

**OLD DOMINION UNIVERSITY
STANDARD CONTRACT**

Contract No.: **21-ODU-14-CCC**

This contract entered into by and between Winn Nursery of Virginia, Inc. hereinafter called the "Contractor" and Old Dominion University, called the "University".

I. **WITNESSETH** that the Contractor and the University, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

II. PERIOD OF PERFORMANCE:

- (1) The contract period shall commence on upon final contract acceptance and execution, as evidenced by the latest execution date on the contract signature page and will be in effect through October 31, 2021. Where contract commencement date is in conflict with final execution date, final execution date shall prevail.
- (2) Upon mutual agreement between both the Contractor and the University, this contract and subsequent period(s) of performance may be renewed for up to four (4) additional one (1) year periods.
- (3) The Contractor agrees that as part of this agreement, Contractor's response to the University's IFB #21-ODU-14-CCC, including any and all associated terms and conditions, scope of service, and related pricing for same shall remain in effect throughout any and all "periods of performance", unless otherwise modified in writing.

III. CONTRACT AGREEMENT:

The contract agreement shall consist of the following documents:

- (1) This signed form;
- (2) Contractor's "Pricing Schedule", as specified in section IX;
- (3) Contractor's "Plant Material" listing, as detailed in 'Exhibit A' (attached excel spreadsheet)
- (4) Any associated purchase order issued as award acceptance for specific services per project request; and,
- (4) Where this Agreement is silent, the University's original Invitation for Bid and all associated exhibits and addenda shall control.

IV. SCOPE OF SERVICES: As required by the University, the Contractors shall provide and furnish all labor, materials, equipment, and supplies to the University for the services of a Landscape Maintenance that will incorporate the services of landscaping maintenance and installation, throughout the campus of the University and other 'as needed' off-campus locations as determined by Facilities Management, Old Dominion University.

A. GENERAL

Resulting contracts will be limited in use to new installations, alterations, maintenance, and emergency repair projects totaling no more than \$500,000 per project. However, the University may, at its discretion, bid out any project(s) separately. Additionally, Contractors would be required to meet any/all license requirements stated within the contract at such time the University has a project(s) need to be fulfilled. Although resulting contracts may be assigned under the Contract Administration of the Director of Facilities Management or his designee, other University departments shall have the authority to utilize any resulting contracts, i.e., Auxiliary Services.

B. PERSONNEL QUALIFICATIONS

Personnel used for the performance of this shall be properly trained and qualified for work of this type. The University reserves the right to refuse or accept services from any personnel deemed by the university to be unqualified, disorderly, or otherwise unable to perform assigned work. The University requires that all contract personnel be properly attired and identifiable (badges with employee's picture and organization) and that all persons working under the contract abide by the Commonwealth of Virginias Standard of Conduct and Performance.

C. QUALITY OF WORKMANSHIP:

All work shall be quality work performed according to the standards of the industry, and to the complete satisfaction of Old Dominion University.

Bidders shall be contractor on one of the required trades and have a known reputation for completing work in a timely and professional manner.

D. SPECIFICS:

1. Upon receipt of an electronic/telephone project notification request from the Contract Administrator or their designees, the contractor(s) shall have any opportunity to visit the site of the proposed work to acquire a full understanding of the nature and scope of the project to be accomplished. The contractor shall furnish the University a formal written proposal* of the costs to include the billed hourly rates, a listing of any 'plant material' at the contract prices, equipment rates, and any miscellaneous items/services outside the contract pricing sheets. In addition, a target date for completion shall be provided, expressed either as a definite date or the number of days after receipt of the purchase order. The proposal must be sent to the Contract Administrator via email transmission by the requested due date, referencing the Project Name/number and shall include the company's letterhead, branding, and/or business identifier. Upon approval by the University, a purchase order will be issued to the contractor, as authority to proceed with the work.

The governing contractual documents delineating obligations and responsibilities by and between the University and the Contractor(s) for any project order award shall consist of (i) the project order e-mail notification(s), (ii) the Contractor's response to same, (iii) either a completed PCARD transaction, as allowed herein, or the issue of an eVA Purchase order which will incorporate the contractor's proposal and the terms and conditions of the basic contract.

On a project-by-project basis, as specified herein, the University reserves the right to furnish any or all materials, parts, supplies and equipment required to complete a project.

*If during the performance of the work, the contractor finds that the project will exceed the cost proposal, the contractor shall notify the University in writing of the new proposed cost and the reasons why a change order is needed to complete the project. The University shall respond in writing, either by approving the change order or by modifying the project to keep costs within the original cost proposal.

2. Prior to payment, the Contractor shall submit, with his/her invoice, a copy of the invoice of materials used on the specified project, and an itemized breakdown of the costs (i.e. number of hours at the contracted rate, and any miscellaneous items such as rentals for equipment such as backhoes, special tools, cost and name of any minorities sub-contractor(s) used, etc.) to the person/department with whom the project was contracted
3. The contractor shall begin the work as stated on its proposal. If no starting time is stated, the work shall begin within fifteen (15) working days of receipt of the purchase order or as scheduled by the University's representative. The typical work schedule shall be performed during the period of 7:00 am until 3:30 PM, Monday through Friday, unless otherwise approved by the Assistant Director of Grounds & Landscapes of Old Dominion University or his designee.
4. The appropriate University's representative will outline and describe the Scope of Work for the specific Landscaping project, the contractor will establish working hours and completion dates. Overtime not specifically approved at the initial job scope meeting shall be approved by the University's representative prior to any work being started. **The overtime rate shall not exceed the rate as allowed within the contract.**
5. Rapid response to emergency calls is of the utmost importance in this service contract. The contractor shall have qualified service personnel on the job site within four (4) hours from the time the emergency call for service is placed. This service shall be available 24 hours a day, 7 days a week, whenever necessary. Any instance where the contract vendor cannot provide the required services within the acceptable time frame, the University shall reserve the right to purchase these items on the open market.
6. At all times the Contractor shall follow 'best management' practices for Landscape Services. In addition, the Contractor shall be responsible for the work activities of their employees.
7. The Contractor's employees shall arrive on the site properly attired in clean clothes (or uniforms) and have identification (badges or patches) of themselves and the company for whom they work.
8. The University shall not reimburse the Contractor for time or mileage to and from the job site. This includes going to and from the supply houses.
9. Parts and materials shall be provided by the Contractor as needed. The University shall reimburse the Contractor "at cost", with no add ons. The Contractor shall submit a copy of the original parts/materials invoice to the University's representative for approval prior to submitting an invoice to Accounts Payable.

E. SPECIFIC SERVICE DELIVERY AREAS:

The following services / lots shall be evaluated and awarded based on the requirements set forth within this solicitation. It is the University intent to make a single award to the lowest responsive and responsible bidder for each service / lot specified herein. However, the University reserves the right to make multiple awards for each service / lot if deemed to be advantageous to the University.

