

**SUPPLEMENTAL AGREEMENT BETWEEN CONTRACTOR AND ARCHITECT
TO PARTIAL ASSIGNMENT OF ARCHITECT CONTRACT FOR CAMPUS
MASTER PLAN PHASE I**

This Supplemental Agreement between Contractor and Architect to Partial Assignment of Architect Contract ("Supplemental Agreement") is entered into effective July 14, 2009, by and between Hensel Phelps Construction Company ("Contractor") and Moseley Architects, P.C. ("Architect" or "Moseley").

Recitals

R-1. On or about May 7, 2007, the County of Spotsylvania, Virginia ("County" or "Owner") and Moseley entered into a contract for architectural services (the "Architect Contract") for what has come to be known as the Campus Master Plan Project.

R-2. On July 14, 2009, Moseley, Contractor, and the County entered into a Consent and Contingent Assignment Agreement under which aspects of the Architect Contract that involve certain services for the Campus Master Plan Phase I Project ("Phase I Project") were contingently assigned by the County to Contractor with Moseley's and Contractor's consent. This contingent assignment was made as part of a procurement done under the Virginia Public-Private Education Facilities and Infrastructure Act ("PPEA") for development and construction of the Phase I Project. Pursuant to this procurement, Contractor has entered into a Comprehensive Agreement with the County.

R-3. Under the Consent and Contingent Assignment Agreement, Moseley and Contractor are obligated to enter into this Supplemental Agreement once the contingencies to the partial assignment of the Architect Contract have been satisfied.

R-4. The contingencies to the partial assignment of the Architect Contract have now been satisfied.

NOW THEREFORE, for and in consideration of the promises, conditions, and covenants set forth therein, and for other valuable consideration, as to the sufficiency of which the parties stipulate, the parties agree as follows:

ARTICLE 1 – INCORPORATION OF RECITALS

The above recitals are incorporated by reference and made a part of this Supplemental Agreement.

ARTICLE 2 – GENERAL PROVISIONS

2.1 Purpose of Supplemental Agreement

The purpose of this Supplemental Agreement is to provide for the transition of the remaining performance originally contemplated by the Architect Contract for the Phase I Project from a design-bid-build approach to the modified design-build approach taken under the PPEA procurement for the Phase I Project by clarifying, supplementing, and modifying aspects of the Architect Contract assigned by the County to Contractor as part of that procurement.

2.2. Definitions

The following definitions apply to this Supplemental Agreement:

2.2.1 "Additional Services" means those services performed by the Architect and its consultants that are (1) beyond the "Primary Services" for the Project; (2) under Article 1.3.3 of the AIA B141-1997 Document, as modified, are a "Change in Services of the Architect"; or (3) under Article 3.4 herein are an "Additional Service". "Additional Services" are ones for which the Architect is entitled to additional compensation beyond the "Lump Sum" by the Contractor. The County has no responsibility to pay Architect directly for any "Additional Services" under this Supplement Agreement, and the County's responsibility to reimburse Contractor for amounts

it pays Architect for Additional Services is limited to circumstances where a change to the Contract Price is allowed by 9.3 of the Comprehensive Agreement.

2.2.2. "Architect's Consultants" means architects, engineers, consultants and other experts retained by the Architect for certain aspects of the Project relating to the overall undertaking by the Architect as specified in the Architect Contract and this Supplemental Agreement. The costs and fees of these architects, engineers and consultants are included in the Architect's fee unless stated otherwise. Nothing contained herein shall create any contractual or other obligation between Contractor and any architect, engineer, consultant or expert retained by the Architect in connection with the Project.

2.2.3. "Architect's Contract" means the contract entered into between Moseley Architects, P.C. and Spotsylvania County on or about May 7, 2007, for the Campus Master Plan Project, and includes (1) "Standard Form Agreement", dated May 7, 2007; (2) AIA Document B-141-1997, Pt. 1, as modified, dated May 7, 2007 ("B-141, Pt.1"); (3) AIA Document B-141-1997, Pt. 2, as modified, dated May 7, 2007 ("B-141, Pt. 2"); and (4) the exhibits to items (1) through (3) as incorporated therein.

2.2.4. "Architect's Contract Documents" means the documents referenced in 1.2 of the Standard Form Agreement as modified by Article 10 of this Supplemental Agreement.

2.2.5. "Contract Administration Phase" means that period of the Project from the start of construction until final acceptance of the Project by the County.

2.2.6. "Contract Documents" means the Comprehensive Agreement, its exhibits, all amendments, change orders, work orders, field orders, and change directives issued thereto, and all design drawings and specifications approved by the Contractor, Architect, and County during the course of the Project.

2.2.7. "Lump Sum" means the Architect's fee for the remaining Primary Services for the Project to be performed by Architect and Architect's Consultants, which is \$526,000.

2.2.8. "Primary Services" means those services the Architect and its consultants are to provide under the Architect Contract and this Supplemental Agreement for the remainder of the Project without additional compensation beyond the Lump Sum.

2.2.9. "Project" or "Phase I Project" is the total development, design, and construction for which the Contractor is responsible under the Comprehensive Agreement with the County, including all services, labor, materials and equipment used or incorporated therein.

