

each aspects of the project from RF, site identification, leasing, zoning, construction, optimization, personnel, and overall budget. Responsible for all due diligence and compliance/regulatory filings such as, leasing, ASAC/ASR,FAA filings, Soil, NEPA/SHPO compliance, drawings/foundation designs, zoning and building permit filings and construction. Provided continuous coverage for AT&T's GSM network on two major Interstates within one year.

6/00-5/02

Accounts Manager, American Tower Corporation, Salem, VA

Responsible for direct sales of antenna space on ATC's owned and managed sites to wireless carrier prospects within the state of WV, and VA. Maintained ongoing management of relationships with existing tenants, assisted in market research and identified numerous built to suit opportunities. Contributed to two major built-outs in WV and VA for Nextel Partners and Devon Mobile Communications during initial launch in 2001.

10/99-6/00

Commercial Accounts Manager, Horizon PCS/ SPRINT PCS affiliate, Roanoke VA

Sales manager for the Roanoke Valley and Lexington area. Oversees all major commercial accounts and services for Sprint PCS. Help launch Sprint PCS sales in the Blue Ridge region in October and provided technical support and training.

11/98-10/99

Retail Representative, CFW/ Intelos, Harrisonburg, VA

Full time sales representative in newly opened Valley Mall location promoting all aspects of communication services. Specializing in sales of PCS, cellular, internet, paging, wireless cable, and long distance services on a daily basis and promoting customer relations.

5/98-9/98

Retail Sales Associate, GTE Wireless, Lexington, VA

Full-time sales associate in retail store, specializing in all wireless services. Responsible for over 60% of all monthly sales as well as providing technical support and customer service.

8/97-4/98

Sales Counselor, Circuit City Stores, Roanoke, VA

Sales associate in high volume department of home office/computer products. Top 5% of sales in division--Awards Excellence achievement from 9/97-12/97. President's Club award 3rd level (1/98-3/98). Ranked top 10% among store in volume and income.

1/96-8/98

Sales/Partnership, First Choice Auto Sales, Lexington, VA

Recruited new clients, improved sales productivity. Followed up on customers. Purchased and maintained automobile inventory.

2/95-2/97

Manager/Owner of Phoenix Bar & Rest. 20 S. Randolph St. Lexington, VA

Opened a full service bar/restaurant. Planned and designed restaurant layout and format. Maintained all inventory and supervised operations on daily basis. Responsible for all record keeping, purchases, bills, and sales. Sold restaurant as a turnkey business and grossed 10-fold profit.

1/93-11/12

Part-time manager, Hunan Garden Restaurant, Lexington, VA

Family owned business. Assists in daily operations when possible. Maintains books and invoices on regular basis. Learned management skills first hand from the family business. Closed business in late 2011

EDUCATION:

Lexington High School, Lexington, VA. 1990

B.A. in Studio Art & Biology, University of Virginia, Charlottesville, VA. 1994

Personal: 44...father of one delightful 18 year old daughter...enjoys challenges, sports, and productivity.

References Available upon request.



SHERMAN P. LEA, SR.
Mayor

**CITY OF ROANOKE
OFFICE OF THE MAYOR**

215 CHURCH AVENUE, S.W., SUITE 452
ROANOKE, VIRGINIA 24011-1594
TELEPHONE: (540) 853-2444
FAX: (540) 853-1145
EMAIL: MAYOR@ROANOKEVA.GOV

May 24, 2018

Mr. Carl Boggess, County Administrator
County of Bedford, Virginia
122 East Main Street
Bedford, Virginia 24523

Dear Mr. Boggess:

As Mayor of the City of Roanoke and as a member of the Roanoke Valley Broadband Authority, I offer my support and recommendation for Anthony Smith and Blue Ridge Towers as an excellent choice for a private-public partner in connection with the Bedford County Broadband Project.

Blue Ridge Towers has proven itself to be a smart, experienced and capable firm to deliver the service and expertise necessary to help bring Southwest Virginia's telecommunications infrastructure up to the standards of other parts of the Country. Blue Ridge Towers has established strong relationships with key resources and firms needed to ensure success.

I have been acquainted with Mr. Smith for many years and have observed him making great strides in business, and supporting the greater Roanoke community through business development initiatives. I am confident that if awarded the project, Bedford County will gain a viable partner and one that will demonstrate excellence and extreme dedication.

If you have any additional questions or need clarification, please feel free to contact me.

Sincerely,

Sherman P. Lea, Sr.
Mayor

SPL:ctw

BOB GOODLATTE
6TH DISTRICT, VIRGINIA

2309 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4606
(202) 225-5431
FAX (202) 225-9681
www.house.gov/goodlatte



Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY
CHAIRMAN

COMMITTEE ON AGRICULTURE

SUBCOMMITTEE ON
LIVESTOCK AND FOREIGN AGRICULTURE

SUBCOMMITTEE ON
COMMODITY EXCHANGES, ENERGY,
AND CREDIT

DEPUTY WHIP

CHAIRMAN, HOUSE REPUBLICAN
TECHNOLOGY WORKING GROUP

CO-CHAIR,
CONGRESSIONAL INTERNET CAUCUS

CONGRESSIONAL INTERNATIONAL
CREATIVITY AND THEFT
PREVENTION CAUCUS

CONGRESSIONAL CIVIL
JUSTICE CAUCUS

April 10, 2018

Mr. Anthony R. Smith
Founder/President
Blue Ridge Towers
1125 1st Street SW
Roanoke, Virginia 24016

Dear Anthony:

Enclosed please find a letter that I have received from the Blue Ridge Parkway regarding your proposal for a cell tower near the Parkway's intersection at U.S. Route 460.

I am pleased that the Parkway was able to provide you with a favorable response. I hope that this information will be helpful to you in resolving this matter.

If I may be of further assistance to you in this or any other matter, please do not hesitate to call upon me.

With kind regards.

Very truly yours,

Bob Goodlatte
Member of Congress

RWG:pl

Enclosure

P.S. If you would like to receive periodic e-mail updates from me about legislative issues, please visit my website (www.goodlatte.house.gov) and subscribe to my e-newsletter.

70 NORTH MASON STREET
HARRISONBURG, VA 22802-4126
(540) 432-2391
FAX (540) 432-6593

916 MAIN STREET
SUITE 300
LYNCHBURG, VA 24504-1608
(434) 845-8306
FAX (434) 845-8245

10 FRANKLIN ROAD, S.E.
SUITE 540
ROANOKE, VA 24011-2121
(540) 857-2672
FAX (540) 857-2675

117 SOUTH LEWIS STREET
SUITE 215
STAUNTON, VA 24401-4282
(540) 885-3861
FAX (540) 885-3930



United States Department of the Interior



NATIONAL PARK SERVICE
Blue Ridge Parkway
199 Hemphill Knob Road
Asheville, North Carolina 28803

IN REPLY REFER

A3815

APR 05 2018

The Honorable Bob Goodlatte
10 Franklin Road
Suite 540
Roanoke, Virginia 24011

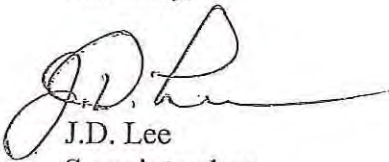
Dear Congressman Goodlatte:

This letter is in response to an inquiry dated May 3, 2017, on behalf of your constituent Mr. Anthony R. Smith, President of Blue Ridge Tower, regarding application for a cell tower near the Blue Ridge Parkway (the Parkway) intersection with Route 460 in Roanoke, Virginia. Parkway staff has been working with Mr. Smith and Blue Ridge Towers to determine any potential effects of the proposed tower. I apologize for the delay in our response.

On December 13, 2017, we approved a proposed cellular communication structure to be constructed by the Blue Ridge Towers. A copy of the approval letter is enclosed.

Thank you for your inquiry. If you have any questions, please contact David Anderson, Blue Ridge Parkway Landscape Architect at (828) 348-3435 or by email at j_david_anderson@nps.gov.

Sincerely,



J.D. Lee
Superintendent

Enclosure



City of Danville
Office of Economic Development

May 29, 2018

Mr. Carl Boggess
County Administrator, Bedford County Virginia
122 East Main Street
Bedford, VA 24523

Dear Mr. Boggess:

Mr. Anthony Smith, President of Blue Ridge Towers, Inc., has contacted me regarding his interest in working with Bedford County to construct nine cell towers and run over fifteen miles of fiber to supply users in rural areas of your county. Mr. Smith has worked with our office to establish two cell towers in the City of Danville, and for one of those towers, he actually purchased land from the Industrial Development Authority of Danville.

Our experience in working with Mr. Smith has been very satisfactory, and I am especially impressed with how he has maintained the site that he purchased from the IDA. That tower sits on a tract of land that is adjacent to a larger tract that the IDA is offering for industrial or commercial development. We were concerned that a potential unkempt plot would detract from the larger site, but Mr. Smith has maintained his plot in excellent condition and there are no issues whatsoever with his custody of this highly visible area.

Based on our experience in working with Anthony Smith and Blue Ridge Towers, Inc., I can give you an unqualified endorsement of how he and the company have performed in Danville.

Best wishes in getting a key service in place to serve your citizens with high speed broadband internet access. This is an essential component of twenty-first century life.

Yours truly,

E. Linwood Wright
Executive Consultant



Mr. Carl Boggess
County Administrator
Bedford County, VA

Dear Mr. Boggess,

This letter is written in support of Blue Ridge Tower/BRISNET. Core Telecom Systems has been working closely with Blue Ridge Towers to design a fixed wireless broadband service for Bedford County, VA. Core Telecom Systems is based in St Louis, MO and has over 20 years of experience designing, building, and deploying carrier class communication and data networks throughout rural America. Core Telecom Systems is uniquely positioned to help our partners with Fixed Wireless, Microwave, Fiber to the Home, Optical Transport, and Data Center solutions.

Blue Ridge Towers is uniquely qualified to start a Wireless Internet Service Provider (WISP) network. With the experience and dedication of the Blue Ridge Towers Team of building and maintaining towers and the experience and resources of Core Telecom Systems and our manufacturing partner Cambium Networks, Bedford County is in good hands. Core Telecom Systems acts as Cambium Networks most trusted Wireless System Integrator throughout North America. This allows our team (Blue Ridge Towers, Core Telecom Systems, and Cambium Networks) to bring the best possible value to Bedford County. Blue Ridge Towers provides a trusted local partner with the ability to leverage the experience and resources of Core Telecom Systems and Cambium Networks.

If I can answer any questions or be of service to Bedford County, please do not hesitate to contact me.

Regards,
Matthew Dorsey
Director of Wireless Solutions
Core Telecom Systems
620 340 7113
mdorsey@coretelecom.net

Company Introduction:

Cambium Networks is a leading global wireless communications technology provider that connects the unconnected with an extensive portfolio of reliable, scalable, and secure product offerings. Our portfolio offerings include; narrowband, WiFi, and broadband point-to-point (PTP) and point-to-multipoint (PMP) platforms managed by cloud-based software. Cambium Networks solutions enable enterprises; oil, gas and utility companies; Internet service providers; and public safety organizations to build powerful communications networks that surpass distance and geographic obstacles to reach users from across mountain tops to the last meter. Cambium Networks empowers network operators to intelligently manage their infrastructure through end-to-end network visibility and actionable analytics. Headquartered outside of Chicago and with R&D centers in the U.S., Ashburton, U.K., and Bangalore, India, Cambium Networks sells through a range of trusted global distributors.

Company Roots:

Cambium Networks was founded in 2011. It was created when Motorola Solutions sold the Canopy and Orthogon businesses to Vector Capital in August 2011. The following November, the company Cambium Networks formally began operating as an independent provider of fixed wireless broadband products.

Company Highlights:

- More than 5,000,000 modules deployed
- Installed in more than 10,000 networks around the world
- Worldwide channel comprised of more than 2,000 partner organizations
- Headquartered outside of Chicago, IL, United States (Rolling Meadows, IL)
- R&D centers in the US, Ashburton, UK, Kiev, Ukraine, and Bangalore, India
- Company Website: www.cambiumnetworks.com

End-to-end Cloud Management

cnMaestro™ is a cloud-based or on-site software platform for secure, end-to-end network control. cnMaestro wireless network manager simplifies device management by offering full network visibility. View and perform a full suite of wireless network management functions in real time. Optimize system availability, maximize throughput, and meet emerging needs of business and residential customers. Collect and display compliance with service level agreements.

Point-to-Point Backhaul

LTE, WiMAX, and public safety backhaul infrastructure need to be reliable. Cambium's PTP solutions provide carrier-grade reliability in the toughest environments. Solutions include 6–38 GHz licensed and unlicensed 5 GHz wireless backhaul options. PTP backhaul solutions enable service providers to rapidly extend past the network edge to offer new subscribers secure broadband connectivity for video, VoIP, and data connectivity.

Point-to-Multipoint Access

With a worldwide deployment record a decade strong, our Point-to-Multipoint (PMP) and ePMP™ wireless broadband service solutions connect millions of people across the world. With frequency reuse enabled by GPS Synchronization, your wireless broadband network can avoid the spectrum crunch and grow with your client base. Point to Multipoint distribution and access solutions enable network operators to provide high-speed wireless broadband service to business and residential customers. Applications supported include data and file transfer, voice, streaming video, and video surveillance. These Point-to-Multipoint wireless broadband networks scale from small deployments to connect remote areas to community-wide deployments with thousands of subscribers.

Wifi

Cambium Networks offers secure, scalable, cloud-managed WiFi solutions for home, small business, and both indoor and outdoor enterprise applications. The 802.11ac and 802.11n edge and enterprise access points ensure rapid deployment and simple operation. One-stop, intelligent remote diagnostics round out an easily managed wireless internet network, effortlessly connecting the unconnected.

High-Resiliency IIoT Wireless Communications

Promising delivery of real time monitoring, measurement, and analytics that optimize performance while establishing sustainable competitive advantage.

Cambium Networks solutions offer powerful, resilient communications infrastructure that interconnects sensors and controls across large-scale field area networks - harnessing the potential of the IIoT to transform accumulated and real-time data into insightful knowledge and critical actions.

cnReach™ provides affordable narrowband wireless connectivity for distribution automation, substation switch and circuit control, and SCADA telemetry.

For more information on Cambium Networks, visit: www.cambiumnetworks.com .

J&J Equipment Rentals

11453 U.S. Hwy 29

Chatham, Virginia

Wednesday, August 29, 2018

Carl Boggess
Bedford County Administrator
Bedford, Virginia

Dear Mr. Boggess,

Blue Ridge Towers is an outstanding company that does a lot of business with J&J Equipment Rentals. The company has been renting our equipment since 2015 and orders such pieces like a midsize excavator, dozer, skid steer loader and a compaction roller to get the job done right.

We have a great relationship with Mr. Smith and his crew and always look forward to partnering with Blue Ridge Towers on all their projects.

Like Mr. Smith and his associates take pride in their production so does J&J Equipment Rentals in regard to the equipment pieces that our owner both purchases and maintains.

We value Blue Ridge Towers and therefore do our utmost to provide the best of equipment and best of service to help keep their developments running efficiently.

Best regards,

Tray Coffey
J&J Equipment Rentals

EXHIBIT C INTENTIONALLY OMITTED

EXHIBIT D INTENTIONALLY OMITTED

EXHIBIT E TO COMPREHENSIVE AGREEMENT

**BEDFORD COUNTY BROADBAND AUTHORITY
BRT HOLDING COMPANY, INC.**

DESIGN-BUILD CONTRACT

This Contract, dated this _____ day of _____, 20____, between the Bedford County Broadband Authority, a political subdivision of the Commonwealth of Virginia under the Wireless Service Authorities Act ("Owner"), and Blue Ridge Tower, Inc., a Virginia corporation ("Contractor"), is binding among and between these parties as of the date of the Owner's signature.

R E C I T A L S

1. The legal address for the Owner and for the Contractor and the addresses for delivery of Notices and other project documents are as follows:

Owner- Bedford County Broadband Authority

Attn- G. Carl Boggess

Address- 122 East Main Street

City, State, Zip- Bedford, Virginia 24523

Telephone (540) 586-7601 Email cboggess@bedfordcountyva.gov

Contractor – Blue Ridge Tower, Inc.

Attn- Anthony Smith

Address- 1125 1st Street

City, State, Zip- Roanoke, Virginia 24016

Telephone (540) 595-7060 Email asmith@blueridgetowers.com

Contractor's Virginia License #: [#####]

FEIN/SSN: [#####]

SCC ID #: 08332827

2. The Project is identified as:

Project Title – Turn Key Broadband Project

General Project Description – Design and Construction of a wireless internet service system in unserved and underserved areas of Bedford County.

3. The Virginia licensed Architect / Engineer who will design the Project is:

Architect/Engineer – Foresight Group, Inc.

Address – 3740 Davinci Ct., Suite 100

City, State, Zip- Peachtree Corners, George 30092

Telephone (770) 368-1399 x. 319 FAX (770) 368-1944

5. Pursuant to the terms of the Comprehensive Agreement between the Parties, Contractor is awarded this Contract to perform the Work described by the Contract Documents for the above-described project ("the Project").

THEREFORE, in consideration of the Recitals set forth above, and good and valuable consideration as set forth below, the parties agree as follows:

1. **STATEMENT OF WORK:** The Contractor shall furnish all labor, equipment, and materials and perform all Work for the design and the construction of the Project in strict accordance with the Proposal.
2. **DESIGN-BUILD CONTRACT:** This Contract shall consist of the following:
 - This Contract Between Owner and Contractor;
 - The Solicitation attached to the Comprehensive Agreement as Exhibit A;
 - Proposal and Technical Details submitted by the Contractor, attached to the Comprehensive Agreement as Exhibit B;
 - the General Conditions of the Design Build Contract (referred to as the "General Conditions");
 - the Supplemental General Conditions.

All of these documents are incorporated herein by reference.

3. **TIME FOR COMPLETION:** The Work shall be commenced on a date to be specified in a written order of the Owner and shall be Substantially Completed within _____ calendar days or not later than the Contract Completion Date which is _____. The Work shall be finally completed within 30 days after the date of Substantial Completion of the Work.
4. **COMPENSATION TO BE PAID TO THE CONTRACTOR:** The Owner agrees to pay and the Contractor agrees to accept as just and adequate compensation for the performance of the Work in accordance with the Contract Documents the sum of Two Million Nine Hundred Thirty-Six Thousand Seven Hundred Eighty dollars (\$2,936,780), plus such contingencies as may be set forth herein.

5. **PAYMENTS:** The procedures for establishing a Schedule of Values for the Work, for requesting monthly progress payments for Work in place, and for requesting payments for properly stored materials are stated in the General Conditions. Unless otherwise provided under the Contract Documents, interest on payments due the Contractor shall accrue at the rate of one percent per month.
6. **CONTRACTUAL CLAIMS:** Any contractual claims shall be submitted in accordance with the contractual dispute procedures set forth in Section 47 of the General Conditions and the supplemental instructions or procedures, if any, attached to this Contract.
7. **NON-DISCRIMINATION:** § 2.2-4311 of the Code of Virginia applies to this contract. See Section 4 of the General Conditions.
8. **AUTHORIZATION TO TRANSACT BUSINESS**
The A/E certifies that, if it is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, it is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law, and that it shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Contract. The Contractor understands and agrees that the Owner may void this Contract if the Contractor fails to comply with these provisions.
9. **DEBARMENT AND ENJOINMENT:** By signing contract, the undersigned certifies that this Contractor or any officer, director, partner or owner is not currently barred from bidding on contracts by any public body of the Commonwealth of Virginia, or any public body or agency of another state, or any agency of the federal government, nor is this Contractor a subsidiary or affiliate of any firm/corporation that is currently barred from bidding on contracts by any of the same.
10. **“ALL RISK” BUILDER’S RISK INSURANCE:** *As this project is a modification to an existing building, in accordance with Section 12(b) - **Owner Controlled During Construction** of the General Conditions, the requirements of Section 12(a) - **Contractor Controlled During Construction** of the General Conditions do not apply.*

[SIGNATURES ON FOLLOWING PAGE]

BEDFORD COUNTY BROADBAND AUTHORITY

IN WITNESS WHEREOF, the parties hereto on the day and year written below have executed this agreement in three (3) counterparts, each of which shall, without proof or accountancy for the other counterparts, be deemed an original thereof.

BRT HOLDING COMPANY, INC.:

BEDFORD COUNTY BROADBAND
AUTHORITY:

Sign

Sign

Name

Name

Position

Position

Approved as to legal form
Authority Counsel

GENERAL CONDITIONS OF THE DESIGN-BUILD CONTRACT

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1. DEFINITIONS

Whenever used in these General Conditions of the Design Build Contract ("General Conditions") or in the Contract Documents, the following terms have the meanings indicated, which are applicable to both the singular and plural and the male and female gender thereof:

Architect, Engineer, Architect/Engineer, or A/E: The term used to designate the duly Virginia-licensed person, persons, or entities designated by the Design-Build Contractor to perform and provide the Architectural and Engineering design and related services in connection with the Work.

Beneficial Occupancy: The condition after Substantial Completion but prior to Final Completion of the Project at which time the Project, or portion thereof, is sufficiently complete and systems operational such that the Owner could, after obtaining necessary approvals and certificates, occupy and use the Project for its intended use. Guarantees and warranties applicable to that portion of the Work begin on the date the Owner accepts the Project, or a portion thereof, for such Beneficial Occupancy, unless otherwise specified in the Supplemental General Conditions or by separate agreement. At beneficial occupancy of any part of the Project, the Owner shall indicate whether such portion of the Project shall be "idled" until substantial completion and entry into the Operating Phase under the Comprehensive Agreement, or may enter into immediate service.

Change Order: A document issued on or after the effective date of the Contract which is agreed to by the Contractor and approved by the Owner, and which authorizes an addition, deletion, or revision in the Work, including any adjustment in the Contract Price and/or the Contract Completion Date. The term Change Order shall also include written orders to proceed issued pursuant to Section 38(a)(3). A Change Order, once signed by all parties, is incorporated into and becomes a part of the Contract.

Code of Virginia: The Code of Virginia, 1950, as amended. Sections of the Code referred to herein are noted by § xx-xx.

Comprehensive Agreement: The PPEA Comprehensive Agreement of which this Design-Building Contract is part.

Construction: The term used to include new construction, reconstruction, renovation, restoration, major repair, demolition, and all similar work upon buildings and ancillary facilities, including any draining, dredging, excavation, grading, or similar work upon real property.

Contract: This Contract between Owner and Design-Build Contractor.

Contract Completion Date: The date by which the Work must be Substantially Complete, which is set forth in the Contract between Owner and Design Build Contractor.

BEDFORD COUNTY BROADBAND AUTHORITY

Contract Documents: The Contract between Owner and Design-Build Contractor signed by the Owner and the Contractor and any documents expressly incorporated therein, and all modifications including addenda and subsequent Change Orders.

Contract Price: The total compensation payable to the Contractor for performing the Work, subject to modification by Change Order.

Contractor or Design-Build Contractor: The person or entity with whom the Owner has entered into a contract to do the Work.

Date of Commencement: the date as indicated in the written Notice to Proceed, the receipt of the earliest Building Permit, or a date mutually agreed to between the Owner and Contractor in writing, whichever is the latest.

Day(s): Calendar day(s) unless otherwise noted.

Defective: An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, deficient, does not conform to the Contract Documents, or does not meet the requirements of inspections, standards, tests, or approvals required by the Contract Documents, or Work that has been damaged prior to the final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion or Beneficial Occupancy).

Design-Build Proposal: The Proposal, including modifications, submitted by the Design-Build Contractor in response to the Owner's PPEA Solicitation setting forth the design concepts, design criteria, pricing requirements, and other conditions of the Work to be performed, for the construction phase of the development.

Drawing: A page or sheet of the Plans which presents a graphic representation, usually drawn to scale, showing the technical information, design, location, and dimensions of various elements of the Work. The graphic representations include, but are not limited to, plan views, elevations, transverse, and longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedules, tables, and/or pictures.

Emergency: Any unforeseen situation, combination of circumstances, or a resulting state that poses imminent danger to health, life, or property.

Field Order: A written order issued by the A/E which clarifies or explains the plans or specifications, or any portion or detail thereof, without changing the design, the Contract Price, the Time for Completion, or the Contract Completion Date.

Final Completion Date: The date of the Owner's acceptance of the Work from the Contractor upon confirmation from the Contractor that the Work is totally complete in accordance with Section 44(b).

Final Payment: The final payment that the Contractor receives pursuant to the applicable provisions of Section 36, except in the event no final payment is made due to termination of the Contract under either Sections 41 or 42. In the event of a termination for cause under Section 41, the Final Payment shall be when the termination became effective. In the event of a termination for convenience under Section 42, the Final Payment shall be either the payment of compensation for termination that the Contractor receives according to the provisions of Subsection 42, or the Owner's determination that no compensation for termination is due the Contractor under Subsection 42, as the case may be.

Float: The excess time included in a construction schedule to accommodate such items as inclement weather and associated delays, equipment failures, and other such unscheduled events. It is the contingency time associated with a path or chain of activities and represents the amount of time by which the early finish date of an activity may be delayed without impacting the critical path and delaying the overall completion of the Project. Any difference in time between the Contractor's approved early completion date and the Contract Completion Date shall be considered a part of the Project float.

Float, Free: The time (in days) by which an activity may be delayed or lengthened without impacting upon the start day of any activity following in the chain.

Float, Total: The difference (in days) between the maximum time available within which to perform an activity and the duration of an activity. It represents the time by which an activity may be delayed or lengthened without impacting the Time for Completion or the Contract Completion Date.

Notice: All written notices, including demands, instructions, claims, approvals and disapprovals, required or authorized under the Contract Documents. Any written notice by either party to the Contract shall be sufficiently given by any one or combination of the following, whichever shall first occur: (1) delivered by hand to the last known business address of the person to whom the notice is due; (2) delivered by hand to the person's authorized agent, representative, or officer wherever they may be found; or (3) enclosed in a postage prepaid envelope addressed to such last known business address and delivered to a United States Postal Service official or mailbox; or (4) email. Notice is effective upon such delivery. All notices to the Owner should be directed to the Project Manager. All notices shall be titled as to their purpose in the subject line (i.e. "notice," "demand," "claim," "instruction," "approval," and "disapproval"). The notice must be dated and should clearly state whether the notice is one required under the contract documents.

Notice to Proceed: A written notice given by the Owner to the Contractor (with a copy to A/E) fixing the date on which the Contract time will commence for the Contractor to begin the prosecution of the Work in accordance with the requirements of the Contract Documents. The Notice to Proceed will customarily identify a Contract Completion Date.

Operating Agreement: Refers to that part of the Comprehensive Agreement which covers operation of the Project subsequent to its completion.

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Operating Phase: The time during which the Project will be operated, subsequent to the completion of design and construction of the Project.

Owner: The public body with whom the Contractor has entered into a contractual agreement and for whom the Work or services is to be provided.

Person: This term includes any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

Plans: The term used to describe the group or set of project-specific drawings prepared by the Design Build Contractor's A/E and acceptable to the Owner which describe the proposed Work in sufficient detail and provide sufficient information for the Building Official, Virginia Department of Health, Soil Erosion, and Sediment Control Officials, and Bedford County Broadband Authority personnel, to determine code compliance and for the Contractor to perform the Work and which are included in the Contract Documents.

Project: The term used instead of the specific or proper assigned title of the entire undertaking which includes, but is not limited to, the "Work" described by the Contract Documents, including any specific Phases or Subphases of such Work, but not any matter covered in the Operating Agreement related to the Operating Phase of the Comprehensive Agreement.

Project Inspector: One or more persons employed by the Owner to inspect the Work for the Owner and/or to document and maintain records of activities at the Site to the extent required by the Owner. The Owner shall notify the Contractor in writing of the appointment of such Project Inspector(s). The scope of the Project Inspector's authority with respect to the Contractor is limited to that indicated in Section 16(e) and (f) and as supplemented by the Owner in writing to the Project Inspector and to the Contractor.