1. LANDSCAPING (LABOR AND MATERIALS):

Contractor shall furnish and provide plants, plantings, site work, and general landscape labor services at the University, service shall include, be not limited to the following:

- a. **PLANTING SPECIFICATIONS:** All species of plants shall be planted in accordance with the guidelines for species as described by the 2014 Nursery Stock Standards, ANSI 260.1-2014.
- b. **SCHEDULING:** The contractor shall respond to a request for general landscape labor within two (2) calendar days of notification unless adverse conditions prevent work. The university will make every effort to provide appropriate schedules and lead-time requested services. Delivery of planted material shall be within fourteen (14) calendar days of notification. Delivery of material only shall be within five (5) calendar days of notification. Services may be required from sunrise to sunset Monday through Sunday. With advance approval of the University representative, the contractor will be permitted to perform work on holidays and / or weekends on a case by case basis. Temperature shall not be a factor in the prevention of performance. Brief showers of rain shall not hinder Contractor performance. Contractor should utilize the time to edge those areas requiring attention. Heavy rains, excessive winds, or heavy snowfall will be considered as an exception to the contractor's ability to perform selected contract requirements.

NOTE: Excessive winds are winds of 40 MPH or greater. One (1) inch or more of snow constitutes a heavy snowfall. Grounds which are too wet due to rain or flooding shall be a factor in the prevention of the contractor in the performance of the contract **PROVIDED** that the contractor has advised the contract administrator. During those inclement weather conditions, as cited above, the contractor may obtain an additional period of time to meet contractual requirements. The period of time should not exceed two (2) working days. Contractor shall ensure that the contract administrator is notified in advance of any work schedule delays.

The University reserves the right to obtain services or materials from other sources as required.

- c. **Site Work:** Area / location of site work shall be approval by the University's contract administrator prior to the start of any work. Site work shall consist of the clearing and removal of grass material, wasted soil, small shrubs and trees prior to establishing beds and planting material. All debris shall be removed from the site and properly disposed or as otherwise required by law. It shall be the Contractor's responsibility to locate his own authorized site(s) for the proper disposal of all materials as stated above in accordance with all local and state ordinances. Trees and shrubs to remain in a clearing area will be marked and protected by the University.
 - 1) Loosen topsoil of lawn areas to minimum depth of 3", if compacted. Remove stones over 1" in any dimension, sticks, roots, rubbish, and extraneous matter. Grade lawn areas to a smooth, free-draining, even surface with a loose, moderately coarse texture.
- d. **Work to be Performed:** Typical work to be performed under this contract will consist of the following:
 - 1) The supply and installation of transplants or planting select landscapes and or specimens;
 - 2) Mowing Maintenance 2x/month and general landscape clean up (blow off walkways/driveways, remove sticks & debris from walk/drive, alert assistant director of hazards/dead plants/etc.);
 - 3) General Landscape Construction such as: installing pathway borders & surfacing, design/build project installation to include landscapes and stormwater BMP's;
 - 4) Some non-routine maintenance like hedge shearing, topiary work, shrub removal, stump removal (by hand) leaf & debris removal;
 - 5) On call for clean-up of storm damage (ice/hurricane/nor'easter/bad storm);
 - 6) Install pine straw, mulch, or rock;
 - 7) Grading excavation, erosion stabilization, jute installation;
 - 8) Seeding and watering;
 - 9) Installation of landscape plugs, annuals, perennials;
 - 10) Rare plant procurement/brokering;

- 11) Herbicide Applications (to include Saturdays for Hampton Blvd median strip)
- e. **Delivered and Installed Materials:** All items listed on the Pricing Schedule and "Exhibit A", shall be quotes based on cost of delivery and installation. The Contractor as needed shall provide all trees, shrubs, groundcover, and flower plants (a sample list has been provided for the typical installed materials purchased for the University – see "Exhibit A" for pricing to include plant material, delivery, and installation).
 - f. **Warranty's Expected:** All planted materials (by contractor) will be guaranteed for one year of original planting. All flowers will be guaranteed free from disease and damage upon receipt. Flowers are guaranteed for three (3) days. The contractor shall not be responsible for accidental or malicious destruction by man, machine, animals, or act of God. Following delivery and installation of materials, the contractor will not be held responsible for any improper handling or maintenance of materials and supplies by the university personnel assigned to this responsibility.
 - g. **Protection of Persons Property:** The contractor shall take every precaution at all times for the protection of persons and property including the university employees and property. The contractor shall be responsible for initiating, maintaining, and supervision of all safety precautions and programs in connection with the work performed as a result of this contract. The contractor shall continuously maintain adequate protection of all work from damaged and shall protect the university's property from injury or loss arising in connection with his contract. Contractor shall be responsible for correcting such damage, loss or injury to the Commonwealth's satisfaction with no additional cost to the university. Contractor must have someone on their staff with a Pesticide certification class 3B to spray for weeds in the beds. In addition, Contractor shall have an OSHA level 30 certified person on staff for safety. Contractor must provide will their bid package a copy of their safety training program.
 - h. **Supervision by contractor:** The contractor shall have a qualified representative with a minimum of 5-years of landscaping experience. Representative shall be responsible for all work means, methods, techniques, sequences, and procedures and for coordinating all portions of the work performed under this contract. The contractor shall, at all times, enforce strict discipline and good order among workers.
 - i. **Contractor/Subcontractor License Requirement:** Contractor shall maintain the requirement of the State's Contractor License, certifying that your firm/individual and subcontractor is properly licensed for providing the goods/services for the Classification/Specialty as providing Landscaping Services.
 - j. **Supervision by the University:** No work under this contract shall be started without prior approval of the assigned university contract administrator. The University contract administrator MUST be notified by phone or email no less than 24 hours prior to planned service delivery at any University property. Failure to comply with this may result in the Contractor being dismissed from state property. In addition, all work will be managed and inspected by the University Contract administrator or his/her designee.
 - k. **Change Orders:** All change orders must come through the University's Contract Administrator office, or his/her designee, before work changes commence.
 - l. **Samples:** A sample of the shredded, processed, hardwood mulch and pine straw may be requested prior to award for specific job request to determine that correct product is being offered.
 - m. **One time maintenance of newly installed trees:** Contractor shall not stake trees unless advised by the University. Contractor shall level out all tree saucers during the planting of the trees and remove all soil from the planting.
 - n. **Minimum Requirements to maintain through the term of the contract period:**
 - 1) "Class A" license and registration through the Commonwealth's Department of Professional on Occupational Regulation (DPOR);
 - 2) State's Pesticide Business License requirement through VDACS;
 - 3) OSHA level 30 certified personnel;
 - 4) Proof of Company's Safety Training program;
 - 5) Experience Landscape personnel with a minimum of 5-years experience.

V. REPORTING AND DELIVERY REQUIREMENTS: UTILIZATION OF SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES: The following reports shall be submitted as indicated:

A. **PERIODIC PROGRESS REPORTS/INVOICES:** The Contractor shall provide a report on involvement of small businesses and businesses owned by women and minorities on a quarterly basis to the Contract Officer. This report will specify the actual dollars contracted to be spent to date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted with such businesses on this contract. This information shall be provided separately for small businesses, women-owned businesses and minority businesses.

B. FINAL ACTUAL INVOLVEMENT REPORT: The Contractor shall submit to the Contract Officer, within 10 days of contract completion, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the contract. At a minimum, this report shall include for each firm contracted with and for each such business class (i.e., small, women-owned) a comparison of the total actual dollars spent on this contract with the planned involvement of the firm and business class as specified in the contract, and the actual percent of the total estimated contract value.

VI. TERMS AND CONDITIONS:

A. ADVERTISING: Contractor agrees that during the entire term of this contract no indication of such sales or services to the University will be used in product literature or advertising.