2.2.10. "Work" has the meaning given in the General Conditions (Exhibit D) to the Comprehensive Agreement.

2.2.11. Capitalized terms not expressly defined herein have the meaning given in the Architect's Contract Documents and in the General Conditions to the Comprehensive Agreement unless otherwise indicated.

2.3 Effect of Supplemental Agreement

The Consent and Contingent Assignment Agreement and the portions of the Architect Contract assigned thereby by the County to Contractor remain in full force and effect except to the extent superseded or modified by this Supplemental Agreement; provided however, that as to the assigned portions, the duties and obligations owed by and to Owner are now duties and obligations owed by and to the Contractor unless otherwise indicated herein, in Articles 3.2 through 3.4 of the Comprehensive Agreement, or in the Consent and Contingent Assignment Agreement.

ARTICLE 3 – ARCHITECT'S SERVICES

3.1. General

3.1.1. Timely Provision of Services and Standard of Care: The Architect shall provide all services required of the Architect in a timely manner to allow timely construction of the Project. The Architect and its consultants in providing any services for the Project shall exercise the degree of care, skill and diligence as ordinarily exercised by other design professionals in Virginia on projects of similar scope. This standard of care, and not that specified in the Architect's Contract, shall also govern the Architect's liability to Contractor.

3.1.2. Permits: The Architect is responsible for assisting both Contractor and Owner in preparation and submittal of documents required for the approval of governmental authorities to the same extent as required by § 2.1.6 of B-141, Pt. 2. The Contractor shall cooperate with the Architect in completing the required permit applications and documentation necessary for obtaining the permits. The Architect will not be responsible for fees for building or construction-related permits.

3.2. Design-Related Services

The Architect's design services for the Project have been completed except for incorporation of approved value engineering into the Construction Documents and incidental design activities that are part of the contract administration phase services of Architect for the Project. However, as provided in 3.3 of the Comprehensive Agreement, Architect's professional liability shall be to Contractor and not to the County.

3.3 Contract Administration Phase

3.3.1. General: Architect shall provide contract administration services during the Contract Administration Phase as set forth in (a) the Architect Contract, including without

limitation, B-141, Pt. 2, § 2.6; (b) Article 3.2 of the Comprehensive Agreement; and (c) paragraphs L, M, O, T, U, GG, KK, and OO of the General Conditions. Mention of "Architect" in any portion of the Comprehensive Agreement or General Conditions other than the provisions cited in the preceding sentence shall not impose any obligation on Architect to provide as Primary Services any services not required by those specific provisions cited in the first sentence or elsewhere in this 3.3.

3.3.2. Interpretations: The Architect, at the request of the Contractor, shall render, with reasonable promptness, interpretations necessary for the proper execution and progress of the Work.

3.3.3. Decisions: All interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Construction Documents and shall be in writing or in the form of drawings.

3.3.4. Site visits: The Architect shall visit the site a minimum of two (2) on-site visits per month for the duration of the Contract Administration Phase and also as required to resolve design-related issues that cannot be resolved promptly through normal information request procedures. The Architect shall prepare observation reports monthly documenting site visits.

3.3.5. Means and Methods: Notwithstanding any provision of, or any reference to any rule or regulation in, this Supplemental Agreement, the Consent and Contingent Assignment Agreement, or the Comprehensive Agreement, the Architect shall have no control over or charge of and shall not be responsible for any of the construction means, methods, techniques or procedures, or for the sequence of the installation of any part of the Work, or for any safety measures or programs in connection with the Work, or for the acts or omissions of the Contractor, subcontractors or any other persons performing any of the Work, or for any failure

on their part to perform the Work in accordance with applicable Contract Documents' requirements and all other applicable codes and laws governing the construction of the Project. The Architect shall not be responsible to direct, coordinate, control, manage, or supervise any part of the Work during its performance. All these duties are the sole responsibility of the Contractor. However, the Architect shall promptly advise Contractor and the County if any portion of the Construction Documents fails to comply with all codes, laws, rules and regulations applicable to the design of the Project and correct such failures with copies of corrections furnished to the Contractor and the County.

3.3.6. Access: The Architect shall be afforded reasonable access to the Work whenever and wherever it is in preparation or progress.

3.3.7. Submittals: The Contract Documents require the Contractor to submit shop drawings, product data and samples. The Architect is responsible for reviewing, approving, or taking any other appropriate action on the Contractor's submittals. The scope of the Architect's and its consultants' reviews of such submittals shall be as specified in the Architect Contract § 2.6.4 of B-141, Pt. 2, and paragraphs O and U of the General Conditions.

3.3.8. Requests For Information: Questions that Contractor or its subcontractors have about design issues and clarifications will be addressed through Requests For Information ("RFIs") submitted by the Contractor to the Architect. The Architect will respond to RFIs promptly in writing. The Contractor will carefully review RFIs prior to submission to confirm in writing that they relate to design issues and are applicable to the Architect's responsibilities as defined herein.

