

COMPREHENSIVE AGREEMENT

Between

The City of Fredericksburg, Virginia

And

Ulliman Schutte Construction, LLC

For

Design and Construction

Of

Improvements to Upgrade and Expand the City's Wastewater Treatment Plant

Date: July 29, 2025

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COMPREHENSIVE AGREEMENT

THIS COMPREHENSIVE AGREEMENT (this “Agreement”) is dated and effective as of July 29, 2025, between THE CITY OF FREDERICKSBURG, VIRGINIA (“the Owner” or “the City”), a city and municipal corporation of the Commonwealth of Virginia, and Ulliman Schutte Construction, LLC (“Design-Builder”). The City and Design-Builder are referred to individually as a “Party” and collectively as “the Parties”.

Recitals

A. On May 25, 2021, the City adopted updated “Public-Private Education Facilities and Infrastructure Act of 2002 Guidelines,” establishing procedures for the development of public facilities through public-private partnerships (“PPEA Guidelines”), which procedures satisfy the requirements of the Public-Private Education Facilities and Infrastructure Act of 2002, Virginia Code § 56.575.1 *et seq.*, as amended (“PPEA”).

B. In April 2022, the City Manager determined that proceeding with a Request for Proposals for the design and construction of improvements to the City’s wastewater treatment plant (the “Project”) would be advantageous to the City and the public, based on the probable scope, complexity, and priority of the Project.

C. On April 11, 2022, the City issued Request for Qualifications #22-0220, for the Design and Construction of Improvements to Upgrade and Expand the City’s Wastewater Treatment Plan (the “RFQ”).

D. The City received, reviewed and evaluated two statements of qualifications in response to the RFQ.

E. The City determined that both Offerors were qualified to successfully execute the design and construction of the Project; and that both Offerors will be invited to submit detailed proposals.

F. The City issued RFP #22-0220 on June 30, 2022 (the “RFP”) to the two qualified Offerors, and both Offerors submitted responsive proposals.

G. City Council held its public hearing on the proposals on October 25, 2022.

H. The City evaluated the proposals based on the criteria stated in the RFP and entered into negotiations with each of the Offerors.

I. After conducting these negotiations, the City selected Ulliman Schutte Construction, LLC (“Design-Builder”) as the offeror which, in its opinion, made the best proposal and provided the best value.

J. On January 31, 2023, the Parties entered into an Interim Agreement consistent with the PPEA, other applicable law, the PPEA Guidelines, the Design-Builder’s Proposal, and

negotiation between representatives of the City and Design-Builder.

K. Concluding that the Project is feasible and having reached eighty-five percentage/stage of the Design Development specified in the Interim Agreement, the Parties now wish to enter into and execute this Agreement.

L. The Parties acknowledge and agree that this Agreement and the Contract Documents (as defined below and incorporated by reference), serve as the Design-Build Contract for purposes of the Project.

M. The Parties have negotiated this Agreement consistent with the PPEA, other applicable law, the PPEA Guidelines, Design-Builder's proposals, and negotiation between representatives of the City and Design-Builder.

N. Having considered this Agreement and other information, the City has determined that the Project to be designed and constructed pursuant to this Agreement serves the public purpose of the PPEA as a qualifying project under the criteria of Virginia Code § 56-575.4(C).

O. The Agreement was posted for public inspection in accordance with the PPEA and the PPEA Guidelines.

P. In accordance with Virginia Code § 56-575.16(5) and the PPEA Guidelines, the City Council of the City of Fredericksburg as the governing body adopted Resolution 25-50 on July 8, 2025 approving the City entering into the Agreement.

Q. Except for terms or obligations that expressly survive the Interim Agreement, this Agreement supersedes the Interim Agreement.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual promises, conditions and covenants herein set forth, the Parties agree as follows:

1. Incorporation of Recitals.

The foregoing recitals are true and correct and are incorporated herein by reference.

2. Contract Documents. The Contract Documents are comprised of the following:

- a. This Agreement, including all exhibits, attachments, and documents expressly incorporated herein;
- b. The General Conditions, including all exhibits, attachments, and documents expressly incorporated therein;
- c. The Supplemental Conditions, including all exhibits, attachments, and documents

expressly incorporated therein; and

- d. Construction Documents prepared and approved in accordance with the terms of this Agreement; and
- e. Any future written modifications, amendments, change directives and change orders to this Agreement.

3. Definitions.

The following definitions apply to this Agreement.

- a. "Construction Documents" means those documents as defined in Article 1.2.3 of the General Conditions and as referenced in Article 2.d.
- b. "Contract Documents" means those documents listed in Article 2, subject to the order of precedence stated in Article 24.
- c. "Contract Price" means the amount that the City will be obligated to pay the Design-Builder as stated at Article 6 of this Agreement and subject to upward or downward adjustment only as may be authorized by the Design-Build Contract and not to exceed the Guaranteed Maximum Price as defined in Article 1.2.14 of the General Conditions.
- d. "Contract Time" has the meaning ascribed by Article 8 hereof, as may be adjusted pursuant to the Contract Documents.
- e. "Date of Commencement" means the date the Comprehensive Agreement is executed on behalf of the City and the Design- Builder.
- f. "Department" refers to the Virginia Department of Environmental Quality, which is the regulatory agency responsible for issuance of the permits applicable to matters inclusive of the operation and discharge quality from the existing Wastewater Treatment Plant.
- g. "Design-Build Contract" means this Agreement, inclusive of all the Contract Documents.
- h. "Final Completion of the Work", "Final Completion" or "final completion" means completion of all of the Phases of Work in conformance with the Construction Documents as further defined in Section 1.2.10 of the General Conditions, and other Contract Documents, including without limitation, punch list items and the delivery by Design-Builder of the Design Engineer's signature on the required portion of the Department's form of Application for Certificate to Operate Final completion does not require completion of items deemed (i) warranty items for all Phases of the Project or (ii) the Restoration of Dixon Park, which will occur following Final Completion as further specified at Section 8(b)(iii).

- i. "General Conditions" means *Design-Build Institute of America* Document No. 535, "Standard Form of General Conditions of Contract between Owner and Design-Builder (2010 edition)", as modified by edits representing final negotiation of the City and Design-Builder, which is attached hereto as Exhibit 2.
- j. "Notice to Proceed" means a written notice issued by the Owner or City indicating that the Design-Builder shall commence work on the Project per the terms of the Agreement.
- k. "Owner's Representative" means Kevin Fallin of Downey & Scott, LLC, or designee. The designation of this individual as Owner's Representative does not act as actual or apparent authority for said Owner's Representative to resolve claims for extensions of time and/or increased contract price, approve applications for payment, or issue certificates of substantial or final completion without the written counter signature on approval documents by the Assistant City Manager or City Manager and availability of funds.
- l. "Project" means the design and construction of the improvements as contemplated by the Contract Documents. "Project" may refer depending on the context to both the entirety of the Project or a part thereof. "Project" may be used interchangeably with the term "Work".
- m. "Project Schedule" means that schedule defined in Exhibit F.
- n. "Standard of Care" is defined in Section 2.3 of the General Conditions
- o. "Substantial Completion of the Work," "Substantial Completion," or "substantial completion," with respect to the Project, shall have the meaning as defined in Section 1.2.26 of the General Conditions of the Contract. Restoration of Dixon Park will occur following Final Completion as further specified at Section 8(b)(iii).
- p. "Supplemental Conditions" means the Supplemental Conditions of Contract between the City and Design-Builder, attached hereto as **Exhibit 3**.

4. General Scope of Work; Interpretation; Intent and Incorporation.

- a. **General Scope.** Design-Builder shall perform, provide or cause to be provided all design and construction services, and provide or cause to be provided all material, equipment, services and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents, including the federal contracting provisions set forth in Exhibit I. Subject to the Standard of Care, Design-Builder shall be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, plans, specifications, and other services and/or materials furnished by Design--Builder under this Agreement.
- b. The Contract Documents are intended to permit the Parties to complete the Work

and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the order of precedence among Contract Documents shall be as provided in Article 24 hereof.

