

COMPREHENSIVE AGREEMENT

BY AND BETWEEN

THE CITY OF MANASSAS PARK, VIRGINIA

AND

SHOCKEY-MANASSAS PARK, LLC

MAY 6, 2008

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**COMPREHENSIVE AGREEMENT
BY AND BETWEEN
THE CITY OF MANASSAS PARK, VIRGINIA
AND
SHOCKEY-MANASSAS PARK, LLC**

This Comprehensive Agreement (the “Agreement”) is made and entered into as of May 6, 2008, by and between The City of Manassas Park, a Virginia municipal corporation (the “City”), and Shockey-Manassas Park, LLC, a Virginia limited liability company (the “Private Entity”).

Recitals

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

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

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

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

B. The PPEA grants the City the authority to approve the development or operation by a private entity of an education facility, technology infrastructure or other public

infrastructure or government facility needed by the City as a qualifying project, or the design or equipping of a qualifying project so developed or operated, if the City determines that the qualifying project serves the public purpose of the PPEA.

C. The PPEA permits a private entity to initiate the approval process for a qualifying project in accordance with the provisions of the PPEA.

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

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

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

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

E. The City owns certain real property situate in the City known as Costello Park and Manassas Park Elementary School on which the City's existing Department of Parks and Recreation facilities and existing elementary school facilities have been constructed. The City desires that such existing facilities be renovated or replaced and the property be developed accordingly.

F. On June 20, 2006, the Mayor and the City Council (together, the "Governing Body") adopted and made publicly available combined guidelines (the "Guidelines") sufficient to enable the City to comply with the PPEA and the Public-Private Transportation Act of 1995.

G. On December 11, 2006, the City received an unsolicited conceptual proposal pursuant to the PPEA and the Guidelines from OWPR, Inc., a Virginia corporation ("OWPR"),

for a qualifying project to include the design and construction of a new parks and recreation facility. The OWPR proposal was one of three unsolicited conceptual proposals received for such a project.

H. On May 18, 2007, the City Manager accepted all three unsolicited conceptual proposals, including the OWPR proposal, for conceptual phase review, provided public notice of this decision, and solicited competing proposals from other prospective proposers for the required period of forty-five (45) days. However, no additional proposals were received during the forty-five (45) day period.

I. During the forty-five (45) day period, OWPR revised its proposal to include the Private Entity, with the Private Entity thereafter assuming responsibility, as the private entity (as defined in the Guidelines), for such proposal and for any negotiations with the City.

J. Recognizing that the City had an urgent need for a new parks and recreation facility and that the City had made a new parks and recreation facility a top priority in its Comprehensive Plan and Capital Improvements Program, the Governing Body determined in writing that proceeding with procurement of the new parks and recreation facility under the PPEA is likely to be advantageous to the public and that use of “competitive negotiation” procedures under the PPEA for the new parks and recreation facility is likely to be more advantageous to the City and the public based upon (i) the probable scope, complexity or urgency of the new parks and recreation facility, or (ii) risk sharing, added value, an increase in funding or economic benefit from the new parks and recreation facility that would not otherwise be available.

K. The Governing Body determined that analysis of the specifics, advantages, disadvantages, and the long- and short-term costs of each of the requests for approval of a

qualifying project, as set forth in the proposals, would be performed by employees of the City and by its consultant HDR Architecture, Inc.

L. The City Manager and City staff reviewed all three unsolicited conceptual proposals and found the Private Entity's proposal (the "Proposal") and one other proposal to be worthy of further consideration.

M. The City engaged in competitive negotiations with the top two proposers, after which the City Manager recommended to the Governing Body that it accept the Proposal and authorize further negotiations with the Private Entity for a Comprehensive Agreement in accordance with the PPEA and the Guidelines.

N. On October 2, 2007, the Governing Body adopted a resolution that accepted the Proposal and (i) authorized the City Attorney to negotiate an interim agreement (the "Interim Agreement") with the Private Entity; and (ii) authorized the Private Entity to proceed with a detailed phase proposal to design and build a new parks and recreation facility.

O. On October 18, 2007, the City and the Private Entity entered into the Interim Agreement and thereafter the parties commenced preparation for and negotiation of a comprehensive agreement.