3.3.9. Modifications: The Architect shall prepare all modifications to the Construction Documents at no additional cost for those items required to bring the design into compliance

with the requirements of the Construction Documents. Modifications required as a result of changes initiated by the County may be prepared as a change order and are Additional Services. Modifications initiated by Contractor that require Additional Services shall be provided as required herein. Prior written approval from the County and Contractor is required for modifications.

3.3.10. Value Engineering Concepts and Substitutions: Evaluation of value engineering concepts and proposed substitutions or alternate materials proposed by the Contractor are within the Architect's Primary Services, except as to certain substitutions as provided in § 2.8.2.6, B-141, Pt. 2.

3.3.11. Not Construction Manager: The Contractor acknowledges that the Architect is not the "construction manager" or "supervisor" of the Work, nor is the Architect a "clerk of the works".

3.3.12. Pay Applications: The Architect shall assist with processing of Contractor's pay applications as specified in paragraph GG of the General Conditions.

3.3.13. Record Drawings: Upon receipt from Contractor of as-built documents with annotations maintained by Contractor and approved by the County as the field "as built" drawings, the Architect shall prepare a set of reproducible record drawings, in accordance with the requirements of the Contract Documents, based solely on County approved marked-up prints, drawings and other data furnished by the Contractor to the Architect. It is understood that the Architect is not responsible for the accuracy and completeness of record drawings and is only serving as a drafting agent. Drawings prepared by the Architect (excluding drawings prepared by others) will be annotated by qualified Contractor representatives to reflect as-built conditions and delivered to the Architect's office. All drawings within each discipline (i.e., mechanical,

electrical, structural, etc.) shall be consolidated and delivered to the Architect in complete and legible form including all annotations and as approved by the County. Drafting will be accomplished either manually or on CADD as required by the Contract Documents. The Architect will complete these drawings within 60 days after receipt of the annotated drawings.

3.3.14. The Architect's Punchlist: The Architect shall perform all services required to punchlist and complete a project of this nature for the disciplines for which the Architect and its consultant are directly responsible. The Architect shall participate as necessary to resolve any "post-completion" issues that are related to design issues. The Architect will assist in all requirements for building commissioning and project closeout.

3.4 Additional Services

3.4.1. The assigned portions of the Architect Contract and this Supplemental Agreement are for a Lump Sum payment to Architect that already includes compensation for all the remaining Primary Services for the Project. The parties believe that the assigned portions of the Architect Contract and this Supplemental Agreement include all services of Architect necessary for completion by Contractor of Phase I Project in accordance with the Comprehensive Agreement. All architectural and engineering services necessary to achieve the scope and schedule of this Project are included within the Lump Sum. Any Additional Services shall be authorized, and paid for by the Contractor. No compensation to Architect for Additional Services will be considered without Contractor's prior written approval.

3.4.2. The following are Additional Services not included within the Lump Sum:

3.4.2.1. Studies: Providing financial, feasibility, or other special studies.

3.4.2.2. Future Facilities: Except for value engineering and incidental to construction administration.

3.4.2.3. Cost Analysis: Providing estimates of construction cost, analyses of ownership or operating costs, or quantity surveys or exhaustive studies of inventories of material, equipment and labor.

3.4.2.4. Revisions: Making revisions in Drawings, Specifications, or other documents when such revisions are not due to a design error or omission and are inconsistent with written approvals or instructions previously given by the County, or are required by the enactment or revision of codes, laws or regulations subsequent to the correct preparation of such documents.

3.4.2.5. Inventories: Providing investigations, surveys, valuations, inventories, or detailed appraisals of existing facilities or relocated equipment, and services required in connection with construction or installation performed by the County unrelated to the Project.

3.4.2.6. Replacement: Providing consultation concerning replacement of any Work damaged by fire or other cause during construction unrelated to design deficiencies and furnishing services as may be required in connection with the replacement of such Work.

3.4.2.7. Default: Providing services made necessary by the default of the Contractor, or by major defects or deficiencies in the Work of the Contractor, or by failure of performance of the Contractor under the Architect Contract, this Supplemental Agreement or the Comprehensive Agreement.

3.4.2.8. Expert Witness: Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding.

3.4.2.9. Consultants: Providing services of consultants for other than the customary services for the Project listed herein.

3.4.2.10. Other Services: Providing any other services not otherwise included in this Supplemental Agreement or not customarily furnished in accordance with generally accepted architectural practice.

3.4.2.11. Extended Phase: If the Contract Administration Phase is extended beyond the date of final acceptance of the Project under the Comprehensive Agreement due to any reasons not the fault of or beyond the control of the Architect, all Contract Administration Phase services during such extended period shall be considered "Additional Services".

3.4.2.13. Succession: Providing additional services required as a result of the transfer of ownership or assignment of the Supplemental Agreement to third parties.

3.4.3. Changes are to be compensated per the attached rate schedule, Exhibit 1.

3.5 Time

3.5.1. Schedule: The Architect shall perform, and shall cause Architect's Consultants to perform, Primary Services and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work.

ARTICLE 4 – CONTRACTOR’S RESPONSIBILITIES

4.1. Additional to Other Articles: The responsibilities of the Contractor set forth in this Article 4 are in addition to those set forth in other articles of this Agreement.

