE, LEED AP**

Senior Associate, Project Manager

**Nina Szewczak, LEED AP**

LEED Consultant

#### **InSites** (Landscape Architect)

**Keith Oliver, ASLA**

Principal Landscape Architect

**Jason Baines**

Landscape Associate, Project Manager

**Will Richardson**

Landscape Designer

#### **RRMM** (Architect for Phase II: Private Development)

**John Maddox**

Principal

**Jamie G. Garcia, RA, LEED AP**

Principal

**Exhibit 4.2(h)**

**Key Construction Personnel**



## **Exhibit 4.2(h)**

### **Key Construction Personnel**

**WM Jordan** (Construction Manager)

**Michael Daniels**

Director of Preconstruction Services, Project Executive

**Bill Drum**

Chief Estimator

**Byron Williams**

Project Manager

**Jeff Ambrose** (Nominee)

Project Superintendent

**David Ancarrow** (Nominee)

Project Engineer

**Exhibit 5.1(a)**

**Contract Price**

## **Exhibit 5.1(a)**

### **Contract Price**

Updated: 4/20/09

#### **PHASE ONE CONTRACT PRICE:**

##### **Forty-One Million Nine Hundred Thousand Dollars (\$41,900,000)**

The Contract Price embodies the Scope of Work as specified in "Exhibit 4.2(a) Design and Construction for Phase One" including the List of Drawings and Specifications dated 3/1/09. The Contract Price excludes all costs incurred by Developer and paid by Owner during the Interim Period from 1/1/08 to 5/31/09. The Contract Price is predicated on a Full Notice to Proceed date of no later than 10/14/09.

#### **CONDITIONS**

##### Owner's Contingency and Soft Cost Allowances (\$3,800,000)

1. Owner's Contingency. The Contract Price includes a \$1,500,000 contingency for the exclusive use by Owner. No expenditure of this amount by Developer shall be allowed without authorization by Owner.
2. Office Furniture, Fixtures, and Equipment (FFE) Allowance. The Contract Price includes an Allowance in the amount of \$1,500,000 for Office FFE including, but not limited to, furniture, case goods, general carpentry, stationery, general office supplies, telephone and communications equipment and telephone handsets, cabling, servers and computers, copy machines, audio and video equipment, CCTV, access control, and kitchen appliances.
3. Art Work Allowance. \$50,000 is the Allowance allocated to be used by Owner at Owner's sole discretion.
4. Permitting and Permanent Utilities Allowance. A \$750,000 Allowance is included in the Contract Price for:
  - a. All permitting costs associated with requisite approvals to complete all necessary demolition and construction activities through Final Completion of the Phase One Project in accordance with Exhibit 4.2(a).
  - b. All costs and permitting and connection fees associated with termination of existing permanent utilities and construction of new permanent utilities required for Final Completion of Phase One Project in accordance with Exhibit 4.2(a). These costs include, but are not limited to, rodent control, sewer cap, asbestos-free certification, water service, sanitary sewer, stormwater sewer, electric power, gas, telephone, data, and cable television.

##### Hard Cost Allowances (\$776,000)

5. Unsuitable Soils Allowance. The Contract Price includes a \$100,000 Allowance for removal and disposal, and treatment of unsuitable soils and the import of suitable soils.
6. Signage Allowance. \$100,000 is the Allowance allocated to the design, construction, and installation of signage. Such signage includes, but is not limited to monument signs,

institutional identification, way finding, interior signage, traffic directional signs, and LEED signage.

7. Vibration Monitoring Allowance. \$100,000 is the Allowance allocated to monitor vibrations caused by construction activities.
8. Spray-on Fireproofing Allowance. \$10,000 is the Allowance allocated for this item.
9. Bird Control Allowance. \$73,000 is the Allowance allocated for bird control under the parking deck in particular and for the Project in general.
10. Wall and Corner Guards Allowance. \$16,000 is allocated for this allowance pending determination of final scope.
11. Fluid Applied Flooring Allowance. \$77,000 is the Allowance allocated pending pricing and scope verification.
12. All Hard and Soft Cost Allowances and Owner's Contingency will be reconciled with associated expenditures after Project closeout. Any unspent amounts of such Allowances as well as Owner's Contingency will be credited 100% to Owner. Any cost overruns associated with these Allowances and Owner Contingency described above are not included in the Contract Price and will be funded 100% by Owner. Any unspent amounts in the Allowances and Owner Contingency may be reallocated to other categories with the approval of the Owner, in its own discretion.
13. Design and DBE Bid Allowance. \$300,000 is the Allowance allocated for final verification of Subcontractor hard bids, including DBE bids, following 100% Design clarifications.

#### Exclusions

14. Building Commissioning. \$35,000 of costs have been identified for Building Commissioning tasks as described in Exhibit 6.6.2.1(f). This cost is not included in the Phase One Contract Price. Owner shall be responsible for this amount, payable to the selected Commissioning Agent.
15. Material Testing and Special Inspections. Costs associated with this item include, but is not limited to, all environmental and material testing during construction, and City-mandated Special Inspections. These costs are not included in the Phase One Contract Price. The contract with the testing and inspection services will be procured directly by Owner.
16. Cost of Power and Water Consumption During Construction. Owner is responsible for the cost of power and water consumption during construction.
17. Lease of 'Streets and Bridges' Parcel for Construction Staging. Any costs to secure and lease the use of the 'Streets and Bridges' land parcel or a portion thereof from the City of Norfolk for construction staging purposes are excluded from the Contract Price.

## **Exhibit 5.2**

### **Payment Schedule for Phase One**

## Updated 4/20/09

**Notes:**

- | Year | Month | Project Duration | Phase One Hard Cost | Hard Cost Allowances | Soft Costs | Allowance: FFE & Art Work | Allowance: Permanent Utilities Fees, Connections, Installation | Owner Contingency | Phase One Total |               |
|------|-------|------------------|---------------------|----------------------|------------|---------------------------|--|-------------------|-----------------|---------------|
| 2009 | Jun   | 1                | \$ 211,389          | \$ 7,372             | \$ 149,534 |                           |  | \$ 30,000         | \$ 398,295      |               |
|      | Jul   | 2                | \$ 211,389          | \$ 7,372             | \$ 149,534 |                           | \$ 30,000  | \$ 30,000         | \$ 428,295      |               |
|      | Aug   | 3                | \$ 211,389          | \$ 14,744            | \$ 139,692 |                           | \$ 30,000  | \$ 30,000         | \$ 425,824      |               |
|      | Sep   | 4                | \$ 211,389          | \$ 29,488            | \$ 139,692 |                           | \$ 30,000  | \$ 40,000         | \$ 450,568      |               |
|      | Oct   | 5                | \$ 975,641          | \$ 51,604            | \$ 169,218 |                           | \$ 30,000  | \$ 50,000         | \$ 1,276,463    |               |
|      | Nov   | 6                | \$ 1,235,811        | \$ 51,604            | \$ 179,060 |                           | \$ 100,000   | \$ 90,000         | \$ 1,656,476    |               |
|      | Dec   | 7                | \$ 1,235,811        | \$ 58,976            | \$ 179,060 |                           | \$ 100,000   | \$ 90,000         | \$ 1,663,848    |               |
|      | Jan   | 8                | \$ 2,276,495        | \$ 58,976            | \$ 179,060 |                           | \$ 100,000   | \$ 90,000         | \$ 2,704,531    |               |
|      | Feb   | 9                | \$ 3,902,562        | \$ 58,976            | \$ 179,060 |                           | \$ 100,000   | \$ 90,000         | \$ 4,330,598    |               |
|      | Mar   | 10               | \$ 3,577,349        | \$ 51,604            | \$ 139,692 | \$ 50,000                 | \$ 100,000   | \$ 90,000         | \$ 4,008,644    |               |
|      | Apr   | 11               | \$ 2,926,922        | \$ 29,488            | \$ 134,771 | \$ 50,000                 | \$ 130,000   | \$ 90,000         | \$ 3,361,180    |               |
|      | May   | 12               | \$ 2,601,708        | \$ 29,488            | \$ 134,771 | \$ 50,000                 |  | \$ 90,000         | \$ 2,905,967    |               |
| 2010 | Jun   | 13               | \$ 2,601,708        | \$ 29,488            | \$ 134,771 | \$ 50,000                 |  | \$ 90,000         | \$ 2,905,967    |               |
|      | Jul   | 14               | \$ 2,601,708        | \$ 36,860            | \$ 129,850 | \$ 50,000                 |  | \$ 90,000         | \$ 2,908,418    |               |
|      | Aug   | 15               | \$ 1,886,238        | \$ 36,860            | \$ 134,771 | \$ 100,000                |  | \$ 90,000         | \$ 2,247,869    |               |
|      | Sep   | 16               | \$ 1,951,281        | \$ 36,860            | \$ 134,771 | \$ 150,000                |  | \$ 90,000         | \$ 2,362,912    |               |
|      | Oct   | 17               | \$ 1,300,854        | \$ 29,488            | \$ 134,771 | \$ 150,000                |  | \$ 90,000         | \$ 1,705,113    |               |
|      | Nov   | 18               | \$ 975,641          | \$ 36,860            | \$ 134,771 | \$ 200,000                |  | \$ 50,000         | \$ 1,404,643    |               |
|      | Dec   | 19               | \$ 975,641          | \$ 44,232            | \$ 134,771 | \$ 200,000                |  | \$ 50,000         | \$ 1,076,979    |               |
|      | Jan   | 20               | \$ 650,427          | \$ 36,860            | \$ 139,692 | \$ 200,000                |  | \$ 50,000         | \$ 2,240,142    |               |
|      | Feb   | 21               | \$ 1,711,650        | \$ 38,800            | \$ 139,692 | \$ 300,000                |  | \$ 50,000         | \$ 41,900,000   |               |
|      | Total |                  |                     | \$ 34,233,000        | \$ 776,000 | \$ 3,091,000              | \$ 1,550,000   | \$ 750,000        | \$ 1,500,000    | \$ 41,900,000 |