- c. Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in this Agreement and the General and Supplemental Conditions.
- d. In accordance with Article 24 hereof and as more fully provided thereby, the Contract Documents form the entire agreement between Owner and Design-Builder. No oral representations or other agreements have been made by the Parties except as specifically stated in the Contract Documents.
- e. Use of the DBIA Contract Documents is subject to the licensed terms of use of such documents stated in Exhibit 2. The License Agreement provided in Exhibit 2 does not operate as a license for the Design-Builder to use the DBIA Contract Documents for other than the Project.

5. **Ownership of Work Product.**

- a. **Work Product.** All project specific drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under the Design-Build Contract (collectively, the "Work Product") are deemed to be instruments of service and Owner will obtain the ownership and property interests therein, except Design-Builder shall retain the copyrights and other intellectual property rights thereto. Upon payment in full for the Work Product, Design-Builder expressly grants Owner a limited license to use the copyrights and other intellectual property rights contained in the Work Product in conjunction with its use and occupancy of the Project and as relevant to expansion or modification of City utilities, and will arrange for an identically limited license from Designer to Owner.

Owner's Limited License Upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates the Design-Build Contract for cause or convenience as set forth in Articles 14(b) or 15 hereof, or if Design-Builder elects to terminate the Design-Build Contract in accordance with Article 14(d) hereof, Designer and Design-Builder shall, upon Owner's payment in full of undisputed amounts due Design-Builder under the Contract Documents grant Owner or its assigns a limited license to use the Work Product to complete the Project and subsequently use consistent with General Condition Section 3.9.

6. Contract Price.

Owner shall pay Design-Builder in accordance with Articles 7 and 13 hereof, subject to adjustment in accordance with the Contract Documents. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes imposed by law or any governmental authority.

7. Payment.

a. Progress Payments

Design-Builder shall submit to Owner's Representative on the fifth (5th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment (as such term is used in the General Conditions to document Monthly Progress Payments) in accordance with Section 6 of the General Conditions. Owner's Representative shall review Design-Builder's Application for Payment (or resubmittal of a previously rejected Application for Payment) and within fourteen (14) days of submission by Design-Builder, Owner's Representative shall either recommend approval of the Application for Payment or shall provide the Design-Builder with an explanation for non-approval.

Owner shall have ten (10) days from recommended approval by Owner's Representative to give notice to Design-Builder of non-approval of the recommended payment amount or withholding of payment as specified in Article 6.3.1 of the General Conditions. This ten-day notice provision of withholding of payments shall not operate to bar a future claim to reconcile overpayment or acceptance of latent defects. Absent any disapproval as stated above, Owner shall make payment within thirty (30) days after recommended approval by the Owner's Representative of each properly submitted and accurate Application for Payment in accordance with Section 6 of the General Conditions, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions.

In the event that Owner agrees to make payment by wire, use of email to provide notification of changes to wiring instructions is discouraged due to cybersecurity concerns. If Owner receives a request to change the payee, routing, or other payment procedures by other than a hardcopy of wiring instructions delivered by vendor upon contract execution, the Owner reserves the right to defer payment without late fee or other penalty until the request can be confirmed by verifying the change through a call to the Design-Builder's Representative or an otherwise verified change of contact notification.

b. Retainage on Progress Payments

- i. Owner will retain five percent (5%) of the progress payments earned on the Reimbursable Costs of the construction portion of the Work and Design-Builder's

fixed fee through Substantial Completion. Design-Builder shall include or cause to be included retainage provisions in all subcontracts at the rate set forth herein. Retainer will not be withheld on Designer's services during construction.

- ii. Upon Substantial Completion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to 150% of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; or any other basis for withholding as provided in Section 6.3 of the General Conditions.

c. Final Payment

Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.6 of the General Conditions. If the sum of all progress payments and the final invoice is greater than the GMP, as may be adjusted pursuant to the terms of the Agreement, the Final Application for Payment shall be adjusted so that the sum of all progress payments and the final payment is not greater than the GMP. If the Design-Builder's claim to amounts payable under this Agreement has been assigned, with consent of Owner, as provided in the General Conditions, a release may also be required of the assignee. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within sixty (60) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.6 of the General Conditions and provided that payment is held for completion of the Dixon Park restoration as set forth in Section 6.6.1 of the General Conditions. The Parties agree that in the event of any mutual mistakes in previous progress payments a reconciliation such payments may be made in the Final Payment.

d. Interest

Undisputed payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing thirty (30) days after recommended approval thereof by the Owner's Representative at a rate of 1% per month, unless Owner gives written notice to Design-Builder of a valid basis for withholding payment in whole or part consistent with Virginia Code § 2.2-4355(C).

8. Contract Time.

- a. Date of Commencement. The Work shall commence upon execution of this Agreement by Owner ("Date of Commencement") and the issuance of a Notice to Proceed ("NTP") unless the Parties mutually agree otherwise in writing. The City Manager shall execute the Agreement on behalf of the City upon approval hereof by the City Council. Some Work (preliminary sitework, demolition, shop drawings, fabrication, general conditions work, etc.) may have to be performed prior to the full

commencement of construction, which shall be reflected in a critical path schedule subject to approval of the Owner's Representative as provided in Section 8.1 of the Supplemental Conditions. The time stated for completion of each Phase includes cleanup of the site.

b. Substantial Completion and Final Completion.

- i. Substantial Completion of Work and Final Completion of Work shall be achieved no later than the dates in the Project Schedule in Exhibit F ("Scheduled Substantial Completion Date" and "Final Completion of the Work"). Following the issuance of the NTP, Design-Builder shall update the Owner's Representative with regard to project schedule together with its monthly pay application, so as to allow the Owner to plan its operations.
- ii. Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable, not later than sixty (60) calendar days after Substantial Completion and within the time specified in the Project Schedule. Restoration of Dixon Park will occur as provided at Section 8(b)(iii).
- iii. All of the dates set forth in this Article 8 and identified in Exhibit F shall be subject to adjustment in accordance with the General Conditions, Article 8 and any other provision in the Contract Documents providing for a time extension. Restoration of Dixon Park shall be complete within ninety (90) days of Final Completion or such greater length of time as may be mutually agreed in writing without compromising erosion and sediment control requirements and as reasonable in light of time of year for park programming and grass or sod growth.

c. Liquidated Damages.

- i. Owner and Design-Builder recognize that TIME IS OF THE ESSENCE in the completion of the Work and that Owner may suffer loss or damages if the Work is not completed within the period of time stipulated, plus any extensions thereof allowed in accordance with the Agreement. The parties also recognize the difficulty of quantifying damages which may be suffered by Owner if the Work is not completed on time. Accordingly, if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Design-Builder agrees it shall owe to and pay to Owner as liquidated damages, but not as a penalty, the sum of \$3,000 for each and every consecutive calendar day of unexcused delay after the date established for Schedule Substantial Completion Date until Substantial Completion is attained. Once the work is Substantially Complete, Design Builder shall have sixty (60) calendar days in which to achieve Final Completion of the work. If Final Completion of the Work is not achieved by the 60th day after Substantial Completion has been achieved, and if no extension of such time period has been granted by the Owner in accordance with the terms of this Agreement, then Design-Builder shall owe and promptly pay the Owner as liquidated damages,

but not as a penalty, the sum of \$2,000 for each and every consecutive calendar day of unexcused delay thereafter that Final Completion of the Work is not achieved. The separate amounts of liquidated damages set forth above shall be assessed cumulatively in the event that Final Completion and Substantial Completion remain unsatisfied.

- ii. Design-Builder further agrees that any liquidated damages Owner assesses against the Design-Builder may also be withheld by Owner from any retainage or other sums Owner may otherwise owe to Design-Builder.

The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion or Final Completion. If in any compliance year during the construction program, the facility does not achieve the existing annual Total Nitrogen and Total Phosphorus waste load allocations for any reason whatsoever, the City shall, at their expense, continue to acquire point source credits to comply with its Total Nitrogen and Total Phosphorus waste load allocations applicable to that compliance year.

- iii. Liquidated damages shall separately accrue at a rate of \$250 for each and every consecutive calendar day of unexcused delay after the date established for restoration of Dixon Park in accordance with 8.b.iii.