4.2. Project: The Contractor shall make known to the Architect all available information and documents Contractor has regarding the requirements for the Project.

4.3. Decisions: The Contractor or his authorized representative shall examine the documents submitted by the Architect and render required decisions promptly and provide required data consistent with professional skill and care and orderly progress of the Work so as not to unreasonably delay the Architect in the performance of its tasks.

4.4. Information: The Architect shall be entitled to rely upon the information and documents provided by the Contractor for completeness and accuracy in the performance of the duties of the Architect. The Architect shall be responsible for designs based on this information.

4.5. Consultants: If the Contractor provides the services of special consultants, all services, information and reports shall be furnished to the Architect and their accuracy and completeness may be relied upon by the Architect.

4.6. Materials Testing Agencies: The County shall provide the required services of materials testing agencies and special inspectors.

4.7. Observed Faults: The Contractor shall make prompt written notice to the Architect and Owner of any faults, defects or nonconformities observed or detected in the Contract Documents.

4.8. Insurance: The Contractor shall not permit construction of the Project to begin until the insurance required by the Contract Documents is in effect with the Architect named as an additional insured of insurance required of Contractor except as to Worker's Compensation and professional liability. As a minimum, the Contractor shall carry a comprehensive general liability insurance and business auto policy with adequate limits for the Project size and value. In the event the Contractor permits construction of the Project to begin before such insurance is obtained, the Contractor agrees to indemnify and hold the Architect harmless from and against all suits, claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of construction of the Project to the extent such claims, damages, losses and expenses would otherwise have been covered by such insurance.

4.9. Related Agreements: The Contractor shall facilitate the accomplishment of the Architect's duties by appropriate references to the Architect and its duties in the Contractor's

agreements, and such references shall be consistent with the Architect's duties under this Supplemental Agreement.

ARTICLE 5 – PAYMENT TO THE ARCHITECT

5.1 Payment for Primary Services

For the performance of the Primary Services, the Architect shall be paid the Lump Sum provided in the schedule of values attached hereto as Exhibit 2. Billings for Lump Sum amounts for Primary Services shall be submitted monthly on a percentage of completion basis.

5.2 Payment for Additional Services and Reimbursable Expenses

Contractor shall make payment for Additional Services and Reimbursable Expenses as prescribed by §§ 1.5.2 through 1.5.4 of the B-141, Pt. 1.

5.3. Timing of Payment, Interest

The Contractor shall make payment to the Architect within 10 days after the Contractor receives payment from the County for the Architect's monthly billing. For Additional Services for which Contractor is not entitled to payment from the County, Contractor shall pay the Architect within 30 days of Contractor's receipt of Architect's invoice. If the Contractor does not pay the Architect when payment is due, the amount due Architect shall bear simple interest from the date the payment is due at the rate of one percentage point over the then-existing prime interest rate in effect as published in The Wall Street Journal on the date payment is due.

5.4 Architect Accounting Records

The Architect shall employ generally accepted accounting principles in keeping its records of expenses pertaining to the performance of Additional Services, and such records shall be available to the Contractor or its representative and to the County at mutually convenient times.

ARTICLE 6 – TERMINATION OR SUSPENSION

6.1. This Supplemental Agreement may be suspended or terminated by the parties pursuant to § 1.3.8 of the B-141, Pt. 1. Notwithstanding, the foregoing, no termination shall be effective unless written notice has been received by the County thereof and 30 days have passed from the County's receipt of such notice. If a termination occurs and the County elects in writing, remaining unperformed portions of the Architect Contract involving the Phase I Project assigned to Contractor shall revert back to the County, but with the County having no liability for any breach by, or obligation of Contractor.

6.2. This Supplemental Agreement and the County's assignment of portions of the Architect Contract pursuant to the Consent and Contingent Assignment Agreement terminate if the Comprehensive Agreement terminates. In such case, Contractor shall compensate the Architect for all Primary Services performed under the assigned portions of the Architect Contract and this Supplemental Agreement as of the date of termination, based on the applicable schedule of values and percentage of work complete, together with all amounts due for Reimbursable Expenses incurred and Additional Services performed as of that date. Payment for services and Reimbursable Expenses shall be due no later than ten (10) days after the date of receipt of the corresponding payment by Contractor from the County for Primary Services and for Additional Services for which Contractor is entitled to payment from the County. For Additional Services for which Contractor is not entitled to payment from the County, Contractor shall pay Architect within 30 days of Contractor's receipt of Architect's invoice. Such payments shall constitute the full amount due the Architect in the event of such termination. If the County terminates the Comprehensive Agreement and so elects in writing, remaining portions of the

Architect Contract involving the Phase I Project assigned to Contractor shall revert back to the County, but with the County having no liability for any breach by, or obligation of, Contractor.

6.3. The parties' obligations under Articles 8 and 9 shall survive termination of this Supplemental Agreement.

ARTICLE 7 – OWNERSHIP AND USE OF DOCUMENTS

Ownership of the Drawings and Specifications prepared by the Architect shall be governed by the Architect Contract as if it had not been assigned to Contractor, with the Owner retaining all rights of use granted therein and acquiring the same rights of use as to any documents created by the Architect after the assignment. Contractor shall have the right to use all documents for purposes of the Project.