Project Manager: The Project Manager as used herein shall be the Owner's designated representative on the Project. The Project Manager shall be the person through whom the Owner generally conveys written decisions and notices. All notices due the Owner and all information required to be conveyed to the Owner shall be conveyed to the Project Manager. The scope of the Project Manager's authority is limited to that authorized by the Owner, who shall provide written information to the Contractor at the Preconstruction meeting defining those limits. Upon receipt of such information, the Contractor shall be on notice that it cannot rely on any decisions of the Project Manager outside the scope of his authority. Nothing herein shall be construed to prevent the Owner from issuing any notice directly to the Contractor. The Owner may change the Project Manager from time to time and may, in the event that the Project Manager is absent, disabled or otherwise temporarily unable to fulfill his duties, appoint an interim Project Manager.

Provide: Shall mean furnish and install ready for its intended use.

Schedule of Values: The schedule prepared by the Contractor and acceptable to the Owner which indicates the value of that portion of the Contract Price to be paid for each trade or major component of the Work.

Site: Shall mean the location at which the Work is performed or is to be performed.

Specifications: That part of the Contract Documents prepared by the Design-Build Contractor's A/E and acceptable to the Owner which contain the written design parameters and the technical descriptions of materials, equipment, construction systems, standards, and workmanship which describe the proposed Work in sufficient detail and provide sufficient information for the Building Official, Virginia Department of Health, Soil Erosion, and Sediment Control Officials, Bedford County, and Bedford County Broadband Authority personnel to determine code compliance and for the Contractor to perform the Work.

Subcontractor: A person having a direct contract with Contractor or with any other Subcontractor for the performance of the Work. Subcontractor includes any person who provides on-site labor but does not include any person who only furnishes or supplies materials for the Project.

Submittals: All shop, fabrications, setting and installation drawings, diagrams, illustrations, schedules, samples, and other data required by the Contract Documents which are specifically prepared by or for the Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information prepared by a Supplier and submitted by the Contractor to illustrate material or equipment conformance of some portion of the Work with the requirements of the Contract Documents.

Substantial Completion or Substantially Complete: The condition when the Owner agrees that the Work, or a specific portion thereof, is sufficiently complete, in accordance with the Contract Documents, so that it can be used by the Owner for the purposes for which it was intended. The Owner at its sole discretion may, after obtaining the necessary approvals and certificates, take Beneficial Occupancy at this time or choose to wait to occupy until after Final Completion is achieved.

Supplemental General Conditions: That part of the Contract Documents which amends or supplements the General Conditions.

Supplier: A manufacturer, fabricator, distributor, materialman or vendor who provides material for the Project but does not provide on-site labor.

Time for Completion: The number of consecutive calendar days following the Date of Commencement which the Contractor has to substantially complete all Work required by the Contract.

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Underground Facilities: All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which are or have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems, or water.

Work: The services performed under this Contract including, but not limited to, furnishing labor, and furnishing and incorporating materials and equipment into the construction. The Work also includes the entire completed construction, or the various separately identifiable parts thereof, required to be provided under the Contract Documents or which may reasonably be expected to be provided as part of a complete, code compliant, and functioning system for those systems depicted in the plans and specifications and described in the project description of the Design Build Contract.

2. CONTRACT DOCUMENTS

- (a) The Comprehensive Agreement between Owner and Contractor lists the Contract Documents. The Contract Documents shall also include the Workers' Compensation Certificate of Coverage, the Performance Bond, the Labor and Material Payment Bond, the Schedule of Values and Certificate for Payment, the Affidavit of Payments of Claims, the Contractor's Certificate of Substantial Completion, and the Contractor's Certificate of Final Completion, which are forms incorporated in these Design-Build General Conditions by reference and are made a part hereof. They must be used by the Contractor for their respective purposes.
- (b) All times and time limits stated in the Contract Documents, including but not limited to the Time for Completion of the Work, are of the essence of the Contract.
- (c) The Contract between Owner and Design-Build Contractor shall be signed by the Owner and the Design Build Contractor in as many original counterparts as may be mutually agreed upon, each of which shall be considered an original.
- (d) Anything called for by one of the Contract Documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other Contract Documents shall have the intended effect. In the event of conflicts among the Contract Documents, the Contract Documents shall take precedence in the following order: the Contract between Owner and Contractor; the Supplemental General Conditions; the General Conditions; the Special Conditions; the approved specifications with attachments; and the approved plans.
- (e) All correspondence, invoices, memoranda, submittals and other documents related to this Project whether generated by the Owner, the A/E, the Contractor or others should be clearly identified at the beginning of the document with the project name.

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Additional identification such as a job number, purchase order number, or such may also be shown at the generator's option.

- (f) If any provision of this Contract shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision.
- (g) The Virginia Soil Erosion and Sediment Control Requirements are included by reference as if fully set forth herein and shall be complied with for the design and construction of the project.

3. LAWS AND REGULATIONS

- (a) The Contractor shall comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Work and shall give all notices required thereby. The Contractor shall assure that all Subcontractors and tradesmen who perform Work on the project are properly licensed by the Department of Professional and Occupational Regulation as required by Title 54.1, Chapter 11, Articles 1 and 3 of the Code of Virginia and by applicable regulations.
- (b) This Contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, Code of Virginia, relating to labor unions and the "right to work." The Contractor and its Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any Work related to the Project shall comply with all of the said provisions.
- (c) IMMIGRATION REFORM AND CONTROL ACT OF 1986: By signing this Contract, the Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.
- (d) The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia and as issued by the Department of Labor and Industry under Title 40.1 or the Code of Virginia shall apply to all Work under this Contract. Inspectors from the Department of Labor and Industry shall be granted access to the Work for inspection without first obtaining a search or administrative warrant.
- (e) Permits and Compliance with Specific Regulations: All work will be designed, constructed, and commenced in accordance with all applicable laws, standards, regulations, and permits. Such permits and regulations include, but are not necessarily limited to, the Virginia Department of Environmental Quality (DEQ) requirements and permits, the Soil Erosion and Sediment Control Regulations and permits, the Virginia Uniform Statewide Building Code and building permits, and any applicable requirements of the Code of Bedford County, Virginia.

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- (f) The Contractor will obtain approvals in order to satisfy the requirements of all agencies that require approvals and permits overseeing the project (see partial list in Permits and Regulations above). This may require testing data, operations manuals, maintenance manuals, as-built drawings, and certifications of completion as required by each agency. The Contractor is fully responsible for completion of the Work necessary for obtaining such approvals.
- (g) The Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to include or otherwise be subject to the same payment and interest requirements in Subsections (a), (b), and (c) of Section 37 of these General Conditions with respect to each lower-tier Subcontractor and Supplier.
- (h) The Contractor, if not licensed as an asbestos abatement contractor in accordance with § 54.1-514, shall have all asbestos-related Work performed by subcontractors who are duly licensed as asbestos contractors appropriate for the Work required.
- (i) Lead Based Paint Activities: If the Contract Documents indicate that lead based paint is present on existing materials, components, or surfaces, the Contractor shall conform to the following:
 - (1) The requirements set forth in 59 Federal Register 45,872 (September 2, 1994) Proposed Rule - Lead: Requirements for Lead based Paint Activities (Proposed Rules) in selecting and performing the means, methods and procedures for performing the Work. This includes, but is not limited to, training of personnel, lead abatement, encapsulation of lead containing materials, removal and handling of lead containing materials, and methods of disposal. When the Final Rule, to be codified at 40 C.F.R. § 745, supersedes the Proposed Rule, the Contractor shall be responsible for conforming to the Final Rule, as of the effective date set forth therein.
 - (2) The requirements for employee protection contained in 29 C.F.R. Part 1926, Subpart D, and the requirements for record-keeping contained 29 C.F.R. Part 1910.
 - (3) The Virginia Department of Labor and Industry's (DLI) Emergency Regulation published in the May 27, 1996, Virginia Register, requiring, among other things, that a permit be issued to the lead abatement contractor, or any subsequent regulation issued by DLI.
- (j) If the Contractor violates laws or regulations that govern the Project, the Contractor shall take prompt action to correct or abate such violation and shall indemnify and hold the Owner harmless against any fines and/or penalties that result from such violation. To the extent that such violation is the result of negligence or other actionable conduct of the Contractor, the Contractor shall indemnify and hold the Owner harmless against any third party claims, suits, awards, actions, causes of action or judgments, including but not limited to reasonable attorney's fees and costs incurred thereunder, that arise or result from such violation.

4. NONDISCRIMINATION

(a) §2.2-4311 of the Code of Virginia shall be applicable. It provides as follows:

1. During the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such Contractor is an equal opportunity employer.
- c. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The Contractor will include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

(b) Where applicable, the Virginians with Disabilities Act and the Federal Americans with Disabilities Act shall apply to the Contractor and all Subcontractors.

5. PROHIBITION OF ALCOHOL AND OTHER DRUGS

(a) § 2.2-4312 of the Code of Virginia shall be applicable. It provides as follows:

“During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor'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 contractor'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 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes

of this section, ‘drug-free workplace’ means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom 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 contract.”

- (b) The Contractor shall also establish, maintain and enforce policies which prohibit the following acts by all Contractor, Subcontractor and Supplier personnel at the Site:
 - (1) the manufacture, distribution, dispensation, possession, or use of alcohol, marijuana or other drugs, except possession and medically prescribed use of prescription drugs; and
 - (2) the impairment of judgment or physical abilities due to the use of alcohol, marijuana, or other drugs, including impairment from prescription drugs.

6. TIME FOR COMPLETION

- (a) The Time for Completion for the project including any dates for completion of any designated Phase or Sub-phase shall be as stated in the Contract as agreed upon by the Owner and Contractor, subject to Change Orders or written mutual agreement of Owner and Contractor. The Work must be substantially completed by the Time for Completion or the Contract Completion Date. Unless otherwise specified, the Contractor shall achieve Final Completion within thirty (30) days after the date of Substantial Completion.
- (b) The Time for Completion shall be stated in the Contract between Owner and Design Build Contractor and shall become a binding part of the Contract upon which the Owner may rely in planning the use of the facilities to be constructed and for all other purposes. If the Contractor fails to substantially complete the Work within the Time for Completion or Contract Completion Date, as set forth in the Contract, he shall be subject to payment of actual damages incurred by the Owner or liquidated damages, if provided for in the Contract.
- (c) The Contractor, in submitting his Proposal and Project Schedule, acknowledges that he has taken into consideration normal weather conditions. For purposes of this Section, normal weather is defined as that which is not considered extraordinary or catastrophic and is not reasonably conducive to the Contractor progressively prosecuting critical path work under the Contract. Weather events considered extraordinary or catastrophic include, but are not limited to, tornadoes, hurricanes, earthquakes, and floods that exceed a 25-year storm event as defined by National Oceanic and Atmospheric Administration (NOAA) for the NOAA data gathering location that is nearest the project site. No additional compensation will be paid to the Contractor because of adverse weather conditions; however, an extension of

time for abnormal weather will be considered by the Owner under the following conditions, all of which must be strictly complied with by the contractor:

- (1) The request for additional time shall be further substantiated by independent weather data collected during the period of delay at the Site affected by the alleged weather delay.
 - (2) The extension requested must be supported by a delay in completion of the entire Project shown on the critical path of the accepted Schedule required for the Project. Extensions will be granted only for delays in completion of the Project, not for that portion of any delay which consumes only "float" time.
 - (3) A request for extension of time based on abnormal weather, and supporting data, must be made within thirty (30) days of the date of the alleged abnormal weather at the Site.
- (d) The failure by the Contractor to comply with any and all of the conditions in (c) above shall constitute a waiver of claims for the extension of time for abnormal weather.
- (e) The Contractor represents and agrees that he has taken into account in his proposal the requirements of the bid documents, the Contract Documents, local conditions, availability of materials, equipment, and labor, and any other factors which may affect the performance of the Work.

7. CONDITIONS AT SITE

The Contractor shall have visited the Site prior to submitting its proposal and is totally responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site, and the character and extent of existing conditions, improvements, and work within or adjacent to the Site. Claims which result from the Contractor's failure to do so will be deemed waived.

8. CONTRACT SECURITY

- (a) Contractor shall deliver to the Owner or its designated representative a Performance Bond and Labor and Material Payment Bond, each fully executed by the Contractor and one or more surety companies legally licensed to do business in Virginia and each in an amount equal to one hundred percent (100%) of the accepted proposal. If more than one Surety executes a bond, each shall be jointly and severally liable to the Owner for the entire amount of the bond. Sureties shall be selected by the Contractor, subject to approval by the Owner. No payment on the Contract shall be due and payable to the Contractor until the bonds have been approved by the

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Owner. The power of attorney from the surety company to its agent who executes the bond shall be attached to the bond.

- (b) For the purposes of all Labor and Material Payment Bonds entered into, the term "subcontractors" as used in §2.2-4337(A)(2) of the Code of Virginia is interpreted to mean any contractors who participated in the prosecution of the Work undertaken by the Contractor (referred to in §2.2-4337(A)(2) of the Code of Virginia as the "prime contractor"), whether such contractor had a direct contract with the Contractor (prime contractor) or whether there were one or more other intervening Subcontractors contractually positioned between it and the Contractor (prime contractor).

9. SUBCONTRACTS

- (a) The Contractor shall, as soon as practicable after the signing of the Contract, notify the Owner in writing of the names of all Subcontractors or consortium partners proposed for the principal parts of the Work and of such others as the Owner may direct. Where the specifications establish qualifications or criteria for Subcontractors, manufacturers, or individuals performing Work on the Project, the Contractor shall be responsible for ascertaining that those proposed meet the criteria or qualifications. The Contractor shall not employ any Subcontractor that the Owner may, within a reasonable time, object by written notice to Contractor as unsuitable.
- (b) The Owner shall, on request, furnish to any Subcontractor, if practicable, the amounts of payments made to the Contractor, the Schedule of Values, and Requests for Payment submitted by the Contractor and any other documentation submitted by the Contractor which would tend to show what amounts are due and payable by the Contractor to the Subcontractor.
- (c) The Contractor shall be fully responsible to the Owner for all acts and omissions of his agents and employees and all succeeding tiers of Subcontractors and Suppliers performing or furnishing any of the Work. Nothing in the Contract Documents shall create any contractual relationship between Owner and any such Subcontractor, Supplier, or other person or organization, nor shall it create any obligation on the part of Owner to pay for or to see to the payment of any moneys due any such Subcontractor, Supplier, or other person or organization, except as may otherwise be required by law.
- (d) The Contractor shall be fully responsible for his invitees at the Site and for those of his Subcontractors, Suppliers, and their employees, including any acts or omissions of such invitees.
- (e) The Contractor agrees that he alone is responsible for all dealings with his Subcontractors and Suppliers, and their subcontractors, employees, and invitees.

10. SEPARATE CONTRACTS

- (a) The Owner reserves the right to let other contracts in connection with the Project, the Work under which may proceed simultaneously with the execution of this Contract. The Contractor shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work. The Contractor shall cooperate with them and shall take all reasonable action to coordinate his Work with theirs. If the Owner has listed other separate contracts in the Requests for Proposals which it expects to proceed simultaneously with the Work of the Contractor, and has included the estimated timing of such other Contracts in the Requests for Proposals, the Contractor shall integrate the schedule of those separate contracts into his scheduling. The Contractor shall make every reasonable effort to assist the Owner in maintaining the schedule for all separate contracts. If the work performed by the separate contractor is defective or performed so as to prevent or threaten to prevent the Contractor from carrying out his Work according to the Contract, the Contractor shall immediately notify the Owner upon discovering such conditions.
- (b) If a dispute arises between the Contractor and any separate contractor(s) as to their responsibility for cleaning up as required by Sections 31(c) and 31(d) of these General Conditions, the Owner may clean up and charge the cost thereof to the respective contractors in proportion to their responsibility. If a Contractor disputes the Owner's apportionment of clean-up costs, it shall be that Contractor's burden to demonstrate and prove the correct apportionment.

11. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE

- (a) The Contractor shall not commence Work under this Contract until he has obtained all the insurance required hereunder from an insurer authorized to do business in Virginia and such insurance has been approved by the Owner; nor shall the Contractor allow any Subcontractor to commence Work on his subcontract until the same types of insurance in an appropriate amount have been obtained by the Subcontractor and approved by the Contractor. Approval of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.
- (b) The Contractor shall take out and shall maintain in force at all times during the performance of the Work Workers' Compensation and Employers' Liability Insurance for all of his employees engaged in the Work in an amount not less than the minimum required by § 2.2-4332 and § 65.2-100 et seq. of the Code of Virginia, and, in case any of the Work is sublet, the Contractor shall require each Subcontractor similarly to provide Workers' Compensation and Employers' Liability Insurance for all of the latter's employees to be engaged in the Work. Contractor shall submit, on the form provided by the Owner, a Certificate of Coverage verifying Workers' Compensation coverage. The Contractor shall likewise obtain a Certificate of Coverage for Workers' Compensation coverage

from each subcontractor prior to awarding the subcontract and shall provide a copy to the Owner.

- (c) During the performance of the Work under this Contract, that: Contractor shall maintain commercial general liability insurance to include Premises/Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability, and Personal Injury Liability, which shall insure him against claims of personal injury, including death, as well as against claims for property damage, which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of general liability insurance shall be not less than **\$1,000,000** per occurrence and **\$2,000,000** aggregate combined limit.
- (d) During the performance of the Work under this Contract, the Contractor shall maintain automobile liability insurance which shall insure him against claims of personal injury, including death, as well as against claims for property damage, which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of automobile insurance shall be not less than **\$1,000,000** combined limit for bodily injury and property damage per occurrence.
- (e) The Contractor's Architect/Engineer responsible for the design portion of the Work shall obtain and maintain in force during the contract period and for a period of 5 years after the final completion of the Work professional liability and errors and omission insurance in the amount of **\$1,000,000** per claim occurrence and **\$1,000,000** aggregate combined claims limit. Contractor shall cause each A/E to agree in writing to indemnify and hold harmless the Owner from claims, losses, or damages, to the extent caused by (i) the errors or omissions in the services performed by the A/E or (ii) claims of patent infringement, copyright infringement, or similar claims arising from such services. Contractor shall furnish the Owner with evidence of the errors and omissions policy or policies of the A/E.
- (f) Contractor shall obtain and maintain throughout the performance of this Contract, umbrella/excess liability insurance with minimum coverage (single limit) of **\$2,000,000**, supplementing the Commercial General Liability and Automobile Liability Insurance.

12. "ALL RISK" BUILDER'S RISK INSURANCE

- (a) **Contractor-Controlled During Construction:** The Contractor, at his own cost, shall obtain and maintain in the names of the Owner and the Contractor "all-risk" builder's risk insurance (or fire, extended coverage, vandalism, and malicious mischief insurance, if approved by the Owner) upon the entire structure or structures on which the Work is to be done and upon all material in or adjacent thereto which is intended for use thereon, to one hundred percent (100%) of the

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insurable value thereof (i.e., construction costs, soft costs, FF&E, and the residual value of the existing structure to remain). Such insurance may include a deductible provision is so provided in the Supplemental General Conditions, in which case the Contractor shall be liable for such deductions whenever a claim arises. The loss, if any, is to be made adjustable with and payable to the Owner, in accordance with its interests, as they may appear. The Owner, its officers, employees, and agents, shall be named as additional insureds in any policy of insurance issued. Written evidence of the insurance shall be filed with the Owner no less than thirty (30) days following award of the Contract. In the event of cancellation of this insurance, not less than thirty (3) days' prior written notice shall be sent to the Owner. Contractor shall provide a copy of the policy of insurance to the Owner upon demand.

- (b) **Owner-Controlled During Construction:** The Owner maintains insurance coverage on its property. On renovation of existing structures where the Owner continues to use the structure or portion thereof while the Work is being performed, the Contractor shall provide "all risk" builder's risk insurance, as described above, in an amount equal to one hundred percent (100%) of the cost of the Work (i.e., construction costs, soft costs, and FF&E costs). In those instances, the Contract between the Owner and Contractor for the project shall expressly exclude the project from the requirements of Section 12(a). The Contractor is responsible for providing any desired coverage for Contractor's or Subcontractors' buildings, equipment, materials, tools, or supplies that are on-site.
- (c) The value of the builder's risk insurance may exclude the costs of excavations, backfills, foundations, underground utilities, and site work.
- (d) Any insurance provided by the Owner will not extent to Contractor's or Subcontractors' buildings, equipment, materials, tools, or supplies unless those items are to become property of the Owner upon completion of the Project and the Owner has assumed responsibility for such items at the time of the loss.

13. TAXES, FEES AND ASSESSMENTS

The Contractor shall, without additional expense to the Owner, pay all applicable federal, state, and local taxes, fees, and assessments except the taxes, fees, and assessments on the real property comprising the Site of the project.

14. PATENTS

The Contractor shall obtain all licenses necessary to use any invention, article, appliance, process, or technique of whatever kind and shall pay all royalties and license fees. The Contractor shall hold the Owner, its officers, agents, and employees harmless against any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article, or appliance manufactured or used in the performance of the Contract, including its use by the Owner. If, before using any invention,

process, technique, article, or appliance specifically named in the specifications or plans as acceptable for use in carrying out the Work, the Contractor has or acquires information that the same is covered by letters of patent making it necessary to secure the permission of the patentee, or other, for the use of the same, he shall promptly advise the Owner. The Owner may direct that some other invention, process, technique, article, or appliance be used. Should the Contractor have reason to believe that the invention, process, technique, article, or appliance so specified is an infringement of a patent, and fail to inform the Owner, he shall be responsible for any loss or liability due to the infringement.

15. ARCHITECT/ENGINEER'S STATUS

- (a) The Design Build Contractor's Architect/Engineer shall be duly and properly licensed by the Virginia Department of Professional and Occupational Regulation to provide these services in Virginia. The Architect/Engineer shall provide the professional services to design the Work in conformance with the applicable standards indicated below.
- (b) The Architect/Engineer shall have authority to endeavor to secure the faithful performance by Owner and Design Build Contractor of the Work under the Contract. He shall review the Contractor's Submittals for conformance to the requirements of the Contract Documents and return copies to the Contractor with appropriate notations. He shall interpret the requirements of the plans and specifications and issue Field Orders to the Contractor as may be required. He shall recommend to the Owner suspension of the Work (in whole or in part) whenever such suspension may be necessary to ensure the proper execution of the Contract. He shall have authority to reject, in writing, Work, including material, installation, or workmanship, which does not conform to the requirements of the plans and specifications. He shall determine the progress and quality of the Work, subject to the right of the Owner to make an overriding decision to the contrary. Upon request by the Contractor, the Architect/Engineer shall confirm in writing within fourteen (14) days any oral order or determination made by him.
- (c) Any building design shall conform to the requirements of the Virginia Uniform Statewide Building Code, all standard manuals relating thereto, and Virginia Soil Erosion and Sediment Control Regulation. The current edition of the regulations and specifications in effect at the time the construction documents are submitted shall be the applicable for each phase of the project.
- (d) The Architect/Engineer shall have no authority to approve or order changes in the Work which alter the approved plans and specifications which were the basis of the Building Permit, Soil Erosion Permit, or other permit without obtaining approval of the appropriate Official.
- (e) The provisions of this section are included as information only to describe the relationship between the Owner, A/E, and Contractor. No failure of the A/E to act

in accordance with this section shall relieve the Contractor from his obligations under the Contract or create any rights in favor of the Contractor.

16. INSPECTION

- (a) All material and workmanship shall be subject to inspection, examination and testing by the Owner, its Project Inspector, authorized inspectors, and authorized independent testing entities at any and all times during manufacture and/or construction. The Owner shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefor, and the Contractor shall promptly segregate and remove the rejected material from the Site. If the Contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the Owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed as provided in Section 41 of these General Conditions, the Contractor and surety being liable for any damage to the same extent as provided in Section 41 for termination thereunder.
- (b) Site inspections, tests conducted on Site, or tests of materials gathered on Site, which the Contract requires to be performed by independent testing entities, shall be contracted for by Contractor and paid for by the Owner. The Contractor shall promptly furnish, without additional charge, all reasonable facilities, labor, and materials necessary and convenient for making such tests. Except as provided in (d) below, whenever such examination and testing finds defective materials, equipment, or workmanship, the Contractor shall reimburse the Owner for the cost of reexamination and retesting following correction. Although conducted by independent testing entities, the Owner will not contract and pay for tests or certifications of materials, manufactured products, or assemblies which the Contract, codes, standards, etc., require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual, or ASTM. If fees are charged for such tests and certifications, they shall be paid by the Contractor. The Contractor shall also pay for all inspections, tests, and certifications which the Contract specifically requires him to perform or to pay, together with any inspections and tests which he chooses to perform for his own purposes, but are not required by the Contract.
- (c) Where Work is related to or dependent on the Defective Work, the Contractor shall stop such related or dependent Work until the Defective Work or deficiency is corrected or an alternative solution is presented that is satisfactory to the Owner. Where Work is rejected because of defective material or workmanship, the Contractor shall stop like Work in other areas or locations on the Project until the matter is resolved and the Owner has approved corrective measures.

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- (d) Should it be considered necessary or advisable by Owner at any time before final acceptance of the entire Work to make an examination of any part of the Work already completed, by removing or tearing out portions of the Work, the Contractor shall on request promptly furnish all necessary facilities, labor, and material to expose the Work to be tested to the extent required. If such Work is found to be defective in any respect due to the fault of the Contractor or his Subcontractors, the Contractor shall bear all the expenses of uncovering the Work, of examination and testing, and/or satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Contract, the actual cost of the Contractor's labor and material necessarily involved in uncovering the Work, the cost of examination and testing, and Contractor's cost of material and labor necessary for replacement including a markup of fifteen (15%) percent for overhead and profit shall be paid to the Contractor and he shall, in addition, if completion of the Work has been delayed thereby, be granted suitable extension of time. Notwithstanding the foregoing, the Contractor shall be responsible for all costs and expenses in removing and replacing the Work if the Contractor had covered the Work prior to any inspection or test contrary to the instructions of the A/E, Owner, or Project Inspector.

- (e) The Project Inspector has the authority to recommend to the Owner that the Work be suspended when in his judgment the Contract Documents are not being followed. Any such suspension shall be continued only until the matter in question is resolved to the satisfaction of the Owner. The cost of any such Work stoppage shall be borne by the Contractor unless it is later determined that no fault existed in the Contractor's Work.

- (g) The Project Inspector has the right and the authority to:
 - (1) Inspect all construction materials, equipment, and supplies for quality and for compliance with the Contract Documents and/or approved shop drawings and Submittals.
 - (2) Inspect workmanship for compliance with the standards described in the Contract Documents.
 - (3) Observe and report on all tests and inspections performed by the Contractor.
 - (4) Recommend rejection of Work which does not conform to requirements of the Contract Documents.
 - (5) Keep a record of construction activities, tests, inspections, and reports.
 - (6) Attend all joint Site construction meetings and inspections held by the Owner and/or the A/E with the Contractor.

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- (7) Check materials and equipment, together with documentation related thereto, delivered for conformance with approved Submittals and the Contract.
 - (8) Check installations for proper workmanship and conformance with shop drawing and installation instructions.
 - (9) Assist in the review and verification of the Schedule of Values & Certificate for Payment, submitted by the Contractor each month.
 - (10) Do all things for or on behalf of the Owner as the Owner may subsequently direct in writing.
- (h) The Project Inspector has no authority to:
- (1) Authorize deviations from the Contract Documents.
 - (2) Enter into the area of responsibility of the Contractor's superintendent.
 - (3) Issue directions relative to any aspect of construction means, methods, techniques, sequences or procedures, or in regard to safety precautions and programs in connection with the Work.
 - (4) Authorize or suggest that the Owner occupy the Project, in whole or in part.
 - (5) Issue a certificate for payment.
- (i) The duties of the Project Inspector are for the benefit of the Owner only and not for the Contractor. The Contractor may not rely upon any act, statement, or failure to act on the part of the Project Inspector, nor shall the failure of the Project Inspector to properly perform his duties, in any way excuse Defective Work or otherwise improper performance of the Contract by the Contractor.