9. Project Schedule.

- a. The Project Schedule includes fixed dates for Substantial and Final Completion of Work as identified in Exhibit F. TIME IS OF THE ESSENCE in achieving the Substantial Completion and Final Completion of Work dates for the Project.
- b. The City and Design-Builder shall use their best efforts to cooperate within the scope of their responsibilities as provided by this Design-Build Contract to maintain the Project Schedule, which may be modified only by mutual written agreement of the Parties as circumstances warrant and consistent with the Design-Build Contract as provided by this Agreement. Design-Builder shall include in the Project Schedule sufficient allowance of time for permitting, reviews, and approvals as it takes in the normal course in the City for an expedited project of this level of complexity. Design-Builder shall update the Project Schedule monthly with commercially reasonable estimates for critical path items and recovery schedule.

10. Plan of Finance.

The City will arrange to finance the costs of the Project (as reflected by the GMP) 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, subject to annual appropriation. The City

Manager will include in future budget year proposals for the duration of the Project amounts reasonably necessary to finance the entire Project.

11. Design Submittal Phase.

Design submissions shall be made as provided in the Second Addendum of the Interim Agreement. The direct costs of design work to implement the 2021 Virginia Uniform Statewide Building Code to the extent specified in the Second Addendum to the Interim Agreement and as more fully set forth in the Owner's Allowance for Cost Escalation and Building Code changes provision of Exhibit B – Assumptions and Clarifications.

12. Construction Phase.

Construction services to be provided or caused to be provided by Design-Builder for the Project shall be performed pursuant to the Contract Documents. With Owner's prior agreement in writing (including any sitework authorized by the Interim Agreement and commenced prior to the execution of this Agreement), construction may commence in accordance with the Project Schedule prior to the Owner's Representative's approval of all of the Construction Documents. Where phased/fast track construction is proposed prior to overall final approval, Plans and Specifications covering the system or components covered by that phase must be approved by the Owner's Representative prior to the start of construction of that phase.

13. Reimbursable Costs, Design-Builder Allowance, Fixed Fees, Guaranteed Maximum Price, Change In Fees Relating To Services For Modification of Design, Shared Savings.

a. Reimbursable Costs

- i. Subject to the limitation that total payments to Design Builder shall not exceed the GMP as set out in Exhibit 1, Owner will reimburse Design Builder for all the following costs for the Project:
 - a) Design-Builder materials, supplies, and equipment either incorporated directly into the construction on the Project or required to accomplish a construction activity on the Project including equipment rental or lease, transportation, and storage. Rental rates of the Design-Builder and its affiliates for the use of owned equipment in the performance of the Work shall be as set forth in Exhibit N or at applicable Green Book Rates if not identified in Exhibit N. Non-owned equipment rental (e.g.: Outside Rentals) shall be reimbursable at actual cost incurred by Design-Builder.
 - b) Design-Builder Labor: Labor costs for personnel performing labor at the Project site will be paid at the rates as set forth in Exhibit O and at all times in an amount equal to or in excess of applicable Davis- Bacon rates. Labor rates include hourly wages inclusive of all fringe benefits, insurance and taxes

required by law and applicable contracts in force between the Design-Builder and its employees or its standard benefits package.

- c) Subcontractor costs for Work on items directly related to and/or incorporated into the finished construction for the Project. For the purposes of this paragraph, the term “subcontracts” includes purchase orders. Design-Builder shall conduct the subcontractor bid process on an “open book” basis and shall allow the Owner’s Representative to review the analysis of any bid if requested. With the exception of Work specifically allocated to specific firm(s) in the Design-Builder’s GMP Proposal or otherwise agreed to by Owner’s Representative. Design-Builder shall endeavor to receive price quotations from at least three (3) firms for all subcontracts where the quotations are expected to exceed or actually exceed \$100,000.00. Design-Builder shall furnish copies of quotations to the Owner’s Representative for review prior to award, if requested. It is not required that the award be made to the lowest offeror but shall be made on the basis of best value. Copies of all subcontracts, including all modifications and/or revisions will be furnished to the Owner’s Representative within five business days from issuance. Design-Builder may select certain subcontractors without going through the bid process indicated above if they determine it is in the best interest of the City and Design-Builder to do so, and with the Owner Representative’s written approval.
 - d) Reimbursable Costs for Non-construction portions of the Work will be documented with vendor’s invoices to Design-Builder and other similar documentation.
 - e) The Design-Builder shall operate on an “open book” basis in providing the Owner with full transparency regarding all project costs incurred, including labor, materials, and subcontractor bids. The Design-builder shall provide the Owner a detailed cost breakdown based on the Schedule of Values, Exhibit D on a defined schedule. The Owner shall have the right to request copies of the Design-Builder’s relevant financial records related to the project to verify expenditures. Notwithstanding the foregoing, agreed payment rates within the GMP denoted as lump sum or fixed fee items or work performed using agreed billing rates or multipliers shall be subject only to review by the Owner (without extensive documentation requirements) for verification of work hours or the correct rate increments being utilized and charged.
 - f) Designer’s On-Site Resident Project Representation: The Resident Project Representative (RPR) shall be reimbursable at the hourly rate as set forth in Exhibit H, plus reimbursable expenses.
- ii. Owner will not reimburse Design Builder for the following costs, unless as approved in advance in written authorization by the Owner:

- a) Design-Builder costs *not* associated with personnel assigned to the Project are considered to be indirect costs that are included as part of the Fixed Fees and are not Reimbursable Costs. Examples of indirect costs that are not Reimbursable Costs include but are not limited to: bonuses to senior executives, travel by company executives or officers, legal expenses and personnel whose services and/or responsibilities include multiple projects, e.g., accounting, home office estimating, and purchasing personnel. Additionally, costs for repairs and maintenance of Design-Builder owned equipment (including by any subsidiary or affiliated companies) or rental equipment are not Reimbursable Costs. Repair costs and costs of routine maintenance of rental equipment are to be included in the rental price.
- b) Public relations and advertising, bad debts, contributions and donations, dividends or payments of profits, entertainment, fines or penalties, life insurance for officers, partners, or proprietors, interest on loans, lobbying, losses on other contracts, income taxes, proposal preparation costs except for proposals arising from change requests or direction from the Owner or Owner's Representative, and legal costs involving disputes with the Owner.
- c) Costs incurred prior to the Effective Date of this Agreement.

b. Design- Builder Allowance

The Design-Builder's Allowance shall be funds established in the Guaranteed Maximum Price Proposal for the exclusive use of the Design-Builder which are not the basis of a Change Order under the Contract Documents. By way of example, but not limitation such costs may include: a) costs resulting from site conditions that do not constitute a differing site condition or change in the scope of work, b) overtime or acceleration due to any failure of performance by the Design- Builder or its' Subcontractors, or suppliers, c) unanticipated escalation of materials or services which are not eligible to be paid out of the Owner Allowance for Cost Escalation and Building Code Changes specified in Exhibit B, or d) subcontractor or supplier defaults to the extent not recoverable from the Subcontractors or Suppliers' sureties, insurance, or other sources using commercially reasonable efforts which shall not include litigation or arbitration. The Allowance may also be used by the Design-Builder for (i)the correction of defective, damaged, or non- conforming Work, and (ii) design errors or omissions caused by any of its Subcontractors or Suppliers; but only to the extent that the Design- Builder is unable to recover costs caused by a Subcontractor or Supplier from that Subcontractor or Supplier through back-charges or from the Subcontractor's or Supplier's sureties, insurance, or any other source using reasonable commercial efforts. Reasonable commercial efforts do not include litigation or arbitration; however, Design-Builder will refund any cost recovery made by it on draws from the Allowance through the date of the final application for payment. Design- Builder will provide Owner with at least 72 hours advance notice of

its intent to utilize the Allowance. The Owner may assert in writing within the advance notice period a rejection to Design- Builder's proposed use of the Allowance. If the Owner has reasonable basis to deny the proposed use as not being within an allowed use as provided for in this Agreement The Owner's written rejection will clearly state the contractual basis of the rejection, as well as the process, and any additional information needed to obtain approval. Owner's failure to respond to a proposed use of Allowance within 72 hours will be deemed an acceptance of such proposed use. Design- Builder will include with each monthly pay application a report on the use of Allowance in that period, an explanation of why the proposed Allowance use is consistent with the terms of this Agreement governing the use of Allowance and a statement of remaining Allowance with an outlook on upcoming Allowance uses in the next three months. Design-Builder understands and agrees that notwithstanding its ability to draw on available Allowance as stated herein, further documentation and approvals may be needed by the Owner to secure the project funding streams, and Design-Builder will cooperate with reasonable documentation or submittals to further this. The unused Allowance at the end of the Project shall be subject to Shared Savings as defined in this Agreement.

