

OLD DOMINION UNIVERSITY STANDARD CONTRACT

Contract No. 12-221-0011-CCC

This contract entered into by and between (hereinafter the "Contractor"), and Old Dominion University (hereinafter the "Client").

I. WITNESSETH that Skip's Floor Covering, Inc. and the Client, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

II. PERIOD OF PERFORMANCE:

The contract period shall commence upon final contract acceptance and execution, as evidenced by the latest execution date on the contract signature page, and will be in effect through January 31, 2013.

Upon mutual agreement between both the Contractor and the Client, this contract and subsequent period(s) of performance may be renewed for up to four (4) additional one (1) year periods.

The Contractor agrees that as part of this agreement, Contractor's response and to the Client's IFB #12-221-0011-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.

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 VIII;
- (3) Contractor's Mohawk Price List, dated February 1, 2012 – January 21, 2013 as specified in Exhibit A;
- (4) Where this Agreement is silent, the Client's original Invitation For Bid and, all associated attachments and addenda shall control.

IV. SCOPE OF SERVICES:

On an as needed basis as specifically requested by the Client the Contractor shall provide Carpet, Flooring Products, Installation, Repair, and Maintenance to the Client in accordance with Contractor's response to the Client's Invitation for Bid (IFB) #12-221-0011-CCC, to include all additional and clarification documents provided, associated addendum(s), and specifically as described in each project work order.

A. GENERAL

Resulting contracts will be limited in use to alterations, maintenance and emergency repair projects totaling no more than \$250,000 per project. However, the Client may, at its discretion, compete any project(s) separately. Additionally, Contractors would be required to meet any/all license requirements stated within the contract at such time the Client 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., Housing Services, Auxiliary Services.

B. PERSONNEL QUALIFICATIONS

Personnel used for the performance of this contract shall be properly trained and qualified for work of this type. Mechanics / Installers shall be mill certified. The Client reserves the right to refuse or accept services from any personnel deemed by the Client to be unqualified, disorderly, or otherwise unable to perform assigned work. The Client 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 Virginia's 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 the Client.

Any services provided under this agreement shall be warranted for a minimum period of two (2) years.

Work shall be performed by reputable, competent professionals who are mill certified for the floor type that is being proposed to install according to factory recommendations for the complete line being offered. All mechanics / installers shall provide evidence of mill certification at the request of the Contract Administrator.

D. SPECIFIC REQUIREMENTS:

1. Upon receipt of a telephone or written request from the Contract Administrator or their designees, the contractor shall visit the site of the proposed work to acquire a full understanding of the nature and scope of the project to be accomplished. The contractors shall furnish the Client a written proposal* of the costs to be billed at the contracted prices, a listing and description of the major items of material, parts, and equipment, the total cost of materials, parts, supplies and equipment, and a target date for completion, expressed either as a definite date or the number of days after receipt of the purchase order. The Client may request a seam diagram to be provided with their proposal.

Upon approval by the Client, a purchase order or the Client's Small Purchase Charge Card (SPCC) will be issued to the successful low bid contractor, as authority to proceed with the work, which will incorporate the contractor's proposal and the terms and conditions of the basic contract. The Client 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 Client in writing of the new proposed cost and the reasons why a change order is needed to complete the project. The Client shall respond in writing, either by approving the change order or by modifying the project to keep costs within the original cost proposal.

2. The Client reserve the right to request a Performance bid for any specific project it deems necessary. During the site visit, the Contract Administrator shall notify the installers that a performance bond is required for said project. The successful installer shall then deliver to the Department of Procurement Services an executed Commonwealth of Virginia Standard Performance Material Payment Bonds, in the sum of the contract amount, with the Commonwealth of Virginia as obligee. The surety shall be a surety company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia. No payment shall be due and payable to the contractor, even if the contract has been performed in whole or in part, until the bonds have been delivered to and approved by the Department of Procurement Services. Standard bond forms may be downloaded from the Division of Engineering & Buildings web site, <http://deb.dgs.state.va.us/BCOM/> or obtained from the Department of Procurement Services prior to or at the time of award.

3. Prior to payment, the Contractor maybe required to 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, special tools, cost and name of any minorities sub-contractor(s) used, etc.) to the person/department with whom the project was contracted.

4. 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 Client's representative. The typical work schedule shall be performed during the period of 7:00 am until 5:00 PM, Monday through Friday, unless otherwise approved by the director of Facilities Management of Old Dominion University or his designee.