## **Exhibit 5.3**

### **Financial Program**

**Exhibit 5.3**

<b>Source</b>	<b>Federal Share</b>	<b>State Share</b>	<b>Local Share</b>	<b>Total</b>
Earmarks (2003-2009)	7,677,728	1,343,602	575,830	9,597,160
Discretionary Bus Facilities (2008)	2,000,000	500,000	-	2,500,000
Discretionary Clean Fuels (2008)	2,700,000	222,000	78,000	3,000,000
State Bond Fund (2009)	-	1,600,000	400,000	2,000,000
ARRA Funds (2009)	14,000,000	-	-	14,000,000
STP Funds (2004-2010)	8,642,272	2,160,568	-	10,802,840
<b>Total</b>	<b>35,020,000</b>	<b>5,826,170</b>	<b>1,053,830</b>	<b>41,900,000</b>



**Exhibit 6.2(b)**

**Form of Guaranty**

## **EXHIBIT 6.2(b)**

### **GUARANTY OF PERFORMANCE AND COMPLETION**

This **GUARANTY OF PERFORMANCE AND COMPLETION** ( the "Guaranty") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2009, by **CONCORD EASTRIDGE, INC.**, an Arizona corporation (the "Guarantor"), to the **TRANSPORTATION DISTRICT COMMISSION OF HAMPTON ROADS**, a transportation district commission created pursuant to the Virginia Transportation District Act of 1964 (the "Commission"), with respect to the obligations of CEI Development, LLC, a Virginia limited liability company (the "Developer") under that certain Comprehensive Agreement dated as of even date herewith, by and between the Commission and Developer (as amended, altered, varied or supplemented, the "Agreement") and the other Contract Documents related thereto. The Agreement is hereby incorporated by reference herein, and all capitalized terms used herein shall have the meanings set forth in Exhibit 1.2 to the Agreement. As a condition to entering into the Agreement, the Commission has required the Guarantor to execute and deliver this Guaranty. The Guarantor acknowledges that financial and direct benefits will accrue to the Guarantor by virtue of entering into this Guaranty and that such benefits constitute adequate consideration therefor.

#### **ARTICLE I**

#### **GUARANTY**

**Section 1.01 Guaranty.** The Guarantor hereby guarantees to the Commission, absolutely, unconditionally and irrevocably, that each and every payment and performance obligation and other liability of the Developer now or hereafter arising under the Agreement or any of the other Contract Documents, including but not limited to all obligations and liabilities of the Developer under any and all representations and warranties made or given by the Developer, under any and all liquidated or stipulated damage provisions of, and under any and all indemnities given by the Developer under the Agreement and/or any other Contract Document (collectively the "Guaranteed Obligations") will be promptly paid and satisfied in full when due and without offset, and performed and completed when required.

**Section 1.02 Obligations.** Except as otherwise provided in Section 4.06 below, the obligations of the Guarantor hereunder are absolute and unconditional and independent of the Guaranteed Obligations of the Developer and shall remain in full force and effect until all the Guaranteed Obligations have been paid, performed and completed in full, irrespective of any assignment, amendment, modification or termination of any Contract Document.

**Section 1.03 No Exoneration.** Except as otherwise provided in Section 4.06 below, the obligations of the Guarantor hereunder shall not be released, discharged, exonerated or impaired in any way by reason of:

(a) any failure of the Commission to retain or preserve any rights against any person;

(b) the lack of prior enforcement by the Commission of any rights against any person and the lack of exhaustion of any bond, letter of credit or other security held by the Commission;

(c) the lack of authority or standing of the Developer or the dissolution of the Guarantor, the Developer or the Commission;

(d) with or without notice to the Guarantor, the amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or failure to assert, any portion of the Guaranteed Obligations, the Contract Documents or any of them, any rights or remedies of the Commission (including rights of offset) against the Developer, or any bond, letter of credit or other guaranty given or available to the Commission to secure all or any part of the Guaranteed Obligations; provided that, notwithstanding the foregoing, the Guarantor shall have available to it any and all defenses to performance of the Guaranteed Obligations that may be available to the Developer based on any such amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination or failure to assert voluntarily made by the Commission, except defenses available to the Developer under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors;

(e) the extension of the time for performance or completion of any Guaranteed Obligation; provided however, that to the extent the Commission grants the Developer an extension of time under the Agreement for performance of any of the obligations of the Developer thereunder, such extension of time shall likewise extend the time for performance by the Guarantor;

(f) except as otherwise provided in subsections (d) and (e) above, the taking or the omission of any of the actions referred to in the Contract Documents or of any actions under this Guaranty;

(g) the existence now or hereafter of any other guaranty or endorsement by the Guarantor or anyone else of all or any portion of the Guaranteed Obligations;

(h) the acceptance, release, exchange or subordination of additional or substituted security for all or any portion of the Guaranteed Obligations;

(i) the taking of any action or the failure to take any action which would constitute a legal or equitable defense, release or discharge of a surety;

(j) any bankruptcy, arrangement, reorganization or similar proceeding for relief of debtors under federal or state law hereinafter initiated by or against the Developer or any of its members, or of the Commission;

(k) the rejection of any Contract Document in connection with the insolvency, reorganization or bankruptcy of the Developer or any of its members;

(l) an impairment of or limitation on damages due from the Developer by operation or law in any insolvency, reorganization or bankruptcy proceeding by or against the Developer or any of its members;

(m) failure by the Commission to file or enforce a claim (whether in bankruptcy or other proceedings) against Developer, any of its members, the Guarantor or any other guarantor;

(n) any merger, consolidation or other reorganization to which the Developer, the Commission or the Guarantor is a party;

(o) any sale or disposition of all or any portion of the Guarantor's direct or indirect ownership in the Developer, or any other event which results in discontinuation or interruption in the business relations of Developer with the Guarantor;

(p) except as otherwise provided in subsection (d) above, the lack of genuineness, validity, regularity or enforceability of any of the Guaranteed Obligations or the Contract Documents;

(q) the failure of the Commission to assert any claim or demand, bring any action or exhaust its remedies against the Developer or any security before proceeding against the Guarantor hereunder after the expiration of applicable notice and cure periods; or

(r) the termination of any Contract Document by reason of the Developer's default thereunder.

#### **Section 1.04 Enforcement of Agreements and Guaranteed Obligations.**

(a) Nothing contained herein shall prevent or limit the Commission from pursuing any of its rights and remedies under the Contract Documents, or any provisions thereof, according to their respective terms.

(b) Subject to Section 4.06 below, the Guarantor shall be obligated to undertake all curative action which may be agreed upon between the Commission, the Guarantor and the Developer. If following notice under Section 4.06 below, the Guarantor does not use commercially reasonable efforts to proceed promptly to effectuate such curative action within a reasonable time, or should no agreement on the curative action be reached within seven (7) days after the Commission notifies the Developer and the Guarantor (under Section 4.06 below) of the need for curative action (or immediately, in the case of emergency conditions), the Commission, without further notice to the Guarantor, shall have the right to perform or have performed by third parties the necessary curative action, and the costs thereof shall be borne by the Guarantor.

(c) The Commission may bring and prosecute a separate action or actions against the Guarantor to enforce its liabilities hereunder, regardless of whether any action is brought against the Developer and regardless of whether any other person is joined in any such

action or actions. Nothing shall prohibit the Commission from exercising its rights against the Guarantor, the Developer, any other guarantor of the Guaranteed Obligations, a performance bond or other security, if any, which insures the performance of the Guaranteed Obligations, or any other person simultaneously, or any combination thereof jointly and/or severally.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**Section 2.01 Representations and Warranties.** The Guarantor hereby represents and warrants that:

(a) Consents. The Developer is a Virginia limited liability company of which the Guarantor is the sole member. Consent of the Developer to any modification or amendment of the Contract Documents or any of them constitutes knowledge thereof and consent thereto by the Guarantor;

(b) Organization and Existence. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Arizona;

(c) Power and Authority. The Guarantor has the full power and authority to execute, deliver and perform this Guaranty, and to own and lease its properties and to carry on its business as now conducted and as contemplated hereby;

(d) Authorization and Enforceability. This Guaranty has been duly authorized, executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with the terms hereof;

(e) No Governmental Consents. No authorization, consent or approval of notice to or filing with, any governmental authority, is required for the execution, delivery and performance by the Guarantor of this Guaranty;

(f) No Conflict or Breach. Neither the execution, delivery or performance by the Guarantor of this Guaranty, nor compliance with the terms and provisions hereof, conflicts or will conflict with or will result in a breach or violation of any material terms, conditions, or provisions of any law, governmental rule or regulation or the charter documents, as amended, or bylaws, as amended, of the Guarantor, or any order, writ, injunction or decree of any court or governmental authority against the Guarantor or by which it or any of its properties is bound, or any indenture, mortgage or contract or other agreement or instrument to which the Guarantor is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties;

(g) No Proceedings. There are no suits or proceedings pending, or, to the knowledge of the Guarantor, threatened in any court or before any regulatory commission,

board or other governmental administrative agency against the Guarantor which could reasonably be expected to have a material adverse affect on the business or operations of the Guarantor, financial or otherwise, or on its ability to fulfill its obligations hereunder;

(h) Contracts. The Guarantor is fully aware of and consents to the terms and conditions of the Contract Documents;

(i) Financial Statements and Tax Returns. The Guarantor has furnished to the Commission (i) the financial statements and balance sheet of the Guarantor for the period ending December 31, 2008, and the related statements of income, shareholders' equity and cash flows for the fiscal year then ended prepared and certified by the Guarantor's chief financial officer; (ii) copies of its Federal tax return for calendar year 2007 filed on [insert date]; and (iii) copies of account statements, as of [insert date], from each financial institution in which deposit/holding or borrowing/credit accounts are maintained; and (iv) copies of account statements from each and every additional lender, as of [insert date], reflecting all amounts owed to or otherwise committed by such lender(s).