P. The City and the Private Entity have now negotiated a comprehensive agreement consistent with the PPEA, the Guidelines, other applicable law, and the Proposal, the terms of which are set out in this Agreement.

Q. The City has determined that a new parks and recreation facility to be delivered by the Private Entity in accordance with the terms of this Agreement serves the public purpose of the PPEA under the criteria of Virginia Code §56-575.4(C), as amended.

[Following the City's public hearing to receive public comment, add an additional recital referencing the hearing and the City's subsequent approval of this Agreement.]

Agreement

In consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and the Private Entity agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

2. Definitions. The following definitions apply to this Agreement:

(a) “Contract Documents” means this Agreement (together with all of its exhibits) and any written modifications and amendments hereto, the Design-Build Contract (together with all documents referenced in Article 2 thereof) and any written modifications, amendments and change orders thereto, and the General Conditions. “Contract Document” means any one of these documents. In the event of any discrepancies between or among any of the Contract Documents, the language in this Agreement (and any modifications and amendments hereto) shall take priority. The priority of the other Contract Documents shall be as set forth in Section 2.1 of the Design-Build Contract.

(b) “Contract Sum” means the aggregate amount of compensation that the City will be obligated to pay to the Private Entity pursuant to Section 8 of this Agreement and the Design-Build Contract. The Contract Sum is subject to upward or downward adjustment pursuant only to the Contract Documents.

(c) “Design-Build Contract” means DBIA Document No. 530 Standard Form of Agreement Between Owner and Design-Builder Cost Plus Fee with an Option for a Guaranteed Maximum Price, as modified, by and between the City (referenced to therein as

“Owner”) and the Private Entity (referenced to therein as “Design-Builder”), attached hereto as Exhibit A and incorporated herein,.

(d) “General Conditions” means DBIA Document No. 535 Standard Form of General Conditions of Contract Between Owner and Design-Builder, as modified, attached hereto as Exhibit B and incorporated herein.

(e) “New Facility” means the new parks and recreation facility to be designed and constructed at the Site for the benefit of the City pursuant to the terms of this Agreement.

(f) “Project” means the design and construction of the New Facility. “Project” includes both the entirety of the Project or a part thereof. It is intended that the term “Project” will be construed consistent with the definition of “Project” in the Design-Build Contract.

(g) “Project Schedule” means the schedule for the Project as approved by the parties.

(h) “Proposal” means the modified PPEA proposal for the New Facility presented by the Private Entity to the City on September 12, 2007.

(i) “Site” means the real property on which the Project is to be located, all portions of which are owned by the City or the City’s School Board as of the date of this Agreement. The City will see that all of the Site is owned by the City as necessary for the Work to proceed in due course. The Site is more particularly described on Exhibit C, attached hereto and incorporated herein.

(j) “Work” means all of the architectural, engineering, construction and other duties and services to be furnished and provided by the Private Entity as required by the Contract Documents. “Work” may include the entirety of the Work or a portion thereof.

(k) “Work Product” means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of the Private Entity and in any way related to the Project.

3. General Scope.

(a) Under this Agreement, the City and the Private Entity agree that the New Facility shall be designed and constructed by the Private Entity for the benefit of the City in accordance with the Contract Documents. The Private Entity shall be paid by the City for the design and construction of the New Facility in accordance with the Contract Documents.

(b) The Project shall be divided into two phases:

(i) Phase 1 shall include the portion of the Scope of Work labeled as Phase 1 on Exhibit D, attached hereto and incorporated herein. Phase 1 shall commence upon the City’s delivery to the Private Entity of this fully-executed Agreement.

(ii) Phase 2 shall include the portion of the Scope of Work labeled as Phase 2 on Exhibit D. Phase 2 shall commence upon the City’s delivery to the Private Entity of a notice to proceed with the Phase 2 Work in accordance with the Project Schedule.

4. Term. The term of this Agreement shall begin on the date of this Agreement and shall continue until its termination pursuant to Section 10 below, any other provision of this Agreement or any other Contract Document, or by law, or until all obligations under this Agreement have been properly and fully performed.