5. The appropriate Client's representative will outline and describe the Scope of Work to be provided by the contractor and establish working hours and completion dates. Overtime not specifically approved at the initial job scope meeting shall be approved by the Client's representative prior to any work being started. **The overtime rate shall not exceed the rate as allowed within the contract.**

6. 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 Client shall reserve the right to purchase these items on the open market.

7. The Contractor shall be responsible for providing the appropriate installers and helpers required to accomplish the work.

8. The Contractor shall be responsible for the work activities of their employees.

9. The Contractor's employees shall arrive on the site in clean proper attire (or uniforms) and have identification (badges or patches) of the company for whom they work. Contractor's vehicles should have passes or should be clearly labeled with company's name / logo.

10. The Contractor shall, when necessary, coordinate their work with the work of the in-house maintenance personnel and/or any other contractors, departments, etc.

11. The Client shall not reimburse the Contractor for time or mileage to and from the job site. This includes going to and from the supply houses.

12. Contractor will provide the Client with a standard published price list for the manufacturer they represent to cover all carpet, carpet tile, padding, cove base, vinyl tile, LVT, sheet goods, accessories, and any other flooring product as listed within their product line. Contractor shall offer the Client a percentage discount off the furnished published price list. In addition, the Client reserves the right to provide carpet, carpet tile, padding, cove base, vinyl tile, LVT, sheet goods, and accessories from any surplus the Client may have on hand in inventory.

E. CONDITIONS AT SITE:

1. Prior to installation, the Contractor shall inspect all subflooring before commencing work. The Contractor shall immediately notify the proper Client representative(s) of all site conditions which would prevent a timely and satisfactory completion of a project. Any such floor defects and irregularities shall be considered at the time of notification and determine proper repair and cost of repair prior to installation of floor or wall material. Commencement of the installation under this section shall constitute Contractor's acceptance of previous construction, and responsibility for all unacceptable finished work caused by previous conditions. There shall be no monetary or time allowance for site conditions once the work has commenced. Unknown conditions will be reviewed and approved by the Client's contract administrator on a case by case basis.

2. Estimated yardage measurements stated on requests are based on architectural drawings. It is the installer's responsibility to field measure and determine final yardage necessary to properly install the carpeting as indicated in these specifications, prior to submission of your proposal to the Contract Administrator.

F. DELIVERY OF MATERIALS:

1. The Contractor shall be solely responsible for the manufacture, delivery and installation of the carpeting until it is accepted by the Client. Carpeting should be adequately covered and protected against damage of any kind during shipment and delivery to the job site.

2. The Contractor shall be responsible for coordinating, scheduling, temporarily storing and delivering all necessary materials. The Contractor shall not deliver any items until all necessary items are available for installation. There will be *no* on-site storage available at work site without the prior approval of the Client's Representative.

3. The Contractor shall contact the Client representative at their designated telephone number at least five (5) working days prior to delivery, and shall install carpeting in respective locations on the

date agreed to by the Client representative. An approved project schedule shall be adhered to.

4. The method, safety and responsibility, and any related costs for handling the material with the least amount of disturbance to all activities within the individual project locations remain with the Contractor.

5. The Contractor shall be responsible for the scheduling, receiving and placement of on floor goods and material to be used in the each project. Goods shall be delivered to the job site in the manufacturer's bundles and shall be clearly marked as to size, dye lot and material.

6. The Contractor shall be responsible for the protection and safety of the materials, whether they are installed or not, until each project is accepted by the Client.

G. PREPARATION:

The Contractor shall insure that all subflooring is smooth, clean, dry, free of all foreign materials and where required leveled, skimmed, sealed, etc. before commencing with the installation of flooring. Furthermore, manufacturer's applicable instructions and recommendations relative to the preparation of the subflooring must be adhered to. The contractor shall vacuum the floor immediately prior to floor installation, and remove all damaging substances which would interfere with the installation or be harmful to the work.

H. MOVEMENT OF FURNITURE

At the Client's request, it shall be the responsibility of the Contractor to move and replace all items necessary for performing services as required. Items shall include, but are not limited to, systems furniture, desks, chairs, filing cabinets, bookcases, credenzas, photocopiers, office equipment, boxed material, printers, and the contents thereof with the exception of computer systems and computer related items. If the Client determines they will provide the moving service it will be a coordinated effort between contractor and the Client's Moving and Hauling to arrange method and schedule. Use of a third party subcontractor shall be acceptable.