ARTICLE 8 – DISPUTES AND LIMITATION OF CLAIMS

8.1 Disputes

In order to facilitate a fair and prompt resolution of disputes, the parties agree as follows:

8.1.1. In the event a claim, dispute, or other matter in question or controversy ("claim") arises between the parties to this Supplemental Agreement that relates to this Supplemental Agreement, the portions of the Architect Contract assigned to Contractor, or the Consent and Contingent Assignment Agreement or the breach of any of them, notice of such claim shall be given in writing to the party against whom the claim may be made not more than twenty (20) working days after such claim arises, in order that the party to whom notice is given may remedy, rectify, or make substantial progress toward resolution of the problem or difficulty giving rise to the claim within thirty (30) days of receipt of the notice. The parties will make good faith efforts to cooperate to resolve the issues between them.

8.1.2. If a dispute between the parties is not resolved as provided in 8.1.1, the parties shall first endeavor to resolve it by mediation, pursuant to the then prevailing Construction Industry Rules of the American Arbitration Association, and if they are unable to do so, then by litigation in the courts of Spotsylvania County, Virginia, and then in state appellate court.

8.1.3. Architect shall cooperate reasonably with Contractor with respect to any disputes the Contractor has with the County that are based in any way on the acts or omissions of the Architect or its consultants.

8.2 Professional Liability of the Architect

The Contractor agrees that it may make claims against the Architect arising out of any Project cost overruns, change orders, extra work or other Project costs or expenses to the extent damages suffered by Contractor are caused by the failure to perform services (including without limitations any failure to conform to the applicable standard of care) of the Architect, its consultants, or their agents in the design of the Phase I Project or in performing under this Supplemental Agreement and the provisions of the Architect Contract assigned to Contractor.

The Architect's aggregate liability (including that of Architect's officers, directors, employees, and consultants) to Contractor relating to this Phase I Project shall not exceed the amount of Architect's insurance coverage available under this Supplemental Agreement.

ARTICLE 9 – INSURANCE AND INDEMNIFICATION

9.1 Architect's Insurance Obligations

9.1.1. The Architect shall, at its expense, unless otherwise noted, obtain and maintain during the terms of this Agreement commercial general liability, automobile liability, worker's compensation and professional liability insurance in the following amounts and coverages:

9.1.1.1 Commercial general liability insurance including coverage for bodily injury, property damage and personal injury, and contractual liability and broad form property damage with per occurrence combined single limits in an amount not less than \$1 million. Contractor shall be named as an additional insured with respect to such coverage, and the coverage of Architect shall be primary to any insurance coverage of Architect carried by Contractor.

9.1.1.2. Comprehensive automobile liability insurance, including non-owned, hired vehicles, with combined single limits of not less than \$1 million for bodily injury and \$1 million for property damage. Contractor shall be named as additional insured with respect to such coverage, and the coverage of Architect shall be primary to any insurance coverage of Architect carried by Contractor.

9.1.1.3 Statutory amounts of Worker's Compensation insurance.

9.1.1.4 Professional liability insurance covering the services of Architect provided for the Project in performance of this Supplemental Agreement. Such insurance shall have minimum policy limits of \$6 million in the aggregate and \$2 million per claim with a maximum deductible of \$250,000.00. The Architect shall continue this professional liability insurance coverage for not less than five years after the Final Completion of the Work. The professional liability insurance policy or policies shall name the Architect furnishing services for the Project as an insured. Architect will bear all costs associated with this policy or policies, including payment of half of any deductible amounts applicable to any claim.

9.1.2. Maintenance of Policies: The Architect agrees to maintain all policies indicated in 9.1 in such amounts for the term of this Supplemental Agreement and such additional time as this Supplemental Agreement requires. Certificates evidencing such policies have been issued

and with respect to any renewals thereof shall also be furnished to the County and Contractor. Any and all policies issued to the Architect and related Acord Form certificates of insurance shall provide that the same may not be canceled without giving at least thirty (30) days prior written notice to Contractor and the County.

9.2. Subrogation

The Contractor and the Architect waive all rights against (1) each other and the contractors, subcontractors, sub-subcontractors, consultants, agents and employees, each of the other, and (2) the County and separate contractors, if any, and their subcontractors and sub-subcontractors, for damages caused by fire and other perils to the extent covered by any property insurance applicable to the Work except such rights as they may have to the proceeds of such insurance.

9.3. Contractor's Insurance Obligations

The Contractor shall obtain and maintain during the life of the Project, at its expense, comprehensive general liability insurance, builder's risk insurance, completed operations insurance and such other insurance in amounts required by the Comprehensive Agreement, except as required to be provided by the Architect pursuant to this Agreement. The Architect shall be named as an additional insured on any general liability and builder's risk policy provided by the Contractor.