17. SUPERINTENDENCE BY CONTRACTOR

- (a) The Contractor shall have a competent foreman or superintendent, satisfactory to the Owner, on the Site at all times during the progress of the Work. The superintendent or foreman shall be familiar with and be able to read and understand the plans and specifications, and be capable of communicating orally and in writing with the Owner's inspectors and the Contractor's workers. The Contractor shall be responsible for all construction means, methods, techniques, sequences, and procedures, for coordinating all portions of the Work under the Contract except where otherwise specified in the Contract Documents, and for all safety and worker health programs and practices. The Contractor shall notify the Owner, in writing, of any proposed change in superintendent, including the reason therefor, prior to making such change.

- (b) The Contractor shall, at all times, enforce strict discipline and good order among the workers on the Project, and shall not employ on the Work, or contract with, any unfit person, anyone not skilled in the Work assigned to him, or anyone who will not work in harmony with those employed by the Contractor, the Subcontractors, the Owner, or the Owner's separate contractors and their subcontractors.
- (c) The Owner may, in writing, require the Contractor to remove from the Site any employee or Subcontractor's employee the Owner deems to be incompetent, careless, not working in harmony with others on the Site, or otherwise objectionable, but the Owner shall have no obligation to do so.
- (d) Contractor shall train the superintendent, foreman, and senior technicians for the crews that will work on the Project on the proper installation of the major components of the Project. Contractor will work with the Owner's Project Manager to develop material for this training.

18. CONSTRUCTION SUPERVISION, METHODS, AND PROCEDURES

- (a) The Contractor shall be solely responsible for supervising and directing the Work competently and efficiently and devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction and for coordinating all portions of the Work under the Contract, except where otherwise specified in the Contract Documents. The Contractor, in performing as the Design Build Contractor, shall also be responsible to the Owner for the design or selection of any specific means, method, technique, sequence, or procedure of construction which is indicated in and required by the Contract Documents. The Contractor is solely responsible to the Owner that the finished Work complies with the Contract Documents.

The Contractor shall be solely responsible for health and safety precautions and programs for workers and others in connection with the Work. No inspection by, knowledge on the part of, or acquiescence by the Architect or Engineer, the Project Inspector, the Owner, the Owner's employees and agents, or any other entity whatever shall relieve the Contractor from its sole responsibility for compliance with the requirements of the Contract or its sole responsibility for health and safety programs and precautions.

- (b) The Contractor shall be fully responsible to the Owner for all acts and omissions of all succeeding tiers of A/Es, Subcontractors, and Suppliers performing or furnishing any of the Work just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between the Owner and any Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the

Owner to pay for or see to payment of any moneys due any such Subcontractor, Supplier, or other person or organization except as may otherwise be required by law.

19. SCHEDULE OF THE WORK

- (a) **General:** The Contractor is responsible for the scheduling and sequencing of the Work, for coordinating the Work, for monitoring the progress of the Work, and for taking appropriate action to keep the Work on schedule. The Contractor may attempt to achieve Substantial Completion on or before the Time for Completion or the Contract Completion Date established by the Contract and receive payment in accordance with Section 36 for the Work completed each period. However, the date established by the Contract Documents as the deadline for achieving Substantial Completion must be used in all schedules as the date on which Substantial Completion will be achieved. The time (in days) between the Contractor's planned early completion and the contracted Time for Completion is part of the Project "Total Float" time and will be used as such. Extensions of time pursuant to Sections 38, 39, and 43, damages for delay, and all other matters between the Owner and the Contractor will be determined using the contractually required Substantial Completion date, not an early Substantial Completion date planned by the Contractor.

Within two (2) weeks after the Contractor signs the Contract, but at least seven (7) days before beginning work, unless otherwise extended by the Owner at the time of the signing, the Contractor shall prepare and submit to the Owner a preliminary bar graph schedule for accomplishing the Work based upon the Time for Completion stated in the Contract. The preliminary schedule shall be in sufficient detail to show the sequencing of the various trades for each floor level, wing or work area. The Owner will notify the Contractor of its acceptance of or objections to the preliminary schedule within fifteen (15) days of receipt by the Owner. A fully complete Project schedule for accomplishing the Work must be submitted in like manner no later than sixty (60) days after the Contract is signed by the Owner.

The Owner's failure to reject or its acceptance of any schedule, graph, chart, recovery schedule, updated schedule, plan of action, etc. shall not constitute a representation or warranty by the Owner, including but not limited to a representation or warranty that the schedule is feasible or practical nor shall any such acceptance or failure to reject relieve the Contractor from sole responsibility for completing the Work within the time allowed. No progress payments will be payable to the Contractor until after it has submitted a preliminary schedule which is acceptable to the Owner. Neither the second progress payment nor any subsequent payment shall be payable to the Contractor until it has submitted a fully complete Project schedule accepted by the Owner. Nor shall subsequent progress payments be payable to the Contractor unless and until he submits the monthly bar graphs or status reports required by Section 19(c) herein or unless and until he provides any recovery schedule pursuant to Section 19(d) herein.

Failure to provide a satisfactory preliminary or fully complete Project schedule within the time limits stated above shall be a breach of contract for which the Owner may terminate the Contract in the manner provided in Section 41 of these General Conditions.

The fully complete Project schedule for accomplishing the Work shall be a Critical Path Method (CPM) schedule which shall be utilized to control the planning and scheduling of the Work. The CPM schedule shall be the responsibility of the Contractor and shall be paid for by the Contractor.

It is the Contractor's responsibility to submit a schedule that shows Substantial Completion of the Work by the Contract Time for Completion or the Contract Completion Date and any interim deadlines established by the Contract.

- (b) **CPM Schedule:** The CPM shall be in the time-scaled precedence format using the Contractor's logic and time estimates. The CPM schedule shall be drawn or plotted with activities grouped or zoned by Work area or subcontract as opposed to a random (or scattered) format.

The CPM schedule shall be time-scaled on a weekly basis and shall be drawn or plotted at a level of detail and logic which will schedule all salient features of the Work, including not only the actual construction Work for each trade, but also the submission of shop drawings and other Submittals for approval, approval of shop drawings by the Contractor's A/E, placing of orders for materials, the manufacture and delivery of materials, the testing and installation of materials and equipment, and all Work activities to be performed by the Contractor. Failure to include any element of Work required for the performance of this Contract shall not excuse the Contractor from completing all Work required within the Time for Completion, Contract Completion Date and any interim deadlines established by the Contract.

The Contractor shall allow sufficient time in his schedule for his A/E to conduct whatever associated reviews or inspections as may be required. Each Work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used. It is the Contractor's responsibility to submit a schedule that shows Substantial Completion of the Work by the Contract Time for Completion or the Contract Completion Date and any interim deadlines established by the Contract.

When completed, the CPM schedule shall be submitted to the Owner for review. The CPM schedule will identify and describe each activity, state the duration of each activity, the calendar dates for the early and late start and the early and late finish of each activity, and clearly highlight all activities on the critical path. "Total float" and "free float" shall be indicated for all activities. Float time, whether "free float" or "total float" as defined in Section I, shall not be considered for the exclusive use or benefit of either the Owner or the Contractor, but must be allocated in the best interest of completing the Work within the Time for Completion or the

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Contract Completion Date. Extensions to the Time for Completion or the Contract Completion Date, when granted by Change Order, will be granted only when equitable time adjustment exceeds the Total Float in the activity or path of activities affected by the change, provided that the Owner has reasonably provided information necessary to allow for the orderly progression of the Work. The CPM schedule shall also show what part of the Contract Price (expressed in U.S. dollars) is attributable to each activity on the schedule and shall be in agreement with the schedule of values, the sum of which for all activities shall equal the total Contract Price. The CPM schedule shall have no line-item activities longer than thirty (30) days in duration, and activities shall be included to provide sufficient detail for effectively managing the sequence of the Work. When acceptable to the Owner and Architect/Engineer as to compliance with the requirements of this Section, the schedule shall become the CPM schedule for the Project. Acceptance of the schedule by the Owner does not indicate agreement with nor responsibility for the proposed or actual duration of any activity or logic shown on the accepted schedule.

- (c) **Monthly Project Reports:** The Contractor shall review progress not less than each month, but as often as necessary to manage the Project properly and stay on schedule. The Contractor shall collect and preserve information on Change Orders, including extensions of time. The Contractor shall evaluate this information and update the latest accepted schedule as often as necessary to finish within the Contract Time for Completion or before the Contract Completion Date. The Contractor shall submit to the Owner along with his monthly request for payment a copy of the bar graph schedule annotated to show the current progress. For projects requiring a CPM schedule, the Contractor shall submit a monthly report of the status of all activities. The bar graph schedule or monthly status report submitted with each periodic request for payment shall show the Work completed to date in comparison with the Work scheduled for completion, including but not limited to the dates for the beginning and completion of the placing of orders; the manufacture, testing and installation of materials, supplies and equipment. The form shall be approved by the Owner; however, a bar graph or a CPM schedule marked, colored or annotated to reflect the above will usually satisfy this requirement. If any elements of the Work are behind schedule, regardless of whether they may prevent the Work from being completed on time, the Contractor must indicate in writing in the report what measures he is taking and plans to take to bring each such element back on schedule and to ensure that the Time for Completion or Contract Completion Date is not exceeded.
- (d) **Progress Delay:** Should any of the following conditions exist, the Owner may require the Contractor to prepare, at no extra cost to the Owner, a plan of action and a recovery schedule for completing the Work by the Contract Time for Completion or the Contract Completion Date:
- (1) The Contractor's monthly project report indicates delays that are, in the opinion of the Owner, of sufficient magnitude that the Contractor's ability

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to complete the Work by the scheduled Time for Completion or the Contract Completion Date is brought into question;

- (2) The CPM schedule sorted by early finish shows the Contractor to be thirty (30) or more days behind the critical path schedule at any time during construction up to thirty (30) days prior to scheduled Substantial Completion date;
- (1) The Contractor desires to make changes in the logic (sequencing of Work) or the planned duration of future activities of the CPM schedule which, in the opinion of the Architect/Engineer or the Owner, are of a major nature.

The plan of action and recovery schedule, when required, shall explain and display how the Contractor intends to regain compliance with the current accepted, fully completed, Project CPM schedule, as updated by approved change orders.

The plan of action, when required, shall be submitted to Owner for review within five (5) business days or the Contractor receiving the Owner's written demand. The recovery schedule, when required, shall be submitted to the Owner within five (5) business days of the Contractor's receiving the Owner's written demand.

- (e) **Early Completion of Project:** The Contractor may attempt to achieve Substantial Completion on or before the Time for Completion or the Contract Completion Date. However, such planned early completion shall be for the Contractor's convenience only and shall not create any additional rights of the Contractor or obligations of the Owner under this Contract, nor shall it change the Time for Completion or the Contract Completion Date. The Contractor shall not be required to pay damages to the Owner because of its failure to achieve Substantial Completion by its planned earlier date. Likewise, the Owner shall not pay the Contractor any additional compensation for achieving Substantial Completion early nor will the Owner owe the Contractor any compensation should the Owner, its officers, employees, or agents cause the Contractor not to achieve Substantial Completion earlier than the date required by the Contract Documents. If the Contractor seeks to change the Time for Completion or the Contract Completion Date to reflect an earlier completion date, he may request or propose such a change. The Owner may, but is not required to, accept such proposal. However, a change in the Time for Completion or the Contract Completion Date shall be accomplished only by Change Order. If the Contractor's proposal to change the Time for Completion or the Contract Completion Date is accepted, a Change Order will be issued stating that all references in the Contract, including these General Conditions, to the Time for Completion or the Contract Completion Date shall thereafter refer to the date as modified, and all rights and obligations, including the Contractor's liability for actual damages, delay damages and/or liquidated damages, shall be determined in relation to the date, as modified.

20. SCHEDULE OF VALUES AND CERTIFICATE FOR PAYMENT

- (a) Before submittal of the first partial payment request under the Contract, the Contractor shall prepare for review and approval of the Owner a schedule of the estimated values listed by trades or by specification sections of the Work totaling the Contract Price. Where the total project has multiple parts or phases, the Contractor shall prepare appropriate schedules of values to facilitate reviews and justifications for payments.

All requests for payment shall be made on the Authority's standard Application and Certificate for Payment. Where a computerized spreadsheet is used, one copy of the entire Schedule of Values shall be provided to the Owner in an agreed electronic format (e.g. EXCEL) with the initial request for payment.

- (b) If the Contractor requests, or intends to request, payment for materials stored in an approved and secure manner, the Schedule of Values must indicate the amount for labor and the amount for materials, and in a supplement thereto must include an itemized list of materials for that trade or Work section. The material breakdown shall be in sufficient detail to allow verification of the quantities required for the Project, the quantities delivered, the Work completed, and the quantities stored on or off Site. Owner shall have the right to inspect all stored materials and documentation related thereto for verification.
- (c) The "Value of Work Completed" portion of the Application and Certificate for Payment shall be completed, the Contractor's certification completed and signed, and the appropriate substantiating material attached to each Application and Certificate for Payment. Such substantiating material includes, but is not limited to, invoices for materials, delivery tickets, time sheets, payroll records, daily job logs/records, and similar materials which, in the opinion of the Owner, are necessary or sufficient to justify payment of the amount requested.
- (d) The labor progress for any task or activity shall be calculated based upon the percentage of Work complete up to fifty percent (50%) of the completion of the task or activity. Thereafter, the evaluation of labor progress will be based upon the effort required to complete that task or activity. The material progress shall be calculated as the invoiced dollar cost of materials used in relationship to the amount estimated as necessary to complete a particular element of Work. When calculating material progress, credit shall be given for installed material as well as that stored on the Site and any material stored off Site which has been certified in accordance with Section 36 of these General Conditions.
- (e) Should Work included in previous Application and Certificate for Payment submittals, and for which payment has been made, subsequently be identified, by tests, inspection, or other means, as not acceptable or not conforming to Contract requirements, the "Value of Work Completed" portion of the first Application and Certificate for Payment submitted after such identification shall be modified to

reduce the "completed" value of that Work by deleting the value of that which has been identified as not acceptable or nonconforming.

21. ACCESS TO WORK

The Owner, the Project Manager, the Owner's inspectors and other testing personnel, inspectors from the Department of Labor and Industry, and others authorized by the Owner, shall have access to the Work at all times. The Contractor shall provide proper facilities for access and inspection.

22. SURVEYS AND LAYOUT

The Contractor shall provide competent surveying and engineering services to execute the Work in accordance with the Contract and shall be responsible for the accuracy of these surveying and engineering services.

23. PLANS AND SPECIFICATIONS

- (a) The general character and scope of the Work are illustrated by the plans and the specifications prepared by the Contractor's Architect/Engineer and in the Contractor's PPEA Proposal. The level of detail shown on the plans and stipulated in the specifications shall be sufficient to clearly demonstrate to the Owner that the design conforms to legal and regulatory requirements, as appropriate. The Contractor shall carry out the Work in accordance with the plans and specification and any additional detail drawings and instructions provided by the A/E.
- (b) Measurements or dimensions shown on the drawings for Site features, utilities, and structures shall be verified at the Site by the Contractor before commencing the Work. The Contractor shall not scale measurements or dimensions from the drawings. If there are discrepancies, the Architect/Engineer shall be consulted. If new Work is to connect to, match with, or be provided in existing Work, the Contractor shall verify the actual existing conditions and necessary dimensions prior to ordering or fabrication.
- (c) As-Built Drawings: The Contractor shall maintain at the Site for the Owner one copy of all drawings, specifications, addenda, approved shop or setting drawings, Change Orders and other modifications (collectively referred to herein as "As-Built Drawings") in good order and marked to record all changes as they occur during construction. These shall be available to the Owner, the Project Inspector, the Owner's other inspectors and to the Owner's testing personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction. The representation of such variations shall include such supplementary notes, symbols, legends, and details as may be necessary to clearly show the as-built construction.

- (d) Record Drawings: Upon completion of the Work and prior to the final inspection, the Contractor shall deliver to the Owner five complete sets of "As-Built Drawings" and Operations, Maintenance, and Training Manuals in reproducible form along with electronic version. Additionally, "As-Built Drawings" along with Operations Manuals will be provided to the appropriate permitting agencies as required by each agency.

24. SUBMITTALS

- (a) Shop drawings, setting drawings, product data, and samples generated by the Design Build Contractor shall be known as submittals. Three copies of all submittals shall be provided to the Owner when generated.
- (b) Submittals shall be approved by the Design Build Contractor and its licensed professional designer and by the Director of Public Works for conformance with the required codes, standards, and provisions of the Contract. Three copies of all approved submittals shall be provided to the Owner. One copy of the "Approved" shop drawings/submittals shall be on file in the construction trailer for use by Inspectors.
- (c) Any submittal material, assembly, or product which deviates from the approved contract documents and Project Plans shall be submitted to the Director of Public Works for approval prior to use or installation.
- (d) The Work shall be in accordance with all permits and Contract documents as detailed by the approved submittals.

25. FEES, SERVICES AND FACILITIES

- (a) The Contractor shall obtain all permits and pay for all fees and charges necessary for temporary access and public right-of-way blockage or use, for temporary connections to utilities and for the use of property (other than the Site) for storage of materials, and other purposes unless otherwise specifically stated in the Contract Documents.
- (b) The Contractor shall be responsible for providing required connections, temporary wiring, piping, etc., to these services in a safe manner and in accordance with applicable codes. All temporary wire, pipe, etc., shall be removed before the Substantial Completion inspection. Acceptance by the Contractor of the use of Owner's water and electricity constitutes a release to the Owner of all claims and of all liability to the Contractor for whatever damages which may result from power and water outages or voltage variations.

- (c) The Owner shall pay any connection charges for permanent utility connections directly to the utility Supplier. The Contractor shall coordinate such connections with the utility Supplier.
- (d) It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor, either directly or through his Subcontractors, shall provide and pay for all material, labor, tools, equipment, water, light, power, telephone and other services or facilities of every nature whatsoever necessary to execute completely and deliver the Work within the Contract Time for Completion or before the Contract Completion Date.

26. EQUALS

- (a) **Brand names:** Unless otherwise stated in the Proposal, the name of a certain brand, make, or manufacturer denotes the characteristics, quality, workmanship, economy of operation, and suitability for the intended purpose of the article desired, but does not restrict the Contractor to the specific brand, make, or manufacturer; it is set forth to convey to the Contractor the general style, type, character, and quality of the article specified.
- (b) **Equal materials, equipment, or assemblies:** Whenever in these Contract Documents a particular brand, make of material, device, or equipment is shown or specified, such brand, make of material, device, or equipment shall be regarded merely as a standard. Any other brand, make, or manufacturer of a product, assembly, or equipment which in the opinion of the Owner is the equal of that specified, considering quality, capabilities, workmanship, configuration, economy of operation, useful life, compatibility with design of the Work, and suitability for the intended purpose, will be accepted unless rejected by the Owner as not being equal.
- (c) **Substitute materials, equipment, or assemblies:** The Contractor may propose to substitute a material, product, equipment, or assembly which deviates from the requirements of the approved plans and specifications but which the Contractor deems will perform the same function and have equal capabilities, service life, economy of operations, and suitability for the intended purpose. The proposal must include any cost differentials proposed. If the proposed substitute is acceptable to the Owner, a Change Order will be proposed to the Contractor to accept the substitute and to deduct the proposed cost savings from the Contract Price. The Owner shall have the right to limit or reject substitutions at its sole discretion.
- (d) The Contractor shall be responsible for making all changes in the Work necessary to adapt and accommodate any equal or substitute product which it uses. The necessary changes shall be made at the Contractor's expense.

27. AVAILABILITY OF MATERIALS

If a brand name, product, or model number included in the Contract Documents is not available on the present market, alternate equal products or model numbers may be proposed by the Contractor for approval by the Owner. Also submit data to the Building Official for approval of products, materials, and assemblies regulated by the VAUSBC.

28. CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the Work shall be purchased by the Contractor, or by any Subcontractor or Supplier, subject to any security interest, installment, or sales contract or any other agreement or lien by which an interest is retained by the seller or is given to a secured party. The Contractor warrants that he has clear and good title to all materials and supplies which he uses in the Work or for which he accepts payment in whole or in part.

29. STANDARDS FOR MATERIALS INSTALLATION & WORKMANSHIP

- (a) Unless otherwise specifically provided in the Contract, all equipment, material, and accessories incorporated in the Work are to be new and in first class condition.
- (b) Unless specifically approved by the Owner or required by the Contract, the Contractor shall not incorporate into the Work any materials containing asbestos or any material known by the industry to be hazardous to the health of building construction workers, maintenance workers, or occupants. If the Contractor becomes aware that a material required by the Contract contains asbestos or other hazardous materials, he shall notify the Owner immediately and shall take no further steps to acquire or install any such material without first obtaining Owner approval.
- (c) All workmanship shall be of the highest quality found in the building industry in every respect. All items of Work shall be done by craftsmen or tradesmen skilled in the particular task or activity to which they are assigned. In the acceptance or rejection of Work, no allowance will be made for lack of skill on the part of workmen. Poor or inferior workmanship (as determined by the Architect/Engineer, the Owner or other inspecting authorities) shall be removed and replaced at Contractor's expense such that the Work conforms to the highest quality standards of the trades concerned, or otherwise collected to the satisfaction of the Owner, or other inspecting authority, as applicable.
- (d) Under the various sections of the plans or specifications, where specified items are supplied with the manufacturer's printed instructions, recommendations, or directions for installation, or where such instructions, recommendations, or

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directions are available, installation of the specified items shall be in strict accordance with the manufacturer's printed instructions.

- (e) Under the various sections of the plans or specifications, where reference is made to specific codes or standards governing the installation of specified items, installation shall in all cases be in strict accordance with the referenced codes and standards. Where no reference is made to specific codes or standards, installation shall conform to the generally recognized applicable standards for first-class installation of the specific item to be installed. Contractors are expected to be proficient and skilled in their respective trades and knowledgeable of the codes and standards applicable to installations and associated work by his trade.
- (f) Where the manufacturer's printed instructions are not available for installation of specific items, where specific codes or standards are not referenced to govern the installation or specific items, or where there is uncertainty on the part of the Contractor concerning the installation procedures to be followed or the quality of workmanship to be maintained in the installation of specific items, the Contractor shall consult the Architect/Engineer for approval of the installation procedures or the specific standards governing the quality of workmanship the Contractor proposes to follow or maintain during the installation of the items in question.
- (g) During and/or at the completion of installation of any items, the tests designated in the plans or specifications necessary to assure proper and satisfactory functioning for its intended purpose shall be performed by the Contractor or by its Subcontractor responsible for the completed installation. All costs for such testing are to be included in the Contract Price. If required by the Contract Documents, the Contractor shall furnish prior to final inspection the manufacturers' certificates evidencing that products meet or exceed applicable performance, warranty and other requirements, and certificates that products have been properly installed and tested.

30. WARRANTY OF MATERIALS AND WORKMANSHIP

- (a) The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new, in first class condition, and in accordance with the Contract Documents. The Contractor further warrants that all workmanship shall be of the highest quality and in accordance with the Contract Documents and shall be performed by persons qualified at their respective trades.
- (b) Work not conforming to these warranties shall be considered defective.
- (c) This Warranty of materials and workmanship is separate and independent from and in addition to any of the Contractor's other guarantees or obligations in the Contract or under Virginia law.

31. USE OF SITE AND REMOVAL OF DEBRIS

- (a) The Contractor shall:
 - (1) Perform the Work in such a manner as not to interrupt or interfere with the operation of any existing activity on, or in proximity to, the Site or with the Work of any other separate contractor;
 - (2) Store his apparatus, materials, supplies, and equipment in such orderly fashion at the Site of the Work as will not unduly interfere with the progress of his Work or the work of any other separate contractor; and
 - (3) Place upon the Work or any part thereof only such loads as are consistent with the safety of that portion of the Work.
- (b) The Contractor expressly undertakes, either directly or through his Subcontractor(s), to effect all cutting, filling, or patching of the Work required to make the same conform to the plans and specifications, and, except with the consent of the Owner, not to cut or otherwise alter the Work of any other separate contractor. The Contractor shall not damage or endanger any portion of the Work or Site, including existing improvements, unless called for by the Contract.
- (c) The Contractor expressly undertakes, either directly or through his Subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the Site shall present a neat, orderly and workmanlike appearance. No such refuse, rubbish, scrap material and debris shall be left within the completed Work nor buried on the building Site, but shall be removed from the Site and properly disposed of in a licensed landfill or otherwise as required by law.
- (d) The Contractor expressly undertakes, either directly or through his Subcontractor(s), before Final Payment or such prior time as the Owner may require, to remove all surplus material, false Work, temporary structures, including foundations, plants of any description, and debris of every nature resulting from his operations and to put the Site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the Contract; and to clean thoroughly all glass installed under the Contract, including the removal of all paint and mortar splatters and other defacements.

If the Contractor fails to clean up at the time required herein, the Owner may do so and charge the costs incurred thereby to the Contractor in accordance with Section 10(b) of these General Conditions.

- (e) The Contractor shall have, On-Site, an employee certified by the Department of Environmental Quality as a Responsible Land Disturber who shall be responsible

for the installation, inspection and maintenance of erosion control and stormwater management measures and devices. The Contractor shall prevent Site soil erosion, the runoff of silt and/or debris carrying water from the Site, and the blowing of debris off the Site in accordance with the applicable requirements and standards of the Contract and the Virginia Department of Environmental Quality's Erosion and Sediment Control Regulations and the Virginia Stormwater Management Regulations.

32. TEMPORARY ROADS

Temporary roads, if required, shall be established and maintained until permanent roads are accepted, then removed and the area restored to the conditions required by the Contract Documents. Crushed rock, paving, and other road materials from temporary roads shall not be left on the Site unless permission is received from the Owner to bury the same at a location and depth approved by the Owner.

33. SIGNS

The Contractor may, at his option and without cost to the Owner, erect signs acceptable to the Owner on the Site for the purpose of identifying and giving directions to the job. No signs shall be erected without prior approval of the Owner as to design and location.

34. PROTECTION OF PERSONS AND PROPERTY

- (a) The Contractor expressly undertakes, both directly and through his Subcontractors, to take every reasonable precaution at all times for the protection of all persons and property which may come on the Site or be affected by the Contractor's Work.
- (b) The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Any violation of these requirements or duties or any potential safety hazard that is brought to the attention of the Contractor by the Architect/Engineer, the Owner, or any other persons shall be immediately corrected.
- (c) The provisions of all rules and regulations governing health and safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia, shall apply to all Work under this Contract.
- (a) The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury or loss, except as may be directly and solely due to errors in the Contract Documents or caused by agents or employees of the Owner. The Contractor shall adequately

protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. The Contractor shall provide and maintain all passageways, guard fences, lights and other facilities for protection as required by public authority, local conditions, or the Contract.

- (b) In an emergency affecting the health, safety or life of persons or of the Work, or of the adjoining property, the Contractor, without special instruction or authorization from the Owner, shall act, at his discretion, to prevent such threatened loss or injury. Also, should he, to prevent threatened loss or injury, be instructed or authorized to act by the Owner, he shall so act immediately, without appeal. Any additional compensation or extension of time claimed by the Contractor on account of any emergency work shall be determined as provided by Section 38 of these General Conditions.
- (c) When necessary for the proper protection of the Work, temporary heating of a type compatible with the Work must be provided by the Contractor at the Contractor's expense, unless otherwise specified.

35. CLIMATIC CONDITIONS

The Contractor shall suspend activity on and protect any portion of the Work that may be subject to damage by climatic or weather conditions.

