

CONTRACTOR BID PROPOSAL AND R & I PROJECT AGREEMENT (U.S.)

Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole, ("Owner") and the undersigned Contractor ("Contractor") enter into this *Contractor Bid Proposal and R & I Project Agreement (U.S.)* ("Agreement") and agree as follows:

1. **Property/Project.**

Property/Project Number: 5376645 / 537664515040101
Property Address ("Project Site"): Bennetts Creek; 4759 Bennetts Pasture Road, Suffolk, VA 23435
Project Type: Replacement
Project Name ("Project"): Cultural Hall upgrades
Stake Name: Chesapeake VA Stake

2. **Scope of the Work.** Contractor will furnish all labor, materials, and equipment necessary to complete the Work in accordance with the Contract Documents. The Work is all labor, materials, equipment, construction, and services required by the Contract Documents.
3. **Contract Documents.** Contract Documents consist of:
- This Agreement;
 - Supplementary Conditions R & I Project Agreement;
 - The Specifications (Division 01 and Divisions 6, 26);
 - Drawings entitled _____ and dated _____;
 - Addendum No. _____ dated _____; and
 - All written Field Changes, written Construction Change Directives and written Change Orders when prepared and signed by Owner and Contractor.
4. **Compensation.** Owner will pay Contractor for performance of Contractor's obligations under the Contract Documents the sum of _____ Dollars (\$ _____). This is the Contractor's Bid Proposal Amount.
5. **Payment.**
- If the Contractor's Bid Proposal Amount is over \$50,000.00, Contractor will submit to Owner a schedule of values which allocates the Contractor's Bid Proposal Amount to various portions of the Work. This schedule, when accepted by Owner will be used as a basis for reviewing Contractor's payment requests.
 - Not more than once each month, Contractor will submit a payment request to Owner. Owner will pay Contractor for work completed within thirty (30) days after Owner receives:
 - Contractor's payment request for work to date;
 - a certification by Contractor that Contractor has paid for all labor, materials, and equipment relating to the Work covered by prior payment requests and that Contractor will pay for all labor, materials, and equipment relating to the Work covered by the current payment request; and
 - releases of all mechanics' liens and claims of subcontractors, laborers, or material suppliers who supplied labor and/or materials for the Work covered by the payment request.
 - updated Construction Schedule.
 - Owner may modify or reject the payment request if, in Owner's opinion, the Work for which payment is requested is not acceptable or is less complete than represented on the payment request.
6. **Extras and Change Orders.** Owner may order changes in the Work by altering, adding to, or deducting from the Work. In the event of such a change, Contractor's compensation and/or the time of completion will be adjusted to reflect the change. Contractor will not commence work on any change until either: (a) Contractor and Owner have agreed in writing to the amount of the adjustment resulting from the change; or (b) Owner has issued a written order for the change acknowledging that there is a dispute regarding the compensation adjustment relating to the change. If Contractor proceeds with a change in the Work without complying with the preceding sentence, Contractor agrees that it will not be entitled to any additional compensation for such change.

7. **Correction of Work.** Contractor will promptly correct, at its own expense,
 - a. any portion of the Work which
 1. fails to conform to the requirements of the Contract Documents, or
 2. is rejected by the Owner as defective or because it is damaged or rendered unsuitable during installation or resulting from failure to exercise proper protection.
 - b. any defects due to faulty materials, equipment, or workmanship which appear within a period of one year from the date of Substantial Completion or within such longer period of time as may be prescribed by law or the terms of any applicable special warranty required by the Contract Documents.

8. **Time of Completion.** Contractor will complete the Work and have it ready for Owner's inspection within 90 (ninety) calendar days from Notice to Proceed issued by Owner. Time is of the essence. If Contractor is delayed at any time in the progress of the Work by any act or neglect of Owner, or by changes in the Work, or by strikes, lockouts, unusual delay in transportation, unavoidable casualties, or acts of nature beyond Contractor's control, then the time for completion will be extended by the time that completion of the Work is delayed. However, Contractor expressly waives any damages for any such delays other than those delays willfully caused by Owner.