I. INSTALLATION REQUIREMENTS:

1. Broadloom carpeting shall be installed utilizing glue down method in most situations. Carpet shall be installed with all rows of yarn running in the same direction, unless specifically approved otherwise by the Client; and shall be installed in accordance with the submitted layout drawings.

2. Side to end seaming will not be permitted and only with specific Client approval would end to end seams be permitted. Carpeting shall be laid in a manner that is free of visual imperfections. All bond seams shall be cemented in accordance with the manufacturer's instructions. No seam glue shall be left on carpet face.

3. Carpeting shall be installed around any floor outlets and similar obstructions. All other obstructions which may be encountered shall be reported to the Client Representative prior to beginning any work.

4. Prior to installation, written notification must be given to the Client representative regarding any and all seaming contrary to what is shown on the submitted layout drawings. Any such change must receive the written approval of the Client representative prior to the initiation of any related work.

5. The Contractor shall be responsible for supplying all necessary labor, tools and material required to perform and complete the work including but not limited to vacuums, and other cleaning equipment.

6. All waste, excess materials of new carpet, tools, etc. shall be removed from the area. The area shall be thoroughly cleaned with a rotating agitator type vacuum cleaner.

7. The Contractor is responsible for removing all debris off campus prior to completion of project unless otherwise specified by Client representative. It shall be the Contractor's responsibility to locate his own authorized site(s) for the proper disposal of all materials as stated within this agreement in accordance with all local and state ordinances. The Contractor will coordinate with the Contract Administrator as to where the dumpster(s) can be located on site if required for a specific work order. Recycling of product will be utilized when available or as directed by the Client representative.

J. SPECIAL CONDITIONS — PROTECTION OF CARPETING MATERIAL:

1. If required and at additional cost the Contractor shall provide and maintain proper protection of the materials after installation has been completed by means of polyethylene film (preferred), drop cloths, heavy reinforced non-staining Kraft paper, plywood, or other materials as required.

2. It is the Contractor's responsibility to insure that the carpeting is not stained, soiled or damaged. Damaged carpeting will be rejected and shall be replaced by the Contractor at their own expense. At the completion of each project, when directed by the Client, the covering shall be removed, the carpet vacuum cleaned and any soiling removed to the satisfaction of the Client's Representative.

3. Each shipment of carpet whether installed by the contractor, or installed by the Client, shall include a copy of the manufacturer's recommended care and cleaning instructions.

K. WORKING HOURS & SCHEDULE:

1. Client and associated facilities: Unless otherwise instructed, all installation and associated work shall be performed during normal business hours between 7 a.m. and 5 p.m., Monday through Friday. For information purposes the contractor shall submit separate pricing for work to be performed after hours including weekends. Overtime work will be requested at least 24 hours in advanced and must be approved by Client representative prior to performing work.

V. TERMS AND CONDITIONS:

The following terms and conditions shall remain in effect for the duration of the contract period, including and all renewal periods:

A. **LAW:** 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 Institutions of Higher Education and their Vendors* 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 Vendors".

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 contractor shall comply with all applicable federal, state and local laws, rules and regulations.

C. **ANTI-DISCRIMINATION:** By submitting their quotes, Bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act. (Rules §10) If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis

of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Rules §36)

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:

- a. Client is an equal opportunity/affirmative action institution providing access to education and employment without regard to age, race, color, national origin, gender, religion, sexual orientation, veteran's status, political affiliation or disability. As such, the contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

D. **ETHICS IN PUBLIC CONTRACTING:** Contractor certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Contractor certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

F. **DEBARMENT STATUS:** Contractor certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids on contracts for the type of goods and/or services covered by this contract, nor are they an agent of any person or entity that is currently so debarred. Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction for specified periods of time. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for the Client. (Rules §18)

G. **ANTITRUST:** Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter

acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. **PAYMENT:**

1. **To Prime Contractor:**

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. 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.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. 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 (Rules §42.A).
- e. 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 (Rules §42.B).

The payment date shall be the later of 30 days from the date of the receipt of goods or invoice, or the date establish by the contract. In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made (Rules §44). All contract also shall require prompt payment of subcontractors by the general contract, upon receipt of payment by the Client (Rules §VIII.B).