9.4 Contractor Indemnification

THE ARCHITECT IS OBLIGATED TO PROVIDE CERTAIN SERVICES UNDER THIS AGREEMENT. HOWEVER, THE PARTIES RECOGNIZE THAT THE ARCHITECT MAY BE REQUIRED TO EXPEND SUBSTANTIAL SUMS IN DEFENSE COSTS IN THE EVENT OF ANY CLAIM OR SUIT ARISING OUT OF THE PROJECT

NOT RELATED TO THE ARCHITECT'S PERFORMANCE OF SERVICES FOR THE PROJECT. THEREFORE, THE CONTRACTOR INDEMNIFIES AND HOLDS THE ARCHITECT HARMLESS FROM AND AGAINST ALL CLAIMS, SUITS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, ARISING OUT OF OR RESULTING IN WHOLE OR IN SUBSTANTIAL PART FROM THE CONTRACTOR'S, ITS AGENT'S, OR SUBCONTRACTOR'S NEGLIGENT ACTS OR WILLFUL MISCONDUCT.

9.5 Architect Indemnification

THE ARCHITECT AGREES TO INDEMNIFY AND TO HOLD HARMLESS THE CONTRACTOR AGAINST DAMAGES (INCLUDING REASONABLE ATTORNEY'S FEES) TO THE EXTENT INCURRED BY CONTRACTOR AND CAUSED SOLELY BY ARCHITECT'S NEGLIGENT ACT, ERROR OR OMISSION IN THE PERFORMANCE BY ARCHITECT OF ITS SERVICES FOR THE PHASE I PROJECT, INCLUDING WITHOUT LIMITATION, THE DESIGN. THE ARCHITECT AGREES THAT THE ARCHITECT'S SERVICES HAVE BEEN AND SHALL BE PROVIDED IN ACCORDANCE WITH THE PROVISIONS OF THIS SUPPLEMENTAL AGREEMENT AND THOSE PROVISIONS OF THE ARCHITECT CONTRACT ASSIGNED TO CONTRACTOR, INCLUDING WITHOUT LIMITATION, THE STANDARD OF CARE SPECIFIED IN PARAGRAPH 3.1.1 OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, ARCHITECT'S LIABILITY TO CONTRACTOR SHALL NOT EXCEED THE AMOUNT OF ARCHITECT'S INSURANCE COVERAGE AS PROVIDED HEREIN.

The Contractor expressly acknowledges and agrees that the foregoing representation shall not apply in connection with, and that the Architect shall have no responsibility for, consequences resulting from: (1) the Contractor's breach or failure to perform a responsibility contained in this Agreement, or (2) any of the following circumstances:

(a) The discovery, identification, presence, handling, disposal, or removal of, or exposure of a person to hazardous materials preexisting in any form at the Project, including but not limited to asbestos or asbestos products, unrelated to the Architect's willful misconduct.

(b) Modification to or use of any drawings, specifications, or other documents furnished by the Architect, which modification or use is not contemplated by this Supplemental Agreement or not approved in writing by the Architect.

(c) The Architect's inability or failure to complete the services contemplated by this Supplemental Agreement as a result of termination of this Supplemental Agreement in accordance with Article 6 prior to completion of the Project, provided such termination is not caused by a breach of this Supplemental Agreement by the Architect.

ARTICLE 10 – ADDITIONAL SPECIFIC MODIFICATIONS TO ASSIGNED ASPECTS OF ARCHITECT CONTRACT

10.1. The following provisions of the assigned aspects of the Architect Contract (as to the assigned portions only) are modified as follows:

10.1.1. Standard Form Agreement

a. 1.2 is modified such that the Contract Documents include the following, as well as those Contract Documents listed in 1.2, with the order of priority being first the documents listed as follows in the order listed and then the documents listed in 1.2 in the order listed there:

(1) Any modifications to this Supplemental Agreement agreed upon in writing by the parties and approved in writing by the County;

(2) The Consent and Contingent Assignment Agreement;

(3) This Supplemental Agreement;

(4) Article 3.2 of the Comprehensive Agreement; and

(5) Paragraphs L, M, O, T, U, GG, KK, and OO of the General Conditions to the Comprehensive Agreement.

b. 2.1 is modified to delete the words "Contract Documents" and substitute therefor "this Supplemental Agreement".

c. 2.2 is modified to delete the words "project schematic design, design development, construction documents, construction bidding services," the words "the judicial center renovation and addition and the Sheriff's office space renovation," and the last sentence.

d. Articles 3 and 4 are deleted as superseded by this Supplemental Agreement.

e. Articles 5.1, 5.6, 5.8, and 5.10 are deleted as superseded by this Supplemental Agreement.

10.1.2. B141-1997, Part 1, as modified.

a. All but §§ 1.1.3.3, 1.1.3.4, and 1.1.3.5 of Article 1.1 are deleted as superseded by this Supplemental Agreement.

b. In Article 1.2, §§ 1.2.2.1, 1.2.2.2, 1.2.2.3, 1.2.2.6 are deleted. The word "Owner" is changed to "Contractor" in §§ 1.2.2.4 and 1.2.2.7.

c. In Article 1.2.3, § 1.2.3.1, change "Owner" to "Contractor."