B. APPLICABLE LAWS AND COURTS: This contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The University and the Contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 23-38.90). The Contractor shall comply with all applicable federal, state and local laws, rules and regulations and policies of the University.

C. APPLICABLE LEGISLATION AND MANUAL: This contract is subject to the provisions of the Commonwealth of Virginia, specifically § 23-38.90 of the Code of Virginia and its associated Rules Governing the Procurement of Goods, Services, Insurance and Construction ("the Rules") and the Purchasing Manual for Universities of Higher Education and their Contractors and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is accessible on the Internet at www.odu.edu/procurement under "Information for Contractors".

D. ASSIGNMENT OF CONTRACT: This contract shall not be assignable in whole or in part without the written consent of the University.

E. AVAILABILITY OF FUNDS: The University shall be bound hereunder only to the extent of the funds available or which may hereafter become available during each subsequent fiscal year and/or contract term, as applicable, and any requirement by Contractor for any total or partial compensation or payment by the University of unpaid fees, whether current or future, for lost profit and/or as liquidated damages in the event of early termination of the then current term if for other than breach by the University is prohibitive.

F. AUDIT: Contractor agrees that they shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The University, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

G. CHANGES TO THE CONTRACT: During the term of this contract, including any and all applicable extensions and/or renewals, changes may be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written contract to modify the scope of the contract.

2. The University may request and issue change orders within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the University a credit for any savings. Said compensation shall be determined by one of the following methods:

a. By mutual agreement between the parties in writing; or

b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the University's right to audit the Contractor's records and/or to determine the correct number of units independently; or

c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized.

The Contractor shall present the University with all vouchers and records of expenses incurred and savings realized. The University shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the University within thirty (30) days from the date of receipt of the written order from the University. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Purchasing Manual for Universities of Higher Education and their Contractors*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the University or with the performance of the contract generally.

H. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the University, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the University may have.

At day 7 of the 15-day period, the contract needs to be 50% complete. Therefore, should the University find the Contractor falling behind in the scheduled time frame. The University may call another contractor to complete their work and hold the awarded contractor responsible for any additional cost to complete said work.

I. **DISCOUNTS:**

1. **Prompt Payment Discounts:** The University will pay within 30 days after acceptance. A prompt payment discount offered for prompt payment of (20) calendar days or longer will be calculated.

2. **Special Educational Or Promotional Discounts:** The Contractor shall extend any special educational or promotional sale prices or discounts immediately to the University during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

J. **DRUG-FREE WORKPLACE:** (*the Rules §11.*)

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 Contractor.

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, the employees of who 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.

K. **EMPLOYMENT DISCRIMINATION:** (*the Rules §10.*)

During the performance of any resulting contract, the Contractor agrees that:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the 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, including the names of all contracting agencies with which the contractor has contracts of over \$10,000.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that such contractor is an equal opportunity employer. However, 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 chapter.
3. If the contractor employs more than five employees, the contractor shall (i) provide annual training on the contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.
4. The contractor shall include the provisions of subdivisions 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that such provisions shall be binding upon each subcontractor or vendor.

L. ENVIRONMENTAL LIABILITY: Any costs or expenses associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of hazardous substances, including, but not limited to, the costs of any cleanup activities, removals, remediations, responses, damages, fines, administrative or civil penalties or charges imposed on the Contractor, whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the storage, accumulation, or release of any hazardous substances, or any noncompliance with or failure to meet any federal, state or local standards, requirements, laws, statutes, regulations or the law of nuisance by Contractor (or by its agents, officers, employees, subcontractors, consultants, sub consultants, or any other persons, corporations or legal entities employed, utilized, or retained by Contractor) in the performance of this Contract or related activities, shall be paid by Contractor. This paragraph shall survive the termination, cancellation or expiration of this Contract.

M. EXCLUSIVITY: The University reserves the right to procure goods or services covered under this contract from a third party when, in the University's sole discretion, it is deemed to be in the University's best interest.

N. EXTRA CHARGES NOT ALLOWED: The contract price shall be for complete installation ready for the University's use, and shall include all applicable freight and installation charges; extra charges will not be allowed.

O. FINAL INSPECTION: At the conclusion of the work, the Contractor shall demonstrate to the authorized University's Contract Administrator that the work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the Contractor at the Contractor's sole expense prior to final acceptance of the work.

P. FORCE MAJEURE: Neither party will be responsible for any losses resulting from delay or failure in performance resulting from any cause, event, or occurrence beyond the control and without the negligence of the parties. Such events, occurrences, or causes include, without limitation: war, strikes or labor disputes, civil disturbances, government orders, pandemics, fires, natural disasters, and acts of God.

Q. GUARANTEE OF WORK:

1. Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one (1) year from the date of final acceptance of the entire project by the University in writing. Equipment and facilities, which have seasonal limitations on their operation, shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the University.
2. If, within the guarantee period, defects are noticed by the University which require repairs or changes in connection with the guaranteed work, those repairs or changes being in the opinion of the University rendered necessary as the result of the use of materials, equipment or workmanship, which are defective, or inferior or not in accordance with the terms of the contract, then the Contractor shall, promptly upon receipt of notice from the University, such notice being given not more than two weeks after the guarantee period expires, and without expense to the University:
 - i. Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein;
 - ii. Make good all damage to the structure, site, equipment, or contents thereof, which is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contracts; and
 - iii. Make good any work, materials, equipment, contents of structures, and/or disturbance of the site in fulfilling any such guarantee.
3. In any case, where in fulfilling the requirements of the contract or any guarantee embraced in or required thereby, the Contractor disturbs any work guaranteed under contract, he shall restore such work to a condition satisfactory to the University and guarantee such restored work to the same extent as it was guaranteed under such other contract.
4. If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the University may have the defects corrected and the Contractor and his surety shall be liable for all expense incurred.
5. All special guarantees applicable to definite parts of the work that may be stipulated in the specifications or other papers forming a part of the contract shall be subject to the term of this section during the first year of the life of such special guarantee.
6. 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. This paragraph relates only to the specific obligation of the Contractor contained 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 of the time within which proceedings may be commenced to establish the Contractor's liability with respect to his other obligations under this contract.

7. In the event the work of the Contractor is to be modified by another Contractor, either before or after the final inspection, the first Contractor shall remain responsible in all respects under the guarantee of work and under any other warranties provided in the contract or by law. However, the Contractor shall not be responsible for any defects in material or workmanship introduced by the Contractor modifying its work. Both the first Contractor and the Contractor making the modifications shall each be responsible solely for the work done by each. The Contractor modifying the earlier work shall be responsible for any damage to or defect introduced into the work which he is modifying. If any Contractor shall claim that another Contractor has introduced defects of materials and/or workmanship into the work of the first, it shall be the burden of the Contractor making the claim to clearly demonstrate the nature and extent of such introduced defects and the responsibility of the other Contractor. Any Contractor modifying the work of another shall have the same burden if he asserts defects to have been caused by the Contractor whose work he is modifying.

R. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the University, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor/any services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the University or to failure of the University to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.

S. **PAYMENT PROVISIONS:**

1. By the University:

a. Prompt Payment: (the Rules §42.)