c. Fixed Fees

The Owner shall pay the Design-Builder Fixed Fees, which consist of the architecture and engineering fees, development fees and expenses, and general conditions fees stated in Exhibit 1. The Fixed Fees include all compensation payable by Owner to Design-Builder beyond Reimbursable Costs for the Services and are intended to compensate for the Design-Builder's and Designer's home office support, overhead costs, and profit for the Project and for all design professional services. The Fixed Fees will not vary with either the estimated cost or actual cost of construction of the Project except as expressly allowed in this Article 13.c. The components of the Fixed Fees below may be eligible (subject to the claims procedures of this Agreement) to increase when a Change in the Project scope, schedule or cost of performance results in increased costs or time of performance for Design Builder. The Fixed Fees will be reduced if Owner's Representative requires a change that reduces the Scope of Work. Notwithstanding the foregoing, if the reduction in the scope of work requires additional design services, Design-Builder may be entitled (subject to the claims procedures of this Agreement) to an increase in the Design Services Fee.

- i. Designer Services for Design, Construction Documents and during Construction: This component of the Fixed Fees covers Services of Designer, including the design and preparation of Construction Documents. This component of the Fixed Fees also covers construction contract administration by the Designer and includes, but is not limited to, review of shop drawings and samples, field interpretation of Construction Documents, preparation of required clarification drawings, and participation in quality control activities. Notwithstanding 13.a.i.f, all Designer Services shall be Fixed Fee.

- ii. Design- Builder Fee during Construction: This component of the Fixed Fees covers profit on the Project plus home office support and overhead costs.
- iii. General Conditions Fee during Construction: This component of the Fixed Fee includes the following:
 - (a) Payroll costs for employees in the direct employment of Design-Builder in the performance of the Work. Such employees shall include, but are not limited to, project executives, design build managers, construction managers, project managers, project engineers, field engineers, coop engineers, safety personnel, quality control personnel, superintendents, BIM technicians and all other personnel employed on the Work except those performing field labor covered by Paragraph 13.a.i.b. Payroll costs are inclusive of, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto.
 - (b) Other direct costs incurred in the performance of the Work including project staff vehicles, jobsite vehicles, fuel for vehicles, IT expenses, phone expenses, internet access expenses, safety supplies and equipment, drug testing, water, ice, waste removal and disposal, sanitary facilities, office supplies, project offices, computers, networks, janitorial, mail / shipping, project office mobilization and demobilization, tool trailers, living expenses, communications equipment, travel expenses, training expenses, recruiting expenses, business licenses, progress photos, project videos, staff expenses, relocation expenses, project sign, office equipment, office furnishings, software, heat, webcams, personnel protection, surveying equipment and supplies, performance and payment bonds, insurance, trade permits and gross receipts tax.
 - (c) Notwithstanding anything to the contrary contained herein, the General Conditions Fee is based on a construction duration of 51 months. In the event that the construction duration is extended by any reason beyond Design-Builder's (or its subcontractors or suppliers) reasonable control, including delays caused by Owner, Design- Builder may be entitled to an increase in the General Conditions Fee (subject to the claims procedures of this Agreement).
- d. Guaranteed Maximum Price.
 - i. The Guaranteed Maximum Price (GMP) is the maximum sum that the Owner shall pay to the Design-Builder in total for this Project, except as otherwise provided in this Agreement. The GMP Price shall include (i) the Reimbursable Costs as defined in Article 13.b that will be payable to Design-Builder, (ii) all Fixed Fees as defined in Article 13.c that will be payable to Design-Builder, (iii) Owner's Allowance as

identified in Exhibit D (in the amount of \$675,000), and (iv) Design- Builder's Allowance. A separate Owner's Allowance for Cost Escalation and Building Code Changes is part of Exhibit B and separate from the GMP.

- ii. If at any time during construction it becomes apparent that the final Reimbursable Costs and Fixed Fees will exceed the GMP, Design-Builder shall immediately notify the Owner's Representative and advise him/her of the action it proposes to take to reduce costs.
 - iii. All proposed revisions or changes to the approved Drawings and Specifications must be submitted to the Owner's Representative for review and approval for conformance with the approved Construction Documents, regardless of whether or not they affect the GMP. Owner's Representative's review and approval shall not be unreasonably conditioned or delayed.
 - iv. Design-Builder shall ensure that the GMP amount is not exceeded, but if such amount is exceeded, Design-Builder shall be solely responsible for any such excess amount.
 - v. No payment shall be made to Design-Builder in excess of the GMP except as adjusted for any Changes made in accordance with this Agreement. Design-Builder shall be wholly responsible to complete the Project at no compensation above the GMP as adjusted for any Changes made in accordance with this Agreement, and the Owner shall have no obligation to pay the Design-Builder such excess amount or any portion thereof.
- e. Change In Fees Relating to Services for Modification of Design.

If Changes to the Work are requested by the Owner in writing after Owner's approval of the 100% Drawings and Specifications, Design-Builder shall, upon the written request of the Owner's Representative, make the necessary design drawing and specification revisions; prepare and issue requests for proposal describing the modifications; prepare estimates, drawings and specifications as required; evaluate proposals and make recommendations to the Owner's Representative. The amounts payable by Owner for Change under this paragraph will be negotiated in a written change order consistent with Article 10 of the Supplemental Conditions and subject to approval by the Deputy City Manager or City Manager, and if the amount payable cannot be agreed upon, may be based upon the rates set forth in Exhibit H along with a mutual determination of a reasonable amount of time and compensation required to complete such Change and (as applicable) the impact of such change on the Project Schedule.

- f. Shared Savings

If the final Project Reimbursable Costs plus Fixed Fees, as presented by Design- Builder within sixty (60) days after Final Completion and then reviewed and audited by the Owner for purposes of establishing the Final Payment, are less than the GMP, as adjusted for any Changes made in accordance with this Agreement then such amount shall hereinafter be referred to as "Savings". Savings shall be shared on the following basis: 50% to the Design-Builder and 50% to the Owner. Available funds for Shared Savings shall be further restricted to exclude the total of any liquidated damages and payments withheld pending successful completion of warranty work. Owner Allowances and Owner and Department contingencies are not subject to Shared Savings. Payment of Design- Builder's initial share of Savings shall be based upon 90% of projected Savings and shall be paid within thirty (30) days of Substantial Completion. Payment of Design Builder's final share of Savings shall be based upon final Savings amount calculated within sixty (60) days after Final Completion.

14. Stop Work and Termination for Cause.

a. City's Right to Stop Work.

- i. The City may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed ninety (90) consecutive days or aggregate more than one hundred and twenty (120) days during the duration of the entire Project.
- ii. Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost to perform and/or time to achieve Substantial Completion of the Work have been impacted by any suspension or stoppage of Work by the City as confirmed by adequate documentation including impacts to the Critical Path Schedule.

b. City's Right to Perform and Terminate for Cause.

- i. If Design-Builder persistently fails to (i) provide or cause to be provided a sufficient number of design professionals or skilled workers; or (ii) supply the materials or equipment required by the Agreement ; or (iii) comply with applicable Legal Requirements; or (iv) timely pay, without cause, Designer, Design Consultants or Subcontractors; or (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted; or (vi) perform material obligations under the Contract Documents, or if Design-Builder (i) becomes insolvent; or (ii) makes a general assignment for the benefit of its creditors; or (iii) commences or consents to any action seeking reorganization, liquidation or dissolution under any law relating to bankruptcy or relief of debtors; or (iv) commences or consents to any action seeking appointment of a receiver or trustee for itself or its assets, then the City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Articles 14.b.ii and 14.b.iii below.