### **ARTICLE III**

#### **WAIVERS, SUBROGATION AND SUBORDINATION**

##### **Section 3.01 Waivers.**

(a) The Guarantor hereby unconditionally waives:

(i) notice of acceptance of this Guaranty or of the intention to act in reliance hereon and of reliance hereon;

(ii) notice of the incurring, contracting, amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or of the failure to assert, any Guaranteed Obligation or any Contract Document;

(iii) demand on the Guarantor in the event of default;

(iv) any invalidity of any Contract Document due to lack of proper authorization of or a defect in execution thereof by the Developer, its purported representatives or agents;

(v) demand for payment or performance, presentment, protest and notice of nonpayment or dishonor respecting any Guaranteed Obligation;

(vi) all other notices to which the Guarantor might otherwise be entitled, except notice as set forth in Section 4.06 below;

(vii) any demand for payment hereunder;

(viii) the provisions of Sections 49-25 and 49-26 of the Code of Virginia of 1950, as amended; and

(ix) any duty on the part of the Commission to disclose to the Guarantor any facts the Commission may now or hereafter know with regard to Developer.

(b) The Guarantor also hereby waives any right to require, and the benefit of all laws now or hereafter in effect giving the Guarantor the right to require, any prior enforcement as referred to in Section 1.03(b) above, and the Guarantor agrees that any delay in enforcing or failure to enforce any such rights or in making demand on the Guarantor for the performance of the obligations of the Guarantor under this Guaranty shall not in any way affect the liability of the Guarantor hereunder.

(c) The Guarantor hereby waives, as against the Commission and any person claiming under the Commission, all rights and benefits which might accrue to the Guarantor by reason of any of bankruptcy, arrangement, reorganization or similar proceedings by or against the Developer and agree that their obligations and liabilities hereunder shall not be affected by any modification, limitation or discharge of the obligations of the Developer that may result from any such proceedings.

(d) Until the Developer shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor hereby agrees not to file, or solicit the filing by others of, any involuntary petition in bankruptcy against the Developer.

**Section 3.02 Subrogation.** Until the Developer shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor shall not claim or enforce any right of subrogation, reimbursement or indemnity against the Developer, or any other right or remedy which might otherwise arise on account of any payment made by the Guarantor or any act or thing done by the Guarantor on account of or in accordance with this Guaranty.

**Section 3.03 Subordination.**

(a) All existing or future indebtedness of the Developer to the Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as Developer shall be in default in the performance of any Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Developer to the Guarantor without the prior written notice to the Commission.

(b) The Guarantor shall file all claims against Developer in any bankruptcy or other proceedings in which the filing of claims is required or permitted by law upon any obligation or indebtedness of the Developer to the Guarantor, and shall have assigned to the Commission all of the Guarantor's rights thereunder to the extent of outstanding and unsatisfied Guaranteed Obligations. If the Guarantor does not file any such claim, the Commission is authorized as the Guarantor's attorney-in-fact to do so in the Guarantor's

name, or in the Commission's discretion, the Commission is authorized to assign the claim to, and cause proof of claim to be filed in the name of, the Commission or its nominee. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to the Commission or its nominee the full amount payable on the claim in the proceeding before making any payment to the Guarantor, and to the full extent necessary for that purpose, the Guarantor assigns to the Commission all of its rights to any payments or distributions to which it otherwise would be entitled. If the amount so paid is in excess of the Guaranteed Obligations covered hereby, the Commission shall pay the amount of the excess to the party determined by it to be entitled thereto.

## **ARTICLE IV**

### **MISCELLANEOUS**

#### **Section 4.01 Enforcement of Guaranty.**

(a) The terms and provisions of this Guaranty shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia applicable to contracts executed and to be performed within the Commonwealth of Virginia.

(b) No supplement, amendment, modification, waiver or termination of this Guaranty shall be binding unless executed in writing and duly signed by the Guarantor and the Commission. No waiver of any of the provisions of this Guaranty shall be deemed or shall constitute a waiver of any other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No failure on the part of the Commission to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise of any other right.

(c) All disputes between the Commission and the Guarantor arising under or relating to this Guaranty or its breach shall be filed, heard and decided in the Circuit Court of the City of Norfolk, Virginia, or if the subject or amount in controversy is within its jurisdiction, the General District Court of the City of Norfolk, Virginia, or in the United States District Court for the Eastern District of Virginia, at Norfolk, Virginia. The Guarantor hereby irrevocably waives the defense of an inconvenient forum to the maintenance of any action or proceedings in such court arising out of or relating to this Guaranty. The Guarantor agrees that a final non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Guarantor agrees and consents to service of process by delivery in the manner and to the address set forth in Section 4.02 below. Nothing in this section shall affect the right of the Commission to serve legal process in any other manner permitted by law.

(d) The rights of the Commission hereunder are cumulative and shall not be exhausted by any one or more exercises of said rights against the Guarantor or other guarantors or by any number of successive actions until and unless all Guaranteed Obligations have been fully paid or performed.



(e) The Guarantor shall pay to the Commission all reasonable out-of-pocket legal fees and other reasonable out-of-pocket costs and expenses (including fees and costs on appeal) the Commission incurs by reason of any permitted enforcement by the Commission of its rights hereunder, provided that the Commission is the prevailing party with respect to a substantial portion of its claim.

(f) THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION OR CLAIM WHICH IS BASED ON, OR ARISES OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED BY THIS GUARANTY.

**Section 4.02 Notices.** All notices and demands by any party to any other shall be given in writing and sent by facsimile (with receipt confirmed) to the facsimile number below with confirmation at the telephone number below and a copy of the notice sent by United States first-class mail, postage prepaid, or by a nationally recognized overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To the Commission:                      Transportation District Commission of Hampton Roads  
c/o Hampton Roads Transit  
Attention: Michael S. Townes, President/CEO  
3400 Victoria Boulevard  
Hampton, VA 23661  
Telephone: (757) 222-6000  
Facsimile: (757) 222-6195

with copy to:                              Charles E. Wall, Esquire  
Williams Mullen  
1021 East Cary Street  
17<sup>th</sup> Floor  
Richmond, Virginia 23218-1320  
Telephone: (804) 783-6498  
Facsimile: (804) 783-6507

To the Developer:                        Jeffery Arnold, President  
Concord Eastridge, Inc.  
901 N. Glebe Road, #350  
Arlington, VA 22203  
Telephone: (202) 955-9200  
Facsimile: (202) 955-9255

with copy to:                              Mark D. Williamson, Esquire  
McGuireWoods LLP  
101 W. Main Street  
Suite 9000  
Norfolk, VA 23510

Telephone: (757) 640-3713  
Facsimile: (757) 640-3973

Any party may, upon prior notice to the others, specify a different address for the giving of notice. Notices shall be effective one day after sending if sent by overnight courier or by facsimile (provided that, in the case of a facsimile, confirmation is made by telephone and first-class mail), or three days after sending if sent by certified mail, return receipt requested.

**Section 4.03 Severability.** If any provision of this Guaranty shall for any reason be held invalid or unenforceable, to the fullest extent permitted by law, such invalidity or unenforceability shall not affect any other provisions hereof, but this Guaranty shall be construed as if such invalid or unenforceable provision had never been contained herein.

**Section 4.04 Assignment.** Neither this Guaranty nor any of the rights, interest or obligations hereunder shall be assigned or delegated by the Guarantor without the prior written consent of the Commission. This Guaranty and all of the provisions hereof shall be binding upon the Guarantor and its successors and permitted assigns and shall inure to the benefit of the Commission and its respective successors and assigns.

**Section 4.05 No Third Party Beneficiaries.** Nothing in this Guaranty shall entitle any person other than the Commission and their respective successors and assigns to any claim, cause or action, remedy or right of any kind.

**Section 4.06 Certain Rights, Duties, Obligations and Defenses.** Notwithstanding Section 1.02 and 1.03 above, the Guarantor shall have all rights, duties, obligations and defenses available to the Developer under the Contract Documents relating to waiver, surrender, compromise, settlement, release or termination voluntarily made by the Commission, failure to give notice of default to the Developer to the extent required by the Contract Documents, interpretation or performance of terms and conditions of the Contract Documents, or other defenses available to the Developer under the Contract Documents except those expressly waived in this Guaranty and defenses available to the Developer under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against the Guarantor shall be subject to no prior notice or demand except for seven (7) days' prior written notice to the Guarantor setting forth the default or breach of Guaranteed Obligation on the part of the Developer and demand for payment or performance of such Guaranteed Obligation, provided that immediate action after written notice may be required of the Guarantor in the case of emergency conditions.

**Section 4.07 Mergers, etc.** The Guarantor shall not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other person or sell, assign, convey, transfer, lease or otherwise dispose of any material portion of its properties and assets to any person or group of affiliated persons, unless:

(a) in case of a merger, the Guarantor shall be the continuing corporation;  
or

(b) the person (if other than the Guarantor) formed by such consolidation or into which the Guarantor merges or the person (or group of affiliated persons) that acquires by sale, assignment conveyance, transfer, lease or other disposition a material portion of the properties and assets of the Guarantor shall expressly agree to perform all of the obligations of the Guarantor hereunder, as a joint and several obligor with the Guarantor if the Guarantor continues to exist after such transaction, by a writing in form and substance reasonably satisfactory to the Commission.

Notwithstanding the agreement by any such person to perform the obligation of the Guarantor hereunder, the Guarantor shall not be released from its obligations hereunder.

**Section 4.08 Survival.** The obligations and liabilities of the Guarantor hereunder shall survive termination of any or all of the Contract Documents or the Developer's rights thereunder due to default by the Developer thereunder.

