

INTERIM AGREEMENT

This INTERIM AGREEMENT ("Interim Agreement") dated this ____ day of May, 2009 is between the Commonwealth of Virginia, Department of Mental Health, Mental Retardation and Substance Abuse Services ("Owner" or "DMHMRSAS") and Balfour Beatty Construction, LLC ("BBC" or "Developer"), whose Identification Number (FEIN or SSN) is 20-1627180 and is binding among and between these parties from the date performance began.

R E C I T A L S

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

Owner	Department of Mental Health, Mental Retardation and Substance Abuse Services		
Attn	James R. Taylor		
Address	1220 Bank Street		
City, State, Zip	Richmond, Virginia 23218-1797		
Telephone	(804) 840-7155	FAX	(804) 371-8898

Developer	Balfour Beatty Construction, LLC		
Attn	Mr. David Salzer		
Address	3924 Pender Drive		
City, State, Zip	Fairfax, Virginia 22030		
Telephone	(703) 218- 1354	FAX	(703) 934-5520

2. The Owner contemplates development of the following Project (Project) identified as:

Project Title	Replacement Facility for Western State Hospital
Project Code	PC# 721-7276

The Project consists of an approximate 336,010 sf replacement facility for Western State Hospital in Staunton, Virginia. The facility will be located on approximately 60 acres of land in Staunton, Virginia, and will include mall spaces, patient care units, as well as administrative and support spaces.

3. Developer submitted its Unsolicited PPEA Proposal (Proposal) on May 25, 2006 under the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA), Va. Code § 56-57.1, et seq., in order to form a public-private effort to provide the Owner certain design, permitting, development financing and construction services in connection with the Project.

4. The Owner received the Unsolicited Proposal on May 25, 2006 and advertised receipt of the Proposal and invited any competing proposals to be submitted to it by October 17, 2006 for consideration. Subsequently, the Owner issued a Request for Detailed Phase Submissions on November 30, 2007. The Final Detailed Phase Submissions for the Project were submitted on January 30, 2009.

5. The Owner determined this to be a qualifying project and on March 5, 2009 advised Developer that the Owner had selected Developer and its proposal under the PPEA for the development, design and construction of the Replacement Facility for Western State Hospital in Staunton, Virginia.

6. The Owner and the Developer desire to commence, on the terms and subject to the conditions set forth in this Agreement, the Services, defined below, while the parties are negotiating the

definitive Comprehensive Agreement for the Developer's full performance of the design, development and construction of the Project (the "Comprehensive Agreement").

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

7. Scope of Services

The Developer agrees to provide, or cause to be provided by professional architectural, engineering and related consulting firms as appropriate, the services identified on Exhibit A to this Interim Agreement in accordance with all requirements for services as set forth in this Interim Agreement (the "Services"). Unless otherwise expressly provided herein, or unless otherwise required by permitting authorities, the Developer will be solely responsible for and will have control over the means, methods, techniques, sequences and procedures for coordinating all portions of the Services. Any Services contemplated by this Interim Agreement, whether completed or in process, will be incorporated into and subject to the terms and conditions of the final Comprehensive Agreement.

8. Proposal Commitments

Notwithstanding the parties' entry into this Interim Agreement, Developer acknowledges and agrees that it will, subject to the Proposal's qualifications and exclusions, maintain the commitments contained within its Proposal, including those related to price and schedule (as to overall duration for completion of the Project only) so long as notice to proceed with the Services is received by June 1, 2009 and there is no interruption or suspension between performance of the Services and the remainder of the work necessary to complete the Project as anticipated in the proposal schedule.

9. Contract Price

In consideration of the provision of the Services provided by Developer under this Interim Agreement, Owner shall compensate the Developer in the amount of the total Contract Price (Contract Price) of Two Million Five Hundred Sixty Six Thousand One Hundred Eighty One Dollars (\$2,566,181) on the terms and conditions set forth herein and as defined in Section 11, and in Exhibits A and B ("General Conditions of the Design-Build Contract," as modified), attached hereto.. The Contract Price is a not-to-exceed amount that will be billed and paid based on percentage of completion of the Services identified on Exhibit A. Any amounts paid pursuant to this Interim Agreement shall be credited against the Developer's Proposal price for purposes of negotiating the Contract Price contained in the final Comprehensive Agreement.