- ii. Upon the occurrence of an event set forth in Article 14.b.i above (except as to bankruptcy as provided in Article 14.e), the City may provide written notice to Design-Builder that it intends to terminate the Design-Build Contract, in whole or in part, unless the problem cited is cured, or a written plan to cure the problem within a reasonable period of time is submitted, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then the City may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then the City may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.
 - iii. Upon declaring the Design-Build Contract terminated pursuant to Article 14.b.ii above, the Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to the City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination and regardless of whether the Owner elects to assign a general contractor to perform the completion work or takes other recourse, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of validated but unpaid Payment Applications (including retainage) exceeds the cost and expense incurred by the City in completing the Work, such excess shall be paid by the City to Design-Builder. If the City's cost and expense of completing the Work exceeds the unpaid balance of costs associated with Work completed by the Design-Builder, then Design-Builder shall be obligated to pay the difference to the City. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by the City in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 of the General Conditions.
 - iv. If the City improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 15 hereof and the City will reimburse Design-Builder for such costs and expenses incurred in connection with the improper termination as provided in Article 15.
- c. Design-Builder's Right to Stop Work

- i. Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop work upon the Owner's failure to pay amounts approved by Owner's Representative and for which the Owner does not provide written notice of withholding pursuant Article 7.a above.
 - ii. Should the event set forth in Article 14.c.i above occur, Design-Builder has the right to provide the City with written notice that Design-Builder will stop work unless said event is cured within fifteen (15) days from the City's receipt of Design-Builder's notice. If the City does not cure the problem within such fifteen (15) day period, Design-Builder may stop work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage as confirmed by adequate documentation including impacts to the Critical Path Schedule.
- d. Design-Builder's Right to Terminate for Cause.
 - i. Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons specified in clauses (1) and (2) below:
 - (1) The Work has been stopped for sixty (60) consecutive days, or more than one hundred and eighty (180) days during the duration of the Project, because of an order by a court or any government authority having jurisdiction over the Work, or orders by the City under Article 14.a.i hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.
 - (2) The City's failure to provide Design-Builder with any information, permits or approvals that are the City's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though the City has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Article 15.a.i. hereof.
 - ii. Upon the occurrence of an event set forth in Article 14.d.i above, Design-Builder may provide written notice to the City that it intends to terminate the Design-Build Contract unless the problem cited is cured, or a written plan to cure the problem within a reasonable period of time is submitted, within seven (7) days of the City's receipt of such notice. If the City fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to the City of its intent to terminate within an additional seven (7) day period. If the City, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Design-Build Contract terminated for default by providing written notice to the City of such declaration. In such case, Design-Builder shall be entitled to recover in the

same manner as if the City had terminated the Design-Build Contract for its convenience under Article 15 of the Design-Build Contract.

e. Bankruptcy of City or Design-Builder.

- i. If either the City or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such Party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

(1) the Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

(2) the Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Design-Build Contract within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

- ii. If the Bankrupt Party fails to comply with the foregoing obligations listed in clauses i. above, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Design-Build Contract, declare the Design-Build Contract terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 14.
- iii. The rights and remedies under Article 14.e.i above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of the Contract Documents.

15. Termination for Convenience.

Upon fourteen (14) days written notice to Design-Builder, the City may, for its convenience and without cause, elect to terminate the Design-Build Contract, in whole or in part.

a. In such event, the City shall pay Design-Builder for the following:

- i. All Work executed in connection with the Design-Build Contract (including general conditions and fixed fee associated with the Work completed);

- ii. The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants;
 - iii. The City shall not be obligated to pay Design-Builder for profit on Work not performed as a result of such termination.
- b. Upon receipt of a notice of termination, unless otherwise directed by the Owner's Representative, the Design-Builder must take the following actions:
- i. Stop Work to the extent specified in the notice.
 - ii. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of the non-terminated Work.
 - iii. Terminate all design, orders and subcontracts to the extent that they relate to the Work terminated.
 - iv. Settle all outstanding liabilities and claims arising out of the termination of orders and subcontracts.
 - v. Transfer title to the Owner and deliver as directed by the Owner's Representative:
 - (1) Work in process, completed Work, and other material produced as a part of or acquired for the Work terminated; and
 - (2) The completed or partially completed (in both hard copy and electronic format) plans, drawings, information, and other property that, if the Agreement had been completed, would have been furnished to the Owner, subject to the provisions on ownership of documents in this Agreement.
 - vi. Use its best efforts to sell, as directed by the Owner's Representative, any property of the types referred to in Article 15.v above, provided that the Design-Builder may acquire property under the conditions prescribed and at prices approved by the Owner's Representative, and the proceeds of any such transfer will be applied in reduction of any payments to be made by the Owner to Design-Builder, or be credited to the price or cost of the Work covered by this Agreement, or be paid in any manner directed by the Owner's Representative.
 - vii. Complete performance of the Work not terminated.
 - viii. Take any action that may be necessary, or that the Owner's Representative may direct, for protecting and preserving any property related to this Agreement that is in the possession of the Design-Builder and in which the Owner has or may acquire an interest.

- c. At any time, Design-Builder may submit to the Owner's Representative a list, certified as to quantity and quality, of termination inventory not previously disposed of, and may request the Owner to remove inventory items or enter into a storage agreement covering them. Not later than fifteen (15) calendar days after receiving this request, the Owner will accept title to the items and remove them or enter into a storage agreement at a commercially reasonable rate. The list will be subject to verification by the Owner's Representative upon removal of the items or, if the items are stored, within forty-five (45) days after submission of the list.
- d. After termination, Design-Builder must submit to the Owner's Representative a termination claim in the form and with the certification prescribed by the Owner's Representative. The claim must be submitted promptly, but in no event more than ninety (90) days after the effective date of termination, unless an extension in writing is granted by the Owner's Representative. However, if the Owner's Representative determines that the facts justify such action, any termination claim may be received and acted upon at any time after the 90-day period. Upon failure of Design-Builder to submit a termination claim within the time allowed, the Owner's Representative may recommend, on the basis of the information available, the amount, if any, due Design-Builder by reason of the termination which amount Owner shall not unreasonably withhold. The termination claim may include costs incurred in its preparation for Design-Builder and its subcontractors.
- e. In no event shall Design-Builder be paid for any Work not actually and properly provided to and approved by Owner and no claim for lost profits or overhead shall be allowed for any time after termination.
- f. The total sum to be paid to Design-Builder may not exceed the GMP as reduced by the payments made and as further reduced by the Agreement price of Work not terminated plus the termination claim. Except for normal spoilage, and except to the extent that the Owner expressly assumed the risk of loss, there will be excluded from the amounts payable to Design-Builder under Article 15.e above, the fair value, as reasonably determined by the Owner's Representative, of property destroyed, lost, stolen, or damaged so as to become undeliverable to the Owner, or to a buyer.
- g. Design-Builder has the right of review under the "Resolution of Disputes, Claims and Other Matters" clause of Owner's actions under Articles 15.d, 15.e and 15.f above, except that, if the Design-Builder has failed to submit its termination claim within the time provided in Article 15.d above and has failed to request an extension of time, there may be no right of review.
- h. In arriving at the amount due the Design-Builder, there may be deducted:
 - i. Any valid claim that the Owner may have against the Design- Builder under this Agreement or otherwise; and

- ii. The agreed price for or the proceeds of sale of materials, supplies, or other things kept by Design-Builder or sold and not recovered by or credited to the Owner.
- iii. If the termination is partial, Design-Builder must file with the Owner's Representative a request in writing for an equitable adjustment of the price and time specified in the Agreement relating to the continued portion of the Agreement.

16. Payment Bonds, Performance Bonds, and Other Security.

- a. Design-Builder shall furnish prior to notice to proceed with separate performance and payment bonds in the amount of one hundred percent (100%) of the costs of construction, executed consistent with the forms provided in Exhibit L. All bonds shall be executed by a corporate surety or corporate sureties that are reasonably acceptable to the City, and duly authorized to do business in the Commonwealth of Virginia, that meet the requirements of Virginia Code § 2.2-4337 and are executed in a form acceptable to the City. Design-Builder shall cooperate with the City to fulfill any reasonable insurance requirements in connection with the Owner's financing for the Project, including reasonable changes to the form of performance and payment bonds provided hereunder.
- b. Design-Builder shall also furnish any cash escrow, funds, cashier's checks, certified checks, or letters of credit required for the City's issuance of any earth disturbing or other permit and any bonds or security required by VDOT or any other governmental authority.