9. **Permits, Surveys, and Taxes.** Contractor will obtain and pay for all permits and licenses, and also pay any applicable taxes. Contractor will also obtain and pay for any surveys it needs to perform the Work. Contractor will conform to all ordinances and covenants governing the Project Site and/or Work.

10. **Compliance with Laws.** Contractor will comply with all applicable laws, ordinances, rules, regulations, and orders of any public authorities relating to performance of the Work.

11. **Payment of Subcontractors and Materialmen.** Contractor will promptly pay for all labor, materials, and equipment used to perform the Work.

12. **Contractor's Insurance.** Prior to performing any work, Contractor will obtain and maintain during the term of this Agreement the following insurance:
 - a. Workers Compensation Insurance.
 - b. Employers Liability Insurance with minimum limits of the greater of \$500,000 E.L. each accident, \$500,000 E. L. disease-each employee, \$500,000 E.L. disease-policy limit or as required by the law of the state in which the Project is located.
 - c. Commercial General Liability Insurance – ISO Form CG 00 01 (12/07) or equivalent Occurrence policy which will provide primary coverage to the additional insureds (the Owner and the Architect) in the event of any Occurrence, Claim, or Suit with:
 1. Limits of the greater of: Contractor's actual coverage amounts or the following:
 - A) \$2,000,000 General Aggregate;
 - B) \$2,000,000 Products - Comp/Ops Aggregate;
 - C) \$1,000,000 Personal and Advertising Liability;
 - D) \$1,000,000 Each Occurrence;
 - E) \$50,000 Fire Damage to Rented Premises (Each Occurrence).
 2. Endorsements attached to the General Liability policy including the following or their equivalent:
 - A) ISO Form CG-25-03 (05/09), Amendment of Limits of Insurance (Designated Project or Premises) describing the Agreement and specifying limits as shown above.
 - B) ISO Form CG 20 10 (07/04), Additional Insured -- Owners, Lessees, Or Contractors (Form B), naming Owner and Architect as additional insureds.
 - d. Automobile Liability Insurance, with:
 1. Combined Single Limit each accident in the amount of \$500,000 or Contractor's actual coverage, whichever is greater; and
 2. Coverage applying to "Any Auto" or its equivalent.

Contractor will provide evidence of these insurance coverages to Owner by providing an ACORD 25 (2010/05) Form or its equivalent: (1) listing Owner as the Certificate Holder and Additional Insured on the general liability and any excess liability policies, (2) listing the insurance companies providing coverage (all companies listed must be rated in A.M. Best Company Key Rating Guide-Property-Casualty and each

company must have a rating of B+ Class VII or higher), (3) attaching the endorsements set forth above for the Certificate of Liability Insurance, and (4) bearing the name, address and telephone number of the producer and signed by an authorized representative of the producer. (The signature may be original, stamped, or electronic.) Notwithstanding the foregoing, Owner may, in writing and at its sole discretion, modify these insurance requirements.