- i. The University shall promptly pay for the completely delivered goods or services by the required payment date.
- ii. Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.
- iii. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.

b. Defect Or Impropriety In The Invoice Or Goods And/Or Services Received: (the Rules §43.)

In instances where there is a defect or impropriety in an invoice or in the goods or services received, the University shall notify the Contractor of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services.

c. Date Of Postmark Deemed To Be Date Payment Is Made: (the Rules §44.)

In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.

d. Interest Penalty; Exceptions: (the Rules §44.)

- i. Interest shall accrue, at the rate determined pursuant to subsection ii., on all amounts owed by the University to a Contractor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.
- ii. The rate of interest charged the University pursuant to subsection i. shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812 of the Code of Virginia.
- iii. Notwithstanding subsection i., no interest penalty shall be charged when payment is delayed because of disagreement between the University and a Contractor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.
- iv. This section shall not apply to retinæ on construction contracts that provides for progress payments, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a Contractor from receiving interest on such funds under an approved escrow agreement.

v. Notwithstanding subsection i., no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia, commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection 2. on amounts withheld that remains unpaid after seven days following the payment date.

2. To Contractor:

Under this contract, Contractor is hereby obligated:

- i. To submit all invoices for goods/services ordered, delivered and accepted directly to:
 - a) Old Dominion University
Finance Office
Rollins Hall, Room 202
Norfolk, Virginia 23529; or
 - b) invoice@odu.edu
- ii. All invoices shall include:
 - a) Contractor Name, 'Remit To' Address, FEIN, or Social Security Number (Individual Contractor);
 - b) Invoice Number, Invoice Date, Payment Terms and Discounts, and Payment Due Date;
 - c) Purchase Order Number;
 - d) University Contact;
 - e) Description of provided goods/services;
 - f) Quantity Delivered per line item;
 - g) Unit and Extended Cost per line item; and
 - h) Total Amount Due

iii. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

iv. All goods or services provided shall be billed by the Contractor at the agreed to contract price.

v. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the University shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve the University of its prompt payment obligations with respect to those charges which are not in dispute.

vi. When applicable, Contractor shall deliver to the University, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the University, or other appropriate penalties may be assessed in lieu of withholding such payment.

3. To Subcontractors: (the Rules §45.)

Under this contract, Contractor shall be obligated:

- i. To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the University for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
- ii. To notify the University and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
- iii. To pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the University, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the University.

T. SEVERABILITY: The provisions of this contract shall be deemed to be severable, and should any or more of such provisions be declared or adjudged to be invalid or unenforceable, the remaining provisions shall be unaffected thereby and shall remain in full force and effect.

U. TERMINATION WITH CAUSE:

1. In the event that the Contractor shall for any reason or through any cause be in default of the terms of the contract, the University may give the Contractor written notice of such default by certified mail/return receipt requested.

2. Prior to termination of the contract, the University shall give the Contractor and its surety ten (10) calendar day's written notice, during which the Contractor and/or his surety may rectify the cause of the termination. If rectified to the satisfaction of the University within said ten (10) days, the University may rescind the notice of termination. If Contractor does not, the termination for cause shall become effective at the end of the ten-day (10) notice period.

3. In the alternative, the University may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Contractor and/or its surety that the causes of termination will be remedied in a time and manner which the University finds acceptable. If at any time more than ten (10) days after the notice of termination, the University determines that Contractor and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the University may immediately terminate the contract for cause by giving written notice to the Contractor and its surety. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.

4. Notice of terminations, whether initial or given after a period of postponement, may be served upon the Contractor and the surety by mail or any other means at their last known places of business in Virginia or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.

5. Upon termination, the Contractor shall withdraw its personnel and equipment, cease performance of any further work under the contract, and turn over to the University any work in process for which payment has been made.

6. The University shall take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method it may deem expedient. In such case the Contractor shall not be entitled to receive any further payment. If the expense of finishing the work, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the contract price, the Contractor shall pay the difference to the University, together with any other expenses of terminating the contract and having it completed by others.

7. In the event of violations of law, safety or health standards and regulations, the contract may be immediately cancelled and terminated by the University and provisions herein with respect to opportunity to cure default shall not be applicable.

V. TERMINATION BY UNIVERSITY FOR CONVENIENCE:

1. The University may terminate any resulting contract at any time for convenience, in whole or in part, upon giving the Contractor notice of such termination. Upon such termination, the Contractor shall immediately cease work and remove from the project site all of its labor forces and materials that the University elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as University may require to assign to the University the Contractor's interest in all subcontracts and purchase orders designated by University. After all such steps have been taken to University's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:

i. All amounts due for work performed subsequent to the latest Request for Payment through the date of termination;

ii. Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination;

iii. The Contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence; and

iv. Upon payment of the forgoing, University shall have no further obligations to the Contractor of any nature.

2. In no event shall termination for the convenience of the University terminate the obligations of the Contractor's surety on its payment and performance bonds.

W. TESTING AND INSPECTION: The University reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

X. WAIVER: No failure of the University to exercise any right or power given to it by law or by any resulting contract, or to insist upon strict compliance by Contractor with any of the provisions of any resulting contract, and no

custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of the University's right to demand strict compliance with the terms of any resulting contract.

VII. SPECIAL TERMS AND CONDITIONS:

A. **ACCESS TO WORK:** The University, the University's inspectors and other testing personnel, and inspectors from the Department of Labor and Industry shall have access to the work at all times. The Contractor shall provide proper facilities for access and inspection.

B. **AS BUILT DRAWINGS:** The contractor may be required to provide the University a clean set of reproducible "as built" drawings and wiring diagrams, marked to record all changes made during installation or construction. The contractor shall also provide the University with maintenance manuals, parts lists and a copy of all warranties for all equipment. All "as built" drawings and wiring diagrams, maintenance manuals, parts lists and warranties shall be delivered to the University upon completion of the work and prior to final payment.

C. **AUTHORIZED CONTRACT PARTICIPATION:** In accordance with the University's Rules Governing Procurement of Goods, Services, Insurance and Construction ("Rules Document"), specifically §6, Cooperative Procurement, it is the intent of this contract to allow any public body, public or private health or educational University's, or the University's affiliated agencies and/or corporations, access and use of any subsequent contract(s), as authorized by the Contractor(s).

Participation in this cooperative procurement is strictly voluntary. If authorized by the Contractor(s), any resultant contract(s) may be extended to the entities as indicated above to purchase at contract prices in accordance with contract terms and conditions. The Contractor(s) shall notify the University in writing of any entities accessing the contract. No modification of this contract or execution of a separate contract is required to participate. The Contractor(s) will provide semi-annual usage reports for all entities accessing the contract(s). Participating entities shall place their own orders directly with the Contractor(s), and shall fully and independently administer their use of the contract(s), including contractual disputes, invoicing and payments, without direct administration from the University. The University shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Contractor(s) to extend participation and use of the contract(s). It is understood and agreed that the University is not responsible for the acts or omissions of any entity, and will not be considered in default of the contract(s) no matter the circumstances.

Use of this contract does not preclude any participating entity from using other contracts or competitive processes as the need may be.

D. **AVAILABILITY OF MATERIALS:** If material specified is not available on the present market, alternate materials may be proposed by the Contractor for approval by the University.