17. Insurance.

- a. Design-Builder shall obtain, maintain for the full duration of the Agreement, comply with the terms and conditions of, and shall pay all premiums with respect thereto as the same become due and payable, the following insurance with companies that are reasonably satisfactory to the City, authorized to do business in the Commonwealth of Virginia and regulated by the Virginia Bureau of Insurance with at least an A (financial strength) and a XIV (size) or greater rating by A.M. Best;
 - i. Worker's Compensation insurance in the amount statutorily required;
 - ii. Commercial General Liability insurance (on an occurrence basis) for a combined single limit for bodily injury and property damage of not less than \$5,000,000, with coverage, at a minimum, for (i) blanket contractual liability; (ii) products liability and completed operations; and (iii) broad form property damage coverage;
 - iii. Business Automobile Liability insurance for a combined single limit for bodily injury and property damage of not less than \$1,000,000. Auto liability should be written with a symbol "I" which will provide owned, non-owned, and hired auto

liability coverage.; and

- iv. Umbrella or Excess Liability insurance for a minimum single limit of \$15,000,000 supplementing the Commercial General Liability policy and Business Automobile Liability policy.
- v. Professional Liability insurance, on a claims made basis, in an amount not less than \$5,000,000 per occurrence and not less than \$15,000,000 in the aggregate, and to be maintained for at least three years after Final Completion, covering damages resulting from negligent professional errors, omissions or wrongful acts or services performed by a certified, licensed or registered architect or professional engineer, as required by applicable law.
- vi. Contractor's Pollution Liability Insurance of not less than \$1,000,000 per occurrence and to be maintained for at least three years after Final Completion for third-party injury and property damage claims, including clean-up costs, and regulatory fines/assessments as a result of pollution conditions, to include wastewater overflows or illicit discharge, arising from Design-Builder's construction operations and completed operations.
- vii. Design-Builder may satisfy the minimum liability limits required above for Commercial General Liability and Business Automobile Liability under an Umbrella or Excess Liability policy.
- viii. Prior to the Owner's execution of the Agreement, Design-Builder shall furnish certificate(s) of coverage to the City, evidencing the coverages required by this section. The Owner may request updated proof of continued coverage at reasonable time frames for the duration of the Work.
- ix. The Commercial General Liability and Business Automobile Liability insurance policies shall name the City, and the security trustees, if any, as part of any financing, if any, as Additional Insureds. Design-Builder shall provide a policy endorsement in the form as follows:

Additional Insured - City, Lessees or Contractors (Form B)

This endorsement conditions insurance provided under the following policy:

COMMERCIAL GENERAL LIABILITY COVERAGE PART SCHEDULE

Name of Design-Builder as named insured, Project Name or Number, and Article II is amended to include as an insured the person or organization shown in the Schedule (City), but only with respect to liability arising out of "your work" for that insured by or for you. Design-Builder also agrees to

endorse the City as “Additional Insureds” on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a pure “True Follow-Form” basis. The Design-Builder further agrees to endorse the City as an Additional Insured on the Builder’s Risk Insurance.

- x. The City reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, sub-limits, deductibles, self-insured retentions, coverages and endorsements based upon any material adverse change in insurance market conditions after the date of this Agreement affecting the availability or affordability of coverage, or changes in the scope of work/specifications affecting the applicability of coverage, and the costs of any such change shall be an adjustment to the compensation payable to Design-Builder. Additionally, the City reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein and to reject any insurer providing coverage due to its poor financial condition or failure to operate legally.
- xi. Design-Builder agrees to provide, or cause to be provided to, the City Certificates of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and are in full force and effect. The Certificates of Insurance shall clearly indicate the project name and project number. Said Certificates of Insurance shall include a minimum thirty (30) days prior notice due to cancellation or non-renewal of coverage to:

City Manager
City of Fredericksburg, Virginia
715 Princess Anne Street
P.O. Box 7447
Fredericksburg, Virginia 22404-7447
Tel: (540) 372-1010 ext. 224 Fax: (540) 372-1201

- xii. Design-Builder, prior to notice to proceed with or commencement of any construction, whichever occurs first, will cause Builder’s Risk insurance to be provided and maintained that names the City as an additional insured by means of an endorsement to the policy and gives coverage to protect the interests of the City and Design-Builder, its Subcontractors and its Design Consultants. The Builder’s Risk coverage shall include property in transit, on or off-premises, which will become part of the Work, and for “acts of terrorism” coverage under the Terrorism Risk Insurance Act of 2002. Design-Builder shall procure and maintain, or cause to be procured and maintained, the Builder’s Risk insurance policy on an “all risk”, 100% replacement cost basis, until completion of the Project and final payment to Design-Builder under the Design-Build Contract. The Design-Builder agrees to have the policy endorsed with a manuscript endorsement eliminating

the automatic termination of coverage in the event the building is occupied in whole or in part, or put to its intended use, or partially accepted by the City. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the City's interest in the building ceases, or the building is accepted and insured by the City. Cessation of the Builder's Risk coverage shall be affirmatively coordinated with the City's property insurer, as identified by the City. Copies of required endorsements shall be received prior to commencement of the Project.

- xiii. Property Coverage - Installation Floater (and Rigger's Form, if applicable) will be required for the installation of contents or equipment, coverage will begin with supplier and continue until equipment/contents has been fully installed. Floater will be valued for the replacement cost value of equipment/contents including all costs. The Design-Builder shall provide coverage for portions of the Work stored off-site after written approval of the Owner at the value established in the approval and for portions of the Work in transit. Riggers Form extension to the General Liability coverage may be on the Design-Builder's insurance coverage, or may be a certificate from the crane company supplying this coverage and listing the City of Fredericksburg, its officers, agents, volunteers, and employees, and the Design-Builder and the subcontractors as additional insureds.
- xiv. Special Hazards - In the event special hazards required by the Contract Documents, the Design-Builder shall obtain and maintain during the life of the Agreement a rider to the policy or policies required, in an amount not less than that stipulated under this Article 17. Should any unexpected special hazards be encountered during the performance of this Agreement, the Design-Builder shall, prior to performing any Work involving the special hazard, immediately obtain this insurance as instructed by the Owner. In the event the special hazard requiring the additional coverage was not a part of the GMP, the expense of such insurance shall be reimbursed to the Design-Builder by the Owner, otherwise the Design-Builder shall assume full responsibility for the purchase with no charge back to the Owner.
- xv. City's Liability and Property Insurance. Owner shall maintain for the duration of the Project its participation in the Virginia Risk Sharing Association (VRSA group self-insurance pool).
- xvi. Any disagreement concerning the distribution of any proceeds from either party's insurer will be resolved in accordance with Article 19 hereof.
- xvii. Additional provisions as to insurance coverage are stated in Article 5 of the General Conditions.

18. Limitation of Professional Liability.

Notwithstanding anything set forth to the contrary in this Agreement, Design-Builder's total liability to Owner arising out of any error or defect in Design Professional Services furnished by Design Builder or Designer shall not exceed fifteen million dollars (\$15,000,000) regardless of whether any action or claim is based upon breach of contract, tort, warranty or strict liability.

19. Resolution of Disputes, Claims and Other Matters.

Disputes, claims and other matters in question between the Parties under the Design-Build Contract shall only be resolved as follows:

- a. 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, with the site of the mediation being the City of Fredericksburg, Virginia, which is agreed to be the sole and exclusive venue. Each party shall bear its own costs associated with mediation and endeavor to reach mutual agreement on a mediator. Should the dispute, claim, or other matter in question remain unresolved for the shorter of (i) following negotiation and mediation, or (ii) more than ninety (90) days after mediation is requested in writing by a Party, either Party may proceed in accordance with Article 19.b below.
- b. If the procedures of Article 19.a have been followed, but more than ninety (90) days have passed since a Party has requested mediation, and the dispute, claim or matter in question remains unresolved, then either Party may institute a lawsuit in the Circuit Court of the City of Fredericksburg, Virginia, and may pursue all available appeals in Virginia state courts, to the extent they have jurisdiction. Design-Builder hereby consents to jurisdiction and venue in Circuit Court of the City of Fredericksburg, Virginia.
- c. Nothing in Articles 19.a or 19.b shall prevent a Party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of the City of Fredericksburg, Virginia if circumstances so warrant.
- d. In the event of any dispute, claim, or other matter in question arising, Design-Builder shall continue its performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. During the pendency of any dispute in connection with the payment of moneys, Design-Builder shall be entitled to receive payments for non-disputed items and amounts.
- e. No claim by Design-Builder will be allowed if a written notice of claim is not timely and completely given as provided in Article 10.1 of the General Conditions

or first asserted after final payment under this Agreement, except as expressly provided herein.