10. Payment Schedule

Payments to the Developer shall conform to and be made as provided in the provisions of Sections 20 and 36 of the *Commonwealth of Virginia General Conditions of the Design-Build Contract* (CO-7 DB) (attached and incorporated herein as Exhibit B). The agreed Schedule of Values for the Services authorized by this Interim Agreement is set forth on Exhibit A. Interest on payments due the Contractor shall accrue as provided in Section 36(i) of the *Commonwealth of Virginia General Conditions of the Design-Build Contract* (CO-7 DB).

11. Contract Documents

The following documents are incorporated by reference into and made an integral part of this Interim Agreement:

- a. The following provisions of the *Commonwealth of Virginia Construction and Professional Services Manual* – Revision 1, October 1, 2004 (“CPSM” or the “Manual”) are included by reference and shall be used by the Developer’s A/E as the referenced standards for design of the buildings:

Table of Applicable CPSM Provisions

- Chapter 1 in its entirety.
 - Chapter 2 in its entirety, plus the following language is added: “Where necessary or appropriate to accomplish the intent of a particular Term or Definition, the terms “Owner” and “Agency” shall be deemed to refer to Developer.”
 - Chapter 3 applies to Developer as the entity providing the design to the Department for the project. These Terms and Conditions apply to the Developer including its Architect / Engineer for the design portion of the Design Build Contract, except that Sections 304, 305, 306, 310, 314, 315, 318, 319, 320, 321, and 326 are not applicable.
 - Chapter 4 is not applicable.
 - Chapter 5, only Sections 502, 504.1, 504.2, 504.3, 504.6(1), 504.6(2), 504.6(4), 504.6(6), 504.6(7) and 507 apply to Contractor with respect to its responsibilities to the Owner for the design services provided by the Contractor’s A/E on the Project.
 - Chapter 6 is not applicable.
 - Chapter 7, Engineering Requirements, Policies, and Code Applications for Buildings on State Property (i.e. codes, standards, energy conservation design and operation requirements) apply to the design of the Project. The current edition of the Virginia Uniform Statewide Building Code which is in effect at the time the Working Drawings / Construction Documents are submitted to the Building Official for Building Permit shall be the applicable Building Code for that phase of the Project.
 - Chapter 8, only Sections 800.2, 800.3, 800.4, 802, 803 (other than Sections 803.3, and 803.4), 805, 806, 807, 808 (other than Sections 808.9 and 808.10), 809.6, 811, 812, 813, 815 and 816 are applicable.
 - Chapter 9, Design and Procurement Criteria, Policies and Guidelines, apply to the design except for those sections concerning Construction procurement procedures.
 - Chapter 10, Section 1000 applies, and Sections 1010 through 1028 apply to some extent, depending upon the final Comprehensive Agreement and its attachments.
 - Appendices C, D, G, I, J, M, N, P, Q for Divisions 2 through 16, and S apply to the design services rendered, depending upon the final Comprehensive Agreement.
 - For the avoidance of doubt, it is understood and agreed that CPSM provisions addressing construction procurement are not intended to apply.
- b. Exhibit A - Scope of Services and Schedule of Values.
- c. Developer’s Proposal in response to the Request for Detailed Phase Submissions for Replacement Facility for Western State Hospital; Project No: PC 721-7276.
- d. Selected portions of the *Commonwealth of Virginia General Conditions of the Design-Build Contract* (form CO-7 DB – 2004 Edition) referenced in Paragraphs 10, 13, 14 and 15 of this Interim Agreement and attached hereto as Exhibit B.
- e. The Request for Detailed Phase Submissions for Replacement Facility for Western State Hospital; Project No: PC 721-7276.

In the event of any conflict in terms among the foregoing documents made a part of this Interim Agreement by reference, the order of precedence shall be as follows: this Interim Agreement, b, a, d, c, e.