- d. § 1.2.3.2 is deleted as superseded by the Supplemental Agreement.
- e. § 1.2.3.4 is deleted as superseded by the Supplemental Agreement.
- f. § 1.2.3.5 is deleted.
- g. In § 1.2.3.7, add the words "and Contractor" after the words "the Owner" in both sentences.
- h. Delete Article 1.3.1.
- i. Add to § 1.3.2, the following: § 1.3.2.5. Contractor's license rights to Instruments of Service are governed by the Supplemental Agreement.
- j. In § 1.3.3.1, change "Owner" to "Contractor" throughout.
- k. In §§ 1.3.3.2.1, 1.3.3.2.3, 1.3.3.2.4, and 1.3.3.2.5, add "or Contractor" after "Owner".
- l. Delete §§ 1.3.7.2, 1.3.7.4, 1.3.7.5 and 1.3.7.9.
- m. In § 1.3.7.6, add "Contractor and" before "Owner" in the second sentence.
- n. In § 1.3.7.8, change "Owner" to "Contractor".
- o. In § 1.3.8.1, change "Owner" to "Contractor" and delete the word "unjustifiably" from the first sentence.
- p. In § 1.3.8.2, add "or Contractor" after "Owner".
- q. Delete §§ 1.3.8.4, 1.3.8.5 and 1.3.9.3.
- r. In § 1.3.9.2, change "Owner" to "Contractor".
- s. Modify § 1.4.1 as follows: (1) Change "This Agreement" to "This Agreement, the Consent and Contingent Assignment Agreement, and the Supplemental Agreement" and change "Owner" to "Contractor" throughout.

t. Article § 1.5.1 is revised as follows: "The Architect shall be compensated \$526,000 for its Primary Services in accordance with this Supplemental Agreement, the Consent and Contingent Assignment Agreement, and the Architect Contract."

u. Delete §§ 1.5.8 - 1.5.9.

10.1.3. B-141-1997, Part 2, as modified.

a. All but Articles 2.1.3 and 2.1.6 are deleted from Article 2.1 as superseded by this Supplemental Agreement.

b. All but Article 2.2.1.3 is deleted from Article 2.2 as superseded by this Supplemental Agreement.

c. Articles 2.3, 2.4, and 2.5 are deleted as superseded by this Supplemental Agreement.

d. Article 2.6 is revised as follows:

(1) Article 2.6.1.1 is modified to read as follows:

The Architect shall provide contract administration services as set forth below, in the Supplemental Agreement, in Article 3.2 of the Comprehensive Agreement, and in paragraphs L, M, O, T, U, GG, KK and OO of the General Conditions of the Comprehensive Agreement.

(2) Article 2.6.1.3 is deleted.

(3) Article 2.6.1.6 delete the words "on the Owner's behalf."

Add at the end the following: "Copies of such Supplemental Drawings and Specifications shall be furnished to the Owner when they are furnished to the Contractor."

(4) Delete Article 2.6.1.7.

(5) Article 2.6.2.1, first sentence, delete the words "of the Owner" and "by the Owner and the Architect," and change the words "the Owner" in subparts (1) and (2) to "the Contractor and Owner."

(6) In Article 2.6.2.2 change "the Owner" to "the Contractor and the Owner."

(7) Delete Article 2.6.2.4.

(8) Delete Article 2.6.3.

(9) Delete Article 2.6.5.3.

(10) Delete Article 2.9.1.3 and 2.9.1.4.

ARTICLE 11 – MISCELLANEOUS

11.1. The terms of this Supplemental Agreement shall be governed by and shall be interpreted in accordance with the laws of the Commonwealth of Virginia.

11.2. Nothing contained in this Supplemental Agreement shall create a contractual relationship with or a cause of action in favor of a third-party against either the Contractor or Architect. Notwithstanding the foregoing, the County is an intended third-party beneficiary.

11.3. Force Majeure: The Architect shall not be liable to the Contractor and shall not be deemed in default hereunder for any failure or delay in the performance of the Supplemental Agreement, caused by or arising out of any disaster, labor disturbances, shortages of labor or equipment, strikes, lockouts, other industrial disturbances, acts of God, acts of public enemy, war, blockade, riot, insurrection, lightning, fire, flood, inclement weather, explosion, or any regulation restrictions or act of governmental agencies.

11.4. Succession: This Agreement shall inure to the benefit of all partners, successors, assigns, and legal representatives of each party to this Agreement and all partners, successors, assigns and legal representatives of each party are hereby bound to the partners, successors, and assigns of this Agreement. The Architect shall not assign or transfer any interest in this Agreement without the written consent of the Contractor and the County. The Contractor shall not assign this Agreement without the written consent of the Architect and the County. In the event the Contractor assigns the Agreement or any part thereof, the Architect may require full payment for all services, including Additional Services as stated in paragraph 2.2, performed as of the date of assignment, which the Contractor shall promptly pay.

11.5. Entire Agreement: This Supplemental Agreement, the Consent and Contingent Assignment Agreement, and the assigned portions of Architect Contract represent the entire and integrated agreement between the Contractor and the Architect concerning the subject matter hereof and supersede all prior negotiations, representations or agreements whether they are written or oral. This Supplemental Agreement may only be amended in writing by the parties.