20. Notices.

All notices and demands by any party to any 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: Timothy J. Baroody, City Manager
City of Fredericksburg, Virginia
715 Princess Anne Street
Room 205
Fredericksburg, Virginia 22401

With copies to: Kelly J. Lackey, City Attorney
City of Fredericksburg
601 Caroline Street
Suite 200B
Fredericksburg, Virginia 22401

David T. Brown, Deputy City Manager
City of Fredericksburg, Virginia
715 Princess Anne Street
Fredericksburg, Virginia 22401

Chris Tabor
Hazen and Sawyer
1555 Roseneath Road
Richmond, Virginia 23230

Kevin Fallin
Downey & Scott, LLC
6799 Kennedy Road, Unit F
Warrenton, Virginia 20187

To Design-Builder: Matthew T. Schutte
President
Ulliman Schutte Construction, LLC
9111 Springboro Pike
Miamisburg, Ohio 45342

Any party may, upon prior notice to the others, specify a different address for the giving of notice. Notices shall be effective one (1) day after sending if sent by overnight courier or three (3) days after sending if sent by certified mail, return receipt requested.

21. Time of the Essence.

The time to complete construction of the Project is of the essence of the Design-Build Contract. The Design-Builder shall proceed expeditiously with adequate forces and make diligent efforts to keep the Project on schedule, and the Design-Builder shall achieve for the Project Substantial Completion of the Work and Final Completion of the Work within the completion times specified in this Agreement. The City will cooperate reasonably with Design-Builder's efforts to keep the Project on schedule.

22. Cooperation.

The Parties agree to cooperate to achieve the objectives of the Design-Build Contract 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 appropriation vote) as needed, so as to not unduly delay the Project Schedule.

23. Counterparts.

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

24. Entire Agreement and Order of Precedence.

This Agreement, including any other Contract Documents, and the Exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between Design-Builder 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 the Design-Build Contract ("modification" for purposes of this provision) shall be binding upon Design-Builder or the City unless reduced to writing in a formal amendment signed by each Party.

In the event of any conflict or inconsistency between or among the meaning of any provision of the Contract Documents that cannot be harmonized, such meaning, and the Contract Documents, shall be interpreted in the following order of precedence: 1) change orders and modifications to this Agreement entered into after the date of this Agreement and any, and attachments thereto 2) The Comprehensive Agreement excluding all of the exhibits 3) Exhibit 1 and Exhibit B; 4) all other exhibits to the Comprehensive Agreement 5) the General Conditions; 6) the Supplemental Conditions; and 7) the Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions. Notwithstanding the order of precedence stated herein,

federal contracting provisions as stated in Exhibit I take precedence over any contrary terms in the Contract Documents.

25. Governing Law.

This Agreement and the Design-Build Contract shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia. The provisions of this Agreement and the Design-Build Contract shall not be construed in favor of or against either Party but shall be construed according to their fair meaning as if both Parties jointly prepared this Agreement and the Design-Build Contract.

26. Annual Appropriation; Filing With Auditor of Public Accounts.

The financial obligations of the City contained in this Agreement are subject to annual appropriation. Within thirty (30) days after the date of this Agreement, the City shall submit a copy of this Agreement to the Auditor of Public Accounts, to the extent required by Virginia Code § 56-575.9(F).

27. Financial Statements.

Design-Builder agrees to provide the City with copies of complete and current financial statements for the Design-Builder on an annual basis. The financial statements provided need not be audited, but if Design-Builder does have the financial statements audited, they shall supplement their initial submission of unaudited financial statements for the year concerned with copies of audited statements within thirty (30) days after they become available. The Design-Builder may designate each submitted financial statement as confidential proprietary information pursuant to Virginia Code § 2.2-3705.6(11)(b) exempt from release under the Virginia Freedom of Information Act, provided it invokes the written criteria necessary to apply the public disclosure exemption.

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

It shall be a condition precedent to this Agreement's effectiveness that it first be approved by City Council as evidenced by the signature of its City Manager on behalf of the City on the signature pages hereof.

29. Representations and Warranties

Design-Builder represents and warrants that it has legal authority to enter into this Agreement and perform all of its obligations herein (including necessary state construction and design licenses and obligations required by Virginia Code § 56-575.8) and that the execution of this Agreement by it has been duly and properly authorized. The City represents and warrants that it has legal authority to enter into this Agreement and perform all its obligations herein and that the execution of this Agreement by it has been duly and properly authorized, including approval by the City Council of the City's entry into this Agreement.

30. Exhibits.

The following exhibits are hereby deemed to be part of this Agreement and incorporated by reference herein:

Exhibit 1	Design-Builder's GMP Proposal, dated July 29, 2025
Exhibit 2	General Conditions of Contract (DBIA Form 535, as revised)
Exhibit 3	Supplemental Conditions
Exhibit A	Davis Bacon Wage Determination
Exhibit B	Clarifications & Assumptions dated July 29, 2025
Exhibit C	Not Used
Exhibit D	GMP Schedule of Values dated July 29, 2025
Exhibit E	Payment Application
Exhibit F	Project Schedule
Exhibit G	Not used
Exhibit H	List of A/E Rates
Exhibit I	Addendum of Additional Terms and Conditions of Federally Funded Project
Exhibit J	Not used
Exhibit K	Extensions to Contract Times due to Unusually Severe Weather
Exhibit L	Sample Performance Bond
Exhibit M	Sample Payment Bond
Exhibit N	Rental Rate Sheet
Exhibit O	Field Labor Wage Rates
Exhibit P	Not used
Exhibit Q	Normal Weather Data
Exhibit R	Use of Premises Requirements

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

THE CITY OF FREDERICKSBURG, VIRGINIA

By: Timothy J. Baroody
Title: City Manager

Date

Approved as to form:

By: _____
Kelly J. Lackey, City Attorney

ULLIMAN SCHUTTE CONSTRUCTION, LLC

By: Matthew T. Schutte
Title: President

Date



Exhibit 1 – Design-Builder's GMP

WWTP Upgrade and Expansion

City of Fredericksburg, Virginia

Due to file size constraints, the full Exhibit 1 document is not included in this version of the file.

See "[Comprehensive Agreement Package - Complete.pdf](#)"



ULLIMAN SCHUTTE
BUILDING A BETTER ENVIRONMENT®



Standard Form of General Conditions of Contract Between Owner and Design-Builder

Document No. 535

Second Edition, 2010

© Design-Build Institute of America
Washington, D.C.





Design-Build Institute of America - Contract Documents LICENSE AGREEMENT

By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of

your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

8. **Acknowledgement.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

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Article 1

General

1.1 Mutual Obligations

1.1.1 *Owner and Design-Builder* intend at all times to cooperate fully with each other, and proceed on the basis of good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions. (Capitalized terms not otherwise defined herein shall have the meaning as defined in the Comprehensive Agreement).

1.2.1 *Agreement* refers to the executed Comprehensive Agreement between Owner and Design-Builder.

1.2.2 *Basis of Design Documents* are Design-Builder's 85% Design Submittal Plans and Specifications used for development of the Guaranteed Maximum Price.

1.2.3 *Construction Documents* are the documents consisting of Drawings and Specifications to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents, unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design-Builder as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract. Once approved, the *Construction Documents* take precedence over the Basis of Design Documents in the event of any conflict between them. Construction Documents are considered to be the 100% documents generated after GMP.

1.2.4 Intentionally Omitted

1.2.5 *Contractor* means Design-Builder

1.2.6 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.7 *Defect, Defective, or Deficient* is an adjective or noun which when modifying or referring to the word Work refers to Work or any part thereof that does not conform to the Contract Documents, or does not meet the requirements of any inspections, standards, tests or approvals referred to in the Contract Documents.

1.2.8 *Designer* is a qualified, licensed design professional who is an employee of Design-Builder or is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Designer, but is retained by the Designer or employed or retained by anyone under contract to Designer, to furnish design services required under the Contract Documents.