E. **CONTRACT AND RENEWAL TERM:**

1. The initial term of any resulting contract shall be for a one (1) year period, commencing from the date of acceptance and expiring on **October 31, 2021**;

2. Any resulting contract may be renewed by the University for four (4) successive one-year periods under the terms and conditions of the original contract except as stated in 2.a. and 2.b. below. Cost considerations may be negotiated only at the time of renewal. Written notice of the University's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

a. If the University elects to exercise the option to renew the contract for an additional one-year period **after the initial term**, the contract price(s) for the additional one year shall not exceed the contract price(s) of the initial contract term by the lesser of (1) the percentage increase/decrease of the Consumer Price Index (CPI) for All Urban Wage Earner and Clerical Workers (CPI-W), All U.S. Items, for base period 1982-84=100, for the previous twelve (12) month period, or (2) not to exceed 5%.

b. If during any subsequent renewal periods, the University elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period by the lesser of (1) the percentage increase/decrease of the Consumer Price Index (CPI) for All Urban Wage Earner and Clerical Workers (CPI-W), All U.S. Items, for base period 1982-84=100, for the previous twelve (12) month period, or (2) not to exceed 5%.

F. **COMPANY PERSONNEL STANDARDS:**

1. Contractor shall provide trained personnel who shall be qualified to properly maintain/perform/test for services specified herein. If any of the Contractor's personnel are not satisfactory in the performance of services to be furnished hereunder in a proper manner and satisfactory to the

University, the Contractor shall remove any such personnel and replace them with satisfactory personnel.

2. Contractor shall use all reasonable care, consistent with its rights to manage and control its operations, not to employ any persons or use any labor or have any equipment or permit any condition to exist which shall or may cause or be conducive to pose any liability to the general public as well as any activity to be construed as a nuisance. The University retains the right to require the Contractor to halt all work activities until such conditions are resolved.
- G. **CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT:** If the work should be stopped under any order of any court or other public authority for a period of ninety (90) days through no fault of the Contractor or of anyone employed by him, or if the owner should fail to pay to the contractor within thirty (30) days when no dispute exists as to the sum, 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 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 cost of physically closing down the job 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.
- H. **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The Contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.
- I. **DELIVERY AND STORAGE:** It shall be the responsibility of the Contractor to make all arrangements for delivery, unloading, receiving and storing materials in the building during installation. The University will not assume any responsibility for receiving these shipments. Contractor shall check with the University and make necessary arrangements for security and storage space in the building during installation.
- J. **INSPECTION OF JOB SITE:** Contractor certifies that they have inspected the job site and are aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the University.
- K. **INSURANCE:** By signing this contract the Contractor certifies it will have the following insurance coverage at the time the contract is awarded and through the term of each contract renewal period. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The Contractor further certifies that the Contractor and any subcontractors will maintain these insurance coverage's during the entire term of the contract and that all insurance coverage's will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
 2. Employer's Liability - \$100,000.
 3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The University must be named as an additional insured and so endorsed on the policy.
 4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)
- L. **INSURANCE and Licensing:** During the performance of this contract, including renewal periods, Contractor shall maintain the type of insurance coverage and minimum limits specified in the above section VII.K., specifically those types and limits specified in section IV.E.1.n. of the Scope of Work.
 - M. **LABELING OF HAZARDOUS SUBSTANCES:** If the items or products requested by this Contract are "Hazardous Substances" as defined by § 1261 of Title 15 of the United States Code (U.S.C.) or "Pesticides" as defined in § 136 of Title 7 of the United States Code, then the Contractor, by submitting his quote, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products the Contractor does not violate any of the prohibitions of Title 15 U.S.C. § 1263 or Title 7 U.S.C. § 136.

- N. MATERIAL SAFETY DATA SHEETS (MSDS): When applicable, Contractor shall at the time of each delivery, provide to the University appropriate MSDS for each chemical and/or compound ordered. Payment will not be made on any chemical and/or compound received until the using agency receives current MSDS.
- O. MISS UTILITIES:
Contractor shall contact Miss Utilities a minimum of forty-eight (48) hours prior to excavation to have all existing underground utilities located, and shall be responsible for any damage to underground utilities during the performance of this contract.
- P. PRIME CONTRACTOR RESPONSIBILITIES: The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- Q. PRODUCT SUBSTITUTION: During the term of any resulting contract, the Contractor is not authorized to substitute any item for that product identified in this contract without the prior written consent of the contracting officer, or their designee.
- R. PROTECTION OF PERSONS AND PROPERTY:
1. The Contractor expressly undertakes, both directly and through its subcontractor(s), to take every precaution at all times for the protection of persons and property which may come on the building site or be affected by the Contractor's operation in connection with the work.
 2. The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.
 3. The provisions of all rules and regulations governing 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.
 4. The Contractor shall continuously maintain adequate protection of all its work from damage and shall protect the University's property from injury or loss arising in connection with this contract. Contractor shall make good any such damage, injury, or loss, except such as may be directly due to errors in the contract documents or caused by agents or employees of the University, and shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by the University. Contractor shall provide and maintain all passageways, guard fences, lights, and other facilities for protection required by public authority, local conditions, any of the contract documents or erected for the fulfillment of his obligations for the protection of persons and property.
 5. In an emergency affecting the safety or life of persons or of the work, or of the adjoining property, the Contractor, without special instruction or authorization from the University, 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 University, 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 paragraph G., of the General Terms and Conditions.
- S. QUALIFIED REPAIR PERSONNEL: All warranty or maintenance services to be performed on the items specified in this contract shall be performed by qualified technicians properly authorized by the manufacturer to perform such services. The University reserves the right to require proof of certification prior to award and at any time during the term of the contract.
- T. SIGNS, TRAFFIC CONTROL AND HIGHWAY PERMIT:
Unless otherwise specified, Contractor shall be responsible for providing any and all signing and traffic control as required by the University when working in the University's rights-of-way, including any and all traffic control plans, and associated permits.
- U. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the University. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the University the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

V. SUPERINTENDENCE BY CONTRACTOR:

1. The Contractor shall have a competent foreman or superintendent, satisfactory to the University, on the job site at all times during the progress of the work. 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 University, in writing, of any proposed change in superintendent including the reason therefore prior to making such change.
2. 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 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 University or the University's separate Contractors and their subcontractors.
3. The University may, in writing, require the Contractor to remove from the work any employee the University deems to be incompetent, careless, not working in harmony with others on the site, or otherwise objectionable.

W. USE OF PREMISES AND REMOVAL OF DEBRIS:

1. The Contractor shall:
 - a. Perform his contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the work of any Contractor;
 - b. 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 Contractor; and
 - c. Place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.
2. The Contractor expressly undertakes, either directly or through his subcontractor(s), to affect all cutting, filling, or patching of his work required to make the same conform to the drawings and specifications, and, except with the consent of the University, not to cut or otherwise alter the work of any other Contractor. The Contractor shall not damage or endanger any portion of the work or premises, including existing improvements, unless called for by the contract.
3. 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 of the work 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.
4. The Contractor expressly undertakes, either directly or through his subcontractor(s), before final payment, to remove all surplus material, false work, temporary structures, including foundations thereof, 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 thoroughly clean all glass installed under the contract including the removal of all paint and mortar splatters and other defacements. If a Contractor fails to clean up at the completion of the work, the University may do so and charge for costs thereof to the Contractor.
5. During and at completion of the work, 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 *Virginia Erosion and Sediment Control Handbook*, latest edition, and of the contract documents.
6. The Contractor shall not operate or disturb the setting of any valves, switches or electrical equipment on the service lines to the building except by proper previous arrangement with the University. The Contractor shall give ample advance notice of the need for cut-offs which will be scheduled at the convenience of the University.