13. **Independent Contractor Relationship.** The parties expressly agree that Contractor is not an agent or employee of Owner but is an independent contractor solely responsible for all expenses relating to Contractor's business.
14. **Indemnity and Hold Harmless.**
 - a. Contractor will indemnify and hold harmless Owner and Owner's representatives, employees, agents, architects, and consultants from and against any and all claims, damages, liability, demands, costs, judgments, awards, settlements, causes of action, losses and expenses (collectively "Claims" or "Claim"), including but not limited to attorney fees, consultant fees, expert fees, copy costs, and other costs and expenses, arising out of or resulting from performance of the Work, attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of real or personal property, including loss of use resulting therefrom, except to the extent that such liability arises out of the negligence of Owner, its representatives, agents, and employees. This indemnity includes, without limitation, indemnification of Owner from all losses or injury to Owner's property, except to the extent that such loss or injury arises out of the negligence of Owner, its representatives, agents, and employees. This indemnity applies, without limitation, to include Claims occurring both during performance of the Work and/or subsequent to completion of the Work. In the event that any Claim is caused in part by a party indemnified hereunder, that party will bear the cost of such Claim to the extent it was the cause thereof. In the event that a claimant asserts a Claim for recovery against any party indemnified hereunder, the party indemnified hereunder may tender the defense of such Claim to Contractor. If Contractor rejects such tender of defense and it is later determined that the negligence of the party indemnified hereunder did not cause all of the Claim, Contractor will reimburse the party indemnified hereunder for all costs and expenses incurred by that party in defending against the Claim. Contractor will not be liable hereunder to indemnify any party for damages resulting from the sole negligence of that party.
 - b. In addition to the foregoing, Contractor will be liable to defend Owner in any lawsuit filed by any Subcontractor relating to the Project. Where liens have been filed against Owner's property, Contractor (and/or its bonding company which has issued bonds for the Project) will obtain lien releases and record them in the appropriate county and/or local jurisdiction and provide Owner with a title free and clear from any liens of Subcontractors. In the event that Contractor and/or its bonding company are unable to obtain a lien release, Owner in its absolute discretion may require Contractor to provide a bond around the lien or a bond to discharge the lien, at Contractor's sole expense.
 - c. In addition to the foregoing, Contractor will indemnify and hold Owner harmless from any claim of any other contractor resulting from the performance, nonperformance or delay in performance of the Work by Contractor.
 - d. The indemnification obligation herein will not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or a Subcontractor under worker's compensation acts, disability benefit acts, or other employee benefit acts.
15. **Resolution of Disputes.** In the event there is any dispute arising under the Contract Documents which cannot be resolved by agreement between the parties, either party may submit the dispute with all documentation upon which it relies to Director of Architecture, Engineering, and Construction, 50 East North Temple, Salt Lake City, Utah 84150, who will convene a dispute resolution conference within thirty (30) days. The dispute resolution conference will constitute settlement negotiations and any settlement proposal made pursuant to the conference will not be admissible as evidence of liability. In the event that the parties do not resolve their dispute pursuant to the dispute resolution conference, either party may commence legal action to resolve the dispute. Any such action must be commenced within six (6) months from the first day of the dispute resolution conference or be time barred. Submission of the dispute to the Director as outlined above is a condition precedent to the right to commence legal action to resolve any dispute. In the event that either party commences legal action to adjudicate any dispute without first submitting the dispute to the Director, the other party will be entitled to obtain an order dismissing the litigation without prejudice and awarding such

other party any costs and attorneys fees incurred by that party in obtaining the dismissal, including without limitation copy costs, and expert and consultant fees and expenses.