- e. **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 Commonwealth 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 an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. **To Subcontractors:**

- a. A contractor awarded a contract under this contract is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

- (2) To notify the Client and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
 - a. The contractor is obligated 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 Client, 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 Client.
3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, 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 agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
- I. **PRECEDENCE OF TERMS**: General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this contract, the Special Terms and Conditions shall apply.
- J. **TESTING AND INSPECTION**: The Client reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- K. **ASSIGNMENT OF CONTRACT**: A contract shall not be assignable by the contractor in whole or in part without the written consent of the Client.
- L. **CHANGES TO THE CONTRACT**: Changes can 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 agreement to modify the scope of the contract.
 2. The Client may order changes 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 Client 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 Client'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 Client with all

vouchers and records of expenses incurred and savings realized. The Client 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 Client within thirty (30) days from the date of receipt of the written order from the Client. 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 Institutions of Higher Education and their Vendors*. 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 Client or with the performance of the contract generally.

- M. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Client, 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 Client may have.
- N. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. Client's excise tax exemption registration number is 212-057-8029.
- O. **TRANSPORTATION AND PACKAGING:** Contractor certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- P. **INSURANCE:** The Contractor certifies that the following insurance coverages at time of award. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §25 of the *Rules Governing Procurement of Goods, Services, Insurance and Construction ("The Rules")* and §65.2-800 et seq. of the *Code of Virginia*. The bidder further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverages 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 Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$500,000 - Combined single limit.

- Q. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- R. **NONDISCRIMINATION OF CONTRACTORS:** The Client's implementing policies and procedures provide for a nondiscriminatory procurement process that prohibits discrimination because of race, religion, color, sex, or nation origin of the Bidder in the solicitation and award of contracts. The policies include appropriate provisions for fair and reasonable consideration of women-owned, minority-owned, and small businesses and to promote and encourage a diversity of suppliers (Rules §VIII.F). A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, and (ii) shall be subject to the same rules as other organization that contract with the Client to account for the use of funds provided (Rules §36.E).
- S. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for CONTRACTORS to conduct business with state agencies and public bodies. Contractor shall participate in the eVA Internet e-procurement solution Registration Service. Failure to register and maintain eVA registration could result termination of this contract for default.

VI. **SPECIAL TERMS AND CONDITIONS:**

- A. **ADVERTISING:** Contractor agrees that no indication of sales or services to Old Dominion University will be used in product literature or advertising. The Contractor shall not state in any of its advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.
- B. **ASBESTOS:** Whenever and wherever during the course of performing any work under this contract, the contractor discovers the presence of asbestos or suspects that asbestos is present, he shall stop the work immediately, secure the area, notify the building owner and await positive identification of the suspect material. During the downtime in such a case, the contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the contractor but without additional compensation due to the time extension.
- C. **AUDIT:** The contractor 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 Client, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

- D. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the Client shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- E. **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 solicitation to allow any public body, public or private health or educational institutions, or *Old Dominion 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 *Old Dominion 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 *Old Dominion University*. *Old Dominion 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 *Old Dominion 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.

- F. **BID PRICES:** Bid shall be in the form of a firm unit price for each item during the contract period.
- G. **CANCELLATION OF CONTRACT:** The Client reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- 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 Client will not assume any responsibility for receiving these shipments. Contractor shall check with the Client and make necessary arrangements for security and storage space in the building during installation.
- J. **DELIVERY NOTIFICATION:** The Client shall be notified 8 hours prior to delivery of any items so that personnel may be available to allow access to the building and verify items received. Notification shall be made to :

K. **DISCOUNTS**

- a. **PROMPT PAYMENT DISCOUNTS:** A prompt payment discount offered for prompt payment within 15 calendar days or longer may be accepted after determination of award and applied upon receipt of vendor invoice.
- b. **SPECIAL EDUCATIONAL OR PROMOTIONAL DISCOUNTS:** The contractor shall extend any special educational or promotional sale prices or discounts immediately to the Client during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

L. **FINAL INSPECTION:** At the conclusion of the work, the contractor shall demonstrate to the authorized client representative 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.

M. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, 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 Client or to failure of the Client to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.

N. **INSPECTION OF JOB SITE:** My signature on this contract and submittal of each quoted project constitutes certification that I have visited the campus / job site and am 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 Client.

O. **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 RFP, specifically those types and limits specified in section **IV. General Terms and Conditions**, and a "Class A" license and registration through the Commonwealth's Department of Professional or Occupational Regulation (DPOR).

P. **LIMITATION OF LIABILITY:** To the maximum extent permitted by applicable law, the contractor will not be liable under this contract for an indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

Q. **MATERIAL SAFETY DATA SHEETS:** Material Safety Data Sheets and descriptive literature shall be provided with each work order for each chemical and/or compound offered. Failure on the part of the contractor to submit and provide such data sheets may be cause of late payment to the contractor for that completed work order.