36. PAYMENTS TO CONTRACTOR

- (a) Unless otherwise provided in the Contract, the Owner will make partial payments to the Contractor on the basis of a duly certified and approved Schedule of Values and Certificate for Payment, showing the estimate of the Work performed during the preceding calendar month or work period. When evaluating the Contractor's Payment Form, the Owner will consider the value of the Work in place, the value of approved and properly stored materials, the status of the Work on the critical path with regard to the Time for Completion, and the estimated value of the Work necessary to achieve Final Completion. The Owner will schedule a monthly pay meeting to occur no earlier than the 25th day of the month represented by the payment request or not later than the 5th day of the following month. The Contractor will submit his monthly estimate of Work completed Form in accordance with the Contract between the Owner and Contractor so that it is received by the Owner's Project Manager at least one work day prior to the date scheduled for the monthly pay meeting. The Owner will review the estimate with the Contractor at the monthly pay meeting, which shall be considered the receipt date, and may approve any or all of the estimate of Work for payment. In preparing estimates, the material delivered to the Site and preparatory Work done shall be taken into consideration, if properly documented as required by Section 20 of these General Conditions, or as may be required by the Owner so that quantities may be verified. In addition to material delivered to the Site, material such as large pieces

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of equipment and items purchased specifically for the Project, but stored off the Site within the Commonwealth of Virginia, may be considered for payment, provided all of the following are accomplished prior to the submission of the monthly payment request in which payment for such materials is requested:

- (1) The Contractor must notify the Owner in writing, at least ten (10) days prior to the submission of the payment request, that specific items will be stored off Site in a designated, secured place within the Commonwealth of Virginia. The Schedule of Values must be detailed to indicate separately both the value of the material and the labor/installation for trades requesting payment for stored materials. By giving such notification and by requesting payment for material stored off Site, the Contractor warrants that the storage location is safe and suitable for the type of material stored and that the materials are identified as being the property of the Contractor, and agrees that loss of materials stored off the Site shall not relieve the Contractor of the obligation to timely furnish these types and quantities of materials for the Project and meet the Time for Completion or Contract Completion Date, subject to Section 43 (b) or these General Conditions. If the storage location is more than 20 miles from the Site, the Contractor may be required to reimburse the Owner for the cost incurred for travel to the storage location to verify the Contractor's request for payment for materials stored off Site. A Supplementary Agreement shall be required for payment by the Owner to the Contractor for materials or equipment that is stored offsite at a location that is not within the Commonwealth of Virginia.
- (2) Such notification, as well as the payment request, shall:
 - (a) itemize the quantity of such materials and document with invoices showing the cost of said materials;
 - (b) indicate the identification markings used on the materials, which shall clearly reference the materials to the particular project;
 - (c) identify the specific location of the materials, which must be within reasonable proximity to the Site and within the Commonwealth of Virginia.
- (3) Owner has a right to request:
 - (a) include a letter from the Contractor's Surety which confirms that the Surety on the Performance Bond and the Labor and Material Payment Bond has been notified of the request for payment of materials stored off the Site and agrees that the materials are covered by the bond; and

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- (b) include a certificate of all-risk builder's risk insurance in an amount not less than the fair market value of the materials, which shall name the Owner and the Contractor as co-insureds.

- (4) The Contractor's Architect/Engineer shall indicate, in writing, to the Owner that Submittals for such materials have been reviewed and meet the requirements of the Contract Documents, that the stored materials meet the requirement of the plans and specifications, and that such materials conform to the approved Submittals. Should the A/E deem it necessary to visit the storage site to make such review, the Contractor shall bear the costs incurred therewith.

- (5) The Owner shall notify the Contractor in writing of its agreement to prepayment for materials.

- (6) The Contractor shall notify the Owner in writing when the materials are to be transferred to the Site and when the materials are received at the Site.
 - (a) Payment will not be made for materials or equipment stored on or off the Site which are not scheduled for incorporation into the Work within the six months next following submission of the request for payment, unless the Contractor has the prior consent of the Owner, which consent may be granted or withheld by the Owner in its discretion if, in the opinion of the Owner, it is not necessary to procure the materials more than six months in advance of use to assure their availability when needed.

 - (b) No payment shall be made to the Contractor until:
 - i. The Contractor furnishes to the Owner its Social Security Number (SSN) if an individual, or its Federal Employer Identification Number (FEIN) if a proprietorship, partnership, corporation, or other legal entity.

 - ii. Certificates of Insurance or other satisfactory evidence of compliance by the Contractor with all the requirements of Section 11 (and Section 12 if applicable) of these General Conditions have been delivered to the Owner.

 - iii. Copies of any certificates of insurance required of a Subcontractor under Section 11 have been delivered to the Owner for payments based on Work performed by a Subcontractor

 - iv. The Contractor has (i) submitted a preliminary schedule which is acceptable to the Owner in accordance with Section 19(a), (ii) submitted a fully complete Project schedule accepted by the Owner in accordance

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with Section 19(a), (iii) maintained the monthly bar graphs or status reports required by Section 19(c), or (iv) provided a recovery schedule pursuant to Section 19(d), as each of them may be required.

- v. The Contractor shall determine the impact on warranties as a result of the early delivery of materials on site or off site and report this information to the Owner. Warranties that will be shortened by early delivery will need to be remedied by the Contractor either through extension of the warranty or assumption of the warranty by the Contractor.
- (d) In making such partial payments, five percent (5%) of each payment to the Contractor shall be retained until Final Completion and acceptance of all Work covered by the Contract, unless otherwise provided by any law, regulation, or program of the federal government. Such retainage shall be held to assure faithful performance of the Contract and may also be used as a fund to deduct amounts due to or claimed by the Owner, including, but not limited to, payment to the Owner of all moneys due for deductive change orders, credits, uncorrected Defective Work, interest, damages, and the like. The Owner may, at its sole discretion, agree on an item by item basis to release the retainage on items which are fully 100% complete, and which have accepted by the Owner as being tested and complete, and on which no further action or work will be required. Retainage which is released by the Owner shall be distributed by the Contractor in conformance with Section 37 of these General Conditions.
- (e) All material and Work for which partial payments are made shall thereupon become the sole property of the Owner, but this provision shall not relieve the Contractor from the sole responsibility for all materials and Work, including those for which payment has been made, or for the restoration of any damaged materials or Work. Nor shall this provision serve as a waiver of the right of the Owner to require the fulfillment of all of the terms and conditions of the Contract.
- (f) The Final Payment, which shall include the retainage, less any amounts due to or claimed by the Owner, shall not become due until the Owner agrees that Final Completion has been achieved and until the Contractor shall deliver to the Owner a Certificate of Completion by the Contractor and an Affidavit of Payment of Claims stating that all Subcontractors and Suppliers of either labor or materials have been paid all sums claimed by them for Work performed or materials furnished in connection with this Project that are due and owing, less retainage. Amounts due the Owner which may be withheld from the Final Payment may include, but are not limited to, amounts due pursuant to Section 16(a)–(d), Section 31(d), costs incurred to repair or replace Defective Work, costs incurred as a result of the Contractor's negligent acts or omissions or omissions of those for whom the Contractor is responsible, delay damages under Section 43(h), and any liquidated or actual damages. If all Subcontractors and Suppliers of labor and materials have not been paid the full amount claimed by them, the Contractor shall list each to

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which an agreed amount of money is due or which has a claim in dispute, with respect to all such Subcontractors and Suppliers, the Contractor shall provide to the Owner an affidavit from each such Subcontractor and Supplier stating the amount of their subcontract or supply contract, the percentage of completion, the amounts paid to them by the Contractor and the dates of payment, the amount of money still due if any, any interest due the Subcontractor or Supplier pursuant to Section 36(h) below, and whether satisfactory arrangements have been made for the payment of undisputed amounts. Nothing in this Section shall be construed as creating any obligation or contractual relationship between the Owner and any Subcontractor or Supplier, and the Owner shall not be liable to any Subcontractor or Supplier on account of any failure or delay of the Owner in complying with the terms hereof.

- (g) Upon successful completion of the final inspection and all Work required by the Contract, including but not limited to the delivery of As-Built reproducible Record Drawings, equipment manuals, written warranties, acceptance of the Work by the Owner and the delivery of the affidavits required in Section 36(f) of these General Conditions, the Contractor shall deliver the written Certificate of Completion by the Contractor to the Owner stating the entire amount of Work performed and compensation earned by the Contractor, including extra work and compensation therefore. The Owner may accept the Work for occupancy or use while asserting claims against the Contractor; disputing the amount of compensation due to the Contractor; disputing the quality of the Work, its completion, or its compliance with the Contract Documents; or any other reason.
- (h) The Owner shall pay to the Contractor all approved amounts for work not in dispute, less all prior payments and advances whatsoever to or for the account of the Contractor. In the case of final payment, the Certificate of Completion by the Contractor shall accompany the final Schedule of Values and Application and Certificate of Payment which is forwarded to the Owner for payment. Payment shall be due within 30 days of approval of Application and Certificate for Payment. The date on which payment is due shall be referred to as the Payment Date. Payment shall be made on or before the Payment Date for amounts and Work not in dispute, subject to any set offs claimed by the Owner, provided, however in instances where further appropriations are required, in which case, payment shall be made within (30) days after the effective date of such appropriation or within thirty (30) days after the receipt of bond proceeds by the Owner. All prior estimates and payments including those relating to extra Work may be collected and adjusted in any payment and shall be corrected and adjusted in the Final Payment. In the event that any request for payment by the Contractor contains a defect or impropriety, the Owner shall notify the Contractor of any defect or impropriety which would prevent payment by the Payment Date, within five (5) days after receipt of the Application and Certificate for Payment by the Owner.
- (i) Interest shall accrue on all amounts owed by the Owner to the Contractor which remain unpaid seven (7) days following the Payment Date. Said interest shall accrue at the rate of two percent (2%) per annum. Nothing contained herein shall be

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interpreted, however, to prevent the withholding of retainage to assure faithful performance of the Contract. These same provisions relating to payment of interest to the Contractor shall apply also to the computation and accrual of interest on any amounts due from the Contractor to the Owner for deductive change orders and to amounts due on any claims by the Owner. The date of mailing of any payment by the U.S. Mail is deemed to be the date of payment to the addressee.

- (j) The acceptance by the Contractor of the Final Payment shall be and operate as a release to the Owner of all claims by the Contractor, its Subcontractors and Suppliers, and of all liability to the Contractor whatever, including liability for all things done or furnished in connection with this Work, except for things done or furnished which are the subject of unresolved claims for which the Contractor has filed a timely written notice of intent, provided a claim is submitted no later than sixty (60) days after Final Payment. Acceptance of any interest payment by the Contractor shall be a release of the Owner from claims by the Contractor for late payment.
- (k) No certificate for payment issued, and no payment, final or otherwise, no certificate of completion, nor partial or entire use or occupancy of the Work by the Owner, shall be an acceptance of any Work or materials not in accordance with the Contract, nor shall the same relieve the Contractor of responsibility for faulty materials or Defective Work or operate to release the Contractor or his Surety from any obligation under the Contract, the Standard Performance Bond and the Standard Labor and Material Payment Bond.

37. PAYMENTS BY CONTRACTOR (§2.2-4354, Code of Virginia)

Under § 2.2-4354, Code of Virginia, the Contractor is obligated to:

- (a) Within seven (7) days after receipt of amounts paid to the Contractor by the Owner for Work performed by the Subcontractor or Supplier under this Contract,
 - (1) Pay the Subcontractor or Supplier for the proportionate share of the total payment received from the Owner attributable to the Work performed by the Subcontractor or the materials furnished by the Supplier under this Contract; or
 - (2) Notify the Subcontractor or Supplier, in writing, of his intention to withhold all or a part of the Subcontractor or Supplier's payment with the reason for nonpayment;
- (b) Pay interest to the Subcontractor or Supplier on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the Owner for Work performed by the Subcontractor or materials furnished by the Supplier under this contract, except for amounts withheld as allowed under subsection (a)(2) of this Section.

- (c) Include in each of his subcontracts a provision requiring each Subcontractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower tier subcontractor. Each Subcontractor shall include with its invoice to, or request for payment from, the Contractor, a certification that that Subcontractor has paid each of its suppliers and lower tier subcontractors their proportionate share of previous payments received from the Contractor attributable to the Work performed or the materials furnished by it under this Contract.

The Contractor's obligation to pay interest to the Subcontractor or Supplier pursuant to subsection (b) of this Section is not an obligation of the Owner. A modification to this Contract shall not be made for the purpose of providing reimbursement for such interest charge. A Contractor's cost reimbursement claim shall not include any amount for reimbursement of such interest charge.

38. CHANGES IN THE WORK

- (a) The Owner may at any time, by written order using a Change Order Form and without notice to the sureties, make changes in the Work which are within the general scope of the Contract, except that no change will be made which will increase the total Contract Price to an amount more than twenty percent (20%) in excess of the original Contract Price without notice to sureties. At the time of the Pre-construction Meeting described in Section 50(b), the Contractor and the Owner shall advise each other in writing of their designees authorized to accept and/or approve changes to the Contract Price and of any limits to each designee's authority. Should any designee or limits of authority change during the time this Contract is in effect, the Contractor or Owner with such a change shall give written notice to the other within seven (7) calendar days, utilizing the procedures set forth in these General Conditions. The Contractor agrees and understands that the authority of the Owner's designee is limited by Virginia Code § 2.2-4309 and any other applicable statute.

In making any change, the charge or credit for the change shall be determined by one of the following methods as selected by the Owner:

- (1) **Fixed Price:** By a mutually agreed fixed amount change to the Contract Price and/or time allowed for completion of the Work. The Change Order shall be substantiated by documentation itemizing the estimated quantities and costs of all labor, materials, and equipment required as well as any mark-up used. The place change shall include the Contractor's reasonable overhead and profit, including overhead for any unreasonable delay arising from or related to the Change Order and/or the change in the Work. See Subsections (d), (e), and (f) below.

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- (2) **Unit Price:** By using unit prices and calculating the number of net units of Work in each part of the Work which is changed, either as the Work progresses or before Work on the change commences, and by then multiplying the calculated number of units by the applicable unit price set forth in the Contract or multiplying by a mutually agreed unit price if none was provided in the Contract. No additional percentage markup for overhead or profit shall be added to the unit prices.
- (3) **Cost Reimbursement:** By ordering the Contractor to perform the changed Work on a cost reimbursement basis by issuing two Change Orders citing this Subsection, an initiating Change Order, authorizing the changed Work, and a continuing Change Order approving the additional cost and time for the changed Work. The initiating Change Order shall:
- (i) Describe the scope or parameters of the change in the Work;
 - (ii) Describe the cost items to be itemized and verified for payment and the method of measuring the quantity of work performed;
 - (iii) Address the impact on the schedule for Substantial Completion;
 - (iv) Order the Contractor to proceed with the change to the Work;
 - (v) Order the Contractor to keep in a form acceptable to the Owner, an accurate, itemized account of the actual (cost of the change in the Work, including, but not limited to, the actual costs of labor, materials, equipment, and supplies;
 - (vi) Order the Contractor to annotate a copy of the Project schedule to accurately show the status of the Work at the time this first Change Order is issued, to show the start and finish dates of the changed Work, and the status of the Work when the changed Work is completed; and
 - (vii) State that a confirming Change Order will be issued to incorporate the cost of the ordered change in the Work into the Contract Price and any change in the Contract Time for Completion or Contract Completion Date.

The Contractor shall sign the initiating Change Order acknowledging he has been ordered to proceed with the change in the Work. The Contractor's signature on each initiating Change Order citing this Subsection 38(a)(3) as the method for determining the cost of the Work shall not constitute the Contractor's agreement on the cost or time impact of the ordered Work.

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The Owner shall be permitted to verify such records and may require such additional records as are necessary to determine the cost of the change to the Work.

Contractor shall submit its costs for the changed Work as part of its monthly payment request to the Owner. Within fourteen (14) days after the conclusion of such ordered Work, the Contractor and the Owner shall reach agreement on (i) the total cost for the ordered Work, based on the records kept and the Contractor's allowance for overhead and profit determined in accordance with the provisions set forth in Subsections 38(d), (e) and (f) below; and (ii) the change in the Contract Time for Completion or Contract Completion Date, if necessary, as a result of the ordered Work. Such costs and time shall be incorporated into a confirming Change Order which references the initiating Change Order. If agreement on the cost and time of the changed Work cannot be reached within the fourteen (14) days allotted, the Contractor may submit notice of its intent to file a claim for the disputed cost or time as provided for in Section 47.

- (4) By issuing a unilateral change order in the amount the Owner believe is the Contractor's reasonable additional cost for the change. If the Owner and Contractor disagree as to the amount or scope of the change order, the Owner shall pay Contractor the amount the Owner believes is the Contractor's additional cost for the change, and the Contractor may, within the 14 days of the date of the change order, file a notice of intent to file a claim for the disputed amount as provided for in section 47.
- (b) The Contractor shall review any change requested or directed by the Owner and shall respond in writing within fourteen (14) days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon his Work, including any increase or decrease in the time and price. The Contractor shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the proposed change in Contract Price.

The Owner shall review the Contractor's proposal and respond to the Contractor within fourteen (14) days of receipt. If a change to the Contract Price and Time for Completion or Contract Completion Date are agreed upon, both parties shall sign the Change Order. If the Contract Price and Time for Completion or Contract Completion Date are not agreed upon, the Owner may direct the Contractor to proceed under Subsection 38(a)(3) above. Change Orders shall be effective when signed by both parties, unless approval by the Board of Directors or its designee is required, in which event the Change Orders shall be effective when signed by the Board of Directors' designee.

- (c) In figuring changes, any instructions for measurement of quantities set forth in the Contract shall be followed.

- (d) Overhead and profit for both additive and deductive changes in the Work (other than changes covered by unit prices) shall be paid by applying the specified percentage markups only on the net cost of the changed Work (i.e. difference in cost between original and changed Work excluding overhead and profit). Said percentages for overhead and profit shall reasonably approximate the Contractor's overhead and profit, but shall not exceed the percentages for each category listed below:
- (1) If a Subcontractor does all or part of the changed Work, the Subcontractor's mark-up for overhead and profit on the Work it performs shall be a maximum of fifteen percent (15%). The Contractor's mark-up for overhead and profit on the Subcontractor's price shall be a maximum of ten percent (10%).
 - (2) If the Contractor does all or part of the changed Work, its markup for overhead and profit on the changed Work it performs shall be a maximum of fifteen percent (15%).
 - (3) If a Sub-subcontractor at any tier does all or part of the changed Work, the Sub-subcontractor's markup for overhead and profit on that Work shall be a maximum of fifteen percent (15%). The markup of a sub-subcontractor's Work by the Contractor and all intervening tiers of Subcontractors shall not exceed a total of ten percent (10%).
 - (4) Where Work is deleted from the Contract prior to commencement of that Work without substitution of other similar Work, one hundred percent (100%) of the Contract Price attributable to that Work shall be deducted from the Contract Price. However, in the event that material Submittals have been approved and orders placed for said materials, a lesser amount, but in no case less than eighty percent (80%) of the Contract Price attributable to that Work, shall be deducted from the Contract Price. The credit to the Owner for reduced premiums on labor and material bonds and performance bonds shall in all cases be one hundred percent (100%).
- (e) Allowable costs for changes in the Work may include but are not limited to the following:
- (1) Labor costs for employees directly employed in the change in the Work, including salaries and wages plus the cost of payroll charges and fringe benefits and overtime premiums, if such premiums are explicitly authorized by the Owner.
 - (2) Materials incorporated into the change to the Work, including costs of transportation and storage, if applicable. If applicable, all cash discounts shall accrue to the Contractor, unless the Owner deposits funds with the

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Contractor to make such payments, and all trade discounts, rebates, refunds, and returns from the sale of surplus materials shall accrue to the Owner.

- (3) Equipment incorporated in the changed Work or equipment used directly in accomplishing the Work. If rented expressly for accomplishing the change in the Work, the cost shall be the rental rate according to the terms of the rental agreement, which the Owner shall have the right to approve. If owned by the Contractor, the costs shall be a reasonable price based upon the life expectancy of the equipment and the purchase price of the equipment, if applicable, transportation costs may be included.
- (4) Costs of increases in premiums for the Standard Labor and Material Payment Bond and the Standard Performance Bond, provided coverage for the cost of the change in the Work results in such increased costs. At the Owner's request, the Contractor shall provide proof of his notification to the Surety of the change in the Work and of the Surety's agreement to include such change in its coverage. The cost of the increase in premium shall be an allowable cost but shall not be marked up.
- (5) Contractor and Subcontractor overhead costs as set forth in Subsection (d) markups above.
- (6) **Agreed Compensation for Overhead for Changes to Time for Completion or Contract Completion Date for Changes to the Work:** If the change in the Work also changes the Time for Completion or the Contract Completion Date by adding days to complete the Work, an itemized accounting of the following direct Site overhead and home office overhead and other indirect overhead expenses set forth in subparagraphs (i) and (ii) below may be considered as allowable costs for compensation in addition to those shown above:

- (i) **Direct Site Overhead Expenses:**

The Contractor's per diem expenses, as shown by the itemized accounting, for the following allowable direct Site overhead expenses: The Site superintendent's pro-rata salary, temporary Site office trailer, and temporary Site utilities including basic telephone service, electricity, heat, water, and sanitary/toilet facilities for each day added. All other direct expenses are covered by and included in the Subsection 38(d) markups above.

- (ii) **Home Office and Other Indirect Overhead Expenses:** A five percent (5%) markup on the above direct Site overhead expenses will be allowed as compensation for the Contractor's home office overhead and all other direct or indirect overhead expenses for days added to the Time for Completion or the Contract Completion Date

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for a change in the Work. All other overhead and other direct or indirect overhead expenses are covered by and included in this markup and the Subsection (d) markups above.

- (7) Any other costs directly attributable to the change in the Work with the exception of those set forth in Subsection 38(f) below.
- (f) Allowable costs for changes in the Work shall not include the following:
 - (1) Costs due to the negligence of the Contractor, any Subcontractor, Supplier, their employees or other persons for whom the Contractor is responsible, including, but not limited to, costs for the correction of Defective Work, for improper disposal of material, for equipment wrongly supplied, for delay in performing the Work, or for delay in obtaining materials or equipment.
 - (2) Home office expenses including payroll costs for the Contractor's officers, executives, administrators, accountants, counsel, timekeepers, clerks, and other similar administrative personnel employed by the Contractor, whether at the Site or in the Contractor's principal or branch office for general administration of the Work. These costs are deemed overhead included in the percentage markups allowable in Subsections 38(d) above.
 - (3) Home office, and field office expenses not itemized in Subsection 38(e)(6) above. Such items include, but are not limited to, expenses of Contractor's home and branch offices, Contractor's capital expenses, interest on Contractor's capital used for the Work, charges for delinquent payments, small tools, incidental job costs, rent and other general overhead expenses.
- (g) All Change Orders, except the "initial" Change Orders authorizing work citing Subsection 38(a)(3) procedures, must state that the Contract Time for Completion or Contract Completion Date is not changed or is either increased or decreased by a specific number of days. The old Time for Completion and, if changed, the new Time for Completion must be stated.

If the Contractor requests an extension to the Time for Completion or a later Contract Completion Date, he must provide written justification for the extension to the Architect/Engineer and to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. When a CPM schedule is required by the Contract, no extension to the Time for Completion or Contract Completion Date shall be allowed unless, and then only to the extent that, the additional or changed Work increases the length of the critical path beyond the Time for Completion or Contract Completion Date. If approved, the increase in time required to complete the Work shall be added to the Time for Completion or Contract Completion Date.

The Owner may decrease, by Change Order, the Time for Completion or Contract Completion Date when an Owner-requested deletion from the Work results in a decrease in the actual time required to complete the Work as demonstrable on the Bar Graph Schedule or on the CPM Schedule, whichever is appropriate. The Contractor may submit a request to decrease, by Change Order, the Time for Completion or Contract Completion Date under the procedures and subject to the considerations set forth in Section 19(d). No request for such decrease shall be considered for approval unless the proposed shorter schedule is otherwise acceptable under Sections 19(d) or (e), whichever is applicable. The Change Order decreasing the Time for Completion or changing the Contract Completion Date must be signed by both the Owner and the Contractor.

With the exception of Change Orders under Subsection 38(a)(3), which shall arrive at a change to the Contract Price and any change to time using the procedures set forth therein, each Change Order shall include all time and monetary impacts of the change, whether the Change Order is considered alone or with all other changes during the course of the Project. Failure to include a change to time and changes in the Contract Price attributable to the changes in time, if permitted under Subsections 38(a)(1) or (2), shall waive any change to the time and Contract Price unless the parties mutually agree in writing to postpone a determination of the time related impacts of the change. Such a determination may be postponed not more than forty-five (45) days to give the Contractor an opportunity to demonstrate a change in the time and price needed to complete the Work. During any such postponement, the Work shall proceed, unless the Owner agrees otherwise.

If at any time there is a delay in the critical path of the Work due to postponement, due to the Contractor's efforts to justify an extension of the time or an increase in the Contract Price, or due to the Contractor's refusal to proceed with any of the Work, pending agreement on a change in time or price, such delay and any Contractor costs resulting from it shall not serve as the basis for the extension of the Time for Completion or Contract Completion Date or for an increase in the Contract Price.

- (h) The acceptance by the Contractor of any payment made by the Owner under a Change Order shall be and operate as a release to the Owner of all claims by the Contractor and of all liability owing to the Contractor for all things done or furnished in connection with the Work described in the Change Order, except for any claims that are timely submitted in accordance with Section 47. The execution of any Change Order by the Owner shall not be an acceptance of any Work or materials not in accordance with the Contract Documents, nor shall it relieve the Contractor of responsibility for faulty materials or workmanship or operate to release the Contractor or his surety from any obligation arising under the Contract or the Standard Performance Bond or Standard Labor and Material Payment Bond.

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- (i) If a dispute arises as to payment under Subsection 38(a)(2) and 38(a)(3), the Owner may require any or all of the following documentation to be provided by the Contractor.

For Work performed on a Unit Price basis:

- (1) certified measurements of authorized and approved excavations, over-excavations, fills and/or backfills, and similar work; and/or
- (2) certified measurements of piling installed, caissons installed, and similar work; and/or
- (3) daily records of waste materials removed from the Site and/or fill materials imported to the Site.

For Work performed on a Subsection 38(a)(3) basis:

- (1) certified payroll records showing the name, classification, date, daily hours, total hours, rate, and extension for each laborer, foreman, supervisor or other worker;
- (2) equipment type & model, dates, daily hours, total hours, rental rate, or other specified rate, and extension for each unit of equipment;
- (3) invoices for materials showing quantities, prices, and extensions;
- (4) daily records of waste materials removed from the Site and/or fill materials imported to the Site;
- (5) certified measurements or over-excavations, piling installed and similar work; and/or
- (6) transportation records for materials, including prices, loads, and extensions.

When requested by the Owner, requests for payment shall be accompanied and supported by invoices for all materials used and for all transportation charges claimed. If materials come from the Contractor's own stock, then an affidavit may be furnished, in lieu of invoices, certifying quantities, prices, etc. to support the actual cost.

- (j) When the variation between the estimated quantity and the actual quantity of a unit-priced item is increased or decreased more than 25 percent of the original Contract quantity, the Contract Price and/or unit price of the item shall be increased or decreased to account for the Contractor's increased or decreased cost. The Contractor's increased or decreased cost shall be calculated only on that quantity in excess of 125 percent of the original contract bid item quantity, or, if there is a

decrease in quantity of more than 25 percent, on that quantity below 75 percent of the original contract bid item quantity.

39. EXTRAS

If the Contractor claims that any instructions given to him by the Owner, by drawings or otherwise, involve extra Work which increases the scope of the Contract, then, except in emergencies endangering life or property, he shall give the Owner written notice thereof before proceeding to execute the Work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than fourteen (14) days after the receipt of such instructions. Should it not be immediately clear to the Contractor that the change involves extra Work outside the scope of the Contract, written notice shall be sufficient if given as soon as possible after such realization, but in no event later than fourteen (14) days after the start of such Work. If the Owner agrees, a Change Order shall be issued as provided in Section 38 of these General Conditions, and any additional compensation shall be determined by one of the three (3) methods provided in Subsection 38(a), as selected by the Owner. If the Owner does not agree, then any claims for compensation for the extra Work shall be filed in accordance with Section 47.

40. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT

If the Work should be stopped under an order of any court or other public authority for a period of ninety (90) days through no fault of the Contractor or anyone employed by him, or if the Owner should fail to pay to the Contractor within thirty (30) days any sum certified by the Owner when no dispute exists as to the sum due or any provision of the Contract, then the Contractor may, upon ten (10) calendar days written notice to the Owner, stop Work or terminate the Contract and recover from the Owner payment for the cost of the Work actually performed, together with overhead and profit thereon, but profit on the Work performed shall be recovered only to the extent that the Contractor can demonstrate that he would have had profit on the entire Contract if he had completed the Work. The Contractor may not receive profit or any other type of compensation for parts of the Work not performed. The Contractor may recover the reasonable cost of physically closing down the Site, but no other costs of termination. The Owner may offset any claims it may have against the Contractor against the amounts due to the Contractor. In no event shall termination of the Contract by the Contractor terminate the obligations of the Contractor's surety on its payment and performance bonds.

41. OWNER'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE

- (a) If the Contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if the Contractor should refuse or should repeatedly fail, except in cases for which extension of time is provided, to supply enough

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properly skilled workmen or proper materials and equipment, or if he should fail to perform the Work in a diligent, efficient, workmanlike, skillful, and careful manner, or if he should fail or refuse to perform the Work in accordance with the Contract Documents, or if he should fail to make prompt payment to Subcontractors or Suppliers of material or labor, or if he should disregard laws, ordinances, or the written instructions of the Architect/Engineer or the Owner, or otherwise be in substantial violation of any provision of the Contract, then the Contractor shall be in default of the Contract.

- (b) The Owner shall give the Contractor and his surety written notice of any default in the manner provided in Section 1 (definition of "Notice") of these General Conditions and allow ten (10) days, during which the Contractor and/or his surety may rectify the basis for the notice if default. If the default is rectified to the reasonable satisfaction of the Owner within said ten (10) days, the Owner shall rescind its notice of default. If not, the Owner may terminate the Contract for cause by providing written notice of termination to the Contractor. In the alternative, the Owner may, in writing, postpone the effective date of the termination for cause, at its sole discretion, if it should receive reassurances from the Contractor and/or its surety that the default will be remedied in a time and manner which the Owner finds acceptable. If at any time after such postponement, the Owner determines that Contractor and/or its surety has not or is not likely to rectify the default in an acceptable manner within the time allowed, then the Owner may immediately terminate the Contract for cause, without the necessity of providing a further notice of default, by notifying the Contractor and his surety in writing of the termination. If Owner postpones the effective date of the termination, and Contractor subsequently rectifies the default to the reasonable satisfaction of the Owner, the Owner shall rescind its notice of default. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.
- (c) Upon termination of the Contract becoming effective, the Owner shall take possession of the Site and of all materials, and make arrangements with Contractor and any rental companies for the assignment of any lease agreement relating to tools and equipment. The Owner shall provide Notice to the Surety that termination of the Contract became effective and proceed as set forth in the Performance Bond and the Terms and Conditions therein. If the expense of finishing the Work, including compensation for additional managerial and administrative services, shall exceed the unpaid balance of the Contract Price and the penal amount of the Standard Performance Bond, the Contractor shall pay the difference to the Owner, together with any other expenses of terminating the Contract and having it completed by others.
- (d) If it should be judicially determined that the Owner improperly terminated this Contract for cause, then the termination shall be deemed to be a termination for the convenience of the Owner, and the Contractor's rights and remedies shall be solely limited to those provided by Section 42 of these General Conditions.

- (e) Termination of the Contract under this Section is in addition to and without prejudice to any other right or remedy of the Owner. Any actions by the Owner permitted herein shall not be deemed a waiver of any other right or remedy of the Owner under the Contract or under the law. The Owner may offset any claims it may have against the Contractor against the amounts due to the Contractor. The provisions of this Section shall survive termination of the Contract.

42. TERMINATION BY OWNER FOR CONVENIENCE

- (a) The Owner may terminate this Contract, in whole or in part, at any time without cause upon giving the Contractor written notice of such termination in the manner provided in Section 1 (definition of "Notice") or these General Conditions. Upon such termination, the Contractor shall immediately cease Work and remove from the Site all of its labor forces, equipment, and such of its materials as Owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as Owner may require to assign to the Owner the Contractor's interest in all Subcontracts and purchase orders designated by Owner. After all such steps have been taken to Owner's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:
 - (1) Amounts due for Work performed in accordance with the Contract subsequent to the latest approved Schedule or Values and Certificate for Payment through the date of termination; and
 - (2) All amounts then otherwise due under the terms of this Contract associated with the Work performed prior to the date of termination; and
 - (3) Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination.

The Contractor shall not be entitled to any compensation or damages for lost profits or for any other type of contractual compensation or damages other than those provided in Subsection 42(a). The Owner may offset any claims it may have against the Contractor against the amounts due to the Contractor. Upon payment of the foregoing, Owner shall have no further obligations to Contractor of any nature. The Contractor agrees to waive all claims against the Owner for any consequential damages that may arise from or relate to the Owner's termination of the Contract including, but not limited to, damages for loss of revenue, income, profit, business, reputation, or bonding capacity.

- (b) In no event shall termination for the convenience of the Owner terminate the obligations of the Contractor's surety on its payment and performance bonds.

- (c) Any actions by the Owner permitted herein shall not be deemed a waiver of any other right or remedy of the Owner under the Contract or under the law. The provisions of this Section shall survive termination of the Contract.

43. DAMAGES FOR DELAYS; EXTENSION OF TIME

- (a) **Excusable Non-Compensable Delays:** If and to the extent that the Contractor is delayed at any time in the progress of the Work by strikes, fires, unusual delays in transportation or unavoidable casualties, or other causes outside the control of the Owner or the Contractor, with the exception of delays caused by weather provided for in Section 6, for which the Contractor intends to request an extension of either the Time for Completion or the Contract Completion Date, as the case may be, then the Contractor shall give the Owner written notice of the delay within fourteen (14) days of the inception of the delay. The Contractor shall also give written notice to the Owner and Architect/Engineer of the termination of the delay not more than fourteen (14) days after such termination. If the Owner agrees with the existence and the impact of the delay, the Owner shall extend the Time for Completion, the Contract Completion Date or Final Completion Date, as the case may be, for the length of time that the date for Substantial Completion or Final Completion was actually delayed thereby, and the Contractor shall not be charged with liquidated for delay during the period of such extension nor shall the Contractor be due compensation or damages of any kind, under any theory of law, as a result of such delay, the impact of such delay, or acceleration of Work as a result of such delay. In the event a CPM schedule is required by the Contract, no extension of the Time for Completion or Contract Completion Date shall be granted unless the Contractor demonstrates a delay in the critical path of the approved CPM schedule.
- (b) **Excusable Compensable Delays:** If and to the extent that the Contractor is unreasonably delayed at any time in the progress of the Work by any acts or omissions of the Owner, its agents, or employees, and due to causes within the Owner's control, and the Contractor intends to request an extension of either the Time for Completion or the Contract Completion Date, as the case may be, and/or additional compensation for damages, if any, caused by the delay, then the Contractor shall notify the Owner written notice of the delay within fourteen (14) days after inception of the delay. The Contractor's written notice shall specify the nature of the delay claimed by the Contractor, the cause of the delay and the impact of the delay on the Contractor's Work schedule. The Owner shall then have seven (7) working days to respond to the Contractor's notice with a resolution, remedy, direction to alleviate the delay, or rejection of the existence of delay. The Owner's failure to respond within the time required shall be deemed to be Owner's rejection of the existence of a delay. If and to the extent that a delay is caused by or due to the Owner taking any actions permitted or required by the Contract, the Contractor shall be entitled to an extension of time or additional compensation only for the portion of the delay that is unreasonable, if any.

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- (c) **Non-Excusable Non-Compensable Delays:** The Contractor shall not be entitled to an extension of the Time for Completion or Contract Completion Date or to any additional compensation for delays if and to the extent they are (1) caused by acts, omissions, fault, or negligence of the Contractor or his Subcontractors, agents or employees or due to foreseeable causes within their control, including, but not limited to, delays resulting from Defective Work including workmanship and/or materials, from rejected work which must be corrected before dependent work can proceed, from Defective Work or rejected work for which corrective action must be determined before like work can proceed, from incomplete, incorrect" or unacceptable Submittals or samples, or from the failure to furnish enough properly skilled workers, proper materials or necessary equipment to diligently perform the work in a timely manner in accordance with the Project schedule; or (2) due to causes that would entitle the Owner to recover delay costs or damages.
- (d) No extension of time or additional compensation, if applicable, will be granted for any delay unless the claimed delay directly affects the critical path of the approved CPM schedule or the schedule shown on the approved bar graph schedule, whichever is applicable, and any float has been consumed. No extension of time or additional compensation shall be given for a delay if the Contractor failed to give notice in the manner and within the time prescribed in Subsections 43(a) or (b) above, whichever applies. Furthermore, no extension of time or additional compensation shall be given for any delay unless a written request therefor is made in writing to the Owner within twenty (20) days of the end of the delay. The request shall state the cause of the delay, the number of days of extension requested, and any additional compensation requested by the Contractor. Failure to give written notice of either the inception or the termination of the cause of delay or failure to present a claim for extension of time and/or monetary compensation within the times prescribed shall constitute a waiver of any claim for extension or additional compensation based upon that cause.
- (e) Requests for extensions of time and/or compensation for delays pursuant to Subsection 43(b) above must be substantiated by itemized data and records clearly showing that the Work delayed was on the critical path of the approved CPM schedule or on the sequence of Work on the approved bar graph schedule, as modified, whichever applies, and that the additional time and/or costs incurred by the Contractor are directly attributable to the delay in the Work claimed. Furthermore, compensation for delay shall be calculated from the contractual Time for Completion or Contract Completion Date, as adjusted by Change Order, and shall not be calculated based on any early completion planned or scheduled by the Contractor, unless a Change Order has been executed pursuant to Section 19(t) changing the Time for Completion or the Contract Completion Date to reflect such early completion. See Section 19 for procedures for the Contractor to follow if he plans early completion of the Work and wishes to request a Change Order reflecting the early completion date.

Agreed Compensation/Liquidated Damages for Owner Delay:

If and to the extent that the Contractor is entitled to an extension in the Time for Completion or the Contract Completion Date and additional compensation purely as a result of delay under Subsection 43(b) and not as a result of a change in the Work under Section 38, the agreed compensation and liquidated damages due the Contractor for days added to the Time for Completion or the Contract Completion Date for each day of such delay shall be the per diem expenses as determined from an itemized accounting or the direct Site overhead expenses and home office and other indirect overhead expenses only as specified in Subsections 38(e)(6)(i) and (ii). These expenses shall exclude any and all expenses specified in Subsection 38.

- (f) If the Contractor submits a claim for delay damages pursuant to Subsection 43(b) above, the Contractor shall be liable to the Owner for a percentage of all costs incurred by the Owner in investigating, analyzing, negotiating and litigating or arbitrating the claim, which percentage shall be equal to the percentage of the Contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact. (Section 2.2-4335, Code of Virginia)
- (g) Any change in the Contract Time for Completion or Contract Completion Date shall be accomplished only by issuance of a Change Order.
- (h) **Agreed Compensation/Liquidated Damages for Contractor Delay:** If the Contractor fails to complete the Work within the Time for Completion or the Contract Completion Date, the Contractor shall be liable to the Owner in the amounts set forth in the Supplemental General Conditions, if any, not as a penalty, but as fixed, agreed and liquidated damages for delay until the Work is substantially or finally completed as the case may be. If liquidated damages are not so fixed in the Supplemental General Conditions, the Contractor shall be liable for any and all actual damages sustained as a result of delay. In addition to damages for delay, whether liquidated or actual, the Contractor shall also be liable for any and all actual damages sustained by the Owner as a result of any other breach of the Contract, including, but not limited to, Defective Work and abandonment of the Contract.
- (i) If liquidated damages are provided by the Supplemental General Conditions, the following provisions apply:
 - (1) If the Work is not substantially complete by the Time for Completion or Contract Completion Date, the Contractor shall owe to the Owner, not as a penalty but as Step One liquidated damages, the sum stated in the Supplemental General Conditions for Step One liquidated damages for each and every partial or total calendar day of delay in Substantial Completion.
 - (2) Once the Work is substantially complete, the accrual of Step One liquidated damages shall cease and the Contractor shall have thirty (30) calendar days in which to achieve Final Completion of the Work.

- (3) If Final Completion of the Work is not achieved on or before the thirtieth (30th) calendar day after Substantial Completion, and if the Owner has not granted any extension of time, the Contractor shall owe to the Owner, not as a penalty but as Step Two liquidated damages, the sum stated in the Supplemental General Conditions as Step Two liquidated damages for each and every partial or total calendar day of delay in Final Completion.
- (j) The Contractor waives any and all defenses as to the validity of any liquidated damage provisions in the General Conditions or other Contract Documents, or of any liquidated damages assessed against the Contractor, on the grounds that such damages are void as penalties or are not reasonably related to actual damages.

44. INSPECTION FOR SUBSTANTIAL COMPLETION & FINAL COMPLETION

- (a) The Contractor shall notify the Owner, in writing on the Certificate of Partial or Substantial Completion by the Contractor of the date when the Work or designated portion thereof, will be, in his opinion, substantially complete and ready for inspection and testing to determine if it has reached Substantial Completion. The notice shall be given at least ten (10) days in advance of said date. Inspection and testing shall take place at a time(s) mutually agreeable to the Contractor and the Owner.

The inspection shall include a demonstration by the Contractor that all equipment, systems and operable components of the project function properly and in accordance with the Contract Documents. The Contractor shall furnish access for the inspection and testing as provided in Section 21 of these General Conditions. The inspection and testing shall determine whether Substantial Completion has been accomplished and shall result in a written list of unfinished Work and Defective Work, commonly referred to as a "punch list," which must be finished and corrected to obtain Final Completion.

After successful completion of the testing and the Project Manager determines that, in his opinion, the Work, either in whole or in part, is substantially complete, the Project Manager shall notify the Contractor, in writing, of the date the Owner accepts the Work. or the specified portion thereof, as substantially complete or the Owner shall notify the Contractor of the deficiencies to be corrected or completed before such Work will be accepted as substantially complete.

- (b) The Contractor shall notify the Owner, in writing on the Certificate of Completion by the Contractor of the date when the Work has reached or will reach Final Completion and will be ready for final inspection and testing. The notice shall be given at least five (5) days in advance of said date. That inspection and any necessary testing shall be conducted in the same manner as the inspection for Substantial Completion. When the Work is finally and totally complete, including

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the elimination of all defects, the Work shall be finally accepted by the Owner and Final Payment shall be made in accordance with Section 36 of these General Conditions.

- (c) Representatives of the appropriate permitting Officials will participate in the Substantial Completion Inspection. The Owner may elect to have other persons of its choosing also participate in the inspections. If one or more Substantial or Final Completion re-inspections are required through the fault of the Contractor, the Contractor shall reimburse the Owner for all costs of re-inspection or, at the Owner's option, the costs may be deducted from payments due to the Contractor.
- (d) The Project Manager will either be present at the Substantial and Final Completion inspections or otherwise inspect the completed Work and advise the Owner whether the Work meets the fire safety requirements of the applicable building code.
- (e) Approval of Work as a result of any inspection required herein shall not release the Contractor or his surety from responsibility for complying with the Contract.

45. GUARANTEE OF WORK

- (a) Except as otherwise specified, all Work shall be, and is hereby, guaranteed by the Contractor against defects resulting from the use of materials, equipment or workmanship, which are defective, inferior, or not in accordance with the terms of the Contract, for one (1) year from the date of Final Completion of the entire Project by the Owner. Equipment and facilities which have seasonal limitations on their operation (e.g. heating or air conditioning units) shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the Owner. Where the Owner agrees to accept a portion or phase of the Work which has been determined to be substantially complete before the entire Work is finally completed, the guarantees for the materials, equipment and workmanship in that portion or phase shall begin on the date that the Owner accepts, unless otherwise specified in the Supplemental General Conditions, Special Conditions, or by separate agreement. At six (6) months and eleven (11) months after substantial completion, the Contractor shall meet with the Owner to review the status of and assign value to any unresolved warranty, guarantee, and punch list items.
- (b) If, within any guarantee period, Work which is not in accordance with the Contract, Defective Work, or inferior material, equipment or workmanship is noted by the Owner which requires or renders necessary repairs or changes in connection with the guaranteed Work, the Contractor shall, promptly upon receipt or notice from the Owner, such notice being given no later than two weeks after the guarantee period expires, and without expense to the Owner:
 - (1) Place in satisfactory condition in every particular all of such guaranteed Work and correct all defects, inferior materials, equipment, or workmanship therein;

- (2) Make good all damage to the structure or Site or equipment or contents thereof, which, in the opinion of the Owner, is the result or the list of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the Contract; and
 - (3) Make good any Work or materials or the equipment and contents of structures and/or Site disturbance that results from fulfilling the provisions of this Section.
- (c) In any case, when in fulfilling the requirements of the Contract and this guarantee or any other guaranty or warranty, the Contractor disturbs any work performed by a separate contractor, he shall restore such work to a condition satisfactory to the Owner and guarantee such restored work to the same extent as if it was guaranteed under this Contract.
 - (d) If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee as set forth in this Section, the Owner may have the defects or inferior materials, equipment or workmanship corrected and the Contractor and his surety shall be liable for all expense incurred.
 - (e) All special warranties and guarantees applicable to definite parts of the Work that may be stipulated in or required by the Contract Documents shall be subject to the terms of this Section during the first year of the life of such special warranty or guarantee.
 - (f) The guarantee of this Section shall be in addition to and not in lieu of all other warranties, express or implied, applicable to or arising from this Contract or by law.
 - (g) Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including liability for Defective Work Linder Section 30. This Section relates only to the specific obligation of the Contractor as set forth in this Section to correct the Work and does not limit the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor's liability with respect to his other obligations under the Contract Documents.
 - (h) In the event the Work of the Contractor is to be modified by another contractor, either before or after the Final Inspection provided by Section 44 of the General Conditions, the first Contractor shall remain responsible in all respects under this Section's Guarantee of Work and under any other warranties or guarantees, express or implied, applicable to or arising from this Contract or by law. However, the Contractor shall not be responsible for any defects in material or workmanship introduced by the contractor modifying his Work. The first Contractor and the

contractor making the modifications shall each be solely responsible for his respective work. The contractor modifying the earlier Work shall be responsible for any damage to or defect introduced into the Work by his modification. If the first contractor claims that a subsequent contractor has introduced defects of materials and/or workmanship into his Work, it shall be the burden of the contractor making the claim to demonstrate clearly the nature and extent of such introduced defects and the other contractor's responsibility for those defects. Any contractor modifying the work of another shall have the same burden if he asserts that defects in his work were caused by the contractor whose work he is modifying.

- (i) The Contractor shall indemnify and hold harmless Owner and Owner's consultants, representatives, agents and employees from and against any and all claims, causes of action, losses, costs, expenses or damages, including but not limited to attorney's fees, of any kind or nature whatsoever, arising from or relating to any bodily injury, including sickness, disease or death, or any property damage, that result from or arise out of the work performed by the Contractor, or by or in consequence of any neglect in safeguarding the Work, through the use of unacceptable materials in the Work, or resulting from any act, omission, negligence, or misconduct of the Contractor, any of his subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. To the extent Contractor fails or refuses to indemnify or hold harmless Owner from any such claims, the Owner may retain as much of the moneys due the Contractor under the Contract as the Owner considers necessary to ensure that a fund will be available to pay a settlement or judgment of such suits, actions, or claims. If insufficient monies are or will become due, the Contractor's surety and/or insurers will not be released from liability until all such claims and actions have been settled and suitable evidence to that effect has been furnished the Owner.

46. ASSIGNMENTS

Neither party to the Contract shall assign the Contract in whole or any part without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the prior written consent of the Owner. Consent to assignment shall not be unreasonably withheld. No assignment shall relieve any party from its obligations under the Contract unless agreed by the Parties.

47. CONTRACTUAL DISPUTES (§2.2-4363, Code of Virginia)

- (a) Contractual claims, whether for money or for other relief, shall be submitted, in writing, no later than sixty (60) days after Final Payment; however, written notice of the Contractor's intention to file such claim must be given within fourteen (14) days of the time of the occurrence or beginning of the Work upon which the claim is based. Such notice shall state that it is a "notice of intent to file a claim" and include a written statement describing the act or omission of the Owner or its agents that allegedly caused or may cause damage to the Contractor and the nature of the

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claimed damage. The submission of a timely notice is a prerequisite to recovery under this Section. Failure to submit such notice of intent within the time and in the manner required shall be a conclusive waiver of the claim by the Contractor. Oral notice, the Owner's actual knowledge, or a written notice given after the expiration of fourteen (14) days of time of the occurrence or beginning of the Work upon which the claim is based, shall not be sufficient to satisfy the requirements of this Section. The Contractor is not prevented from submitting claims during the pendency of the Work, and the Owner shall not be obligated to render a final written decision on any claim until after Final Payment. All claims shall state that they are "claims" pursuant to this Section, be submitted along with all practically available supporting evidence and documentation and the certification required by Subsection 47(e), and request a final decision. Certificates for payment, applications for payment, vouchers, invoices and similar requests for payment submitted for work done by the Contractor in accordance with the expected contract performance are routine submissions and shall not be considered claims under this Section. Proposed or requested change orders, demands for money compensation or other relief, and correspondence and e-mails to the Owner or its representatives, which do not strictly comply with the requirements of this Section, shall not be considered claims under this Section.

- (b) No written decision denying a claim or addressing issues related to the claim shall be considered a denial pursuant to this Section unless the written decision makes express reference to this Section and is signed by the City Manager or his designee. The Contractor may not institute legal action prior to receipt of the Owner's final written decision on the claim unless the Owner fails to render such a decision within ninety (90) days of submission of the claim, at which time the claim shall be deemed denied.
- (c) The decision of the Owner on the Contract shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim, initiates legal action as provided in § 2.2-4364 of the Code of Virginia. Failure of the Owner to render a decision within 90 days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the Owner's failure to render a decision within 90 days shall be the Contractor's right to immediately institute legal action. No administrative appeals procedure pursuant to § 2.2-4365 of the Code of Virginia has been established for contractual claims under this Contract.
- (d) In the event that a dispute, claim or controversy between the Owner and the Contractor arises regarding the requirements of the Contract, the performance of the Work, payment due the Contractor, the terms of any Change Order, or otherwise, the Contractor shall not stop, suspend or delay the Work or any part of the Work to be performed under the Contract, or under any Change Order, or as ordered by the Owner. The Contractor shall continue to diligently prosecute the Work to completion, including work required in any Change Order or as directed by the Owner.

- (e) Along with a claim submitted under this Section, the Contractor shall submit a notarized statement under penalty of perjury certifying that the claim is a true and accurate representation of the claim. Claims submitted without the statement shall not constitute a proper claim and, if not submitted with the certification within the time required, shall be deemed to be waived.
- (f) The remedies provided in these General Conditions, including costs, expenses, damages or extensions of time, shall be the Contractor's sole remedies for the acts, omissions or breaches of the Owner, which shall survive termination or breach of the Contract.

48. ASBESTOS – NOT APPLICABLE

49. TRAINING, OPERATION, AND MAINTENANCE OF EQUIPMENT

- (a) As a part of the Work, the Contractor in conjunction with his Subcontractors and Suppliers shall provide the Owner's operations and maintenance personnel with adequate instruction and training in the proper operation and maintenance of any equipment, systems, and related controls provided or altered in the Work. The training requirements may be further defined in the specifications.
- (b) The Contractor shall provide the Owner with five copies of operating, maintenance and parts manuals for all equipment and systems provided in the Work. Additionally, Contractor will provide all necessary copies of documents required by regulatory agencies for their review and approval. Further specific requirements may be indicated in the specifications.

50. PROJECT MEETINGS

- (a) The intention of this Section is that the Contractor and the Owner have timely exchange of information and cooperate to accomplish the Work as required by the Contract Documents. The Contractor is responsible for managing the Work, obtaining approvals and requesting clarifications on a timely, reasonable basis. The Owner is responsible for making a reasonable effort to provide timely responses to the Contractor.

- (b) **Preconstruction Meeting:**

Prior to the start of construction and no later than 15 calendar days after the Notice to Proceed, a "Preconstruction" meeting shall be held with attendees to include the Owner's Project Manager and Project Inspector, the Architect/Engineer's project manager and representatives of each design discipline involved in the Project, the Director of Public Works or designee, the Contractor's project manager and

BEDFORD COUNTY BROADBAND AUTHORITY

superintendent (and scheduler, if Contractor desires), and representatives of the Contractor's major Subcontractors. The purpose of the meeting is to clarify and discuss the specifics related to, but not limited to, the following:

- (1) Persons involved from each entity and their chain of authority including the names of persons authorized to sign Change Orders and any limits to their authority. Name of Contractor's on-site certified Responsible Land Disturber.
- (2) Names, addresses, telephone numbers, email addresses and FAX numbers to be used for Requests for Information (RFI), Requests for Clarification (RFC), Requests for Proposals (RFP), shop drawings, Submittals, and notices.
- (3) Contractor's proposed construction schedule and Owner's sequencing requirements, if any.
- (4) Application and Certificate for Payment requirements and procedures.
- (5) Procedures for shop drawings, product data and Submittals.
- (6) Procedures for handling Field Orders and Change Orders.
- (7) Procedures for Contractor's request for time extension, if any.
- (8) Construction Site requirements, procedures and clarifications to include:
 - Manner of conducting the Work
 - Site specialties such as dust and erosion control, stormwater management, project signs, clean up and housekeeping, temporary facilities, utilities, security, and traffic Safety
 - Layout of the Work
 - Quality control, testing, inspections and notices required
 - Site visits by the A/E and others
 - Owner's Project Inspector duties
 - Running Punch List
 - As-Built Drawings
- (9) Procedures and documentation of differing or unforeseen Site conditions
- (10) Monthly Progress Meeting
- (11) Assignment of responsibility for generation of meeting minutes of all project meetings.
- (12) Project Close-Out requirements and procedures

(13) Project records

(c) **Monthly Pay Meeting:**

Section 36 establishes the requirement for a monthly pay meeting which will usually be held at or near the Site. In addition to Owner and Contractor representatives, the following representatives, at a minimum, should be available to attend portions of the meeting, as applicable or necessary:

SUPPLEMENTARY CONDITIONS
TO GENERAL CONDITIONS OF THE DESIGN- BUILD CONTRACT

Supplementary Conditions

These Supplementary Conditions amend or supplement the General Conditions of the Design-Build Contract between the Bedford County Broadband Authority ("Owner") and Blue Ridge Tower, Inc. ("Contractor") and other provisions of the Contract Documents as indicated below. All provisions, which are not so amended or supplemented, remain in full force and effect.

SC-1 Owner's liquidated damages per day of unexcusable delay are \$200.

SC-2 All references to the Commonwealth of Virginia "Construction and Professional Services Manual" ("CPSM") do not apply to this Contract and should be disregarded.

SC-3 The first sentence of the second-to-last paragraph of Section 19(a) is deleted. The second sentence is deleted, and replaced with "The Project Schedule shall be the responsibility of the Contractor and shall be paid for by the Contractor."

SC-4 Section 19(b) is deleted and replaced with the following:

(b) **Project Schedule:** The Project Schedule shall be in the form attached to this Design-Build Contract using the Contractor's time estimates.

The Contractor shall allow sufficient time in his schedule for his A/E to conduct whatever associated reviews or inspections may be required. Failure to include any element of Work required for the performance of this Contract specifically in the schedule shall not excuse the Contractor from completing all Work required within the Time for Completion, Contract Completion Date, and any interim deadlines established in the Contract. In the Project Schedule, each Work activity will be assigned a time estimate by the Contractor. It is the Contractor's responsibility to submit a schedule that shows Substantial Completion of the Work by the Contract Time for Completion or the Contract Completion Date and any interim deadlines established by the Contract.