5. Work.

(a) The Private Entity shall furnish all necessary personnel, material, equipment and services to fully and properly perform the Work in accordance with the Contract

Documents, except as excluded on Exhibit E, attached hereto and incorporated herein, or as otherwise specified.

(b) The City shall perform work related to the New Facility as set forth on Exhibit E. The City hereby certifies that it shall perform all work to be performed by the City properly and in accordance with industry standards and applicable laws and regulations. Any defects in such work shall be subject to change order in accordance with the General Conditions.

6. Notice to Proceed. The City's delivery to the Private Entity of this executed Agreement shall constitute notice to proceed with Phase 1 of the Work in accordance with the Project Schedule.

7. Project Schedule. The Project Schedule shall be as set forth in the Design-Build Contract. The Project Schedule may be modified under the circumstances set forth in the Design-Build Contract and the General Conditions. The City and Private Entity shall use reasonable efforts to maintain the Project Schedule and each of them shall (a) execute and deliver in a timely fashion all instruments and documents as contemplated by the terms of this Agreement and the other Contract Documents, and (b) perform obligations in accordance therewith. To help keep the Project on schedule, the City shall give prompt attention to permits, reviews and approvals required for the New Facility.

8. Payment to Private Entity

(a) The amount of compensation to be paid by the City to the Private Entity shall be established pursuant to the terms of the Design-Build Contract and shall be referred to herein as the "Contract Sum". Payment of the Contract Sum by the City to the Private Entity shall be made in accordance with the terms of the Design-Build Contract.

(b) The City shall arrange to finance the costs of the Project in a manner that results in the availability of funds in the amounts and at the times required to meet the projected needs for the Project. The City represents and warrants that it has appropriated funds necessary to fulfill all of the City's financial obligations related to the Project in the amounts and at the times required to meet the projected needs thereof, including but not limited to a reasonable contingency to address adjustments reasonably required. A copy of the approved minutes of the meeting of the Governing Body reflecting appropriation of such amounts is attached hereto as Exhibit F and incorporated herein.

9. Representations and Warranties.

(a) City Representations and Warranties. The City hereby represents and warrants to the Private Entity as follows:

(i) The City is the responsible public entity, as that term is used in the PPEA and the Guidelines, for the Project. As such, the City has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement and the other Contract Documents.

(ii) The City has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other Contract Documents.

(iii) Each person executing this Agreement or any other Contract Document, or any other agreement, instrument or document on behalf of the City to which the City is a party, has been or at such time of execution will be duly authorized to execute each such document on behalf of the City.

(iv) Neither the execution and delivery by the City of this Agreement and the other Contract Documents executed by the City concurrently herewith, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.

(v) There is no action, suit, proceeding, investigation or litigation pending and served on the City which challenges the City's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Contract Documents to which the City is a party, or which challenges the authority of the City official executing this Agreement or the other Contract Documents to which the City is a party, and the City has disclosed to the Private Entity any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the City is aware.

(vi) The zoning for the Site is consistent with the requirements of the Project and is otherwise suitable and appropriate for the Project.

(b) Private Entity Representations and Warranties. The Private Entity hereby represents and warrants to the City as follows:

(i) The Private Entity is a duly organized limited liability company created under the laws of the Commonwealth of Virginia. It has and will maintain throughout the term of this Agreement the requisite power and all required licenses (or it or its subcontractors will have all required licenses prior to the time activities which require licenses are undertaken) to carry on its present and proposed activities, and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement and the other Contract Documents.

(ii) The Private Entity has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other Contract Documents.

(iii) Each person executing this Agreement or any other Contract Document on behalf of the Private Entity to which the Private Entity is a party has been or at such time of execution will be duly authorized to execute each such document on behalf of the Private Entity.

(iv) Neither the execution and delivery by the Private Entity of this Agreement and the other Contract Documents executed by the Private Entity concurrently herewith, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.

(v) There is no action, suit, proceeding, investigation, indictment or litigation pending and served on the Private Entity which challenges the Private Entity's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Contract Documents to which the Private Entity is a party, or which challenges the authority of the Private Entity official executing this Agreement or the other Contract Documents to which the Private Entity is a party, and the Private Entity has disclosed to the City any pending and unserved or threatened action, suit, proceeding, investigation, indictment or litigation with respect to such matters of which the Private Entity is aware.