**Section 4.09 Headings.** The Article and Section headings in this Guaranty are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

**Section 4.10 Counterparts.** This Guaranty may be executed in one or more counterparts, all of which shall constitute one and the same instrument.

**Section 4.11 Entire Agreement.** This Guaranty constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. The Guarantor agrees to execute, have acknowledged and delivered to the Commission such other and further instruments as may be reasonably required by the Commission to effectuate the intent and purpose hereof.

[Signatures on following pages]

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed as of the day and year first above written by its duly authorized officer.

**GUARANTOR:**

**CONCORD EASTRIDGE, INC.**

By: *Susan H. Eastridge*  
Susan H. Eastridge, Chief Executive Officer

STATE OF Virginia )

CITY/COUNTY OF Arlington )

The foregoing instrument was acknowledged before me, Anna Ford, Notary Public, this 3<sup>rd</sup> day of June, 2009, by Susan H. Eastridge, who has presented identification of drivers license (a United States Passport, a certificate of United States citizenship, a certificate of naturalization, an unexpired foreign passport, an alien registration card with photograph, a state issued driver's license or a state issued identification card or a United States military card). Susan H. Eastridge voluntarily acknowledged this instrument as Chief Executive Officer of Concord Eastridge, Inc., and attested that she is duly authorized and empowered to execute this Guaranty on behalf of Concord Eastridge, Inc.

*Anna Ford*

Notary Public

Registration Number: 7130775

My commission expires: November 30, 2011

Notary Seal

Receipt of this Guaranty is hereby acknowledged and accepted by the Commission effective as of the day and year first above written.

TRANSPORTATION DISTRICT COMMISSION OF  
HAMPTON ROADS

By: Michael S. Townes  
Michael S. Townes, President/CEO

STATE OF Virginia )

CITY/COUNTY OF Norfolk )

The foregoing instrument was acknowledged before me, MARY A. Thompson, Notary Public, this 10th day of JUNE, 2009, by Michael S. Townes, who has presented identification of driver's license (a United States Passport, a certificate of United States citizenship, a certificate of naturalization, an unexpired foreign passport, an alien registration card with photograph, a state issued driver's license or a state issued identification card or a United States military card). Michael S. Townes voluntarily acknowledged this instrument as President and Chief Executive Officer of the Transportation District Commission of Hampton Roads, and attested that he is duly authorized and empowered to execute this Guaranty on behalf of the Transportation District Commission of Hampton Roads.

Mary A. Thompson  
Notary Public

Registration Number: 329488  
My commission expires: 11/30/2011

Notary Seal

**Exhibit 8.2(a)**

**Developer's Operating Agreement**

AMENDED AND RESTATED OPERATING AGREEMENT OF CEI DEVELOPMENT, LLC

THIS AMENDED AND RESTATED OPERATING AGREEMENT OF CEI DEVELOPMENT, LLC (the "Agreement") is made as of March 26, 2009, by and between Susan H. Eastridge ("EASTRIDGE") and R. Jeffery Arnold ("ARNOLD") [collectively, the "Members" and sometimes individually referred to as the "Member"].

WITNESSETH:

WHEREAS, the Members have formed a limited liability company known as CEI Development, LLC (the "Company") by Articles of Organization submitted to the Virginia State Corporation Commission ("SCC") prior hereto and by a Certificate of Organization issued or to be issued by SCC (the "Certificate"), for all purposes permitted by the Virginia Limited Liability Company Act, as now existing or hereafter amended (the "Act"); and

WHEREAS, the above named Members desire and intend to create a written Operating Agreement, as permitted by the Act, pursuant to which the Company will be operated and administered; and

WHEREAS, the above named Members constitute all of the Members in the Company pursuant to this Agreement and as provided by law.

WHEREAS, the original Operating Agreement of CEI Development, LLC, dated January 2, 2009, is amended to include the provisions set forth in Exhibit B, attached hereto, and made a part hereof.

NOW, THEREFORE, in consideration of the foregoing, of the mutual covenants and promises herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereto, intending legally and equitably to be bound, hereby agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

Accounting Year shall mean and refer to the accounting year of the Company, ending December 31 of each year.

Act shall mean the Virginia Limited Liability Act, at Virginia Section 13.1-1000 et seq., as amended.

Affiliate shall mean a Person (hereinafter defined) directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Person in question. The term "control," as used in the immediately preceding sentence means, with respect to a Person that is a corporation, the right to the exercise, directly or indirectly, of at least fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation and, with respect to a Person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled Person.

Agreement shall have the meaning given thereto in the introductory paragraph of this Agreement.

Articles shall mean all documents at any particular time being the Articles of Organization of the Company. It includes the original Articles of

Organization filed with SCC, the original Certificate of Organization issued by SCC and all amendments thereto.

Bankruptcy shall mean, and a Member shall be deemed a "Bankrupt Member" upon,

(i) The entry of a decree or order for relief against the Member by a Court of competent jurisdiction in any involuntary case brought against the Member under any bankruptcy, insolvency or other similar law (collectively, "Debtor Relief Laws") generally affecting the rights of creditors and relief of debtors now or hereafter in effect;

(ii) The appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar agent under applicable Debtor Relief Laws for the Member or for any substantial part of its assets or property;

(iii) The ordering of the winding up or liquidation of the Member's affairs;

(iv) The filing of a petition in any involuntary bankruptcy case, which petition remains undismissed for a period of one hundred eighty (180) days or which is not dismissed or suspended pursuant to the Section 305 of the Federal Bankruptcy Code (or any corresponding provision of any future Federal Bankruptcy law);

(v) the commencement by the Member of a voluntary case under any applicable Debtor Relief Law now or hereafter in effect, (vi) the consent by the Member to the entry of an order for relief in an involuntary case under any such law or to the appointment of or the taking of possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar agent under any applicable Debtor Relief Laws for the Member or for any substantial part of its assets or property, or (vii) the making by a Member of any general assignment for the benefit of its creditors;

Capital Account shall have the meaning set forth in Section 6 hereof.

Capital Contribution as set forth in Section 4 shall mean and refer to the amount of cash, and/or the agreed fair market value of property (less the amount of indebtedness, if any, of such Member which is assumed by the Company and/or the amount of indebtedness, if any, to which such property is subject, as of the date of contribution, without regard to the provisions of Code Section 7701(g)), actually contributed by a Member to the capital of the Company, as well as any additional contributions actually made pursuant to this Agreement, including, but not limited to, any amounts paid by a Member (except to the extent indemnification is made by another Member) in respect of any claims, liabilities or obligations against the Company and/or pursuant to any guaranty of Company indebtedness or otherwise by such Member.

Capital Contribution Default shall have the meaning given thereto in Section 5 of this Agreement.

Code means the Code of Virginia as amended.

Defaulting Member shall have the meaning set forth in Section 5 hereof IRC means the Internal Revenue Code of 1986 as amended.



Managers shall mean Susan H. Eastridge and R. Jeffery Arnold.

Member as set forth in Section 3(a) hereof means each of those persons or entities identified in the preamble hereto and on Exhibit A and their permitted successors and assigns who have been duly admitted as members pursuant hereto.

Member's Representative means, if not the Member, the person or persons designated from time to time to represent a Member's interest at Membership meetings.

Membership Interest shall mean the respective percentage interest of the Members in the profits and losses of the Company and distributions by the Company as set forth on Exhibit A, as the same may be adjusted pursuant to this Agreement.

Net Cash Flow of the Company means the taxable income for Federal income tax purposes as shown on the books of the Company, increased by the following:

- (a) The amount of depreciation and amortization;
- (b) Any nontaxable income of the Company (excluding equity contributions); and
- (c) Any nontaxable insurance proceeds, financing proceeds, decreases in Reserves, and any other funds denied by the Members to be available for distribution and reduced by the following:
  - (i) Payments upon the principal of any mortgages or any other Company obligations or loans;
  - (ii) The portion of any expenses, including but not limited to Company's organization and syndication costs, start-up costs, and leasing commissions paid during the taxable year but required to be capitalized and amortized in subsequent taxable years under the IRC;
  - (iii) Expenditures for the acquisition of property, capital improvements and/or replacements (except to the extent financed through equity contributions or borrowings of the Company for such purposes);
  - (iv) Such Reserve for capital improvements, replacements, repairs, escrows, security deposits, tax and insurance payments and anticipated expenses or other contingencies, as the Members shall deem to be reasonably necessary in the conduct of the Company's business; and
  - (v) Any non-taxable expenses of the Company recorded on the Company's financial statements but not deducted for income tax purposes.

Net Profits and Net Losses mean and refer to the income or losses of the Company determined in accordance with Federal Tax accounting principles taking into account applicable Treasury Regulations.

Non-Defaulting Member shall have the meaning set forth in Section 5 hereof.

Person shall mean an individual, partnership, corporation, trust, unincorporated association or any other entity or association.

Priority Return means, as of any date after the effective date hereof with respect to EASTRIDGE and/or ARNOLD, an amount equal to 8.0% per annum, cumulative and compounded monthly, on the daily balance of EASTRIDGE's and/or ARNOLD's Unreturned Capital Contribution, respectively; (i.e., if in any fiscal year there shall be insufficient Net Cash Flow to pay the Priority Return, the right thereto shall accumulate and be paid before any other distributions are made to the Member).

Refinancing Proceeds shall mean the excess of gross proceeds of any borrowings by the Company over the sum of: (i) any amounts used to repay then existing loans of the Company, including loans from Members and to pay and provide for all debts and obligations of the Company then due; and (ii) all expenses of such borrowings including without limitation, all commitment fees, broker's commissions, and attorneys' fees.

Reserves shall mean reserve funds which may be established by the Members for working capital's contingent liabilities, taxes, debt service or other purposes consistent with this Agreement.