- X. WARRANTY: All materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of one (1) year following date of delivery. Should any defect be noted by the University, the University will notify the Contractor of such defect or non-conformance. Notification will state either (1) that the Contractor shall replace or correct, or (2) the University does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the Contractor is required to correct or replace, it shall be at no cost to the University and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the Contractor fails or refuses to replace or

correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the Contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price.

- Y. WORK SITE DAMAGES: Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the University's satisfaction at the Contractor's expense.
- Z. WORK ESTIMATES (TIME AND MATERIAL CONTRACTS): Under this time and material contract, the Contractor shall furnish the University with a non-binding written estimate of the total costs to complete the work required. The estimate must include the labor category(ies), the Contractor's hourly rates specified in the contract, and the total material cost. Material costs shall be billed at Contractor's actual prices and Contractor's shall furnish prices as detailed in *Exhibit A* as specified in the contract. If the University determines that the estimated price is not fair and reasonable, the University has the right to ask the Contractor to reevaluate the estimate. If the revised estimate is determined to be not fair and reasonable, the University reserves the right to obtain additional quotes from other Contractors. A work order will be issued to the Contractor, as the authority to proceed with the work, which will incorporate the Contractor's estimate and the terms and conditions of the contract. The Contractor and his/her personnel shall log in with the designated contract administrator each day before and after work to confirm labor hours.

VIII. PAYMENT METHOD:

- A. The University shall issue eVA 'Direct Orders' for required performance and delivery against any resulting contract.
- B. The Contractor shall be paid when (i) requested work is completed, (ii) the requested work is approved and accepted by the University, and (iii) Contractor has submitted to the Office of Finance/Accounts Payable a proper invoice for the approved, accepted and completed work.
- C. The Contractor shall not receive payment for work found by the University to be unsatisfactory, or performed in violation of federal, state, or local laws, codes, ordinances, rules or regulations.
- D. Progress Payments:
If requested in writing by the Contractor and approved in writing by the University, progress payments may be made under the following circumstances:
 - 1. When total contract cost for all materials and services exceed \$25,000;
 - 2. When project completion time is anticipated to exceed sixty (60) days;
 - 3. Payments will only be made for:
 - a) Purchased materials and/or equipment related to the project that has been delivered on site and/or stored off-site;
 - b) Those same materials and/or equipment that has a total value of at least 10% of the project cost, not to exceed 75%; and
 - c) Materials and/or equipment that have satisfied i. and ii. above, and that have all proper invoicing and required documentation, as approved by the University's Contract Administrator or appropriate Project Manager.
 - d) Regardless of completion time frame and/or amount of expense outlay incurred by the Contractor, shall not be paid more than once every 30 days.

Note: *It shall be the responsibility of the selected Contractor to safeguard those materials and/or equipment that have been "prepaid" by the University, and shall also certify at the completion of the project that same was either (i) used during the performance and completion of the project, or (ii) turned over as property to the University.*

- E. Charge Cards Payments:
 - 1. In an effort to increase administrative efficiency and streamline the invoice and payment process, the University may elect to process those contracted goods/services less than \$5,000, as applicable, via use of the University's Small Purchase Charge Card ("PCARD").
 - 2. In those instances deemed to be in "its best interest", the University may elect to process transactions via its 'Gold' PCARD, not to exceed transactions up to \$50,000 per order, or monthly transactions up to \$250,000 accumulative, unless otherwise approved and/or stipulated.

IX. PRICING SCHEDULE:

PRICING SCHEDULE - The contractor agrees to provide the services in compliance with the scope of work for each specific project at the firm fixed rates for the period of this agreement as follows:

- : The University may develop a "scope of work" on a per project basis, and compete to awarded Contractors;
- : On a per project basis, Contractor agrees to provide the services specified in the per project "scope of work" at the agreed to firm fixed rates as specified in below Table and/or Exhibit A;
- : Unless otherwise mutually agreed to and modified, the below rates shall remain in effect for the duration of agreement, including any subsequent Renewal Periods;
- : In any instance where the contractor cannot provide the required services within an acceptable time frame, the University reserves the right to purchase these services on the open market;
- : All below rates shall include cost such as insurance, salaries, overhead, profit, etc., and no additional cost shall be allowed unless otherwise mutually agreed to in writing;
- : For any project that requires services and/or materials that not specified in below Table and/or in Exhibit A, Contractor may provide rates for same in any response to a project quotation.

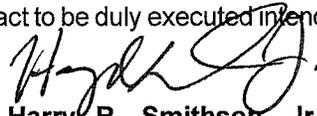
A. CONTRACT PRICING:

| ITEM | CATEGORIES | REGULAR TIME | OVERTIME |
|------|--|-----------------|--------------|
| 1 | General Landscape Labor | \$65.00/HR. | \$90.00/HR. |
| 2 | Landscape Supervisor | \$100.00/HR. | \$150.00/HR. |
| 3 | Mulch, Hardwood, Processed, Double Shredded, Provide and Install | \$75.00/CU.YD. | - |
| 4 | Mulch Installation (Labor Only), University will provide Material | \$50.00/CU.YD. | - |
| 5 | Pine Straw, Baled, Provide and Install | \$15.00/BALE | - |
| 6 | Pine Straw Installation (Labor Only), University will provide Material | \$10.00/BALE | - |
| 7 | Top Soil, Shredded, Sifted, to provide and install | \$75.00/CU.YD. | - |
| 8 | Biomix / Bioengineering Soil, to provide and install | \$125.00/CU.YD. | - |
| 9 | River rocks "river jack", 1-3", provide and install | \$400.00/1 ton | - |
| 10 | River rocks "river jack", 3-5", provide and install | \$400.00/1 ton | - |
| 11 | Stone, #57, provide and install | \$225.00/1 ton | - |
| 12 | Stone, #2, provide and install | \$250.00/1 ton | - |
| 13 | Stone, #3, provide and install | \$250.00/1 ton | - |
| 14 | Stone #8, provide and install | \$250.00/1 ton | - |
| 15 | Crushed Granite, provide and install, (used in bike parking and pathways) | \$200.00/1 ton | - |
| 16 | Crushed Oyster Shell, provide and install (used in historic pathways) | \$250.00/1 ton | - |
| 17 | Sand, "washed" / "screened", provide and install (used for volleyball pits & general fill) | \$90.00/1 ton | - |
| 19 | EXHIBIT "A", Plant Material, contractor to provide and install | \$20,181.00/LOT | |

IN WITNESS WHEREOF, the University has caused this contract to be duly executed intending to be bound thereby.