16. **Termination of Agreement by Contractor.** In the event Owner materially breaches any term of the Contract Documents, Contractor will promptly give Written Notice of the breach to Owner. If Owner fails to cure the breach within ten (10) days of the Written Notice, Contractor may terminate this Agreement by giving Written Notice to Owner and recover from Owner the percentage of the Contract Sum represented by the Work completed on the Project site as of the date of termination together with any out of pocket loss Contractor has sustained with respect to materials and equipment as a result of the termination prior to completion of the Work, less any offsets. Contractor will not be entitled to unearned profits or any other compensation or damages as a result of the termination and hereby waives any claim therefor. Contractor will provide to Owner all warranty, as built, inspection, and other close out documents as well as materials that Contractor has in its possession or control at the time of termination. Without limitation, Contractor's indemnities and obligations as well as all warranties relative to Work provided through the date of termination survive a termination hereunder.
17. **Termination of Agreement by Owner for Cause.** Should Contractor make a general assignment for the benefit of its creditors, fail to apply enough properly skilled workmen or specified materials to properly prosecute the Work in accordance with Contractor's schedule, or otherwise materially breach any provision of the Contract Documents, then Owner may, without any prejudice to any other right or remedy, give Contractor Written Notice thereof. If Contractor fails to cure its default within ten (10) days, Owner may terminate this Agreement by giving Written Notice to Contractor, take possession of the premises and all materials, tools, and appliances thereon, and finish the Work by whatever method Owner deems expedient. In such case, Contractor will not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Work, including compensation for additional administrative, architectural, consultant, and legal services (including without limitation attorneys fees, expert fees, copy costs, and other expenses), such excess will be paid to Contractor, less any offsets and recoupment. If such expense exceeds the unpaid balance, Contractor will pay the difference to Owner. Contractor will provide to Owner all warranty, as built, inspection, and other close out documents as well as materials that Contractor has in its possession or control at the time of termination. Without limitation, Contractor's indemnities and obligations as well as all warranties relative to Work provided through the date of termination survive a termination hereunder.
18. **Termination of Agreement by Owner for Convenience.** Notwithstanding any other provision contained in the Contract Documents, Owner may, without cause and in its absolute discretion, terminate this Agreement at any time. In the event of such termination, Contractor will be entitled to recover from Owner the percentage of the Contract Sum equal to the percentage of the Work which Owner and/or its architect determines has been completed on the Project site as of the date of termination together with any out of pocket loss Contractor has sustained with respect to materials and equipment as a result of the termination prior to completion of the Work, less any offsets and recoupment. Contractor will not be entitled to unearned profits or any other compensation as a result of the termination and hereby waives any claim therefor. Contractor will provide to Owner all warranty, as built, inspection, and other close out documents as well as materials that Contractor has in its possession or control at the time of termination. Owner may, in Owner's sole discretion, take legal assignment of subcontracts and other contractual rights of Contractor. Without limitation, Contractor's indemnities and obligations as well as all warranties relative to Work provided through the date of termination survive a termination hereunder.
19. **Assignment of Contract.** The parties hereto will not assign any rights or obligations under this Agreement without the prior written consent of the other party.
20. **Integration Clause.** The Contract Documents reflect the full agreement of the parties with respect to the Project and the Work and supersede all prior discussions, agreements, and representations regarding the subject matter of the Contract Documents. The Contract Documents may be amended only in a written document signed by both parties hereto.
21. **Applicable Law.** The parties acknowledge that the Contract Documents have substantial connections to the State of Utah. The Contract Documents will be deemed to have been made, executed, and delivered in Salt

Lake City, Utah. To the maximum extent permitted by law, (i) the Contract Documents and all matters related to their creation and performance will be governed by and enforced in accordance with the laws of the State of Utah, excluding conflicts of law rules, and (ii) all disputes arising from or related to the Contract Documents will be decided only in a state or federal court located in Salt Lake City, Utah and not in any other court or state. Toward that end, the parties hereby consent to the jurisdiction of the state and federal courts located in Salt Lake City, Utah and waive any other venue to which they might be entitled by virtue of domicile, habitual residence, place of business, or otherwise.

22. **Enforcement.** In the event either party commences legal action to enforce or rescind any term of the Contract Documents, the prevailing party will be entitled to recover its attorneys fees and costs, including without limitation all copy costs and expert and consultant fees and expenses, incurred in that action and on all appeals, from the other party.
23. **Bid Proposal/Agreement.** Contractor's submission to Owner of this agreement signed by Contractor will constitute Contractor's offer and bid proposal to perform the Work described in this agreement according to the terms thereof. Owner's signing of this agreement and delivery to Contractor of the signed copy thereof will constitute acceptance of Contractor's offer and will convert this document to a binding agreement.
24. **Effective Date.** The effective date of this Agreement is the date indicated by the Owner's signature.

OWNER:

Corporation of the Presiding Bishop of
The Church of Jesus Christ of Latter-day Saints,
a Utah corporation sole.

CONTRACTOR:

By: _____

Title: Facility Manager

Print Name: Mark Denison

Address:
1510 Todds Lane
P O Box 7290
Hampton, VA 23666

Telephone No: 757-826-7176

Facsimile No: 757-826-0934

Email: staffordsw@ldschurch.org

Effective Date: _____

Reviewed By: _____

By: _____

Title: _____

Print Name: _____

Address: _____

Telephone No: _____

Facsimile No: _____

Email: _____

Fed. I.D. or SSN: _____

License No: _____

Date: _____