Sale Proceeds shall mean the excess of all cash receipts arising from the sale of all or any portion of the Company's assets over the sum of:

- (i) The amount of cash disbursed or to be disbursed in connection with or as an expense of such sale or other disposition; and
- (ii) The amount necessary for the payment of all debts and obligations of the Company arising from or otherwise related to such sale or other disposition, including loans from Members, which are then to be paid.

SCC shall mean the Virginia State Corporation Commission.

## **2. Purpose and Formation of Company.**

(a) EASTRIDGE and ARNOLD hereby form a limited liability company pursuant to the laws of the Commonwealth of Virginia for the special and limited purposes as specifically set forth in Exhibit B attached hereto, including the certain prohibited acts as set forth therein. The provisions of Exhibit B shall be superior to any contrary or conflicting terms and conditions contained within this Amended and Restated Operating Agreement.

(b) The name of the Company shall be "CEI Development, LLC".

(c) In connection with the execution of this Agreement, the Members have caused Articles of Organization that comply with the requirements of the Act to be properly filed with SCC and shall execute such further documents (including amendments to the Articles of Organization) and take such further action as is appropriate to comply with the requirements of law for the formation or operation of a limited liability company in all counties where the Company may conduct its business.

(d) The location of the registered office of the Company shall be: c/o Concord Eastridge, Inc. at 901 Glebe Road, Suite 350, Arlington, Virginia 22203 Attn: R. Jeffery Arnold (and thereafter at such other location as the Managers from time to time may designate).

(e) The location of the principal place of business of the Company shall be at: c/o Concord Eastridge, Inc. at 901 Glebe Road, Suite 350, Arlington, Virginia 22203 (or at such other place as the Managers from time to time may select).

### 3. Members.

(a) The Members are those persons and entities set forth on Exhibit A and their permitted successors and assigns who have been duly admitted as Members pursuant to this Agreement. The separate Membership Interest of each Member shall be as stated in Exhibit A, as may be amended from time to time.

(b) (i) With the unanimous consent of the Members, the Company may admit new Members upon such new Members' providing to the Company their initial contributions which shall constitute fair value of the percentage of the Membership Interests being acquired, as determined by the Members.

(ii) The assignment of an existing Member's Membership Interest to a third party shall not result in the admission of such third party as a new Member except as provided in Section 12 below.

(c) Unless the context otherwise requires, references in this Agreement to "Members" mean only those persons or entities who are listed as such on Exhibit A, or their successor(s), duly admitted as Members as provided in this Agreement, including any Manager who is a member. Unless named in this Agreement, or unless admitted to the Company as a substituted or new Member as provided herein, no person shall be considered a Member; and the Company need deal only with the Members so named and so admitted. The Company shall not be required to deal with any other Person by reason of an assignment by a Member, except as otherwise provided in this Agreement.

(d) A Member may not resign as a Member without the unanimous consent of the Members.

### 4. Capital Contributions.

Upon execution of this Agreement, EASTRIDGE and ARNOLD shall make a capital contribution to the Company in the amount set forth on Exhibit A (collectively, the "Capital Contributions"). Thereafter, with the unanimous consent of the Managers, the Members each hereby agree to equally contribute any additional equity capital necessary in connection with the acquisition, development, renovation improvement and management of properties.

### 5. Effect of Failure to Make Capital Contributions.

In the event that either Member (the "Defaulting Member") fails to contribute any portion of its respective share of the required Capital Contribution on a timely basis and fails to cure such default within ten (10) days from receipt of written notice from the Non-Defaulting Member (a "Capital Contribution Defaulting"), then, notwithstanding anything contained in this Agreement to the contrary, the Member who shall have timely made the applicable required Capital Contribution (the "Non-Defaulting Member") shall have the right to do either of the following:

(a) The Non-Defaulting Member shall be permitted to make the Defaulting Member share of the required Capital Contribution (the "Required Contribution") and such Required Contribution shall be deemed to accrue interest at the rate of eight percent (8%) per annual. If the Defaulting Member does not repay the Non-Defaulting Member the Required Contribution together with the interest thereon within ninety (90) days after the Non-Defaulting Member shall have made the Required Contribution on behalf of the Defaulting Member, the Membership Interests of the Members in the Company shall be re-adjusted on the basis of the proportion that each Member's total gross Capital Contributions made to the Company (including the Required Contribution) bears to the total gross cash. Capital Contributions made by both of the Members to the Company immediately following the making of such Required Contribution by the Non-Defaulting Member; or

b) Notwithstanding any provisions contained in this Agreement to the contrary but subject to any applicable restrictions in any financing documents for the Company, as the same may be waived or consented to by such lender, to pledge the credit of the Company by borrowing from any source (including the Non-Defaulting-Member) an amount less than or equal to the Required Contribution that has not been matched by the Defaulting Member; the repayment terms and security to be as the Non-Defaulting Member in its sole discretion may determine. In the event a Defaulting Member shall refuse to execute any promissory note, deed of trust, and/or security instrument, if required pursuant to this clause (h) by a Member-lender to the Company; then said Defaulting Member hereby constitutes and appoints any authorized representative of the Non-Defaulting Member as its true and lawful attorney-in-fact for the term of this Agreement, with power and authority for and on its behalf and in its name, to execute any such promissory note(s), security instrument(s), or other appropriate document and to be bound thereby as if it personally executed the same.

6. Maintenance of Capital Account.

The Capital Account of a Member as of any date shall generally consist of and be increased by:

(i) Such Member's Capital Contribution to the capital of the Company plus any additional Capital Contributions such Member may make from time to time to the capital of the Company (including the net fair market value of any noncash asset contributed to the Company);

(ii) Such Member's distributive share of Net Profits through such date, and (iii) such Member's share of the Company's tax exempt income, and (B) decreased by (i) any amount distributed (including the net fair market value of any noncash assets) to such Member through such date in reduction of the Company's capital and not as a payment of an obligation, loan or interest related thereto owed to such Member by the Company, (ii) such Member's distributive share of Company's Net Losses through such date, and;

(iii) Such Member's share of the Company's nondeductible expenses which are not otherwise capitalized and included in the adjusted basis of Company assets. In the event any of the proceeds of liquidation of the Company are to be distributed in kind, all such property shall be valued at fair market value, and any unrealized appreciation or depreciation with respect to such property shall be allocated to the Capital Accounts of the Members prior to such liquidating distribution in the same manner as if such property were sold at its fair market value, in accordance with

Paragraph 7. Any gain or loss on the sale, or disposition of Company properties in the process of liquidation, shall be credited or charged to the Members in accordance with Paragraph 7, and reflected accordingly in their Capital Accounts prior to making liquidating distributions. Notwithstanding, the Capital Account of a Member contributing property to the Company (or deemed to have contributed property to the Company pursuant to Code Section 704(b) Treasury Regulations) shall not reflect any allocation of gain, loss, income or deduction pursuant to Code Section 704(c) to the extent such built-in gain, loss, income or deduction has already been reflected in Capital Accounts. These provisions relating to the maintenance of Capital Accounts are intended to comply with the Treasury Regulations promulgated under Section 704(b) and shall be interpreted and applied consistently therewith.

7. Allocation of Profits and Losses.

(a) After making any applicable special allocations provided in subparagraph (b) below, Net Profits, Net Losses and all items of tax credit shall be allocated among the Members as follows:

(i) Net Profits and all items of tax credit shall be allocated in the following order of priority:

(1) First, to those Members who have received Net Cash Flow distributions under Subparagraph 8(b) for the current fiscal year, in proportion to (but not in excess of) such distributions;

(2) Second, to those Members who have received a cash distribution in any prior fiscal year until the cumulative Net Profit allocated pursuant to this subparagraph for the then current and prior fiscal years is equal to the cumulative Priority Return for the current and all prior fiscal years;

(3) Third, to those Members who have previously been allocated Net Losses pursuant to subparagraphs (ii)(5) and then (ii)(4), and then (ii)(3), in proportion to and to the extent of the excess, if any, of (A) the cumulative Net Losses allocated to each Member pursuant to subparagraph (ii)(5) and then (ii)(4) and then (ii)(3) for all prior fiscal years, over (B) the cumulative Net Profits allocated to such Member pursuant to this subparagraph (2) for all prior fiscal years; and (4) The balance to all Members, pro rata in accordance with their Membership Interests. (ii) Net Losses shall be allocated in the following order of priority;

(4) Fourth, the balance to all Members, pro rata, in accordance with their Membership Interests.

(ii) Net Losses shall be allocated in the following order of priority:

(1) First, to those Members who have previously been allocated Net Profits pursuant to subparagraph (i)(4), in the same proportion as the Net Profit allocations made in each of the prior years, beginning with the most recent prior year, until the cumulative Net Losses allocated pursuant to this subparagraph (ii)(1) for the then current and all prior fiscal years are equal to the cumulative Net

Profits allocated to those Members pursuant to subparagraph (i)(4) for all prior fiscal years;

(2) Second, the balance, if any, to all Members pro rata, in accordance with their Membership Interests; and

(3) Provided, however, that the losses allocated pursuant to subparagraph (ii) shall not exceed the maximum amount of losses that can be so allocated without causing a Member to have an Adjusted Capital Account Deficit at the end of any fiscal year (applied on a Member by Member basis); all losses in excess of this limitation shall be allocated pro rata among the other Members who do not have Adjusted Capital Account Deficits, to the extent such losses may be allocated by law. (iii) Notwithstanding any of the allocations in subparagraphs (i) and (ii) above, income and gain (including items of gross income and gain, if necessary) and losses and deductions attributable to the Company's last fiscal year and/or the fiscal year in which the Company sells or disposes of all or substantially all of its assets, shall be allocated among the Members as follows:

(iii) Notwithstanding any of the allocations in subparagraphs (i) and (ii) above, income and gain (including items of gross income and gain, if necessary) and losses and deductions attributable to the Company's last fiscal year and/or the fiscal year in which the Company sells or disposes of all or substantially all of its assets, shall be allocated among the Members as follows:

(1) All income and gains shall be allocated in the following order of priority:

(A) First, to those Members who have negative balances in their Capital Accounts, in proportion to such negative balances, until all negative balances have been increased to zero;

(B) Second, to the Members to the extent necessary to cause each Member's Capital Account to be equal to its then unreturned Capital Contributions;

(C) Third, to EASTRIDGE and/or ARNOLD in proportion and to the extent of the excess, if any, of (I) the cumulative Priority Return for such Member for the current and all prior fiscal years over (II) the cumulative Net Profits allocated to such Member [attributable to such Priority Returns] pursuant to subparagraph (i)(1) for all prior fiscal years; and

(D) Fourth, to all other Members, pro rata, in accordance with their Membership Interests.