11.6. Severability: In the event any provision of this Supplemental Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

11.7. Captions: The captions in this Supplemental Agreement are for convenience only and shall not be deemed a part hereof.

CONTRACTOR

By: Steven J. Speer
Its: VICE President

MOSELEY ARCHITECTS

By: [Signature]
Its: VICE PRESIDENT

TIMMONS GROUP

2009 BILLING RATES

Rates in effect 01/01/09 - 12/31/09

| TEAM MEMBER | Hourly Rate |
|--|-------------|
| ENGINEER TECHNICIAN | \$65.00 |
| PROJECT ENGINEER | \$75.00 |
| DESIGNER | \$80.00 |
| SENIOR PROJECT ENGINEER | \$110.00 |
| PROJECT MANAGER | \$120.00 |
| SENIOR PROJECT MANAGER | \$140.00 |
| PRINCIPAL | \$190.00 |
| ENVIRONMENTAL TECHNICIAN | \$65.00 |
| ENVIRONMENTAL SCIENTIST | \$95.00 |
| SENIOR GEOTECHNICAL ENGINEER | \$125.00 |
| GIS TECHNICIAN | \$60.00 |
| GIS ANALYST | \$90.00 |
| GIS PROGRAMMER/ANALYST | \$110.00 |
| SENIOR SOFTWARE ENGINEER | \$145.00 |
| PROGRAM MANAGER | \$180.00 |
| LANDSCAPE ARCHITECT/LAND PLANNER | \$80.00 |
| LANDSCAPE ARCHITECT/LAND PLANNER PROJECT MANAGER | \$130.00 |
| SURVEY TECHNICIAN | \$65.00 |
| SURVEY PROJECT MANAGER | \$80.00 |
| LICENSED LAND SURVEYOR | \$100.00 |
| 2 MAN CREW | \$100.00 |
| 3 MAN CREW | \$125.00 |
| CONSTRUCTION INSPECTOR | \$65.00 |
| SENIOR CONSTRUCTION INSPECTOR | \$75.00 |
| CONSTRUCTION MANAGER | \$110.00 |
| SENIOR CONSTRUCTION MANAGER | \$130.00 |
| CLERICAL | \$60.00 |

MOSELEYARCHITECTS

SCHEDULE OF HOURLY BILLING RATES CALENDAR YEAR 2009

| | |
|--|----------|
| Principals (RA or PE) | \$196.00 |
| Architects | |
| Security Specialist (RA) | \$166.00 |
| Senior Project Manager (RA) | 138.00 |
| Project Manager (RA) | 108.00 |
| Architect (RA) | 91.00 |
| Intern Technician | 68.00 |
| Engineering Director (PE) | \$168.00 |
| Electrical Engineering | |
| Senior Electrical Engineer (PE) | \$140.00 |
| Engineer/Designer (PE) | 121.00 |
| Engineering Intern | 79.00 |
| Mechanical Engineering | |
| Senior Mechanical Engineer (PE) | \$140.00 |
| Engineer/Designer (PE) | 121.00 |
| Engineering Intern | 79.00 |
| Structural Engineering | |
| Senior Structural Engineer (PE) | \$126.00 |
| Engineer/Designer (PE) | 100.00 |
| Engineering Intern | 55.00 |
| Plumbing Engineering | |
| Senior Plumbing Engineer (PE) | \$140.00 |
| Engineer/Designer (PE) | 121.00 |
| Engineering Intern | 79.00 |
| Corrections Planner | \$160.00 |
| Director of Construction Administration (RA) | \$152.00 |
| Construction Administrator (RA or PE) | \$112.00 |
| Specification Writer (RA) | \$115.00 |
| Cost Estimator | \$138.00 |
| Senior Environmental Planner | \$116.00 |
| Environmental Planner | 68.00 |
| Interior Designer (IIDA) | \$79.00 |
| Administrative | \$61.00 |

EXHIBIT 2

SCHEDULE OF VALUES FOR PRIMARY SERVICES

The contract schedule of values is defined as follows:

| | | |
|----|--------------------------------------|------------------|
| 1) | Construction administration services | \$526,000 |
| | Total Lump Sum | \$526,000 |

Exhibit G to
Comprehensive Agreement
Forms

STANDARD LABOR AND MATERIAL PAYMENT BOND

STANDARD PERFORMANCE BOND FOR CONSTRUCTION CONTRACTS

PAY APPLICATION FORM SC-12

CONSTRUCTION CONTRACT CHANGE ORDER JUSTIFICATION

CONTRACT CHANGE ORDER

AFFIDAVIT OF PAYMENT OF CLAIMS

ARCHITECT/ENGINEER'S CERTIFICATE OF SUBSTANTIAL COMPLETION

CERTIFICATE OF PARTIAL OR SUBSTANTIAL COMPLETION BY
CONTRACTOR

CERTIFICATE OF COMPLETION BY CONTRACTOR

CERTIFICATE OF FINAL COMPLETION BY ARCHITECT