R. **PREVENTIVE MAINTENANCE:** The contractor shall provide necessary preventive maintenance, required testing and inspection, calibration and/or other work necessary to maintain the equipment / materials in complete operational condition during the warranty period.

delivered and, if necessary, confirmed by the agency or institution, or other appropriate remedies may be assessed in lieu of withholding such payment.

- X. **SUBCONTRACTS**: No portion of the work shall be subcontracted without prior written consent of the Client. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the Client 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.
- Y. **WARRANTY**: All materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of two (2) year following date of delivery. Should any defect be noted by the owner, the Client 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 owner 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 Client 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.
- Z. **WARRANTY (COMMERCIAL)**: The contractor agrees that the goods furnished under this contract shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Client by any other clause of this contract. A copy of this warranty should be furnished upon request.
- AA. **WORK SITE DAMAGES**: Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Client's satisfaction at the contractor's expense.
- BB. **WORK ESTIMATES**: Under this contract, the selected contractors shall be afforded the opportunity to visit the site of proposed work and shall furnish the Contract Administrator with a non-binding written estimate of the total costs to complete the work required. The estimate must include the contractor's rate as specified in the contract, and the total material cost to include the number of square yards/ feet of floor material. Material costs shall be a discount off the Manufacturer's list price as specified in their contract. The Contractor Administrator will evaluate the quotes received and make an award to the most responsive contractor for that specific project order. A Direct Order (DO) 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. After completion of job and goods and/or services are in compliance with the T& C's of the project, the Contract Administrator will authorize approval to complete the Client's e-receiving report in Banner for processing of payment.

VII. COMPENSATION AND METHOD OF PAYMENT:

The Client shall pay the Contractor based on invoices sent directly to Accounts Payable. Terms are Net 30, unless discount for prompt payment is offered and accepted. The Client is capable to making payments as early as fifteen (15) days. At a minimum, all invoices must reference the contract number, materials used, product description, and labor hour, etc.

Payment shall be made to the Contractor 30 days after receipt of an approved invoice and completion of work whichever is later based on the following method of payments:

1. Progress Payments:
If requested in writing by the Contractor and approved in writing by the Client, progress payments may be made under the following circumstances:
 - a. When total contract cost for all materials and services exceed \$25,000;
 - b. When project completion time is anticipated to exceed sixty (60) days;
 - c. Payments will only be made for:
 - i. Purchased materials and/or equipment related to the project that has been delivered on site and/or stored off-site;
 - ii. Those same materials and/or equipment that has a total value of at least 10% of the project cost, not to exceed 75%; and
 - iii. Materials and/or equipment that have satisfied i. And ii. Above, and that have all proper invoicing and required documentation, as approved by Contract Administrator.

VIII. PRICING SCHEDULE:

SECTION 1 - The contractor agrees to provide the services in compliance with the scope of work at a firm fixed price for the period of this agreement as follows:

- : In any instance where the contractor cannot provide the required services within an acceptable time frame, the Client reserves the right to purchase these services on the open market;
- : The quantities shown below are annual estimated quantities only. The Client reserve the right to purchase those services actually needed and in quantities as required by the Client, regardless of whether such total quantities are more or less than those shown;
- : The following is a sample listing of the most commonly purchased Carpet and Flooring Material that represents the past 12 month usage. Actual quantities will vary.
- : The percentage discount as noted in section A, shall be used to purchase any carpet that might not be listed on the sample pricing schedule. This contract shall include the manufacturer's complete line, not just the sample items listed.