(2) All losses shall be allocated in the following order of priority:

(A) First, to those Members up to an amount necessary to cause each Member's Capital Account to be reduced to equal its then Unreturned Capital Contributions, if any;

(B) Second, to those Members who have positive balances in their Capital Accounts, in proportion to such positive balances until all positive balances have been reduced to zero; and

(C) Third, to all other Members, pro rata, in accordance with their Membership Interests.

(D) Provided, however, that the losses allocated pursuant to this subparagraph (2) shall not exceed the maximum amount of losses that can be so allocated without causing a Member to have an Adjusted Capital Account Deficit at the end of any fiscal year (applied on a Member by Member basis); all losses in excess of this limitation shall be allocated pro rata amount the other Members who do not have Adjusted Capital Account Deficits, to the extent such losses may be allocated by law.

(b) The following special allocations shall be made as applicable prior to the allocation of Net Profits and Net Losses in subparagraph (a) above:

(i) Nonrecourse Deductions and Minimum Gain Chargeback. Except as otherwise provided in this subparagraph (i), Nonrecourse Deductions (if any) for any fiscal year shall be allocated to the Members in accordance with Section 7(a) of this Agreement. Notwithstanding any other provisions of this Paragraph 7, if there is a net decrease in Minimum Gain during any Company fiscal year, each Member shall be specially allocated items of Company income and gain (including items of gross income and gain, if necessary) for such year (and, if necessary, subsequent years) in an amount, proportion and manner as determined in accordance with Treas. Reg. Section 1.704-2(f). This subparagraph (i) is intended to comply with the minimum gain chargeback requirement in such section of the Treasury Regulations and shall be interpreted consistently therewith.

(ii) Member Nonrecourse Deductions and Member Minimum Gain Chargeback. Except as otherwise provided in this subparagraph (ii), Member Nonrecourse Deductions (if any) for any fiscal year shall be allocated to the Member(s) who bear(s) the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treas. Reg. Section 1704-2(i). Notwithstanding any other provision of this Paragraph 7 except subparagraph 7(b)(i), if there is a net decrease in Minimum Gain attributable to a Member Nonrecourse Debt during any Company fiscal year, each Member who has a share of such Minimum Gain shall be specially allocated items of Company income and gain (including items of gross income and gain, if necessary) for such year (and, if necessary, subsequent years) in an amount, proportion and manner as determined in accordance with Treas. Reg. Section 1.704-2(i). This subparagraph (ii) is intended to comply with the minimum gain chargeback requirement in such section of the Treasury Regulations and shall be interpreted consistently therewith.

(iii) Qualified Income Offset. In the event any Member has an Adjusted Capital Account Deficit at the end of any Company fiscal year due to an unexpected adjustment, allocation, or distribution described in Treas. Reg. Section 1204-1 (b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain (including items of gross income and gain, if necessary)

shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this subparagraph (iii) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Paragraph 7 have been tentatively made as if this subparagraph (iii) were not in the Agreement. The allocations referred to in this subparagraph (iii) shall be interpreted and applied to satisfy the requirements of Treas. Reg. Section 1.704-1(b)(2)(ii)(d).

(iv) Gross Income Allocation. In the event any Member has an Adjusted Capital Account Deficit at the end of any Company fiscal year, each such Member shall be specially allocated items of Company income and gain (including items of gross income and gain, if necessary) in the amount of such Adjusted Capital Account Deficit as quickly as possible, provided that an allocation pursuant to this subparagraph (iv) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Paragraph 7 (except subparagraph (b)(v)) have been made as if subparagraph (iii) hereof and this subparagraph (iv) were not in the Agreement.

(v) Curative Allocations. In the event that the limitations in subparagraph 7(a) or the items of income and gain that are specially allocated pursuant to subparagraphs 7(b)(i), (ii), (iii) or (iv) cause losses to be allocated in a manner other than in proportion to their Membership Interests, Net Profits and Net Losses, as the case may be, shall subsequently be allocated in a manner which most quickly results in offsetting the effect of such earlier allocations, such that the Partners' Capital Accounts are returned to the balances which would have existed had the above allocations not been made. The allocations made by this subparagraph (v) are intended to be made to the extent permitted by law in order to minimize any economic distortions which may result from the application of the special allocations of subparagraph 7(b). However, all allocations made pursuant to this subparagraph (v) shall be subject to all of the limitations set forth in subparagraphs 7(b)(i), (ii), (iii) and (iv).

(vi) Section 704(c) Allocation. Notwithstanding any of the above allocations in this Paragraph 7, in accordance with Code Section 704(c), any income, gain, loss and deductions with respect to any property contributed to the capital of the Company (or deemed to have been contributed to the Company pursuant to Code Section 704(b) of the Treasury Regulations) shall, solely for tax purposes and not for Capital Account purposes, be allocated among the Members so as to take account of any variation between the adjusted tax basis of such property to the Company and its value as reflected in Capital Accounts and computed in accordance with Code Sections 704(b) and (c).

(c) Whenever a proportionate part of the Company Net Profit or Net Loss is credited or charged to a Member's Capital Account, every item of income, gain, loss, deduction or credit entering into the computation of such Net Profit or Net Loss applicable to the period during which such profit or loss is realized, shall be considered credited or charged, as the case may be, to such Capital Accounts in the same proportion. As between a Member and his or her transferee, each item of income, gain, loss, deduction or credit for any taxable year (or



portion thereof, as the case may be) shall be apportioned in accordance with the law on the basis of the respective periods of actual ownership as between the Member and his or her transferee, using any convention permitted by law and selected by the Managers. Any transferee of a Membership Interest shall succeed to the Capital Account relating to the Membership Interest transferred.

8. Distributions.

(a) No Member shall have the right to receive distributions of property from the Company. No Member shall have the right to receive, and the Members shall not have the right to make distributions to a Member which include a return of all or any part of its Capital Contribution, except to the extent specifically provided in this Agreement

(b) The Net Cash Flow of the Company shall be distributed monthly, if feasible, but in any event not less than quarterly, except that earnings may be retained by the Company and transferred to Company capital for the reasonable needs of the business as determined in the sole discretion of the Members. Any distribution shall be as follows:

- (i) First, to EASTRIDGE and/or Arnold, *pari passu*, in the amount of Priority Return through such date;
- (ii) Second, to any Non-Defaulting Member for repayment of Required Contributions, together with interest thereon;
- (iii) Third, to EASTRIDGE and/or ARNOLD, *pari passu*, in repayment of their Initial Capital Contributions;
- (iv) Fourth, to the Members to the extent that and until they have received a sum equal to their unreturned Capital Contributions, in proportion to their unreturned Capital Contributions; and,
- (v) Fifth, to the Members, *pro rata*, in proportion to their Membership Interests.

(c) For the Company's last fiscal year and/or the fiscal year in which the Company sells or disposes of all or substantially all of its assets, the Company's final distributions of Net Cash Flow and assets (at fair market value) upon liquidation of the Company shall be distributed in accordance with the Member's respective positive Capital Accounts, after giving effect to any and all contributions, distributions and allocations for all periods through the liquidation.

(d) Any Sale Proceeds, Refinancing or net proceeds upon liquidation of the Company shall be distributed to and among the Members at such times as shall be determined by the Managers in the following amounts and order of priority:

- (i) First, to the establishment of such Reserves as deemed necessary by the Managers;
- (ii) Second, to creditors of the Company other than Members;
- (iii) Third, to EASTRIDGE and/or ARNOLD, *pari passu*, in the amount of any unpaid Priority Return;
- (iv) Fourth, to any Non-Defaulting Member for the repayment of

any Required Contributions, together with interest thereon;

(v) Fifth, to EASTRIDGE and Arnold, *pari passu*, in repayment of their Initial Capital Contribution:

(vi) Sixth, to the repayment of any unreturned Capital Contributions of the Members, *pari passu*, in proportion to their respective unreturned Capital Contributions of the Members; and

(vii) The balance, if any, to the Members, *pro rata*, in accordance with their respective Membership Interests.

(e) The number of Managers shall be two (2), who shall be EASTRIDGE and ARNOLD. Removal of an existing Manager for cause shall occur with the vote of Members owning at least sixty-six and 2/3 percent (66.334%) of the Membership interests. "Cause" shall mean that the Manager shall have been convicted of a felony; shall commit fraud willful misconduct or gross negligence in connection with its obligations under this Agreement; or shall affirmatively take or fail to take any action that shall cause a default under the Company's construction or permanent loan. Otherwise, the removal of an existing Manager shall require the unanimous consent of all Members. The Managers shall devote such time and effort to the Company business as may be reasonably necessary to promote adequately the interests of the Company and the mutual interest of the Members, provided, however, that it is specifically understood and agreed that no Manager or other Member shall be required to devote full time to the Company's business.