10. Termination.

(a) If a party to this Agreement defaults or fails or neglects to carry out a material obligation under this Agreement (for purposes of this Section 10, the "Defaulting

Party”) and if the other party (for purposes of this Section 10, the “Non-Defaulting Party”) is not in material breach of this Agreement at the time, the Non-Defaulting Party may give written notice that it intends to terminate this Agreement, which notice shall contain a reasonably detailed explanation of the reasons for the proposed termination. The Defaulting Party shall correct the default, failure or neglect within thirty (30) days after being given such notice; provided, however, if (i) the nature of such default, failure or neglect is such that it is not reasonably capable of being corrected within such thirty (30) day period and (ii) the Defaulting Party notifies the Non-Defaulting Party of a reasonable alternative period reasonably acceptable to the Non-Defaulting Party within fifteen (15) days of receipt of such notice, the Defaulting Party shall be allowed such reasonable alternative period to correct the default, failure or neglect so long as the Defaulting Party promptly commences and diligently pursues such corrections to completion. If the Defaulting Party fails to make such corrections within the thirty (30) day period or fails to commence and diligently pursue to completion such corrections within the alternative period, then the Non-Defaulting Party may, at its sole discretion and without prejudice to any other remedy, terminate this Agreement. The terms of this Section 10 shall not apply to a failure on the part of the Private Entity to perform the obligations set forth in Section 11.2 of the General Conditions, or to a failure on the part of the City to make timely payments to the Private Entity, all of which shall be governed by the General Conditions.

(b) If not sooner terminated pursuant to the terms of Subsection (a) above, or by mutual agreement, this Agreement shall terminate when all terms and conditions of all the Contract Documents (exclusive of warranty and indemnity obligations, and any other provisions which by their express terms are to survive termination) have been satisfied and all of the Private Entity’s construction obligations under this Agreement have been fulfilled.

11. Cooperation; Resolution of Disputes, Claims and Other Matters.

(a) The parties agree to cooperate to achieve the objectives of this Agreement, and to use reasonable and good-faith efforts to resolve all disputes and disagreements that may arise hereunder. Each party agrees to designate representatives with the authority to make decisions binding upon such party (subject in the case of the City to those matters requiring an appropriate vote of the Governing Body or the City's planning commission) so as to not unduly delay the Project Schedule.

(b) All disputes, claims and other matters in question between the parties arising out of or in relation to the Design-Build Contract shall be resolved in accordance with the terms thereof.

(c) All other disputes, claims and other matters in question between the parties shall be resolved as follows:

(i) A party shall give to the other party written notice of any claim for any additional compensation, damages or delay, or of any other claim, dispute or other matter in question, within fifteen (15) days of the occurrence of the event leading to the dispute, claim or question, and shall submit any supporting data within thirty (30) days after the occurrence giving rise to the dispute, claim or question ends.

(ii) The parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation conducted pursuant to the Construction Industry Mediation Procedure of the American Arbitration Association, with the site of the mediation being in the City of Manassas Park, Virginia, or such other site as may be agreed upon by the parties. Should the dispute, claim or other matter in question remain unresolved for the shorter

of (A) ninety (90) days following negotiation and mediation, or (B) ninety (90) days after mediation is invoked by a party, either party may proceed in accordance with Paragraph (iii) below.

(iii) If the procedures of Paragraph (ii) above have been followed, and the dispute, claim or matter in question remains unresolved, then either party may institute a lawsuit or chancery action, as appropriate, in the Circuit Court of the County of Prince William, Virginia, or if the subject or amount in controversy is within its jurisdiction, the General District Court of the County of Prince William, Virginia.

(iv) Nothing in Paragraphs (ii) or (iii) above shall prevent a party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of the County of Prince William, Virginia, if circumstances so warrant.

12. Financial Statement. On an annual basis, the Private Entity shall file with the City a statement reflecting the general financial condition of the Private Entity.

13. Proposal Fee. Within sixty (60) days of the date of this Agreement, the City shall reimburse to the Private Entity any excess review fees paid to the City by the Private Entity at the time of its submission of the Proposal in accordance with Section II.C.5 of the Guidelines. Such excess fees shall include the portion of the review fees not expended by the City to cover its costs of processing, reviewing and evaluating the proposal.