When completed, the Project Schedule will be submitted to the Owner for review. Extensions to the Time for Completion, the Contract Completion Date, and any interim deadlines shall be made only by Change Order and for just cause. The Project Schedule

BEDFORD COUNTY BROADBAND AUTHORITY

shall also include a statement of what part of the Contract Price (expressed in U.S. dollars) is attributable to each activity on the schedule and shall be in agreement with the Schedule of Values, the sum of which for all activities shall equal the total Contract Price. When acceptable to the Owner and Architect/Engineer as complying with this section, the schedule shall become the Project Schedule for the Project. Acceptance of the schedule by the Owner does not indicate agreement with nor responsibility for the proposed or actual duration of any activity shown on the accepted Project Schedule.

SC-5 Section 19(c) is deleted and replaced with the following:

- (c) **Monthly Project Reports:** The Contractor shall review progress not less than each month, but as often as necessary to manage the Project properly and stay on schedule. The Contractor shall collect and preserve information on Change Orders, including extensions of time. The Contractor shall evaluate this information and update the latest accepted Project Schedule as often as necessary to finish within the Contract Time for Completion or before the Contract Completion Date. The Contractor shall submit to the Owner along with his monthly request for payment a copy of the latest Project Schedule showing current progress, together with a narrative of the current status of the Project if appropriate. If any elements of the Work are behind schedule, regardless of whether they may prevent the Work from being completed on time, the Contractor shall indicate in writing in the report what measures it is taking and plans to take to bring the Project back on schedule and to ensure that the Time for Completion or Contract Completion Date is not exceeded.

SC-6 The Contractor is not required to have a construction trailer onsite, and any reference to such a trailer is hereby stricken.

End of Section

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That BRT Holding Company, Inc., the Contractor (“Principal”), whose principal place of business is located at _____, and _____ (“Surety”), whose address for delivery of Notices is _____, are held and firmly bound unto the Bedford County Broadband Authority, the Owner (“Obligee”) in the amount of _____ dollars (\$____) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____ entered into a contract with Obligee for the design and construction of a system to provide qualifying communications services, as more specifically provided therein (the “Design-Build Contract”), which contract is by reference expressly made a part hereof:

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly and faithfully perform said Contract in strict conformity with the plans, specifications, and conditions of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Provided, that any alterations which may be made in the terms of the Contract, or in the Work to be done under it, or the giving by the Obligee of any extension of time for the performance of the Contract, or any alterations, extensions, or forbearance on the part of either or both of the Obligee or the Principal to the other shall not in any way release the Principal and the Surety, or either of them, their heirs, executors, administrators, successors, or assigns from their liability hereunder, notice to the Surety of any such alterations, extensions, or forbearance being hereby waived.

No action shall be brought on this bond unless brought within one year after: (a) final completion of the Contract and all work thereunder, including expiration of all warranties and guarantees, or (b) discovery of the defect or breach of warranty of guarantee if the action be for such.

The Surety represents to Principal and to Obligee that it is legally authorized to do business in the Commonwealth of Virginia.

[SIGNATURES FOLLOW]

BEDFORD COUNTY BROADBAND AUTHORITY

Signed and sealed this _____ day of _____, 20__.

BRT HOLDING COMPANY, INC.:
Contractor/Principal

Witness

By: _____

Name: _____

Its: _____

Surety

By: _____

Attorney-in-Fact

Name: _____

AFFIDAVIT OF ATTORNEY-IN-FACT

COMMONWEALTH OF VIRGINIA)
) to wit:
CITY/COUNTY OF _____)

I, the undersigned notary public, do certify that _____, whose name is signed to the foregoing performance bond in the sum of \$_____ and dated _____, and which names the Bedford County Broadband Authority as Obligee, personally appeared before me today in the above jurisdiction and made oath that he/she is the attorney-in-fact of _____, an _____ corporation which is the Surety on the foregoing bond, that he/she is duly authorized to execute the foregoing bond on the Surety's behalf pursuant to the Power of Attorney noted above and attached hereto, and on behalf of the surety, he/she acknowledged the foregoing bond before me as the surety's act and deed.

Notary Public

My commission expires: _____
Notary Registration No.: _____

APPROVED:

Authority Counsel

Terms and Conditions of the Performance Bond

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the prompt and faithful performance of the Design-Build Contract, which is incorporated herein by reference.

2. If the Contractor promptly and faithfully performs the Design-Build Contract in strict conformity with the plans, specifications, and conditions of said Contract, the Surety and the Contractor shall have no obligations under this Bond.

3. In the event of Contractor's Default, and subsequent notification to the Surety pursuant to Section 41 of the General Conditions of the Design-Build Contract, the Surety shall, within fourteen (14) days of receipt of such notice, contact the Owner in writing and arrange a meeting with the Owner to discuss methods of completing the Design-Build Contract. If the Surety fails to arrange a meeting or fails to attend such meeting, the Surety shall be deemed to be in default on this Bond and the Owner may, at its sole discretion, take what measures it deems necessary to protect the Owner's interests, without further notice to the Surety, and the Owner shall be entitled to enforce any remedy available to the Owner under the Design-Building Contractor or any other provision of law.

4. Within thirty (30) days after such meeting, during which time the Surety may investigate and otherwise analyze the project, and which period shall not toll any time periods under the Design-Build Contract nor operate as a waiver of any of the Owner's rights, the Surety shall, at its own expense, notify the Owner in writing that it is taking one of the following actions, which shall be acceptable to Owner, at the Owner's discretion:

- a. By written takeover agreement with the Owner, the Surety shall itself undertake to perform and complete the Design-Build Contract, which it may do through its licensed agents or through licensed independent contractors, If the Owner, at its sole discretion, consents, the Contract may serve as the Surety's independent contractor (however, the Owner will not directly contract with the contractor produced by the Surety). However, no takeover agreement shall give the Surety any rights to succeed to the Contractor's rights under the Operating Agreement, but shall be only to those rights and obligations under this Design-Build Contract.
- b. The Surety may, if acceptable to the Owner and at the Owner's sole discretion, waive its right to perform and complete the Design-Build Contract, and with reasonable promptness under the circumstances:
 - i. Pay to the Owner all amounts for which it may be liable to the Owner as surety on this Bond, including the damages provided in Paragraph 6 below; or
 - ii. Deny liability, in whole or in part, and provide written notice thereof to the Owner, citing its reasons therefor.

5. If, after the meeting described in Paragraph 3 above, the Surety does not proceed with reasonable promptness with one of the options provided in Paragraphs 4.1 or 4.2 above, the Owner may send additional written notice to the Surety demanding that the Surety perform its

obligations under the Bond. If the Surety does not proceed to perform its obligations under the Bond within fifteen (15) days after receipt of said notice, the Surety shall be deemed to be in default on this Bond. Thereafter, the Owner shall be entitled to enforce any remedy available to the Owner under this Bond, the Design-Build Contract, or other provision of law. If the Surety proceeds as provided in Paragraph 4.2, and the Surety and Owner are unable to agree as to the amount for which the Surety is liable to the Owner, or if the Surety has denied liability, in whole or in part, the Owner, without further notice, shall be entitled to enforce any remedy available to the Owner under the Bond, the Design-Build Contract, or other provision of law. In such event, the Owner may immediately proceed to complete the work in any manner authorized by law.

6. After the Owner has terminated the Contractor's right to complete the Design-Build Contract, and if the Surety elects to act under Paragraphs 4.1 or 4.2.1 above, then the responsibilities of the Surety to the Owner shall not be greater or less than those of the Contractor under the Design-Build Contract, and the responsibilities of the Owner to the Surety shall not be greater or less than those of the Owner under the Design-Build Contract. To the limit of the amount of this Bond, plus the increased cost of any change orders under the Design-Build Contract. To the limit of the amount of this Bond, plus the increased cost of any change orders under the Design-Build Contract, provided the Owner commits the balance of the Construction Contract Price to the prompt and faithful completion of the Construction Contract, the Surety is obligated without duplication for:

- a. The responsibilities of the Contractor for correction of defective work and completion of the Design-Build Contract;
- b. Additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
- c. Liquidated damages, or, in the event liquidated damages are not specified in the Design-Build Contract, actual damages caused by delayed performance or non-performance by the Contractor.

The Owner, at its sole discretion, may waive its claims for delay costs and/or liquidated damages.

7. The Surety shall not be liable to the Owner for obligations of the Contractor that are not set forth in the Design-Build Contract, including those obligations set forth in the Operating Agreement, and the Balance of the Contract Price shall not be reduced, set off, or increased by reason of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner, its officers, agencies, administrators, successors, or assigns.

8. The Surety hereby waives notice of any changes, including changes of time, to the Design-Build Contract or to related subcontracts, purchase orders, and other obligations. The Surety understands and agrees that the penal amount of the Bond shall be increased or decreased by any changes to time and amount incorporated by any Change Orders.

9. Any proceeding by the Owner under this Bond, legal or equitable, may be instituted only in the Circuit Court or General District Court for Bedford County, Virginia, to the jurisdiction of which the Parties irrevocably consent.

10. Notice to the Surety shall be mailed or delivered to the address shown on the face of the Bond in the space for Surety address for delivery of notices.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond under Section 2.2-4337 of the Code of Virginia, 1950, as amended, and not as a common law bond, when furnished in accordance with the statutory requirements.

12. Definitions.

- a. **Balance of the Design-Build Contract Price** means the total amount payable by the Owner to the Contractor under the Design-Build Contract after all proper adjustments have been made, reduced by all valid and proper payments made to or on behalf of the Contractor under the Design-Build Contract.
- b. **Design-Build Contract** means the agreement between the Owner and the Contractor identified on the face of this Bond, and includes all of the contracts made a part thereof, and duly executed modifications, amendments, and change orders thereto.
- c. **Contractor Default** means a failure of the Contractor, as defined in Section 41 of the Design-Build Contract, to perform or otherwise comply with the terms of the Design-Build Contract.

13. Nothing in these Terms and Conditions shall prevent a Surety from becoming involved in the Design-Build Contract prior to termination, upon notice from the Owner of the Contractor's failure to promptly and faithfully perform the Design-Build Contract in strict conformity with the plans, specifications, and conditions of the Design-Build Contract.

[END OF PERFORMANCE BOND]

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That BRT Holding Company, Inc., the Contractor (“Principal”), whose principal place of business is located at _____, and _____ (“Surety”), whose address for delivery of Notices is _____, are held and firmly bound unto the Bedford County Broadband Authority, the Owner (“Obligee”) in the amount of _____ dollars (\$____) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____ entered into a contract with Obligee for the design and construction of a system to provide qualifying communications services, as more specifically provided therein (the “Design-Build Contract”), which contract is by reference expressly made a part hereof:

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly make payment to all claimants as hereinafter defined, for labor performed and material furnished in the prosecution of the Work provided for in the Design-Build Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions.

The Principal and the Surety, jointly and severally, agree with Obligee as follows:

1. A “Claimant” is one having a direct contract with the Principal or with a subcontractor of the principal for labor, material, or both for use in the performance of the Design-Build Contract. A “subcontractor” of the Principal, for the purposes of this Bond only, includes not only those subcontractors having a direct contractual relationship with the Principal, but also any other contractor who undertakes to participate in the Work which the Principle is to perform under the aforesaid Design-Build Contract, whether there are one or more intervening subcontractors contractually positions between it and the Principal. “Labor” and “material” shall include, but not be limited to, public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the work site.

2. Any claimant who has a direct contractual relationship with the Principal and who has performed labor or furnished material in accordance with the Design-Build Contract in furtherance of the Work provided in the Design-Build Contract, who has not been paid in full therefor before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment may bring an action on this bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The Obligee need not be a party to such action and shall not be liable for the payment of any costs, fees, or expenses of such suit.

BEDFORD COUNTY BROADBAND AUTHORITY

3. Any claimant who has a direct contractual relationship with any subcontractor of the Principal but who has no contractual relationship, express or implied, with the Principal, may bring an action on this Bond only if he has given written notice to the Principal within ninety (90) days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the Work was performed or to whom the material was furnished. Notice to the Principal shall be served by registered or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or material furnished shall not be subject to the time limitations stated in this Paragraph 3.

4. No suit or action shall be commenced hereunder by any claimant:

a. Unless brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials; it being understood, however, that if any limitation embodied in this Bond is prohibited by law controlling the construction of the Project, the limitation embodied in this Bond shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

b. Other than in the General District Court or Circuit Court for Bedford County, Virginia.

5. The amount of this Bond shall be reduced by and to the extent of any payment or payments made for labor and materials in good faith hereunder.

[SIGNATURES ON FOLLOWING PAGE]

Signed and sealed this _____ day of _____, 20__.

BRT HOLDING COMPANY, INC.:
Contractor/Principal

Witness

By: _____

Name: _____

Its: _____

Surety

By: _____

Attorney-in-Fact

Name: _____

AFFIDAVIT OF ATTORNEY-IN-FACT

COMMONWEALTH OF VIRGINIA)
) to wit:
CITY/COUNTY OF _____)

I, the undersigned notary public, do certify that _____, whose name is signed to the foregoing performance bond in the sum of \$_____ and dated _____, and which names the Bedford County Broadband Authority as Obligee, personally appeared before me today in the above jurisdiction and made oath that he/she is the attorney-in-fact of _____, an _____ corporation which is the Surety on the foregoing bond, that he/she is duly authorized to execute the foregoing bond on the Surety's behalf pursuant to the Power of Attorney noted above and attached hereto, and on behalf of the surety, he/she acknowledged the foregoing bond before me as the surety's act and deed.

Notary Public

My commission expires: _____
Notary Registration No.: _____

APPROVED:

Authority Counsel

[END OF PAYMENT BOND]

NOTICE TO PROCEED

[DATE]

TO: BRT Holding Company, Inc.
c/o Mr. Anthony Smith
1125 1st Street
Roanoke, Virginia 24016

Re: Bedford County Broadband Authority
Turn Key Broadband Proposal

Dear Mr. Smith:

In accordance with the Design-Build Contract portion of our PPEA Comprehensive Agreement, you are notified that the Time for Completion under the above Agreement will commence to run on , 20 _____. By that date, you are to start performing your obligations under the Design-Build Contract. In accordance with the Design-Build Contract, the Work shall be substantially completed within calendar days from and after the said date, which is _____, 20_____.

Before you may start any Work at the site, SECTION 11, Contractor's And Subcontractor's Insurance, of the General Conditions Of The Design-Build Contract requires that you deliver to the Owner the Certificates of Insurance which the Contractor is required to purchase and maintain in accordance with the Contract Documents.

You are also reminded of the requirements of the General Conditions, SECTION 8 - Contract Security and SECTION 12 - "All Risk" Builder's Risk Insurance.

(Owner)

By _____
(Authorized Signature)

(Typed Name & Title)

Bedford County/Blue Ridge Towers Broadba

| Site Name | Site Address | Tower Type | MS1 SCIP | MS2 Site Acq | MS3 Survey/2C |
|-----------------------|--|-------------------|-------------|-----------------|------------------|
| Big Island | 1240 Sunset Hill Rd. Big Island, Va 24526 | 195' Monopole | | | |
| Big Island Elementary | 114 Schooldays Rd. Big Island, Va 24526 | 195' Self Support | | | |
| Montvale | 11575 Lynchburg Turnpike Rd. Montvale, Va. 24122 | 195' Self Support | | | |
| Hardy Collection | 1220 Bandy Mill Rd. Hardy, Va 24101 | 195' Self Support | | | |
| Shady Grove | 101 Shady Grove Drive Thaxton, VA. 24174 | 195' Self Support | | | |
| McGhee Rd. | 1065 McGhee Rd. Bedford, Va 24523 | 195' Self Support | | | |
| Boonsboro School | 1065 Lee Jackson Highway Bedford, Va 24503 | 195' Self Support | | | |
| Moneta VFD | 3340 Horeshoe Bend Rd. Moneta, Va 24121 | 195' Self Support | | | |
| Huddleston | 3536 Dundee Rd. Huddleston, Va 24104 | 195' Self Support | | | |
| New London | 1046 West London Park Drive Forest, Va. 24551 | 195' Self Support | | | |

Wheat Valley Reservoir 500 Overstreet 195' Self Support
Creek Rd. Bedford,
Va 24523

Dumplin Mountain 1964 Headens 175' Self Support
Bridge Rd.
Bedford, Va 24523

nd Milestone Project Tracker

| | | | | | | |
|---------------------------------|------------------------------------|---|------------------------|-------------------------------|-----------------------------------|---|
| MS4 Zoning Submittal | MS5 Zoning Approval | MS6 FAA TOW AIR Approval | MS7 Phase I | MS8 SHPO/ NEPA | MS9 Geotech Report | MS10 Construction Drawings |
|---------------------------------|------------------------------------|---|------------------------|-------------------------------|-----------------------------------|---|

| | | | | | |
|------------------|--------------|---------------------|-------------------|-----------------|-----------------|
| MS11 | MS13 | MS14 | MS15 | MS16 | MS17 |
| Building | Tower | Construction | Foundation | Tower | Tower |
| Permit | Order | Start | Complete | Delivery | Delivery |
| Submittal | | | | | |

**MS 18
Electrical
Inspection
Passed**

**MS19
Construction
Complete**

OPERATING AGREEMENT

This Operating Agreement (“Operating Agreement”) is formed between the Bedford County Broadband Authority, a political subdivision of the Commonwealth of Virginia under the Wireless Service Authorities Act (the “Authority” or “Owner”), and Blue Ridge Tower, Inc., doing business as BRISCNET, a Virginia corporation (“BRT” or the “Contractor”; collectively, the “Parties”).

RECITALS

WHEREAS, the Authority is a political subdivision of the Commonwealth of Virginia under the Virginia Wireless Service Authorities Act, Chapter 43.1 of Title 15.2 of the Code of Virginia, 1950, as amended, with the authority to participate in the provision of qualifying communications services, defined as high-speed data service and Internet access service, of general application, but excluding any cable television or other multi-channel video programming services; and

WHEREAS, BRT is a wireless internet service provider (WISP) with years of experience providing the infrastructure, goods, and services set forth in this Agreement, and is a “private entity” under the Act, and is capable of providing the services contemplated herein.

WITNESSETH

NOW THEREFORE, in consideration of the premises hereof and the mutual promises set forth herein, together with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. Purpose.** The purpose of this Agreement is to provide ubiquitous high-speed internet to the unserved and underserved public in Bedford County at fair, reasonable, and uniform prices.
- 2. Term.** This Agreement shall be for a five-year initial term, with four renewals of five years each, contingent on continued achievement of deployment, customer satisfaction, and service targets.
- 3. Payments.** BRT will charge fair, reasonable, and uniform rates to the public for its services. It will provide two main services as the Authority’s partner: (1) Installation, maintenance, upkeep, and timely replacement and updating of its equipment; and (2) being an Internet service provider (ISP) to the public. BRT will receive its payments through customer subscriptions. The Authority will own and maintain the tower structures following their Final Acceptance as set forth in the Design-Build Contract. Notices to Proceed with deployment in accordance with this Operating Agreement shall follow Substantial Completion of the construction of the towers and backhaul under the Design-Build Contract. BRT will be expected to meet reasonable reinvestment levels for replacement and updated equipment on a regular basis.
- 4. Tower Deployment.**
 - 4.1. Deployment Schedule.** The following towers (each a “Tower”) will be part of Phase I rollout. Cambium Network equipment shall be initially deployed, with deployment dates as set forth below:

| Name | Location | Deployment Date |
|------|----------|-----------------|
| | | ??? |

On or before the “deployment date,” the Equipment on each Tower shall be fully installed, fully permitted, and in actual use providing wireless internet service to customers. In the event that the Notice to Proceed for the Operations Phase is issued later than [REDACTED], the Deployment Dates shall be extended in the same number of days as the Notice to Proceed is delayed.

4.2. Propagation Testing & Engineering. It is BRT’s responsibility to select and license spectrum and to choose appropriate and effective equipment to achieve the goals of this Agreement in a timely manner and as otherwise agreed. The technical specifications for a Cambium Network entitled “Project Bedford County 11 Tower sites updated with 820s rev6 using alt. site with updated address,” dated 22 August 2018, is incorporated herein as the plans which BRT agrees to implement. Nevertheless, this acceptance by the Authority does not divest BRT of full and complete responsibility for the choice of technologies to achieve the goals of this Operating Agreement. In furtherance of these goals, BRT shall:

4.2.1. Prior Approval of Equipment. All construction, installations, and alterations, including maintenance, repair, removal or relocation, except routine and/or emergency repairs and maintenance of any of BRT’s equipment shall require submission of plans with detail required by the Authority and the prior written approval of the Authority. In the event emergency repairs or routine maintenance is needed, plans shall be submitted as soon as practical following the end of the emergency or maintenance; provided that any such repairs or maintenance which is consistent with the existing as-built drawings shall not require any submittals. The Authority reserves the right, consistent with good engineering practices, to reasonably and within a reasonable time period approve or disapprove the plans and the actual changes or improvements. In the event the changes or improvements are not in accordance with the approved plans or do not meet the requirements of this Agreement, the Authority shall provide written notice to BRT of such non-compliance. In the event BRT has not corrected such non-compliance within thirty (30) days following written notice, the Authority may remove the Improvements or otherwise take the necessary action to remove the equipment and restore the premises at the expense of BRT.

4.2.2. As-builts. Within thirty (30) days after substantial completion of construction, installation, or alteration of any of the equipment, BRT shall provide the Authority with “as-built” plans for antennas and transmission equipment deployments.

4.2.3. Utility Service & Redundancy. All ground equipment used by BRT will be located inside a secure compound. Ground equipment will be located outside of any buildings and mounted to the exterior of existing poles or buildings with the prior approval of the Authority. BRT will install a battery backup system that will provide redundancy to their equipment at each tower location.

5. Operations.

5.1. Deployment Fee. For each structure on which Equipment is deployed, BRT shall pay to the Authority:

BEDFORD COUNTY BROADBAND AUTHORITY

- 5.1.1. Year 1 of this Agreement: \$10 per month.
- 5.1.2. Year 2 of this Agreement: \$100 per month.
- 5.1.3. Year 3 of this Agreement: \$250 per month.
- 5.1.4. Year 4 of this Agreement: \$400 per month.
- 5.1.5. Monthly deployment fees for subsequent years shall increase each July 1 in accordance with the U.S. Bureau of Labor Statistics Consumer Price Index (CPI-U) for the Lynchburg Metropolitan Statistical Area.

5.2. Customer Service. The goal of the Parties is to provide service to all persons desiring it at fair, reasonable, and uniform pricing.

5.2.1. Non-Discrimination. BRT shall provide service on a non-discriminatory to any business or resident in Bedford County that requests it without regard to race, sex, religion, alienage, disability status, age, or other reason prohibited by law. Service shall only be denied for a valid capacity-related reason. If a request for service is made by a residence or business and service is not available, BRT shall notify the Authority, indicate what would be needed to provide service to the customer, and work with the Authority to find a solution to expand coverage to the requested area.

5.2.2. Quarterly Reports. BRT shall provide the Authority a quarterly report describing the customer base in Bedford County and demonstrating that broadband availability is being expanded into the County. Coverage areas, available services, new buildout activity, and customer success stories demonstrating the impact of the project are strongly encouraged. A list of customer complaints and their resolution status shall also be provided. Customer lists, however, should not be provided unless specifically requested; aggregated data is sufficient.

5.2.3. Complaints. Customer service complaints should be resolved as soon as practicable, but in no event later than seven calendar days from a customer reporting them without reasonable cause. Excessive legitimate complaints from customers regarding BRT's service sent to the Authority will be considered a failure to meet performance criteria. The Authority shall take the following steps to work with BRT and resolve complaints before determining that complaints are excessive. After the Authority works with BRT by following the steps below, the Authority shall have sole discretion in deciding whether issues have been resolved to the satisfaction of the Authority:

- a) The Authority will forward all complaints it receives to BRT, and provide BRT's customer service contact information to any person from whom it receives a complaint.
- b) If the Authority determines that complaints are becoming excessive, in the sole determination of the Authority, both parties shall meet at the County Offices or another mutually agreed upon location.

- c) At the meeting BRT shall report on the root cause of the complaints and present a plan to resolve the issues responsible for the complaints.
- d) BRT shall then have 30 days to resolve the issues and report to the Authority on the resolution.
- e) Failure to satisfactorily resolve the complaints shall be a default.

5.3. Maintenance. Maintenance of Towers is the responsibility of the Authority, subject to the Management Agreement; maintenance of Equipment, including wiring and base stations, is the responsibility of BRT.

5.4. BRT's Right of Access. Subject to such reasonable security-related rules and regulations as the Authority shall from time-to-time promulgate notifying BRT in writing thirty (30) days in advance of the effective date, BRT and BRT's employees, representatives, contractors and subcontractors shall have the right of 24-hour, 7-day-a-week access to the premises for the purposes of installing, inspecting, maintaining, operating, repairing, or removing equipment and facilities used by BRT in connection with its operations. BRT shall give reasonable advance notice to the Authority when BRT needs access to a site, if practicable, and BRT shall provide a timeframe for access, as soon as practical and in the interest of security, but within 24 hours of the request, except in case of emergency. In the event of an emergency BRT shall give prior notice to the Authority if possible, or within a reasonable time thereafter. Only those employees, representatives, contractors, and subcontractors of BRT of which the Authority has been informed in writing will be allowed access to the sites. The Authority has the option of assigning a representative to be present at all times when BRT is present at a site. The Authority may establish additional or more or less stringent access requirements by written notification to BRT. However, in no event shall BRT be unreasonably denied access to the Site.

5.5. Duty to Replace Equipment in the Event of Damage or Destruction. In the event of the damage or destruction of any piece of Equipment, BRT shall repair or replace such equipment within seven days following such damage or destruction. In the event such damage or destruction results in a claim on insurance made under Section 6.2.2.e of this Agreement, BRT shall use all funds recovered on such claim for the purpose of replacement or improvement of such equipment.

5.6. Replacement. Choice of wireless communications equipment and its replacement schedule is the responsibility of BRT. BRT has the responsibility, consistent with the other obligations of this Agreement, to replace equipment that is superannuated, technologically obsolescent, or has become unreliable due to passage of time or wear and tear. However, BRT shall replace each piece of equipment not later than two years following its full depreciation based upon the latest Internal Revenue Service depreciation tables and methodology for calculating depreciation of wireless communication assets. *See Revenue Procedure 2011-22.*

6. Public Procurement Act. BRT agrees to comply with the following mandatory Public Procurement Act provisions:

6.1. Required Terms & Conditions. The provisions of this section apply at any site where performance of work in connection with this specific Agreement is done.

6.1.1. Non-Discrimination. BRT agrees that it will (Va. Code § 2.2-4311):

- a) Not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by local, state, or federal law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of BRT's business;
- b) Post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause;
- c) State that it is an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of SCS to perform services under this Agreement. All notices, advertisements, and solicitation placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section; and
- d) Will include the provisions of the foregoing subparagraphs in every subcontract or purchase order exceeding \$10,000 issued by BRT in order to fulfill its obligations under this Agreement, so that the provisions will be binding on each subcontractor or subvendor.

6.1.2. Drug-Free Workplace. BRT agrees that it will (Va. Code § 2.2-4312):

- a) Provide a drug-free workplace for its employees;
- b) 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 its workplace and specify the actions which will be taken against any employee for a violation;
- c) State in all of its solicitations or advertisements for employees to perform services under this Agreement that BRT maintains a drug-free workplace;
- d) Include the provisions of this sub-paragraph in every subcontract or purchase order of over \$10,000, so that said provisions shall be binding upon each subcontractor or subvendor.

6.1.3. Illegal Alien Workers. BRT agrees not to employ illegal alien workers or otherwise violate the provisions of the Immigration Reform and Control Act of 1986.

6.2. Insurance Requirements.

6.2.1. Liability Coverage. BRT must take out and maintain during the term of this Agreement such bodily injury, personal liability, and property damage liability

insurance necessary protect it and the Authority from claims for damages arising from personal injury, including death, as well as from claims for property damage, which might arise from BRT’s performance of its obligations under this Agreement. Such insurance must be issued by a company admitted to do business in the Commonwealth of Virginia and with at least an AM Best rating of A-. Within 10 days after issuance of the Notice to Proceed under this Agreement, and in no event later than the first day on which BRT begins its performance, BRT must provide the Authority with a certificate of insurance showing such insurance to be in force and providing that the insurer must give the Authority at least 30 days’ notice prior to cancellation or other termination of or reduction in such insurance.