(f) Any of the Members may engage in, possess an interest in and/or be affiliated with other business ventures of every nature and description, whether or not in the same business as or in competition with the Company, independently or with others including, but not limited to, the ownership, financing, leasing, operation, management, selling and development of real and/or personal property, and neither the Company nor the remaining Members shall have any rights in and to said independent ventures or the income or profits derived therefrom. The fact that a member, or an officer, director, beneficiary or stockholder of such Member, is employed by, or is directly or indirectly interested in or connected with, any person or firm employed by the Company to render or perform a service, or from whom or which the Company may buy merchandise or other property, shall not prohibit the Company from employing such persons or firm, or from otherwise dealing with it, provided that the terms are reasonable to the Company; in any such events neither the Company nor any other Member thereof shall have any rights in or to any income or profits derived therefrom.

(g) All actions required to be taken by the Members shall be taken by the vote of the Members or the Members' Representatives either at a regularly scheduled annual meeting or at a meeting specially called for that purpose upon not less than seven (7) days, prior written notice. In the alternative, such actions may be taken upon written consent of Members owning and holding the requisite Membership Interests.

(h) In the case of a distribution of property made in the manner provided in Section 734 of the Code, or in the case of a transfer of a Membership Interest in the Company permitted by this Agreement made in the manner provided in Section 743 of the Code, the Members, on behalf of the Company, may jointly file an election under Section 754 of such Code in accordance with the procedures set forth in applicable Treasury Regulations, (1) The Managers shall be the "tax matters partners" as that term is defined in Section 6231(a)(7) of the Code.

9. Conduct of the Members.

As set forth in this Agreement, there are numerous matters concerning the acquisition, development, construction and leasing of property that will require the joint approval of the Members. In order to facilitate such approvals, each of EASTRIDGE and ARNOLD hereby agrees to handle all matters that require joint approval expeditiously and in good faith, and to make every effort to resolve differences between the Managers so that the joint approvals can be obtained.

10. Deadlock.

If the Managers shall fail to mutually agree upon any matter that requires joint approval, either Manager may give written notice to the other Manager stating that it has determined that a deadlock between the Managers exists and is continuing. If the Managers fail to mutually agree upon an appropriate resolution of such deadlock within fifteen (15) days of the date of such notice, either Manager (the "Offeror") may give to the other Manager (the "Offeree") a written notice ("Buy-Sell Notice") offering to sell to the Offeree its entire Membership Interest in the Company (free and clear of all liens and other encumbrances) [i.e., the Membership Interest in the Company owned by the limited liability company which the respective Manager controls]. The Buy-Sell Notice shall specify all material terms of the purchase which shall include the following:

(a) The purchase price to be paid for such Membership Interest, which shall be payable in immediately available funds at closing;

(b) The release of the selling Member from all guarantees of, or personal liability for, all known liabilities of the Company or an indemnity in lieu thereof; and (c) the indemnification of the selling Member from any liabilities of the Company not known to the selling Member as of closing.

The Offeree shall have a period of forty-five (45) days after the date of the Buy-Sell Notice to elect, by written notice to the Offeror, to purchase, or cause a third party designated by it to purchase, the entire Membership Interest of the Offeror on the terms and conditions specified in the Buy-Sell Notice. If the Offeree shall give such notice to the Offeror, closing on the sale of the Offeror's Membership Interest shall be held, at a mutually agreed upon location, at 10:00 a.m. on the date thirty (30) days after the date on which such notice is given by the Offeree, or at such other time and place as may be mutually agreed upon by the parties. If the Offeree does not, within such forty-five (45) day period, give notice of its agreement to purchase, or cause to be purchased, the entire Membership Interest of the Offeror, the Offeree shall be required to sell, and the Offeror shall be required to purchase, or cause a third party designated by it to purchase the entire Membership Interest on the same terms and conditions as specified in the Buy Sell Notice. Closing on the sale of the Offeree's Membership Interest shall be held at a mutually agreed upon location, at 10:00 A.M. on the date forty-five (45) days after the date of the Buy-Sell Notice, or at such other time and place as may be mutually agreed upon by the parties.

11. Indemnification.

Provided that the actions or omissions of the Member or Manager did not constitute fraud, gross negligence, dishonesty or willful disregard of this Agreement, the Company (collectively, the "Indemnitor") shall indemnify, defend

and hold harmless any Member or Manager (the "Indemnatee") from and against any claims, demands or charges attributable to any act performed or omitted to be performed by the Indemnitor and/or any Indemnatee in connection with the business of the Indemnitor. If the assets of the Indemnitor shall be inadequate to provide full indemnification to such Indemnatee, the Members shall be required to individually share, pro rata, in the payment of all costs, expenses, losses and liabilities not indemnified by Indemnitor assets. The Member or Manager who has borne the costs, expenses, losses or liabilities shall give written notice to the other Member or Manager explaining, in reasonable detail and with adequate substantiation, the basis for its claim for indemnification by the other Member or Manager, as the case may be, and such other Member or Manager shall be required, promptly after notice, to pay to such Member or Manager a portion of the costs, expenses, losses and liabilities proportionate to its relative percentage Membership Interest in the Indemnitor.

**12. Mortgage, Pledge, Sale or Other Disposition of Membership Interest.**

(a) Neither Member shall, without the prior written consent of the other Member, pledge, mortgage, hypothecate, encumber, or in any way charge its share of the assets or profits of the Company or any part thereof. Neither Member shall make any other disposition whatsoever (whether by sale, distribution, assignment, gift or otherwise) of any part or all of its Membership Interest in the Company without the prior written consent of the other Member. Any attempted or purported attempt to do so shall be void ab initio. Both Members agree to cooperate with the other Member in connection with the release of the Selling Member from any and all liability on any existing financing for the Company.

(b) Notwithstanding the provisions of Section 1.2(a), the Membership Interest of any Member shall be assignable, whether by sale, assignment, transfer or otherwise, only if the disposition satisfies the following terms and conditions:

(i) If a Member (referred to herein as the "Selling Member") receives a bona fide offer for its Membership Interest, which offer it is willing to accept, the Selling Member shall promptly notify in writing the other Member ("Non Selling Member"), enclosing a copy of the bona fide offer, and the following rules shall apply:

(1) The Selling Member shall offer to assign and transfer its Membership Interest to the Non-Selling Member at the price and upon the terms contained in such bona fide offer. The Non-Selling Member, may, at its option, elect within twenty (20) days after receipt of such notice to purchase the Selling Member's entire Membership Interest being offered.

(2) If the Non-Selling Member does not accept the Selling Member's offer, the Selling Member shall be at liberty to sell its Membership Interest to the outside offeror at the price and upon the terms contained in its bona fide offer; provided, however, that if such sale is not consummated within ninety (90) days after the date of the Selling Member's original offer to the Non-Selling Member, the Selling Member may not thereafter dispose of its Membership Interest without again offering to the Non-Selling Member the right to purchase its Membership Interest as aforesaid.

(3) An offer, to be a bona fide offer within the meaning of subparagraph (1) above, shall be in writing, shall contain an offer

to purchase the Membership Interest in question stating the price, method of payment and other terms and conditions of such offer and shall contain the name and business address of the offeror, who shall be financially capable of consummating the purchase. Such offer shall be accompanied by a deposit of not less than ten percent (10%) of the offered purchase price.

(ii) An assignee or transferee of a Member pursuant to this Section 12(b) shall not become a Member unless and until admitted as a Member pursuant to Section 12(e),

(c) Notwithstanding the provisions of Section 12(a) and (b) above to the contrary, a Member may assign all or any part of his or its Membership Interest to:

(i) In the case of a Limited Liability Member, to its Members and/or the immediate family members of such Member;

(ii) In the case of a corporate Member, to its shareholders;

(iii) In the case of a Partner Member, to its Partners, or

(iv) an institutional lender as collateral security for a loan; provided, however, that no transfer may be made without the consent of both Members if such transfer, either alone or when aggregated with all other transfers made in the relevant period, would in the reasonable opinion of the Members cause a dissolution of the Company for Federal tax purposes or would cause a state or local real estate transfer tax to be imposed on the Company. A Member shall cease to be a Member upon assignment of his or its entire Membership Interest. An assignee or transferee of a Member pursuant to this Section 1.2(c) shall not become a Member unless and until admitted as a Member pursuant to Section 12(e). As used herein, the term "immediate family members" shall mean mother, father, sister, brother, child or spouse of such Member.

(d) An assignee of a Member who has not been admitted as a Member shall not be a Member and shall not be entitled to vote or participate in the affairs and management of the Company or to become or exercise any right of a Member. An assignee is entitled, to the extent of the interest assigned, only to distributions to which the assignor would otherwise be entitled.

(e) The assignee of all of a Member's Membership Interest shall have the right to become a substitute Member only if:

(i) The terms of the assignment provide that the assignee is to become a substitute Member;

(ii) The assignee agrees in writing to be bound by the terms of this Agreement and the Articles and the Certificate, as amended, to the date thereof;

(iii) Consent to such assignment and admission has been obtained as required by this Agreement;

(iv) The assignee executes an appropriate amendment to this Agreement; and

(v) The assignee pays the Company its reasonable costs and expenses of preparing, reviewing, executing and recording of such amendments.

13. Termination.

(a) The Company shall be dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

(i) At the time or upon the happening of the events specified in the Articles or in this Agreement;

(ii) Upon the unanimous written consent of the Members; or

(iii) The sale of all of the property of the Company.

(b) Upon the occurrence of any event provided in Section 13(a) of this Agreement, the Company shall be dissolved unless all remaining Members elect in writing to continue the business of the Company in accordance with the terms of this Agreement.

(c) Upon dissolution under Section 13(a), no further business shall be conducted by the Company except for the taking of such action as shall be necessary for the winding up of the affairs of the Company and the distribution of its assets to the Members pursuant to the provisions hereof, and thereupon the Manager shall immediately proceed to wind up and terminate the business and affairs of the Company.