14. Records.

(a) Protected Records. If the Private Entity believes that any Work Product or any other document or item subject to transmittal to or review by the City under the terms of this Agreement or any other Contract Document contains trade secrets or other information exempt or protected from disclosure pursuant to applicable law, the Private Entity shall use its

reasonable efforts to identify such information prior to such transmittal or review, and the City shall confer an appropriate means of ensuring compliance with applicable laws prior to transmittal or review.

(b) Requests for Public Disclosure. The City recognizes that certain Work Product and other documents or materials of which the City obtains a copy, may contain trade secrets or other information exempt from disclosure under applicable law, or may include information that is otherwise subject to protection from misappropriation or disclosure. Should any such items become the subject of a request for public disclosure, the City shall respond as follows:

(i) The City shall use reasonable efforts to immediately notify the Private Entity of such request and the date by which it anticipates responding.

(ii) The Private Entity must then assert in writing to the City any claim that such items are protected from disclosure.

(iii) If the Private Entity fails to make such assertion within three (3) business days after the City notifies the Private Entity of its intended response, the City shall have the right to make such disclosure.

(iv) If the Private Entity makes a timely assertion that the requested items contain trade secrets or other information exempt from disclosure or otherwise protected under applicable law, the City and the Private Entity shall seek judicial declaration of the rights of the parties. Until such declaration is made, the City will maintain the confidentiality of such items.

(v) If the City's denial of a request for disclosure of items is challenged in court, the Private Entity shall assist the City in its defense, and shall indemnify the

City for direct damages assessed and reasonable costs the City incurs in such defense, excluding any damages or costs resulting from the City's negligence.

15. Conditions Precedent and Subsequent to Agreement's Effectiveness.

(a) Governing Body Approval. It shall be a condition precedent to this Agreement's effectiveness that entry into this Agreement between the City and the Private Entity for the Project pursuant to the terms hereof has first been approved by the Governing Body; that this Agreement has been properly executed by the City; and that the approved, executed Agreement has been delivered to the Private Entity no later than May 7, 2008; and

(b) Entry into Design-Build Contract. It shall be a condition subsequent to this Agreement's effectiveness that, immediately after execution of this Agreement by both parties, the parties shall enter into the Design-Build Contract for the New Facility in form and substance satisfactory to the City and the Private Entity, consistent with the provisions of this Agreement.

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

17. Relationship of Parties.

(a) The relationship of the Private Entity to the City shall be one of an independent contractor, not an agent, partner, joint venturer or employee. Consistent with the Private Entity's status as an independent contractor, the City shall have no rights to direct or control the day-to-day business activities of the Private Entity in its execution of the Work under this Agreement. No agent, employee, subcontractor or representative of the Private Entity shall be deemed to be an agent, employee, subcontractor or representative of the City for any purpose,

and the agents, employees, subcontractors and representatives of the Private Entity are not entitled to any of the benefits the City provides for its employees.

(b) The Private Entity will be solely and entirely responsible for its acts and for the acts of its agents, employees, subcontractors and representatives during the performance of this Agreement.

(c) The City shall have the right, in its reasonable discretion and for good cause shown, to require the Private Entity to remove any agent, employee, subcontractor or representative from employment on the Project; provided, however, that (i) before exercising such right, the City shall first meet with the Private Entity to explain its concerns and allow the Private Entity a reasonable opportunity to resolve such concerns; and (ii) the Private Entity shall be entitled to an equitable Change Order pursuant to the terms of the Design-Build Contract in the event any such removal results in a material, adverse impact on the Private Entity's costs or schedule relating to its performance of the Work. The Private Entity may employ any removed individual on other projects not related to the Project.

(d) The City shall have and be entitled to exercise all rights of approval, inspection and review as specified in the Contract Documents or as otherwise provided by applicable law.

18. Drug-Free Workplace. During the performance of this Agreement:

(a) The Public Entity will provide a drug-free workplace for the Public Entity's employees.

(b) The Public Entity will 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 Public Entity's workplace and specifying the actions that will be taken against employees for violations of such prohibition.