UNIVERSITY: Old Dominion University

Date: 3/08/2021


By: Harry R. Smithson, Jr., CPPO

Title: Asst. Director, Procurement

EXHIBIT A

PLANT MATERIAL - WINN NURSERY

| BOTANICAL NAME | COMMON NAME | SIZE | REMARKS | UNIT PRICE | TOTAL |
|----------------|-------------|------|---------|------------|-------|
|----------------|-------------|------|---------|------------|-------|

All items listed herein shall be quoted based on cost of the plant material, delivery, and installation. The Contractor, as needed shall provide all trees, shrubs, groundcover, and flower plants, etc. The following is a sample list of the University's typical plant material purchased throughout the University:

CANOPY TREES

| | | | | | |
|--------------------------------|------------------------|----------------|-----|--|------------|
| Acer rubrum | Red Maple | 2 1/2 - 3" | B&B | | 350 |
| Carpinus betulus 'Fastigiata' | Columnar Hornbeam | 2 1/2 - 3" | B&B | | 350 |
| Ginko biloba | Maidenhair Tree (Male) | 2 1/2 - 3" | B&B | | 500 |
| Liquidambar styraciflua | Sweet-Gum | 2 1/2 - 3" | B&B | | 300 |
| Metasequoia glyptostroboides | Dawn Redwood | 2 1/2 - 3" | B&B | | 300 |
| <i>Nyssa sylvatica</i> | <i>Sour Gum</i> | <i>15-Gal</i> | | | <i>300</i> |
| Quercus acutissima | Sawtooth Oak | 2 1/2 - 3" | B&B | | 325 |
| Quercus bicolor | Swamp White Oak | 2 1/2 - 3" | B&B | | 350 |
| Quercus coccinea | Scarlet Oak | 2 1/2 - 3" | B&B | | 350 |
| Quercus falcata | Southern Red Oak | 2 1/2 - 3" | B&B | | 350 |
| Quercus laurifolia | Laurel Oak | 2 1/2 - 3" | B&B | | 350 |
| Quercus michauxii | Swamp Chestnut Oak | 2 1/2 - 3" | B&B | | 350 |
| Quercus velutina | Black Oak | 2 1/2 - 3" | B&B | | 400 |
| Quercus nuttallii | Nuttall Oak | 2 1/2 - 3" | B&B | | 350 |
| Quercus virginiana | Live Oak | 2 1/2 - 3" | B&B | | 450 |
| Salix balyonica | Weeping Willow | 2 1/2 - 3" | B&B | | 300 |
| Taxodium distichum | Bald Cypress | 2 1/2 - 3" | B&B | | 300 |
| <i>Taxodium distichum</i> | <i>Bald Cypress</i> | <i>15-Gal.</i> | | | <i>250</i> |
| Zelova serrata 'Village Green' | Japanese Zelkova | 2 1/2 - 3" | B&B | | 350 |

EVERGREEN TREES

| | | | | | |
|---------------------------------|-----------------------------|----------------|----------------|--|------------|
| Cryptomeria japonica | Japanese Cedar | 6-8' | B&B | | 250 |
| <i>Charnaecyparis thyooides</i> | <i>Atlantic White Cedar</i> | <i>15-Gal.</i> | <i>B&B</i> | | <i>250</i> |
| Ilex x attenuata | Foster Holly | 5-6' | B&B | | 225 |
| Ilex x attenuata | Foster Holly | 6-8' | B&B | | 275 |
| Ilex x attenuata | Foster Holly | 8-10' | B&B | | 400 |
| Ilex x attenuata | Savannah | 5-6' | B&B | | 225 |
| Ilex x attenuata | Savannah | 6-8' | B&B | | 275 |
| Ilex x attenuata | Savannah | 8-10' | B&B | | 400 |
| Ilex latifolia 'Wirt Winn' | Lusterleaf Holly | 5-6' | B&B | | 225 |
| Ilex latifolia 'Wirt Winn' | Lusterleaf Holly | 6-8' | B&B | | 275 |
| Ilex latifolia 'Wirt Winn' | Lusterleaf Holly | 8-10' | B&B | | 400 |
| Ilex opaca | American Holly | 8-10' | B&B | | 400 |
| Ilex vomitoria 'Pendula' | Weeping Yoppon | 5-6' | B&B | | 225 |
| Ilex vomitoria 'Pendula' | Weeping Yoppon | 6-8' | B&B | | 275 |
| Ilex vomitoria 'Pendula' | Weeping Yoppon | 8-10' | B&B | | 400 |
| Magnolia grandiflora | Southern Magnolia | 8-10' | B&B | | 350 |
| Magnolia grandiflora | Little Gem | | 30 gal | | 375 |
| Magnolia grandiflora | Little Gem | | 15 gal | | 225 |
| Magnolia soulangeana | Saucer Magnolia | 8 - 10' | B&B Multi-Stem | | 300 |
| Magnolia virginiana | Sweetbay Magnolia | 8 - 10' | B&B Multi-Stem | | 300 |

| | | | | | |
|-----------------|---------------|-------|-----|--|-----|
| Pinus elliottii | Slash Pine | 8-10' | B&B | | 300 |
| Pinus palustris | Longleaf Pine | 8-10' | B&B | | 300 |
| Pinus taeda | Loblolly Pine | 8-10' | B&B | | 250 |

ORNAMENTAL TREES

| | | | | | |
|---|--------------------------------|----------------|-------------------|--|------------|
| Acer palmatum | Japanese Maple | 8 - 10' | B&B Multi-Stem | | 750 |
| Amelanchier canadensis 'Robin Hill Pink' | Robin Hill Serviceberry | 5-6' | B&B Multi-Stem | | 200 |
| <i>Amelanchier canadensis 'Robin Hill Pink'</i> | <i>Robin Hill Serviceberry</i> | <i>7-Gal.</i> | <i>Multi-Stem</i> | | <i>100</i> |
| Betulas nigra 'Heritage' | Heritage Birch | 8 - 10' | B&B Multi-Stem | | 250 |
| <i>Cercis Canadensis</i> | <i>Redbud</i> | <i>15-Gal.</i> | <i>Multi-Stem</i> | | <i>250</i> |
| Comus kousa | Oriental Dogwood | 6-8' | B&B | | 250 |