12. Ownership of Work Product

The term "Work Product" is intended to include all drawings, plans, specifications, calculations, reports, and documentation, whether in paper copy or electronic format, produced by, through, or at the direction of Developer that is furnished, or required to be furnished, to Owner. Owner shall own all rights, title and interest in the Work Product upon its receipt of such Work Product. Owner's ownership rights, include without restriction or limitation, the right of the Owner, and anyone contracting with Owner, to incorporate any ideas or information from the Work Product into: (a) any other contract awarded in reference to the Project; or (b) any subsequent procurement by Owner on another project. In receiving all rights, title and interest in the Work Product, Owner is deemed to own all intellectual property rights, copyrights, patents, trade secrets, trademarks, and service marks in Work Product, and Developer agrees that it shall, at the request of Owner, execute all papers and perform all other acts that may be necessary (if any) to ensure that Owner's rights, title and interest in the Work Product are protected at the Developer's expense. The rights conferred herein to Owner include, without limitation, Owner's ability to use the Work Product without the obligation to notify or seek permission from Developer. Owner hereby grants Developer the unrestricted right to retain copies of the Work Product and to use this Work Product in the normal course of Developer's business for any lawful purpose. The Owner may use the Work Product for completion and maintenance of the Project by others, without further employment of, or payment of any additional compensation to Developer, in which event Owner shall release Developer and its design professionals from any responsibility for the conformance of any such work by others to the Work Product. In addition, the Owner's use of the Work Product on any subsequent procurement by Owner on another project shall be at Owner's sole risk, and Developer neither warrants nor represents that the Work Product is suitable for use on another project without modification. In the event the Owner elects to reuse the Work Product for another project, the Owner agrees that it shall employ or engage design professionals that are responsible for preparing project and site-adapted final design documents, and that those design professionals shall stamp any such design documents with their seals and signatures, which meet all applicable codes and standards in effect at the time, and no Work Product shall be used with Developer's or its design professionals' title block, logo or company name. The Owner waives any rights to seek recovery from Developer for any claims, damages, liabilities, losses and expenses arising out of or resulting from the Owner's use of the Work Product on another project.

13. Changes in the Work

All proposed changes to this Agreement must follow the procedures as outlined in Section 38 (all references to bonds or sureties are inapplicable) of the *Commonwealth of Virginia General Conditions of the Design-Build Contract* (form CO-7 DB, attached as Exhibit B).

14. Termination

The parties may terminate this Interim Agreement as set forth in Sections 40, 41 (all references to bonds and sureties are inapplicable) and 42 (except subsection (b) is inapplicable) of the *Commonwealth of Virginia General Conditions of the Design-Build Contract* (form CO-7 DB). In the event Owner terminates the Interim Agreement for its convenience, the Owner shall not, in furtherance of all or any part of the Project work under a Comprehensive Agreement, hire, engage or contract with any consultant or subcontractor to Developer for a period of at least 180 days after such termination. The parties agree that the Comprehensive Agreement shall be in place within 180 days after execution of the Interim Agreement unless this date is changed by mutual agreement of the parties. Notwithstanding the preceding sentence, or anything to the contrary in the Contract Documents, the fact that Owner and Developer have entered into this Interim Agreement shall not be construed as obligating Owner to enter into a

Comprehensive Agreement with Developer, and Developer shall have no recourse or rights against Owner if Owner does not enter into a Comprehensive Agreement with Developer.

15. Disputes / Claims

Any contractual claims shall be submitted in accordance with the contractual dispute procedures set forth in Section 47 of the *Commonwealth of Virginia General Conditions of the Design-Build Contract* (form CO-7 DB).

16. Counterparts

This Interim Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Interim Agreement or any counterpart hereof to produce or account for the other counterparts.

In witness whereof the undersigned have executed this contract on the dates set forth beside their respective signatures.

Balfour Beatty Construction, LLC

Department of Mental Health, Mental Retardation and
Substance Abuse Services

(DEVELOPER)

(OWNER)

By: _____
(Signature in ink) (Date)

By: _____
(Signature in ink) (Date)

Name: _____

Name: _____

Title: _____

Title: _____