(d) Upon dissolution, the Manager shall sell such of the Company assets as it deems necessary or appropriate. In lieu of the sale of any or all of the Company property, the Manager, after making provision for the distributions required by Section 13(e)(i) and (ii), may convey and assign all or any part of the Company property to the Members in undivided interests as tenants in common or such other form of ownership as the remaining Members shall unanimously request, or as otherwise shall be applicable. A full accounting shall be made of the accounts of the Company and of the Company's assets, liabilities and income, from the date of the last accounting to the date of such dissolution. The profits and losses of the Company shall be determined to the date of dissolution and transferred as provided in Section 7 to the respective capital accounts of the Members. In accounting for distributions of the Company's property, such property shall be valued at the fair market value at the date of dissolution as determined by an appraisal secured by the Manager, except that no value shall be placed upon the firm name or goodwill of the Company. Any difference between the valuation of the Company property and its book value shall be considered as though it represented profit or loss, and shall be allocated to the Capital Accounts of the Members. Any gain or loss on disposition of Company property shall be credited or charged to the Capital Accounts for the Members in the same manner as the difference between the valuation of Company property and its book value.

(e) The Manager shall apply the Company assets, in the following order of priority:

(i) First, to the payment and discharge of, or reservation for, all of the Company's debts and liabilities to persons other than Members and the expenses of dissolution and winding up in the order or priority as provided by law;

(ii) Second, to the creation of a reserve fund for contingent liabilities to the extent deemed reasonable by the Manager;

(iii) Third, to EASTRIDGE and/or ARNOLD, pari passu, in the amount of any unpaid Priority Return;

(iv) Fourth, to any Non-Defaulting Member, for the repayment of any Required Contributions, together with interest thereon;

(v) Fifth, to EASTRIDGE and/or ARNOLD, pari passu,, in repayment of its Initial Capital Contribution;

(vi) Sixth, to the Members, pari passu, proportionate to and up to the amounts of their Capital Contributions which have not been returned and;

(vii) Seventh, the balance, if any, to the Members, pro rata, in accordance with their respective Membership Interests.

(f) The Members shall look solely to the assets of the Company for the return of their Capital Contributions and if the Company property remaining after the payment or discharge of the debts, obligations and liabilities of the Company is insufficient to return the Capital Contributions, they shall have no recourse therefore against the remaining Members or the Manager.

14. Guarantees of Financings. The payment and performance by the Company of obligations for construction and permanent financings may have to be personally guaranteed by the Members of the Company. If such guaranty is joint and several, the guarantors shall indemnify each other from any disproportionate payments under any guaranty.

15. Entire Agreement. The Members hereby acknowledge and agree that this Agreement contains the entire written agreement between the Members hereto with respect to the matters set forth herein, unless and until subsequent written documents are executed by the Members, and no representations, promises, agreements or understandings, written or oral, not herein contained in this Agreement shall be of any force or effect. Any and all prior agreements and understandings, whether written or oral, are hereby terminated and canceled and deemed null and void. No change or modification hereof shall be valid or binding unless in writing and signed by both Members. Moreover no valid waiver of any provision of this Agreement at any time shall be deemed a waiver of any other provision of this Agreement at such time or will be deemed a valid waiver of such provision at any other time.

16. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

17. Successors in Interest. This Agreement shall inure to the benefit of, and be binding upon, the Members hereto and their respective heirs, executors, personal and legal representatives, successors and permitted assigns.

18. Headings. The headings in this Agreement are inserted for convenience and reference only and are not intended to be used in construing or interpreting any of the provisions of this Agreement.

19. Notices. Any notice required to be given under the provisions of this Agreement must be in writing, and shall be deemed given upon actual receipt, one (1) business day after being sent by overnight delivery service or three (3) business days after being sent by United States certified or registered mail addressed to the following addresses, or to such other address as the respective Members may hereafter specify in writing to the Company. As provided above, notices may also be delivered by Federal Express or other nationally recognized courier service, or by hand delivery.

Susan H. Eastridge:

5685 N. Scottsdale Road, Suite 150  
Scottsdale, Arizona 85250

R. Jeffery Arnold:

901 N. Glebe Road, Suite 350  
Arlington, Virginia 22203

Each notice so given shall be deemed delivered and effective upon the earlier of the date such notice is so posted or at the time of actual delivery thereof. Rejection of delivery of a notice shall not impair the effectiveness of any notice given to any party as specified in this Agreement. Courtesy copies shall not affect the validity of any notice required or allowed herein.

20. Governing Laws. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

21. Construction. Wherever used in this Agreement, the singular, plural, feminine, masculine and/or neuter shall be read in a context which gives to the terminology used a construction which effectuates the intent of the parties hereto.

22. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same Agreement.

23. Time is of the Essence. The Members agree that time is of the essence in the performance of all of the covenants and agreements contained in this Agreement.

IN WITNESS WHEREOF, the Members hereto have executed and delivered this Agreement as of the day and year first written above.

By: Susan H. Eastridge  
Susan H. Eastridge, Manager

WITNESS: Virginia Fulmer

By: R. Jeffery Arnold  
R. Jeffery Arnold, Manager

WITNESS: Virginia Fulmer



**EXHIBIT A**

**MEMBERSHIP INTERESTS**

<b>Names and Address of Members</b>	<b>Capital Contributions</b>	<b>Membership Interest</b>
Susan H. Eastridge 5642 North Scottsdale Road Scottsdale, Arizona 85253	\$900	90%
R. Jeffery Arnold 1302 Clayborne House Court McLean, Virginia 22101	\$100	10%

Exhibit B

Specific and Limited Purposes of CEI Development, LLC

**Section A. Special Purpose.** The sole purpose of the Company is to perform and fulfill obligations to the Transportation District Commission of Hampton Roads (the "Commission") pursuant to that certain Comprehensive Agreement to be dated as of May 2009, by and between the Commission and the Company entered into pursuant to the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 (together with all related agreements entered into pursuant thereto, as the same may hereafter be modified, supplemented or amended and restated in accordance with the terms thereof, the "Comprehensive Agreement"). In general, the Company will (i) develop, design and construct a new bus maintenance facility and a new administration building on the Commission's property on 18<sup>th</sup> Street and (ii) develop private facilities at a later date on the property on 15<sup>th</sup> Street currently owned by the Commission, all in the City of Norfolk, Virginia, and all on the terms of and subject to the conditions set forth in the Comprehensive Agreement (the "Project").

**Section B. Certain Acts Prohibited.** Until the Company has performed and fulfilled all of its obligations under the Comprehensive Agreement, the Company shall not:

(a) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding on behalf of, by or against the Company; institute any proceedings under any applicable insolvency law or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally; seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Company or a substantial portion of its properties; make any assignment for the benefit of the Company's creditors; or take any action in furtherance of any of the foregoing;

(b) acquire or own any material assets other than those reasonably necessary to perform the Company's obligations under the Comprehensive Agreement;

(c) incur any indebtedness, excluding liabilities incurred with respect to any unsecured borrowings from a member of the Company (individually, a "Member" and collectively, the "Members") and liabilities incurred in the ordinary course of business, in each case, relating to the Project;

(d) engage in any voluntary dissolution, liquidation, consolidation or merger of the Company or any sale of all or substantially all of the Company's assets;

(e) fail to preserve its existence (and observe all limited liability company formalities) as an entity duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia;

(f) amend, modify, terminate or fail to comply with Section A above or this Section B of this Agreement without the prior written consent of the Commission;

(g) form, hold, own or acquire any subsidiary or make any investment in or acquire the obligations or securities of any other person or entity (including any affiliate);

(h) commingle its assets with the assets of any Member, any affiliate of the Company, or any other person or entity;

(i) allow any person or entity to pay the Company's debts and liabilities or fail to pay its debts and liabilities solely from the Company's own assets, unless such payments are made by a guarantor in accordance with the terms of any guaranty or similar agreement entered into pursuant to the terms of the Comprehensive Agreement;

(j) fail to maintain its records, books of account and bank accounts separate and apart from those of the Members and affiliates of the Company, the affiliates of the Members and any other person or entity, or fail to prepare and maintain its own financial statements (in accordance with generally accepted accounting principles) separate and apart from any other person or entity (including any affiliate) and susceptible to audit;

(k) enter into any contract, agreement or transaction with any Member or any affiliate of the Company, except upon terms and conditions that are contemplated by the Comprehensive Agreement or are otherwise intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than a Member or an affiliate of the Company, or any partner, member, principal or affiliate thereof;

(l) fail to correct any known misunderstandings regarding the separate identity of the Company;

(m) hold itself out to be responsible or pledge its assets or credit-worthiness for the debts of another person or entity or allow any person or entity to hold itself out to be responsible or pledge its assets or credit-worthiness for the debts of the Company, except as provided in the Comprehensive Agreement;

(n) make any loans or advances to any third party, including a Member or any affiliate of the Company, or any partner, member, principal or affiliate thereof; or hold evidence of indebtedness of any other person or entity (other than cash and investment-grade securities), except in each case as provided in the Comprehensive Agreement;

(o) fail to file its own tax returns or to use separate contracts, purchase orders, stationery, invoices and checks and apart from any other person or entity (including any affiliate);

(p) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that the Company is responsible for the debts of any third party (including a Member or any affiliate of the Company or any member, principal or affiliate thereof);

(q) fail to allocate fairly and reasonably among the Company and any third party any overhead for common employees, shared office space or other overhead and administrative expenses;

(r) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(s) share any common logo with or hold itself out as or be considered as a department or division of (i) any partner, principal, member or affiliate of the Company, (ii) any affiliate of a partner, principal, member or affiliate of the Company or (iii) any other person or entity or allow any person or entity to identify the Company as a department or division of that person or entity;

(t) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of the Company or the creditors of any other person or entity;

(u) engage in any business activity unrelated to the performance of the Company's obligations under the Comprehensive Agreement; or

(v) take any action that is reasonably likely to cause the Company to become insolvent.

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