| | | | | |
|---|----------------------------|----------|--------------------|------|
| Comus kousa | Oriental Dogwood | 8-10' | B&B | 375 |
| Lagerstroemia indica | Crape Myrtle | 8 - 10' | B&B Multi-Stem | 250 |
| Lagerstroemia indica | Crape Myrtle | 8 - 10' | B&B Single-Stem | 300 |
| <i>Oxydendrum arboretum</i> | <i>Sourwood</i> | 15-Gal. | <i>Single-Stem</i> | 300 |
| Vitex agnus-castus 'Latifolia' | Chaste Tree | 5-6' | B&B Multi-Stem | 200 |
| Vitex agnus-castus 'Latifolia' | Chaste Tree | 6-8' | B&B Multi-Stem | 250 |
| Vitex agnus-castus 'Latifolia' | Chaste Tree | 8-10' | B&B Multi-Stem | 325 |
| EVERGREEN SHRUBS | | | | |
| Aronia melanocarpa | Chokeberry | | Container | 45 |
| Aucuba japonica | Japanese aucuba | 18 - 24" | Container | 45 |
| Aucuba japonica | Japanese aucuba'nana' | 18 - 24" | Container | 45 |
| <i>Callicarpa americana</i> | American Beautyberry | | Container | 45 |
| Camellia japonica | Japanese Camelia | 30-36 | Container | 100 |
| Camellia sasanqua | Sasanqua Camelia | 30-36 | Container | 100 |
| Elaeagnus pungens 'Fruitlandii' | Fragrant Elaeagnus | 18 - 24" | Container | 45 |
| Fatsia japonica | Japanese Fatsia | 18 - 24" | Container | 45 |
| <i>Ilex glabra compacta</i> | <i>Inkberry Holly</i> | 1-Gal. | <i>Container</i> | 17.5 |
| Ilex vomitoria 'Nana' | Dwarf Yaupon Holly | 18 - 24" | Container | 45 |
| ILLICIIDACEAE | | | | |
| Illicium floridanum | Illicium parviflorum | 30-36 | Container | 90 |
| Juniperus chinensis 'Kaizuka' | Hollywood Juniper | 18 - 24" | Container | 45 |
| Juniperus conferta | Shore Juniper | 18 - 24" | Container | 45 |
| Juniperus horizontalis 'Blue Pacific' | Blue Pacific Juniper | 18 - 24" | Container | 45 |
| Laurus nobilis 'Angustifolia' | Laurel | 18 - 24" | Container | 75 |
| Osmanthus heterophyllus 'Gulf tide' | Gulf tide Holly Osmanthus | 18 - 24" | Container | 45 |
| Pieris japonica | Japanese Pieris | 18 - 24" | Container | 45 |
| Pittosporum tobira | Variegata | 18 - 24" | Container | 45 |
| Pittosporum tobira | Japanese Pittosporum | 18 - 24" | Container | 45 |
| Pittosporum tobira 'Nana' | Wheeler's Dwarf | 18 - 24" | Container | 45 |
| Raphiolepis indica | India Hawthorn | 18 - 24" | Container | 45 |
| Rhododendron Azalea | "Hellen Curtis" Azalea | 18 - 24" | Container | 45 |
| Rhododendron Azalea | Poukanensis Azalea | 18 - 24" | Container | 45 |
| Rhododendron Azalea | "Girard Hybrids" | 18 - 24" | Container | 45 |
| Rhododendron Azalea | Gumpus | 18 - 24" | Container | 45 |
| Rhododendron Azalea | Encore | 18 - 24" | Container | 50 |
| Rhododendron Exbury Azalea | "Gibraltar" Exbury Azalea | 18 - 24" | Container | 60 |
| Ternstroemia gymnanthera | Cleyera japonica | 18 - 24" | Container | 45 |
| Viburnum japonicum | V. awabukii | 30-36 | Container | 90 |
| Viburnum plicatum var. tomentosum | Mariesii | 30-36 | Container | 90 |
| Viburnum rhytidophyllum | Leatherleaf Viburnum | 30-36 | Container | 90 |
| Viburnum rhytidophyllum | Viburnum x pragense | 30-36 | Container | 90 |
| Viburnum tinus 'Lucidum' | Laurestinus Viburnum | 30-36 | Container | 90 |
| DECIDUOUS SHRUBS | | | | |
| Buddleia davidii | Butterfly-bush | 18 - 24" | Container | 45 |
| Clethra ainifolia | Sweet Pepper bush | 7 gal. | Container | 100 |
| Hydrangea macrophylla | Hydrangea | 18 - 24" | Container | 45 |
| Hydrangea quercifolia 'Snow Queen' | Oak-leaved Hydrangea | 18 - 24" | Container | 45 |
| Itea virginica | Virginia Sweetspire | 1 gal. | Container | 17.5 |
| Itea virginica | Virginia Sweetspire | 3 gal. | Container | 45 |
| <i>Itea virginica</i> | <i>Virginia Sweetspire</i> | 7 gal. | <i>Container</i> | 100 |
| Spirea nipponica 'Snowmound' | Snowmound Spirea | 18 - 24" | Container | 45 |
| Viburnum plicatum 'Summer Snowflake' | Summer Snowflake Viburnum | 18 - 24" | Container | 45 |
| Viburnum plicatum tomentosum 'Mariesii' | Maries Doublefile Viburnum | 18 - 24" | Container | 45 |
| Viburnum x burkwoodii | Burkwood Viburnum | 18 - 24" | Container | |
| ORNAMENTAL GRASSES | | | | |
| Calamagrostis acutiflora 'Stricta' | Feather Reed Grass | 1 Gal. | Container | 17.5 |
| Helictotrichon sempervirens | Blue Oak Grass | 1 Gal. | Container | 17.5 |
| Miscanthus sinensis | Japanese Silver Grass | 1 Gal. | Container | 17.5 |
| Pennisetum alpecuroides | Rose Fountain Grass | 1 Gal. | Container | 17.5 |
| Panicum spp | Panicgrass | 1 Gal. | Container | 17.5 |
| GROUNDCOVERS | | | | |

| | | | | | |
|--|--------------------------------|--------|-----------|---------------------------|--------------|
| Festuca ovina | Blue Fescue | 1 Gal. | Container | | 15 |
| Hypericum calycinum | Aaronsbeard | 1 Gal. | Container | | 15 |
| Ophiopogon japonicus | Mondo Grass | 1 Gal. | Container | | 12 |
| Ophiopogon japonicus 'Gyokuruu' | Black Mondo Grass | 1 Gal. | Container | | 25 |
| Pachysandra terminalis 'Green Carpet' | Pachysandra | 1 Gal. | Container | | 15 |
| Vinca Major | Big Periwinkle | 1 Gal. | Container | | 12 |
| Vinca Minor | Periwinkle | 1 Gal. | Container | | 12 |
| PERENNIALS | | | | | |
| Coreopsis verticillata 'Moonbeam' | Threadleaf Coreopsis | 1 Gal. | Container | | 17.5 |
| Hemerocallis lilaceae 'Happy Returns' | Daylily (Soft yellow) Low / AS | 1 Gal. | Container | | 15 |
| Hemerocallis lilaceae 'Stell de 'Oro'' | Daylily (Golden) Low / AS | 1 Gal. | Container | | 15 |
| Hemerocallis liliaceae 'Bright Banner' | Daylily (Red) Tall / Mid | 1 Gal. | Container | | 15 |
| Hemerocallis liliaceae 'Hyperion' | Daylily (yellow) Tall / Mid | 1 Gal. | Container | | 15 |
| Hemerocallis liliaceae 'Lacy Queen' | Daylily (Peach) Tall / Late | 1 Gal. | Container | | 15 |
| Hosta plantaginea 'Grandiflora' | Autumn Plantian Lily | 1 Gal. | Container | | 40 |
| Hosta sieboliana 'Elegans' | Plantian Lily | 1 Gal. | Container | | 40 |
| Iris siberica 'Butter & Sugar' | Siberian Iris Tall / White | 1 Gal. | Container | | 15 |
| Iris versicolor | Blue Flag Iris | 1 Gal. | Container | | 17.5 |
| Liatris spicata | Gay Feather | 1 Gal. | Container | | 17.5 |
| Lobelia cardinalis | Cardinal Flower | 1 Gal. | Container | | 17.5 |
| Rudbeckia fulgida 'Goldsturm' | Bleck-eyed Susan | 1 Gal. | Container | | 17.5 |
| Sedum X telephium 'Autumn Joy' | Live-forever | 1 Gal. | Container | | 17.5 |
| Veronica spp | Moody Blues | 1 Gal. | Container | | 17.5 |
| | | | | NET TOTAL FOR EXHIBIT "A" | \$ 20,181.00 |