(c) The Public Entity will state in all solicitations or advertisements for employees placed by or on behalf of the Public Entity that the Public Entity maintains a drug-free workplace.

(d) The Public Entity will include the provisions of the foregoing Subsections (a), (b) and (c) in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

19. Nondiscrimination. During the performance of this Agreement:

(a) The Public Entity will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Public Entity. The Public Entity agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) The Public Entity, in all solicitations or advertisements for employees placed by or on behalf of the Public Entity, will state that such Public Entity is an equal opportunity employer.

(c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section 19.

(d) The Public Entity will include the provisions of the foregoing Subsections (a), (b) and (c) in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

20. Miscellaneous.

(a) Successors and Assigns. Except as expressly otherwise provided, all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement, and the rights and responsibilities of the parties hereunder, may not be assigned or delegated without the prior written consent of the parties to this Agreement.

(b) Notices. All notices and demands by either party to the other shall be given in writing and sent by a nationally recognized overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To the City: City of Manassas Park, Virginia
Attn: Mercury T. Peyton, City Manager
City Hall
One Park Center Court
Manassas Park, Virginia 240111
Telephone: (703) 530-0393
Facsimile: (703) 335-0053

with a copy to: City of Manassas Park, Virginia
Attn: Dean H. Crowhurst, City Attorney
City Hall
One Park Center Court
Manassas Park, Virginia 240111
Telephone: (703) 335-0052
Facsimile: (703) 335-0053

To the Private Entity: Shockey-Manassas Park, LLC
c/o Howard Shockey & Sons, Incorporated
Attn: Jeff Boehm, Vice President
1057 Martinsburg Pike (22603)
P. O. Box 2530

Winchester, Virginia 22604
Telephone: (540) 667-7700
Facsimile: (540) 665-3201

with a copy to:

Williams Mullen
Attn: Charles E. Wall, Esquire
1021 East Cary Street, 17th Floor (23219)
P. O. Box 1320
Richmond, Virginia 23218-1320
Telephone: (804) 643-1991
Facsimile: (804) 783-6507

(c) Binding Effect. Subject to the limitations of Subsection (a) above, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns, and wherever a reference in this Agreement is made to any of the parties hereto, such reference also shall be deemed to include, wherever applicable, a reference to the legal representatives, successors and permitted assigns of such party, as if in every case so expressed.

(d) Debarment. The City has adopted a debarment policy (the “Debarment Policy”) for contractors pursuant to the provisions of the Virginia Public Procurement Act (Va. Code § 2.2-4300 *et seq.*). By executing this Agreement the Private Entity affirms that it is not in violation of the terms of the Debarment Policy and acknowledges that if at any time during the term of this Agreement the Private Entity is in violation of the Debarment Policy, the City shall have the unreviewable right to treat the Private Entity as a Defaulting Party and commence termination of this Agreement in accordance with Section 10 above.

(e) Treatment of Assets. Title to all property furnished by the City shall remain in the name of the City. The City shall become the owner of the Work Product and other documents, if any, prepared by the Private Entity as provided in Article 4 of the Design-Build Contract.

(f) No Third-Party Beneficiaries. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

(g) Waiver. No waiver by any party of any right or remedy under this Agreement or the other Contract Documents shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or the other Contract Documents. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged.

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

(i) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which such counterparts together shall be deemed to be one and the same instrument.

(j) Entire Agreement. This Agreement, together with all of its exhibits and any written modifications and amendments hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between the Private Entity and the City concerning the Project, and there are no covenants, promises, agreements, conditions or

understandings, either oral or written, between them other than are herein set forth. No alteration, amendment, change or addition to this Agreement shall be binding upon either party unless reduced to writing and signed by each party.

(k) Headings. The section and paragraph headings appearing in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provision hereof.

(l) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

[Signatures on following page]

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

THE CITY OF MANASSAS PARK,
a Virginia municipal corporation

By: _____
Francis C. Jones, Jr., Mayor

SHOCKEY-MANASSAS PARK, LLC,
a Virginia limited liability company

By: HOWARD SHOCKEY & SONS, INCORPORATED,
a Virginia corporation, Manager

By: _____
Jeffrey S. Boehm, Vice President