6.2.2. Insurance. BRT shall maintain the following insurance to protect it from claims that could arise from performance of this Agreement, including claims (i) under the Workers’ Compensation Act; (ii) for personal injury, including death; and (iii) for damage to property, regardless of whether such claims arise out of BRT’s actions or inactions, or those of BRT’s subcontractor or other persons directly or indirectly employed by either of them:

- a) Worker's Compensation:
 - Coverage A: Statutory
 - Coverage B: \$100,000
- b) General Liability:

| | |
|-------------------------------|-----------------------|
| Per Occurrence: | \$1,000,000 |
| Personal/Advertising Injury: | \$1,000,000 |
| General Aggregate: | \$2,000,000 |
| Products/Completed Operations | \$2,000,000 Aggregate |
| Fire Damage Legal Liability | \$ 100,000 |
- c) Automobile Liability:

| | |
|------------------------|-------------|
| Combined Single Limit: | \$1,000,000 |
|------------------------|-------------|
- d) Professional Liability:

| | |
|--------------------|-------------|
| Per Occurrence: | \$1,000,000 |
| General Aggregate: | \$1,000,000 |
- e) Insurance on Equipment. BRT shall maintain insurance on its Equipment in an amount at least equal to its present depreciated value, which amount, however, shall not be less than 100% of the replacement cost of the Equipment.

6.3. Registration to Transact Business (Va. Code § 2.2-4311.2). BRT warrants and certifies that it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, 1950, as amended, or as otherwise required by law. SCS will

not allow its corporate existence to lapse or its certificate of authority or registration to do business in the Commonwealth to be revoked or cancelled at any time during the term of this Agreement. The Authority may void this Agreement if BRT fails to remain in compliance with the provisions of this section.

6.4. Non-Collusion.

6.4.1. Governmental Frauds Act. Neither BRT's proposal nor this agreement is the result of, or affected by, any unlawful act of collusion with another person or company engaged same line of business or commerce, or any act of fraud punishable under the Virginia Governmental Frauds Act, §§ 18.2-498.1 *et seq.* of the Code of Virginia, 1950, as amended. Furthermore, BRT understands that fraud and unlawful collusion are crimes and can result in fines, prison sentences, and civil damage awards.

6.4.2. COIA. All aspects of BRT's proposal and agreement are in compliance with the applicable provisions of the State and Local Government Conflict of Interests Act, §§ 2.2-3100 *et seq.* of the Code of Virginia, 1950, as amended. Specifically, without limitation, no employee of the Authority or member of employee's immediate family shall have any proscribed personal interest in this Agreement.

6.4.3. Ethics in Contracting. BRT's proposal and this Agreement are in accordance with the applicable provisions of the Virginia Public Procurement Act, Art. 6, Ethics in Public Contracting, §§ 2.2-4367 *et seq.* of the Code of Virginia, 1950, as amended, and any other applicable law set forth therein.

7. Remedies.

7.1. Liquidated Damages for Delay. The Authority may give one Notice to Proceed, or may give several Notices to Proceed for each tower site as they come "on-line." The Parties agree that if the Equipment on each Tower is not fully installed as of the deployment date set forth in this Operating Agreement, following the Authority's giving 14 days' demand for performance, the Authority's damages shall be deemed liquidated in the amount of \$200 per day. The Parties agree that the damages are not susceptible of definite measure, and that this is a good faith pre-estimate of probable damages and not a penalty. This sum shall be due and payable and shall extend until BRT either cures the default or the Authority declares SCS in breach and terminates this Agreement.

7.1.1. Excusable Delay. If and to the extent BRT is delayed at any time in the progress of the project by strikes, fires, unusual delays in transportation or unavoidable casualties, or other causes outside the control of BRT, then BRT shall give the Authority written notice within 14 days after the inception of the delay. BRT shall also give the Authority written notice of the termination of the delay within 14 days after such termination. If the Authority agrees with the existence and impact of the delay, the Authority shall extend the delivery date for the length of time that the delivery date was actually delayed thereby, and the BRT shall not be charged with liquidated damages for delay during the period of such extension.

7.2. *Right of Authority to Terminate Agreement upon Bankruptcy or Insolvency of BRT.* In the event BRT becomes bankrupt, either voluntarily or involuntarily, or if a receiver is appointed for it, or if it executes any bill of sale, deed of trust, or general assignment for the benefit of creditors in lieu of foreclosure, or become critically insolvent, in the sole judgment of the Authority, the Authority may terminate this Agreement, giving BRT reasonable time to remove its Equipment from the Towers.

7.3. *Right of Authority to Make Payments.* In the event BRT intends to default on any payment to any creditor who has or may have a lien on the Equipment, it shall give notice to the Authority at the same time as it gives notice to the creditor. The Authority has the right to advance such sums as may be necessary to make payments on behalf of BRT under any lien, credit, subordination, or other agreement relating to the Equipment, including any taxes, insurance proceeds, replacements, or repairs to the Equipment, or to ensure the performance of any of the covenants included in such credit agreement or lien, which sums shall become a lien on the Equipment in favor of the Authority. All such advances may be evidenced by the Authority by a memorandum of lien, and shall bear interest from the date of payment thereof at the lawful judgment interest rate in the Commonwealth of Virginia.

7.4. *Termination for Cause.*

7.4.1. If BRT should refuse or should repeatedly fail, except in cases for which the Authority is notified and gives permission, to supply enough properly skilled workmen or proper materials and equipment to perform its obligations under this Agreement, or if he should fail to perform its obligations in a diligent, efficient, workmanlike, skillful, and careful manner, or if it should fail or refuse to perform its obligations, or if he should fail to make prompt payment to creditor or lienor, or if he should disregard laws or ordinances, or otherwise be in substantial violation of any provision of this Agreement, then BRT shall be in default of the Agreement.

7.4.2. The Authority will give BRT prompt written notice of any default and allow 10 days during which BRT may rectify the basis for the notice of default. If the default is rectified to the reasonable satisfaction of the Authority within said ten (10) days, the Authority shall rescind its notice of default. If not, the Authority may terminate this Agreement for cause by providing written notice of termination to BRT. In the alternative, the Authority may, in writing, postpone the effective date of the termination for cause, at its sole discretion, if it should receive reassurances from BRT that the default will be remedied in a time and manner which the Authority finds acceptable. If at any time after such postponement, the Authority determines that BRT has not or is not likely to rectify the default in an acceptable manner within the time allowed, then the Authority may immediately terminate this Agreement for cause, without the necessity of providing a further notice of default, by notifying BRT in writing of the termination. If the Authority postpones the effective date of the termination, and BRT subsequently rectifies the default to the reasonable satisfaction of the Authority, the Authority shall rescind its notice of default.

7.4.3. Termination of this Agreement under this Section is in addition to and without prejudice to any other right or remedy of the Authority. Any actions by the Authority permitted herein shall not be deemed a waiver of any other right or

remedy of the Authority under this Agreement or under the law. The provisions of this Section shall survive termination of this Agreement.

7.5. *“Cooling Off” Period.* In no event shall either Party file suit against the other without first giving notice of all grievances, and waiting 90 days prior to filing. In the event such waiting period would cause the aggrieved Party to miss a statute of limitations or other time bar, such party may file suit, but may not serve it on the other party before 90 days have passed; nor shall this section be construed to be a pledge not to plead the statute of limitations.

8. Miscellaneous.

8.1. *Integration.* This Agreement, including the exhibits hereto, constitutes the full and complete agreement of the Parties respecting its subject matter, and any prior or contemporaneous agreements or understandings, written or oral, are hereby merged into and superseded by the provisions of this Agreement. This Agreement may only be amended or supplemented by a subsequent writing of equal dignity except where expressly set forth herein. This Agreement may not be assigned by a Party without the prior written consent of the other Party.

8.2. *Notices.* Notices may be given to:

If to Authority:

Bedford County Broadband Authority
Attn: G. Carl Boggess
122 East Main Street
Bedford, Virginia 24523
cboggess@bedfordcountyva.gov

If to BRT:

Blue Ridge Tower Holdings, LLC
Attn: Anthony Smith
1125 1st Street
Roanoke, Virginia 22922

Either Party may amend addresses it has set forth in this paragraph by sending notice to the other Party as set forth in this paragraph, notwithstanding the provisions of section 8.1.

8.3. *No Covenants of Officials.* No covenant, agreement or obligation contained in this Agreement shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee, council member, supervisor or agent of the Authority in his or her individual capacity, and neither Authority officials nor any officer, employee, council member, supervisor or agent thereof executing this Agreement or any related instrument shall be liable personally on this Agreement or such instrument or be subject to any personal liability or accountability by reason of the execution and delivery thereof. No director, officer, employee, council member, supervisor or agent of the Authority shall incur any personal liability with respect to any other action taken by him or her pursuant

to this Agreement or any of the transactions contemplated hereby, provided he or she acts in good faith.

8.4. *Intellectual Property.* All intellectual property created in the performance of the Obligations is the property of the Authority. Any reports, studies, photographs, negatives, or other documents prepared by BRT in the performance of its Obligations shall be remitted to the Authority by BRT, without demand therefor, upon the earliest of (i) completion of its Obligations; (ii) completion of the Contract Period; or (iii) termination, cancellation or expiration of the Contract Documents. BRT shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of the Obligations without the prior written consent of the Authority.

8.5. *Rule of construction as to dates.* If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is a Saturday or Sunday or a legal holiday in the Commonwealth of Virginia, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first business day following such Saturday, Sunday or legal holiday. Unless otherwise specified herein, all references in this Agreement to a “day” or “days” shall refer to calendar days and not business days.

8.6. *Choice of law.* This Agreement shall be construed according to the laws of the Commonwealth of Virginia without regard to its principles of conflicts of laws. The Parties consent to exclusive venue and jurisdiction in the General District Court or Circuit Court for Bedford County, Virginia, and shall not file any suit in any other court.

8.7. *Drafter & Severability.* This Agreement has been jointly drafted by the Parties, and is to be construed as jointly drafted and not be construed against either of the Parties as the drafter. This Agreement is severable, and if any provision is found to be invalid by any court of competent jurisdiction, the remainder shall survive. The section and paragraph headings in this Agreement are for convenience of reference only and do not modify or restrict any provisions hereof and shall not be used to construe any provisions of this Agreement.

8.8. *Covenant of authority.* All Parties warrant that the signatories below have full authority, and have undertaken such legal actions as may be necessary to ensure such authority, to bind the entities of which they are representatives to the full extent permitted by law. This Agreement may be executed by facsimile, electronic or original signature of the Parties and in counterparts which, assuming no modification or alteration, shall constitute an original and when taken together, shall constitute one and the same instrument.

8.9. *Time of the essence.* Time is of the essence of all obligations set forth herein for which a time is stated.

8.10. *Waiver.* The failure of either Party to this Agreement to insist upon strict compliance with any term herein shall not be construed to be a waiver of that requirement.

IN WITNESS WHEREOF, the Parties affix their signatures below:

BEDFORD COUNTY BROADBAND AUTHORITY

By:

Its: Chair

BLUE RIDGE TOWER, INC., d/b/a BRISCNET

By: Anthony Smith

Its: Manager

WIRELESS PROPERTY MANAGEMENT AGREEMENT

THIS WIRELESS PROPERTY MANAGEMENT AGREEMENT (hereinafter the “Agreement”) is made and entered into this ___ day of _____, 20__ by and between Bedford County Broadband Authority, a political subdivision of the Commonwealth of Virginia under the Wireless Service Authorities Act (the “Authority”), and Blue Ridge Tower, Inc., a Virginia corporation (the “Company”). The Authority and Company may hereinafter be referred to jointly as the “Parties” or individually as a “Party.”

WITNESSETH:

WHEREAS, the Authority seeks to own and operate a project to provide qualifying communications services to the citizens of Bedford County, Virginia (the “System”) as more specifically described in that Turn Key Broadband Proposal dated August 30, 2018, and amended through the date of this Agreement; and

WHEREAS, the Authority seeks to obtain the services of a qualified and competent management company to provide management services for the vertical assets that are part of the Authority’s System as more specifically set forth herein; and

WHEREAS, the Company has been chosen by the Authority to provide such services in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the Parties agree as follows:

ARTICLE 1. DEFINITIONS. Terms shall be understood to have the same meaning in this Management Agreement that they do elsewhere in this Comprehensive Agreement, except where defined in this Management Agreement or as necessary to achieve the manifest intent hereof. This Management Agreement deals specifically with the vertical assets that form part of the System.

ARTICLE 2. APPOINTMENT AND SERVICES OF COMPANY.

2.01. Term. The Authority hereby hires the Company as the exclusive manager of the System upon the terms and conditions herein stated, and Company hereby accepts said engagement, for a term beginning on the date of this Agreement and ending at 12:00 midnight on the five (5) year anniversary of the beginning date, unless sooner terminated by the Parties as provided in Article 5 of this Agreement. At the expiration of said term, this Agreement, if not renewed in writing by the Parties, shall then be deemed a month-to-month agreement cancelable by either Party on not less than thirty (30) days’ advance written notice, which notice may be given at any time during a month, provided that in any event the cancellation shall be effective at the end of the calendar month in which the thirty (30) day notice period ends.

2.02. Services of Company. The Company shall direct, supervise, manage, operate, maintain, and repair the System and develop, institute, and follow programs and policies to facilitate the efficient operation of the System, to include, but not limited to, the proper collocation of third party providers in compliance with this Agreement, the Collocation Agreement, and all written directions of the Authority on as profitable a basis as reasonably possible. Without limiting

the generality of the foregoing and subject at all times to such procedures and directions that shall be set forth in this Agreement, Company shall do all of the following:

(a) Employees. Company shall select, employ, pay, supervise, and discharge all employees and personnel necessary to the operation, maintenance, and protection of the System. All persons so employed by Company shall be employees of Company or independent contractors retained by Company, and not by the Authority. All costs of gross salary and wages, payroll taxes, medical and dental insurance, worker's compensation, insurance, incentive and bonuses, and other costs and employment benefit expenses payable on account of such employees shall be included in the Approved Operating Budget. The Company shall fully comply with all applicable laws and regulations having to do with worker's compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employer/employee-related subjects.

(b) Records and Budgets. Company shall keep or cause to be kept at the Records Office suitable books of control as provided in this Agreement. Company shall be required to prepare and submit to the Authority such monthly, quarterly, annual, or other operating and capital budgets as shall be required by the Authority. Without limitation, Company shall prepare and submit to the Authority a proposed operating budget and a proposed capital budget for the System for the management and operation of the System for the forthcoming Fiscal Year no later than February 1 of each year during the term hereof to cover the fiscal year beginning each July 1. All proposed operating budgets and capital budgets shall be on a form submitted by Company and approved by the Authority. The Authority will consider the proposed budgets and endeavor to approve such budgets by May 15 of each year. The Parties may negotiate details of such budget during the intervening time. The proposed budgets shall become the Approved Capital Budget and the Approved Operating Budget only when approved by the Authority.

The Company shall have the right, from time to time during each Fiscal Year, to submit requested revisions to the budgets for consideration and approval by Owner. Company agrees to use diligence and all reasonable efforts to ensure that the actual costs of maintaining and operating the System shall not exceed the Approved Operating Budget or the Approved Capital Budget pertaining thereto, as applicable.

(c) Collocating. Company shall coordinate the collocation of third party providers on the vertical assets of the System in such a way as to ensure proper placement and proper functionality of the System and shall use commercially reasonable efforts to obtain responsible third party providers for collocation purposes. The Authority may negotiate and execute a Collocation Agreement using the standard Collocation Agreement form which is attached to the Comprehensive Agreement as Exhibit H. Any deviation from the standard form shall require the prior written consent of the Authority.

Company shall use reasonable efforts to ensure that all co-location space payments and all other monies payable under the Collocation Agreement are paid by the third party providers as and when the same shall become due and payable directly to Company. Company shall adjust space payments and other required payments where adjustment is contemplated by the Collocation Agreement, shall notify the Authority and service providers of such adjustments, and shall sign

and serve in the name of the Authority such notices, including without limitation letters demanding past due and currently owed payments, as are deemed appropriate or necessary by the Company.

(d) Collections. Company shall undertake the collection of monies due of every kind and of any form due from third party service providers. Payments shall be collected in accordance with the Collocation Agreement. The commencement of any legal action related to the recovery of payments due shall require the prior written approval of the Authority and may be carried out by the Authority if it so elects.

(e) Maintenance. Company shall maintain or cause to be maintained the System in good and marketable condition; provided no maintenance expense, repair or alterations other than emergency repairs, which are specifically identified within the Approved Operating Budget, shall be undertaken without the prior written consent of the Authority. Company shall institute and effectuate a preventative maintenance program. Notwithstanding the foregoing, in the event of an emergency in which there is an immediate danger to person or property or in which action is required in order to avoid suspension of services, Company shall take such action as is reasonable and prudent under the circumstances and shall be reimbursed for any expense incurred in such action, even if not in the Approved Operating Budget, so long as Company attempts to consult with the Authority and, in any event, notifies the Authority within 48 hours of taking such action explaining the reasons therefor. Company shall obtain all necessary receipts, releases, waivers, discharges and assurances necessary to keep the System free of any mechanics', laborers', materials suppliers' or vendors' liens in connection with the maintenance or operation of the System. All such documentation shall be in such form as required by the Authority.

(f) Contracts. Company shall not enter into any contract without the Authority's prior written approval; provided, however, that the Authority's prior written approval shall not be required with respect to any utility or service contract which is (i) entered into in the usual course of business, (ii) for a term of one year or less, and (iii) specifically provided for in the Approved Operating Budget. Without limiting the foregoing, each contract entered into pursuant to this subsection shall contain a thirty (30) day (or less) cancellation clause exercisable by the Authority without cause and without penalty or fee, unless otherwise approved in writing by the Authority. All contracts are to be entered into by the Company on behalf of the Authority. Company shall assure that any contractor performing work on the System maintains insurance satisfactory to the Authority, including, but not limited to, worker's compensation and insurance against liability for injury to persons and property arising out of all such contractor's operations naming Company and the Authority as additional insureds. Company shall obtain certificates of insurance for all such insurance before the work begins. Company shall furnish copies of the certificates to the Authority if requested.

(g) Purchases. Company shall supervise and purchase or arrange for the purchase of all reasonable materials and equipment which are provided for in the Approved Operating Budget or otherwise specifically approved by the Authority in writing. All such purchases shall be done in accordance with the Virginia Public Procurement Act and any other applicable policies of the Authority.

(h) Operating Expenses. Company shall submit to the Authority all requests for payment of all normal operating expenses specifically provided for in the Approved Operating Budget. The Authority shall pay such expenses in a manner commercially reasonable for the System. Company shall recommend that the Authority purchase major items of new or replacement equipment when the Company believes such purchase to be necessary or desirable. The Authority may arrange to purchase and install such items itself or may authorize the Company to do so subject to any supervision and specification requirements and conditions prescribed by the Authority. Prior to purchasing, the Company and Authority shall ensure compliance with the Virginia Public Procurement Act and any other applicable policies and procedures.

(i) Compliance. Company manage the System in compliance with all terms and conditions of applicable federal, state and local law. Company shall also comply or supervise compliance with the provisions of any insurance policy or policies insuring the Authority in relation to the System (so as not to decrease the insurance coverage or increase insurance premiums). Company shall be responsible for performance by the Authority under all license agreements, easement agreements, covenants, conditions, restrictions, documentation of record, development agreements, operating agreements or other similar documents governing or applicable to the title, operation and management of the System known to the Company.

(j) Licenses and Permits. Company shall assist in obtaining at Authority's expense all licenses, permits or other instruments required for the operation of the System or any portion thereof (collectively, "Licenses"). Company shall send to the Authority a copy of all initial or renewal license applications. Licenses shall be obtained in the Authority's name.

(k) Notice and Cooperation. The Parties shall forthwith give notice to each other of the commencement of any action, suit or proceeding against the Authority or against the Company with respect to the operations of the System or otherwise affecting the System. Company shall fully cooperate, and shall cause all its employees to fully cooperate, in connection with the prosecution or defense of all legal proceedings affecting the System.

(l) Other Complaints and Notices. Company shall handle promptly any complaints or requests from third party providers in accordance with the Co-Location Agreement and shall notify the Authority of any major complaints so made. Company shall notify the Authority promptly of: (i) any notice received by Company or known to Company of violations of any governmental requirements (and make recommendations regarding compliance therewith); (ii) any fire, accident or other casualty or damage to the System; (iii) any violations relative to the use, maintenance or leasing of space of the System under governmental laws, rules, regulations, ordinances or like provisions; (iv) defaults under any agreements affecting the System; or (v) any violations of any insurance requirements. Company shall promptly deliver to the Authority copies of any documentation in its possession relating to such matters. Company shall keep the Authority reasonably informed of the status of the particular matter through the final resolution thereof.

ARTICLE 3. COMPENSATION.

3.01 Tower Management Fee. For providing the services set forth in Article 2 of this Agreement, Company shall be entitled to 20 percent of all revenues generated from all Collocation

Agreements as full compensation for management services, but physical maintenance and capital items for the System shall be part of the Annual Budgets. Payment of said fee shall be made to Company on a monthly basis unless otherwise agreed to by the Parties.

ARTICLE 4. RELATIONSHIP OF PARTIES; REPRESENTATIONS AND WARRANTIES.

4.01 Nature of Relationship. In taking any action pursuant to this Agreement, Company will be acting only as an independent contractor, and nothing in this Agreement, expressed or implied, shall be construed as creating a partnership or joint venture or any employment relationship or that of principal and agent between the Parties or any other relationship between the Parties.

4.02 Communications Between Parties. The Authority shall rely on Company to direct and control all operations of the System; provided, however, the Authority reserves the right to communicate directly with any current or future third party service provider for any reason.

4.03 Company Not to Pledge Authority's Credit. Company shall not, except in the purchase of goods, services, materials and supplies reasonably required in the ordinary course of business in the operation of the System or as may be otherwise required in the performance of its obligations under this Agreement and in either case as previously approved by the Authority, pledge the credit of the Authority; nor shall Company, in the name or on behalf of the Authority, borrow any money or execute any promissory note, installment purchase agreement, bill of exchange or other obligation binding the Authority or the System.

4.04. Representations and Warranties.

(a) Company represents and warrants that it has full power, authority and legal right to execute, deliver and perform this Agreement and to perform all of its obligations hereunder and that the execution, delivery and performance of all or any portion of this Agreement does not and will not require any consent or approval from any governmental authority, violate any provisions of law or any government order or conflict with, result in a breach of, or constitute a default under any instrument to which the Company is a party.

(b) Authority represents and warrants that it has full power, authority and legal right to execute, deliver, and perform this Agreement.

ARTICLE 5. TERMINATION.

5.01. Termination by Authority for Convenience. This Agreement may be terminated by the Authority at any time without cause and upon written notice to Company by the Authority, effective thirty (30) days from the date of such notice, which shall be considered the effective date of termination.

5.02. Termination by Authority for Cause. The Authority may terminate this Agreement at any time during the term hereof upon written notice to the Company effective immediately for any of the following reasons:

(a) If Company shall suspend or discontinue business;

(b) If a court shall enter a decree or order for relief in respect of Company in an involuntary case under the federal bankruptcy laws, as now or hereinafter constituted, or any other applicable federal, state or foreign bankruptcy, insolvency or other similar law, or appoint a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar office of Company or for any substantial part of its property, or for the winding-up, dissolution or liquidation of its affairs, and such decree or order shall continue unstayed and in effect for a period of sixty (60) consecutive days or if Company shall consent to any of the foregoing;

(c) If Company shall commence a voluntary case or action under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy insolvency or other similar law, or consent to the appoint of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator, or other similar official of Company or for any substantial part of its property, or make any assignment for the benefit of creditors, or admit in writing that is unable, or fail generally to pay its debts as such debts become due, or take action in furtherance of any of the foregoing;

(d) If Company is grossly negligent or engages in willful misconduct with respect to its duties or obligations to the Authority under this Agreement; or

(e) If Company commits any other material default in the performance of any of its obligations under this Agreement, unless such default is cured within thirty (30) days after written notice of such default is given to Company, or, if not curable within thirty (30) days, commenced within such thirty (30) days and diligently prosecuted to completion.

5.03 Termination by Company. This Agreement may be terminated by Company, without cause, upon ninety (90) days' written notice to the Authority. This Agreement may be terminated by Company for cause if the Authority commits any material default in the performance of any of its obligations under this Agreement, including, without limitation, its obligations to pay Company any fees due and payable under Section 3.01 above, and such default shall continue for a period of thirty (30) days after notice thereof by Company to the Authority.

5.04 Orderly Transition. In the event of any termination or expiration of this Agreement, the Company shall use its best efforts to effect an orderly transition of the management and operation of the System to an agent designated by the Authority and to cooperate with such agent.

ARTICLE 6. MISCELLANEOUS.

6.01 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. Venue for any action hereunder shall be in the state courts for Bedford County, Virginia.

6.02 Entire Agreement. This Agreement contains the entire agreement between the Parties with regard to the subject matter hereof, and this Agreement shall not be amended, modified or cancelled except in writing signed by both Parties.

6.03 Successors and Assigns. All terms, conditions and agreements herein set forth shall inure to the benefit of, and be binding upon the Parties, and any and all of their respective heirs,

successors, representatives and assigns. Notwithstanding the foregoing, this Agreement may not be assigned by Company nor shall Company delegate any of its duties hereunder without the Authority’s prior written consent, which consent may be granted, withheld, or conditioned in the Authority’s sole and absolute discretion. Any attempted assignment or delegation by Company hereunder in violation of this subsection shall be null and void and of no force or effect.

6.04 Waiver. The failure of either Party to insist upon a strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such terms, provisions, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either Party or any terms or provisions hereof shall be deemed to have been made unless expressed in writing and signed by such Party. In the event of consent by the Authority to an assignment of this Agreement, no further assignment shall be made without the express written consent of the Authority.

6.05 Severability. Whenever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under all applicable laws. However, if any provision of this Agreement is invalid under any applicable law, such provision shall be ineffective only to the extent of such invalidity with the remaining provisions of this Agreement remaining in full force and effect.

6.06 Notices. Any notice required or desired to be given under this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when personally delivered or delivered by any generally recognized courier, or by certified or registered mail, addressed to the appropriate address shown below. Any notice given by depositing it in the United States mail as certified or registered mail, postage prepaid, shall be deemed given five (5) business days after deposit.

Authority: _____

Company: _____

6.07 Counterparts: This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, but all such executed counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed as of the Effective Date.

Signatures on following page

BEDFORD COUNTY BROADBAND AUTHORITY

BLUE RIDGE TOWER, INC.:

Name: _____

Position: _____

BEDFORD COUNTY BROADBAND AUTHORITY:

Name: _____

Position: _____

TOWER COLLOCATION AGREEMENT

THIS COLLOCATION AGREEMENT (“Lease”) is made as of the ___ day of _____, 20__ by and between the _____ (“Lessee”), and the Bedford County Broadband Authority (“Lessor”) by and through its agent, BRT Holding Company, Inc. (“Manager”).

RECITALS

A. Lessor is the owner of the property, consisting of equipment, equipment shelter and a communications tower, (“Lessor’s Property”) known as _____.

B. Lessor is a public body, corporate and politic, organized pursuant to § 15.2-5431.1 et seq. of the Code of Virginia, 1950, as amended.

C. Consistent with the Lessor’s statutory authority, the Lessor desires to provide Lessee with this co-location opportunity to install and operate its equipment and services.

D. The Lessor has agreed to

E. Lessor desires to lease to Lessee and Lessee desires to lease from Lessor certain space in the equipment shelters of Lessor’s towers and certain tower space on Lessor’s tower for installation and use of Lessee’s equipment under the following terms and conditions set forth herein.