A. FLOORING MATERIALS

ITEM	DESCRIPTION OF ITEM	LIST PRICE	% DISC.	ODU'S NET PRICE	12 MON. ESTIMATED USAGE	TOTAL
Broadloom:						
1.a.	Broadloom Carpet, Direct-Glue Down, Mohawk – Urban Virtue, Quick Ship, Urban Path	\$36.92	53%	\$17.35	2536 SY	\$43,999.60
1.b.	Broadloom Carpet, Direct-Glue Down, Mohawk – Emotions Collection, Charm	\$60.00	53%	\$28.20	86 SY	\$2425.20
Carpet Tile:						
2.a.	Modular 24" X 24", Mohawk – Pure Genius, Quick Ship, CEO	\$54.94	53%	\$25.82	1735 SY	\$44,797.70
2.b.	Modular 24" X 24", Mohawk - Emotions Collection, Charm	\$80.66	53%	\$37.91	734 SY	\$27,825.94
2.c.	Modular 24" X 24", Mohawk – Whitehurst Hall, Shirt	\$109.50	53%	\$51.47	1790 SY	\$92,131.30
Hard Surfaces:						
3.a.	Vinyl Composition Tile (VCT), 12" x 12", Standard Grade, 45 SF per Box, Mohawk Commercial VCT	\$2.88	53%	\$1.35	9990 SF	\$13,486.50
3.b.	LVT, Mohawk	\$7.19	53%	\$3.38	107,532 SF	\$363,458.16
Miscellaneous Supplies:						
4.a.1.	Cove Base, Vinyl, 4", Mohawk	\$1.38	53%	\$0.65	13,300 LF	\$8645.00
4.a.2.	Cove Base, Rubber, 4", Mohawk	\$1.53	53%	\$0.72	1100 LF	\$792.00
4.a.3.	Cove Base, Vinyl, 6", Mohawk	\$2.23	53%	\$1.05	1200 LF	\$1260.00
4.a.4.	Cove Base, Rubber, 6", Mohawk	\$2.51	53%	\$1.18	100 LF	\$118.00

4.b.	Skimming and Patching Material, ARDX SDF Floor Sealing	\$2.45	53%	\$1.15	45,000 SY	\$51,750.00
4.c.1.	Adhesive, Carpet Tile, 4-Gal. Bucket, Mohawk	\$209.26	53%	\$98.35	15 Bk.	\$1475.25
4.g.	Adhesive, Carpet, Rolled Goods, 4-Gal. Bucket, Mohawk	\$123.40	53%	\$58.00	47 Bk.	\$2726.00
4.h.	Adhesive, Vinyl Composition Tile, 5-Gal. Bucket, Mohawk	\$164.49	53%	\$77.31	25 Bk.	\$1932.75
4.i.	Adhesive, Cove Base, per Tube, Mohawk	\$10.96	53%	\$5.15	785 Tubes	\$4042.75
4.j	Adhesive, LVT, per 4-gallon Bucket	\$436.00	53%	\$204.92	144 Bk.	\$29,508.48
A.	DISCOUNT ON ALL OTHER PRODUCT LINES: Discount Received: <u>53</u> % Manufacturer: <u>Mohawk</u>	\$		\$	-	\$690,374.63
B. FLOOR INSTALLATION						
ITEM	DESCRIPTION OF SERVICE	UNIT	UNIT PRICE	QTY (Est.)	TOTAL	
Broadloom:						
1	Labor rate to installation carpet, direct-glue down, per square yards (regular hours) for services as requested regarding carpet installation, service calls, etc.	Square Yard	\$4.00	2662	\$10,648.00	
1.a.	Labor rate per square yards (Overtime)	Square Yard	\$4.00	65	\$260.00	
1.b.	Labor rate to remove direct-glue down carpet per square yards (regular hours).	Square Yard	\$2.25	2492	\$5607.00	
Carpet Tile:						
2	Labor rate to installation carpet, tile, Modular 24" x 24" per square yards (regular hours) for services as requested regarding carpet installation, service calls, etc.	Square Yard	\$4.25	4439	\$18,865.75	
2.a.	Labor rate per square yards (Overtime)	Square Yard	\$4.25	106	\$450.50	
2.b.	Labor rate to remove carpet tile, modular 24" x 24" per square yards (regular hours).	Square Yard	\$2.25	4047	\$9105.75	
Hard Surfaces:						
3.a.	Labor rate to install Vinyl Composition Tile (VCT), 12" x 12", per square foot (regular hours).	Square Foot	\$0.80	9990	\$7992.00	
3.a.1.	Labor rate per square foot (Overtime)	Square Foot	\$0.80	250	\$200.00	
3.a.2.	Labor rate to remove Vinyl Composition Tile, 12" x 12", per square foot (regular hours).	Square Foot	\$0.80	9990	\$7992.00	
3.b.	Labor rate to install LVT, per square foot	Square			\$161,298.00	

19	VCT Mechanic: (Non-Standard Hrs)	\$67.50	Hour
20	Dissemble & Reassemble Furniture, (regular hours)	\$100.00	Hour
21	Move Freestanding Furniture, (regular hours)	\$75.00	Hour
22	Materials not listed in above price list	Cost	Each

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR: Skip's Floor Covering, Inc.

By: Shari Ann Skipper

Title: President

Date: 1/26/12

CLIENT: Old Dominion University

By: [Signature]

Title: Vice President for Administration and Finance

Date: 2/7/12