WITNESSETH

1. **LEASED PROPERTY.** Lessor hereby leases to Lessee space on Lessor’s existing tower located on Lessor’s Property (the “Tower”) for the purposes of providing wireless information services and commercial mobile radio service. Such uses include, but are not limited to, mounting equipment using proven engineering methods to ensure the equipment will remain safely secured to the Tower and an equipment enclosure or space in an existing equipment enclosure.

2. **LESSEE’S EQUIPMENT.** The term “Equipment” as used herein shall be deemed to refer to Lessee’s or Lessee’s agent, assignee or subtenant as applicable, transmitters, receivers or transceivers, transmission lines(s) and antenna(s) and miscellaneous property as identified in **Exhibit A** hereof and any replacements thereof or additions thereto permitted by this Lease. The Lessee shall provide drawings showing where on the tower and where in the shelter the equipment will reside and which electrical outlets will be used for the Lessor’s approval.

3. **TERM.**

The primary term of this Lease shall be five (5) years, commencing on the date of installation (the “Lease Commencement Date”), with _____ () succeeding five-year terms at the Lessee’s option. Subject to the provisions of Sections 4, and 21, below, and provided that

either party may cancel this Lease upon One hundred Eighty (180) days' prior written notice to the other party.

4. RENT.

a. The rent for the primary term of this Lease shall be _____
(\$ _____) per month commencing on the Lease Commencement Date.

b. The first payment of Rent shall be due on the earlier of (i) ten (10) days after the Lease Commencement Date, or (ii) the last business day of the month in which the Lease Commencement Date occurs. In the event the Lease Commencement Date occurs on a date other than the first (1st) day of the month, the first monthly payment of Rent shall be pro-rated based on the number of days remaining in that month from the Lease Commencement Date until the end of the month.

c. Lessor may impose a charge of Ten Percent (10%) of the Rent for any payments not received by the required date. The last month's Rent shall be pro-rated based on the number of days in the month that the Lease remains in effect.

d. Effective as of the first anniversary of the date on which the first full monthly payment of Rent occurs and on each subsequent anniversary of the first full monthly payment of Rent during the Term, Rent shall be increased from the immediately preceding year by an amount equal to the percentage increase in the United States Department of Labor, Consumer Price Index for the Lynchburg Metropolitan Statistical Area, All Goods and Services Base ("**Index**") published for the most recent month over the Index published for the same calendar month of the preceding year.

e. Monthly rent shall refer to basic rental payments described in this Paragraph 4 as well as any additional rental payment due to multiplexing as set forth in Section 24 hereof.

5. INSTALLATION.

a. This Lease is specifically conditioned upon Lessee obtaining (at Lessee's sole expense) a structural analysis performed by an independent, third party (acceptable to Lessor) to determine and report effects of the current and anticipated loads on the tower structure. Additionally, any and all proposed structural modifications shall be approved by the Lessor. In the absence of such a structural analysis and approval, this Lease shall be null and void.

b. No Equipment shall be installed on the Tower until it has been approved or evaluated by the engineering department or consultant of Lessor, and determined to be compatible with the Tower design. All construction is to be coordinated with the Lessor. The Lessor shall provide a formal letter referencing Exhibit A of lease agreement for approval and issuance of a Notice To Proceed ("**NTP**"). All approved equipment, mounting and design are associated with an NTP.

c. During installation and operation of its Equipment, Lessee shall not cause by its transmissions or its other activities on the Leased Property interference of any kind whatsoever to the broadcasting or transmission activities or other communications facilities of Lessor on the Tower as those facilities existed as of the Lease Commencement Date. If such interference is caused by Lessee and cannot be reduced to levels acceptable to Lessor, Lessee must immediately halt all installation work upon notice from Lessor, and Lessor may elect to terminate this Lease by giving Lessee thirty (30) days' written notice. In the event that this Lease is terminated pursuant to this Section 5(c), the parties shall have no further obligations or liabilities hereunder.

d. Lessor recognizes that Lessee shall be licensed to use its Equipment at this site as authorized by the Federal Communications Commission ("FCC"), if such license requirements are applicable to Lessee's Equipment or radio frequencies. Lessee shall provide upon request from Lessor a copy of its licenses for that use once such license is received. Lessee shall apply for such licenses prior to installing its Equipment on the Tower.

e. Lessee agrees that the installation will be done in a neat, workman-like manner in accordance with standards of good engineering practice. All costs of applications, permits, and installation of the Equipment will be assumed by Lessee.

f. The Equipment, if kept in Lessor's building or enclosure, shall be kept locked and rendered inaccessible to unauthorized persons.

g. Lessee's transmission lines shall be electrically grounded to the Tower in accordance with good engineering practice.

h. Monitor speakers, if any, for the Equipment shall be disabled except when work is being performed on the Equipment.

i. Lessee will strictly adhere to the following requirements. In the event Lessee fails to do so, Lessor, after reasonable notice and Lessee's failure to correct, will have the immediate right to terminate this Lease. In the event that this Lease is terminated pursuant to this Section 5(i), the parties shall have no further obligations or liabilities hereunder.

(i) NO DRILLING OR WELDING TO OR REMOVAL OF ANY PART OF THE TOWER WILL BE ALLOWED WITHOUT THE LESSOR'S PERMISSION.

(ii) Antenna brackets and transmission line brackets must be inspected by and approved by Lessor prior to installation.

(iii) Painting of any hardware or brackets will be allowed only in strict compliance with Part 17 of FCC Rules and only if consistent with the color band in which the subject hardware or brackets are located on the Tower.

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(iv) All rustable material, including, but not limited to, bolts, nuts, and washers, must be hot-dipped galvanized or made of stainless steel.

(v) Equipment cabinets must be identified with a label consisting of a typed card under plastic on which the Lessee's name, address, 24-hour telephone number(s), station call sign and operating frequencies will be inscribed.

(vi) Each antenna must be identified as indicated in **Exhibit A** by a metal tag fastened securely to its bracket or permanent marker labeling the equipment ownership on the Tower so that maintenance personnel will know the ownership of each antenna system.

(vii) Each coaxial, waveguide, or transmission line must be hung inside the Tower and run in a specific location predetermined by Lessor.

6. USES OF LEASED PROPERTY.

a. Lessee shall use the Leased Property only for the installation, maintenance, repair, replacement, alteration, use, and operation of the Equipment. Such operations shall be conducted in accordance with applicable FCC licenses and with the standards imposed by the FCC and any other governmental body or agency as shall have jurisdiction over the installation, maintenance, repair, replacement, alteration, use, and operation of the Equipment or with any activities of Lessee on the Leased Property. Lessor shall have the right to lease space on the Tower to any other person or persons desiring to engage in any form of broadcasting and/or electromagnetic communications, provided that such other lessees shall not cause by transmission or other activities any interference with Lessee's transmission activities.

b. Lessee shall comply with all laws and regulations of federal, state, county, and municipal authorities applicable to the Leased Property, the housing and operation of the Equipment therein, and the exercise of the rights conferred hereunder. Lessee shall conduct its business at the Leased Property in such a manner so as not to interfere with (i) Lessor in the conduct of the main purpose of the transmitting building, and (ii) other lessees of the Tower; *provided, however*, that nothing said herein is intended to preclude Lessee's quiet enjoyment of the Leased Property afforded herein. The entrances, parking areas and other common areas of the premises on which the Leased Property is located shall not be obstructed or encumbered by Lessee or used for any other purposes other than normal ingress or egress to and from the Leased Property.

c. In the event that Lessee has not installed its equipment and begun serving customers from the public within 12 months following the effective date of this Lease, this Lease shall terminate and the parties shall have no further obligations to one another.

7. PERMITS. Lessee shall obtain, or cause to be obtained, at its own expense, any and all licenses or permits from the FCC and such governmental body or agency as shall have jurisdiction in connection with the installation, repair, alteration, or replacement of the Equipment or with any activities of Lessee on the Leased Property. If for any reason, any governmental agency shall fail or refuse to issue extend or renew a license or to permit Lessee to

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continue using the Leased Property for its intended purposes, and Lessee shall fail to obtain, or cause to be obtained, such license or permit, Lessee shall promptly notify Lessor of same, and in such event, this Lease may be terminated by either Lessor or Lessee. In the event this Lease is terminated pursuant to this Section 7, the parties shall have no further obligations or liabilities hereunder.

8. LESSEE'S RIGHTS OF ACCESS.

a. Lessor hereby grants to Lessee a nonexclusive right of access to the Leased Property for the employees, agents or representatives designated by Lessee to the extent reasonably necessary to enable Lessee to install, operate, maintain, repair, replace and monitor the Equipment. Such access shall include ingress and egress to the Tower or building as described in **Exhibit A**. Lessee shall have 365 days a year, 24 hour a day access to the Premises for maintenance and other operational activities to all approved equipment described in Exhibit A. For informational purposes a notification will be provided indicating only that Lessee was on premise performing work on equipment approved within the Exhibit A. Notice To Proceed is the binding authorization of the lease for activities on the premise.

b. Lessee will be given a combination code for the gate entrance, a code to the Tower entrance, a code for the Lessor's building in the event that Lessee's Equipment is stored in the Lessor's building, each for maintenance purposes. If the code is shared with unauthorized personnel by the Lessee or by others who have directly or indirectly received the code from Lessee, the Lessee will bear the expense of recoding the locks. Lock codes may be changed on as frequently as necessary to achieve the Lessor's security goals.

c. In order to maintain the integrity of the operations of Lessor, Lessee, and other Tower tenants, Lessor shall have the right to restrict certain individuals or companies from performing Lessee's maintenance services on the Leased Property.

d. All Contractors and Sub-Contractors of Lessee who shall perform any services for Lessee on the Leased Property shall hold licenses from Bedford County and/or the Commonwealth of Virginia and/or other authorizations appropriate to and necessary for the work being performed.

e. Lessor will take all reasonable steps to prevent unauthorized access to the Tower, including erecting appropriate signs and fencing.

9. UTILITIES. Lessee shall be responsible for its costs for electrical power for its equipment, electrical connections, and any necessary telephone company wiring and connections.

10. TAXES. Lessor shall pay all real estate taxes, assessments or levies assessed or imposed against the land on which the Leased Property is located, and all taxes which may be assessed against the Tower and any buildings thereon. Lessee shall reimburse Lessor for all personal property taxes assessed or imposed upon Lessor as a result of Lessee's Equipment being located at the Leased Property or which are assessed directly on the Equipment; *provided,*

however, Lessee shall have the right to request prior notification of any taxes for which it is to be charged, so as to be given the opportunity to appear before the taxing authority and contest said assessment.

11. INDEMNIFICATION. Lessee shall indemnify and hold Lessor and Lessor's officers, directors, board members and employees harmless from any and all costs, claims, damages or liabilities arising during the initial Term or renewal Term of this Lease out of or in connection with (i) Lessee's, its employees', assignees or agents' use of the Tower, including any damage to surrounding structures; (ii) anything else done by Lessee, its employees or agents on or about the Tower including any damage to surrounding structures; (iii) any breach or default in the performance of Lessee's obligations, representation, warranties or covenants under this Lease; (iv) injuries to or death of persons and damage to property; and (v) other willful or negligent acts or omissions of Lessee arising out of Lessee's use of the Tower, except for any claim or damages arising solely out of Lessor's (including its officers, directors, partners, employees, parents or affiliates) willful or negligent act or omissions. Lessee shall reimburse Lessor for any reasonable legal fees or costs incurred by Lessor in connection with any such claim. This indemnity clause shall survive the expiration or termination of this Lease.

12. ENVIRONMENTAL. Lessor and Lessee (and Lessee's assignees) shall each ensure that it complies with all Environmental laws and regulations. Each shall protect, defend, indemnify and hold the other harmless from and against any and all claims, fines, judgments, penalties, actions, abatement, cleanup, remediation, testing, investigations, losses, damages, costs, expenses, or liability (including attorneys' fees and costs) directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, discharge, disposal, or presence of a Hazardous Material on, under or about the Leased Property or Lessor's Property caused by the indemnifying party; except to the extent caused by the negligence or willful misconduct of the indemnified party. This indemnity shall survive the expiration or termination of this Lease.

13. INSURANCE. Lessee and/or Lessee's assignees shall procure and maintain comprehensive public liability and property damage insurance with a responsible insurance company legally entitled to do business in the Commonwealth of Virginia covering all its operations and activities on or in connection with the Leased Property with a single limit of not less than One Million Dollars (\$1,000,000) naming Lessor as an additional insured and prior to the Lease Commencement Date shall furnish Lessor with a certificate evidencing such insurance and stating that such coverage shall not be canceled or changed until Lessor be given thirty (30) days' notice in writing. The insurance must be carried throughout the term of this Lease. Lessee shall procure and maintain, before commencing any installation and/or maintenance work on the Tower, insurance covering workers compensation insurance with a responsible insurance company legally qualified to do business in the Commonwealth of Virginia and said insurance shall provide for the payment of compensation in accordance with the laws of the Commonwealth of Virginia for all workers employed, and employees of Lessee and its contractors and sub-contractors, and further insuring Lessor against any and all liability for personal injury or death of such workers and employees. Lessee shall provide Lessor with said certificate of insurance prior to the commencement of any installation and/or maintenance provided for in this Lease.

14. MAINTENANCE OF LEASED PROPERTY.

a. Lessor shall provide for the Leased Property (but not to the Equipment housed thereon) and the Tower all necessary maintenance and repairs to maintain the Tower in a safe and structurally sound condition, *provided, however*, that when such maintenance and repair is made necessary by or because of the fault or negligence of Lessee (reasonable wear and tear excepted), Lessee shall reimburse Lessor for the cost thereof. The Tower itself and all work performed on the Lessor's Property by Lessor's employees or third parties hired or retained by Lessor shall meet with all applicable federal, state, and local/municipal laws, including rules and regulations of the FCC, the Federal Aviation Administration, and the Occupational Safety and Health Administration. Compliance with all such laws, rules, and regulations shall be the sole responsibility of, and at the sole expense of, Lessor.

b. Lessee or its assignees as appropriate, at its own expense, shall carry out the maintenance of Lessee's Equipment, including, but not by way of limitation, the electrical and mechanical maintenance of lights thereon. Maintenance shall be conducted by Lessee in accordance with standards of good engineering practice to assure that at all times, Lessee's Equipment is in conformance with the requirements of the FCC and all other government bodies or agencies with jurisdiction over Lessee. Lessor shall assume the responsibility of Lessee for compliance with applicable sections of Part 17 of FCC Rules and Regulations pertaining to registration, lighting, painting, inspection, and maintenance of the Tower. However, the terms of this Lease shall not be construed so as to relieve Lessee of its other responsibilities under FCC Rules and Regulations. The foregoing notwithstanding, Lessor affirms that it is familiar with all federal tower and antenna structure regulations. Lessor agrees to comply with all applicable regulations. Lessor agrees to provide evidence of such compliance to Lessee as reasonably necessary to enable Lessee to comply with regulations applicable to Lessee.

c. Lessee shall, upon the termination of this Lease, surrender possession of the Leased Property to Lessor in as good a condition as same was received at the commencement of the term, reasonable wear and tear excepted.

15. ALTERATIONS BY LESSEE. Lessee shall have the right at its own cost and expense, to make, or cause to be made, such changes and alterations in its Equipment in or on the Leased Property as operations may require, including the renovation or replacement of its antennas, *provided however*, that **(a)** such changes or alterations are in conformance with standards of good engineering practice and the provisions of Section 5 hereof and, if necessary, have been approved by the FCC and any other governmental body or agency as referred to in Section 6 hereof, and *provided further*, **(b)** plans and specifications are first submitted to and approved in writing by Lessor, and **(c)** any proposed changes or alterations do not increase the "wind loading" of the Tower. Lessee will provide at Lessor's request an independent professional analysis of "wind loading" and stress to determine any changes that Equipment replacements and/or alterations by Lessee would cause. Except in the event of emergencies,

Lessee shall give Lessor no less than five (5) business days' advance notice of any maintenance or installations of Lessee's Equipment on the Tower.

16. TOWER DAMAGE. In the Event that the Tower is fully or materially destroyed or damaged by fire, lightning, ice accumulation, windstorm, explosion, collapse, vandalism, civil disturbance, aircraft, or other vehicle damage or other casualty, Lessor may elect to terminate this Lease, effective as of the date of such destruction or damage. If the Tower is in need of such repair or is so damaged by fire, lightning, ice accumulation, windstorm, explosion, vandalism, aircraft, or other vehicle damage, collapse or other casualty that reconstruction or repair cannot reasonably be undertaken without dismantling Lessee's antennas and interrupting Lessee's operations, Lessee shall receive abatement of rent for such time as it is unable to conduct its normal operations. If Lessee's operations are interrupted for more than (90) ninety days, Lessee may, upon written notice, terminate this Lease in which event no further rent payment shall be due. Under no circumstances shall Lessor be liable for any financial loss due to the aforementioned circumstances.

17. DAMAGE TO LESSEE'S EQUIPMENT. Under no circumstances, except for intentional misconduct or gross negligence by Lessor, shall Lessor be responsible for damage to or loss of Lessee's Equipment.

18. SERVICE INTERRUPTION. Lessor shall incur no liability to Lessee for failure to furnish space, as provided herein, or the rendition of any services, if prevented by war, fires, strikes, or other labor troubles, accidents, acts of God, or other causes beyond its control.

19. EMINENT DOMAIN. If the land upon which the Tower, foundation, guy wire anchors or transmitter building is located, and/or the Leased Property is acquired or condemned under the power of eminent domain whether by public authority, public utility, or otherwise, then this Lease shall terminate as of the date title shall have vested in public authority, and Lessee shall be entitled to a pro rata refund of its prepaid rent and a total abatement of all future rent payments. Lessor shall be entitled to the entire amount of any condemnation award, except that Lessee shall be entitled to make claim for and retain a condemnation award based on and attributable to personal property, moving expenses, or leasehold interest as permitted by law.

20. ASSIGNMENT. Lessee shall not be allowed to assign, sublet, mortgage or encumber this Lease, or subject or permit the Lease Property or any part thereof to be used by others with prior written notice to and approval by Lessor. No assignment, sublet or use of others shall relieve Lessee of its obligations under this Lease. Lessee shall notify Lessor in writing at least 60 days in advance of any such proposed assignment, subletting or other encumbrance. Notwithstanding anything herein to the contrary, Lessor hereby provides consent to Lessee subletting its Tower space and assigning its rights hereunder to any single Internet provider under contract to Lessee to provide broadband Internet services on a subscription basis to customers, as long as such entity remains in compliance with such contract or until Lessee otherwise notifies Lessor it has terminated such contract, and as long as such use of Lessor's facilities do not jeopardize the tax-exempt status of the bonds that financed the facilities as determined in Lessor's sole discretion in consultation with Lessor's bond counsel. However, such assignment shall not relieve Lessee of its obligations hereunder.

21. TERMINATION. In the event that Lessee violates any material provision of this Lease, Lessor shall so notify Lessee in writing and in the event that Lessee fails to remedy any such violations within thirty (30) days from the time of the receipt of the aforesaid notice by Lessor (with the exception of those items termination for which is hereinabove addressed), then and in that event Lessee shall be required to remove without contest all of Lessee's Equipment and all rights in favor of Lessee hereunder shall forthwith terminate. In the event that Lessee does not remove its Equipment within a reasonable time, then upon prior written notice to Lessee, Lessor shall have the right to remove Lessee's Equipment to correct such violation for failure to comply with the terms hereof. The cost of such removal shall be paid to Lessor by Lessee on demand. In the event that such cost or expenses or the rental payments are not paid upon demand, Lessor is hereby expressly granted a lien on Lessee's Equipment installed on the Tower to the extent of the amount of the rental payment or expenses so incurred but not paid by Lessee and is authorized to dispose of such Equipment by sale or otherwise, upon written notice to Lessee. Lessor is hereby expressly released from all liability of every nature whatsoever in case it so removes all or any of the said Lessee's Equipment pursuant to this Section. Notwithstanding any provision herein to the contrary, Lessee shall have the right to terminate this Lease at any time without advance notice if it is unable to secure all required licenses, permits and approvals to operate its facilities on Lessor's Property and it provides a written statement to Lessor explaining such.

22. REMOVAL OF LESSEE'S EQUIPMENT. At the termination of this Lease, whether it expires by its own terms or is canceled for any reason, Lessor agrees to give Lessee reasonable access to remove its antennas and associated transmitting and receiving Equipment for a period of thirty (30) days after such termination and Lessee agrees to remove the Equipment in such period. At the termination of this Lease, Lessee shall remove or cause to be removed its antennas and associated Equipment and to pay all cost in connection with such removal within thirty days of receiving such notice. In the event Lessee fails to remove all Equipment within such period, then Lessee shall be responsible for rent as "holdover" tenant for time period the Equipment remains on the tower beyond the thirty day removal notice until such time as the Equipment is removed. In addition, violation of this Section by Lessee shall be treated as a termination for cause under Section 22.

23. ADDITIONAL EQUIPMENT AND RENT. Should Lessee desire to operate more than the Equipment described in **Exhibit A**, then Lessee shall make written request of Lessor accompanied by the information for each such additional transmitter and/or antenna(s). For the duration of the "Project" Exhibit A could be amended to include additional equipment as defined in the "project" to be added according to the scheduled roll-out plan of the "Project." Any additional rent for each such additional transmitter and/or antenna(s) shall be negotiated by the parties at the time Lessee submits its written request to Lessor. At the request of Lessor, the parties shall execute an amendment to this Lease stating the amount of any such additional rent agreed to by the parties. Should use of such additional transmitter commence mid-month, the additional monthly rent shall be pro-rated. Upon payment of the first month's additional rent for such additional transmitters, the Lessee may commence use of such transmitter(s). All terms of this Lease shall apply to all such additional equipment installed and used by Lessee in accordance with the terms of this Section 23 and the term "Equipment" as used in this Lease

shall be deemed to refer to such additional Equipment installed and maintained in accordance with this Section 23.

24. **REMEDIES CUMULATIVE.** The remedies provided herein shall be cumulative and shall not preclude the assertion by any party hereto of any other rights or the seeking of any other remedies against the other parties hereto.

25. **NO WAIVER.** Should Lessor or Lessee permit a continuing default of performance of the terms of this Lease, the obligations of the defaulting party hereunder shall continue and such permissive default shall not be construed as a renewal of the term hereof nor as a waiver of any of the rights or obligations hereunder.

26. **ENTIRE AGREEMENT.** This Lease, including the exhibits and other documents referred to herein or delivered pursuant hereto, which from a part hereof, contains the entire understanding of the parties with respect to its subject matter. There are no restrictions, agreements, promises, warranties, covenant or undertaking other than expressly set forth herein. This Lease supersedes all prior agreements and understandings between the parties. No modification of this Lease shall be effective unless contained in writing signed by the authorized representatives of both parties.

27. **HEADINGS.** The section and paragraph headings contained in this Lease are for reference purposes only and shall not affect in any way the meaning or interpretation of this Lease.

28. **NOTICES.** Any Notice, communication, request, demand, reply or advice (severally and collectively referred to as "Notice") in this Lease required or permitted to be given, made or accepted must be in writing. Notice shall, unless otherwise provided herein, be given or served (a) by depositing the same in the United States Mail, postage and fees prepaid, registered or certified, and addressed to the party to be notified, with return receipt requested, (b) by delivering the same to such party, or an agent of such party, in person or by a nationally recognized overnight delivery service, such as Federal Express or United Parcel Service or (c) by regular mail, facsimile transmission, email or other commercially reasonable means addressed to the party to be notified. Notice sent by registered or certified mail in the manner hereinabove described shall be effective from and after the expiration of three (3) days after such deposit or as of earlier actual receipt. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of Notice, the address of the parties shall, until changed by Notice, be as follows:

LESSOR: [address of BRT Holdings Company, Inc.]

With a copy to: [address of Bedford County Administration]

LESSEE: [address of lessee]

29. GOVERNING LAW/VENUE. This Lease shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia without regard to its conflict of laws rules. Venue shall be in the state courts for Bedford County, Virginia.

30. MEMORANDUM OF LEASE. Once the Lease Commencement Date has been established, the parties hereby agree to execute a declaration substantially in the form of **Exhibit B** attached hereto, setting forth the Lease Commencement Date and the termination date.

31. TITLE AND POSSESSION. Lessor represents and covenants that Lessor owns the Lessor's Property in fee simple terms, free and clear of all liens, encumbrances, and restrictions of every kind and nature, and that Lessor has full right to make this Lease.

32. QUIET ENJOYMENT. Lessor covenants and agrees that, upon Lessee's paying the monthly rent and observing and performing all of the terms, covenants and conditions to be observed and performed by Lessee under this Lease, Lessee shall be entitled to quiet enjoyment of the Leased Property during the term of this Lease.

33. RADIO FREQUENCY RADIATION CONCERNS.

a. Lessor acknowledges that situations may arise in which the radiation exposure guidelines specified in the federal regulations are exceeded in a particular area or areas due to emissions from multiple fixed transmitters. If such a situation arises in which one or more of Lessee's transmitters are or may be contributing to the excess exposure, Lessor agrees to:

(i) Provide Lessee with any data in Lessor's possession reasonably necessary to analyze the excess exposure without on-site testing; and

(ii) Allow Lessee to perform reasonable testing on or around any equipment which may be contributing to the excess exposure, including providing access to locked areas.

b. Lessor must provide Lessee with written notice to conduct routine maintenance at least two (2) weeks prior to requiring Lessee to power down or shut-off its equipment to allow Lessor or other lessees to conduct maintenance, painting, or similar activity on the Tower or equipment on the Tower; *provided, however,* that nothing herein shall prevent Lessor from requiring the immediate power down or shut-off of Lessee's equipment to perform immediate emergency repairs or maintenance. Furthermore, Lessee shall only be required to power down or shut-off its equipment for a reasonable period of time. Lessor understands the essential 24-hour, 7 days a week nature of Lessee's equipment, and as such agrees to make its best efforts to avoid or minimize any downtime of such equipment due to Lessor's tower maintenance needs; and Lessor further agrees to work proactively with Lessee to avoid or minimize potential negative effects of such downtime while also allowing necessary tower maintenance and inspections to occur.

IN WITNESS WHEREOF, this Lease has been duly executed and delivered by the Lessor and the Lessee on the date first above written.

LESSEE: [name]

By: _____

Its: _____

LESSOR: Bedford County Broadband Authority:

By: _____
Chairman

EXHIBIT A

LESSEE'S EQUIPMENT

EXHIBIT B

Prepared by:

Return to:

Michael W.S. Lockaby
VSB No. 74136
Guynn, Waddell, Carroll & Lockaby, P.C.
415 South College Avenue
Salem, Virginia 24153

[name of lessee]

MEMORANDUM OF LEASE

Exempt from recordation fees under Section 58.1-811(A)(3) of the Code of Virginia, 1950, as amended.

THIS MEMORANDUM OF LEASE is made this ___ day of _____, 20___, by the BEDFORD COUNTY BROADBAND AUTHORITY, a political subdivision of the Commonwealth of Virginia under the Wireless Service Authorities Act (“Lessor” and Grantor for indexing purposes) and _____, a _____ (“Lessee” and Grantee for indexing purposes).

The Lessor and Lessee have entered a certain Lease for space on a communications tower owned by Lessor on that property described as:

[legal description]

The Lessee has the right to locate equipment for the provision of wireless communications services and commercial mobile radio service on the tower. This lease is effective _____, 20___, and has an initial term of five years, and may be extended for up to ___ five-year extended periods at the Lessee’s option.

The terms, covenants, and conditions of the Lease, of which this is a memorandum, shall extend to, be binding upon, and inure to the benefit of the Lessor’s and Lessee’s successors-in-interest.

This memorandum of lease is subject to all the terms, conditions, and understandings set forth in the Lease, which are incorporated herein by reference and made a part hereof as if fully set forth herein. In the event of a conflict between the provisions of this memorandum and the Lease, the Lease shall control.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[NOTARIZED SIGNATURE PAGES WOULD FOLLOW UPON RECORDATION]