1.2.9 *Drawings and Specifications* mean the surveys, drawings and specifications that Design-Builder causes to be prepared for the Project that are approved by the Owner, Designer and Design-Builder.

1.2.10 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.5.1 and the submission of all documents set forth in Section 6.6.2. Additionally, Design-Builder shall provide Owner all contractually required information to apply for certificate to operate by the Department, including but not limited to engineer's completion of the certification of the construction being completed as designed.

1.2.11 *Fixed Fees* mean the amounts payable to the Design-Builder as specified in Article 13.c of the Agreement for the Services in addition to Reimbursable Costs.

1.2.12 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, laws or regulations arising from epidemics, unusually severe weather conditions not reasonably anticipated, and other acts of God, provided that the party asserting the existence of such event promptly communicates any occurrence giving rise to a claim and takes reasonable steps to mitigate impacts.

1.2.13 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition).

1.2.14 *Guaranteed Maximum Price* ("GMP") means the amount established as the maximum amount payable to the Design-Builder as defined in Article 13.d of the Comprehensive Agreement.

1.2.15 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.16 *Land* means the real property identified as owned by the Owner and ingress/egress easements shown on the Construction Documents defined in this Article.

1.2.17 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, standards, requirements, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work including, without limitation the 2021 Virginia Uniform Statewide Building Code, Virginia and the federal Americans with Disabilities Act, and local implementation of 9 VAC 25-830-55 (mandatory resiliency provisions of Chesapeake Bay Preservation Act regulations). All publications and other documents (such a manuals, handle codes, standards, and specifications) cited to in this Agreement for the purpose of establishing requirements applicable to equipment, materials, or workmanship are hereby incorporated by reference in this Agreement. Design-Builder expressly acknowledges and agrees to be bound by those state and federal provisions incorporated by reference into this Agreement as Exhibit I required by the City based on the sources of funds to finance the Project. Owner acknowledges that the 85% drawings and specifications were based on the 2018 Virginia uniform Statewide Building Code and that Design-Builder shall update the 100% drawings and specifications to the 2021 code as provided for in the Second Addendum of the Interim Agreement and Exhibit B (Assumptions and Clarifications).

1.2.18 *Person(s) or person(s)* means any individual, partnership, joint venture, association, joint-stock company, corporation, limited liability company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other legal entity.

1.2.19 *Project Schedule* means the schedule for design and construction of the Project, which, in its initial version, is set forth in Exhibit F attached hereto.

1.2.20 *Reimbursable Costs* mean the amounts payable to the Design-Builder as specified in Article 13.a of the Agreement for the Services in addition to the Fixed Fees.

1.2.21 *Requisition* means an application for payment in the form attached as Exhibit E.

1.2.22 *Scope of Work* means all the work and materials for the Project required by this Agreement to be provided by Design-Builder, and that may be required to result in a fully functional Project and all of which shall be provided by Design-Builder within the GMP, except as may be modified by any Change.

1.2.23 *Services* means all pre-construction and development services and all architectural and engineering design, procurement and construction services related to the Project furnished by Design-Builder, including, without limitation, all labor, services, materials and facilities, and all other things that are required to provide for the development of the site and the design, construction and equipping of the Project so that such Project is properly completed. Services are a part of the Work.

1.2.24 *Site* is the land or premises on which the Project is located.

1.2.25 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.26 *Substantial Completion or Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents, including an occupancy permit, where required, commissioning, and items so that it may be utilized and can be used for its intended uses, including that the Project is ready to accept move-in and/or expanded operational uses by the Owner and all life/safety items are operational, and other items that are necessary for issuance of Certificate to Operate by the Department are complete.

1.2.27 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.28 *Unusually Severe Weather* means weather that impacts major Work activities on the critical path of the Project and deviates from that which could be reasonably expected due to the time of year or as compared to standard averages for the area as compiled through the NOAA or other authorized local sources. See Exhibit Q.

1.2.29 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment,

services and labor reasonably inferable from the Contract Documents.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the Design-Builder allowance account to the extent provided for in the Comprehensive Agreement; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Design-Builder shall prepare and submit a schedule in accordance with Supplemental Condition, Section 8.1, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.1.5 The Design-Builder shall perform on the site with its own organization, work equivalent to at least 10% of the total amount of Work to be performed under this Agreement. The percentage of Work required to be performed by the Design-Builder may be reduced with written approval of the Owner's Representative.

2.2 Design Professional Services.

2.2.1 It is understood and agreed that this Agreement includes design services. Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed

design professionals employed by Design-Builder, or procured from qualified, independent licensed Designer or Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Design-Builder further represents that the structural, electrical, mechanical and other engineering disciplines provided for the design of the Project will be under the direct supervision of licensed professional engineers who are registered in Virginia or who are persons in responsible charge of an engineering firm registered in Virginia. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services.

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions on projects of similar complexity at the same time and in the Commonwealth of Virginia.

2.4 Design Development Services.

2.4.1 Subject to Section 2.3.1, Design-Builder is responsible to Owner for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other Services furnished by the Design-Builder's design professionals under this Agreement. Design-Builder must, without any changes to the GMP or schedule, correct any errors or deficiencies in any of the designs, drawings, specifications, and other Services, which fail to conform to the Standard of Care all at no cost to the Owner, and, provided that such errors or deficiencies do not arise out of, or as a result of, any written directives issued by Owner or Owner's Representative, and further provided, that because of such errors or deficiencies the Work does not conform to the requirements of this Agreement. Design-Builder shall, consistent with Article 11 of the Comprehensive Agreement, prepare the interim design submissions described therein which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a reasonable time that is consistent with the turnaround times set forth in Design-Builder's approved schedule pursuant to Exhibit F.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The

Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner and/or Owner's Representative's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to seek approval for construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, upon adequate documentation of additional costs established by change order or through the claim process. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Licenses, Government Approvals, Permits and Responsibilities.

2.6.1 Except as **may be otherwise provided for in the Agreement**, Design-Builder shall identify and obtain and pay for all necessary permits, approvals, licenses, government charges (excluding nutrient credit purchase), and building inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.6.3 Intentionally Omitted

2.6.4 Design-Builder shall demonstrate compliance with all environmental permits and regulations identified in the Contract Documents and/or as may be required by law prior to, and during construction.

2.6.5 Design-Builder shall comply with all state and local building code requirements.

2.6.6 Design-Builder shall pay all fees and charges for temporary connections to outside services and for use of property outside the site, subject to reimbursement as provided by the Contract Documents. Subject to Article 2.11.5, the Owner will directly pay for permanent utility connection fees for the facility.

2.6.7 Design-Builder's Work shall not impede, prevent or cause the City to be in violation of permits issued to the City by the Department or other agencies.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and in a good and workmanlike manner and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision demonstrably impacts Design-Builder's cost and/or time of performance.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights unless expressly stated otherwise.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 On a daily basis during the progress of the work, Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas or Owner's continued operation of waste water treatment. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to

permit Owner to occupy the Project or a portion of the Project for its intended use.

2.7.7 The Design-Builder must give personal superintendence to the Work either in person or by having a foreman or superintendent on the Design-Builder's payroll, approved by the Owner's Representative, with authority to act on behalf of the Design-Builder, on the site at all times Work is in progress.

2.7.7.1 A minimum of one such superintendent must be provided on site to be responsible for coordinating, directing, inspecting, and expediting the Work of the Design- Builder and its subcontractors.

2.7.7.2 It is contemplated that all construction Work at the Site will be performed during normal working hours, between the hours of 7:00 a.m. until 5:00 p.m., Monday through Friday, local time, unless otherwise specified in this Agreement. Work performed by the Design-Builder at its own volition outside such normal working hours shall be at no additional expense to the Owner and approved by the Owner. The Design-Builder's material and equipment deliveries must not interfere with the arrival or departure of Owner employees, staff and visitors to existing facilities or the use of adjacent land.

2.7.8 Except as otherwise provided in the Supplemental Conditions, the Design-Builder must refer requests received from occupants of buildings included in the immediate Work area to change the hours of Work, including anticipated cost and schedule impact, to the Owner's Representative for consideration of a possible Change Order subject to approval of the Deputy City Manager or City Manager.

2.7.9 The Design-Builder shall submit a daily construction report by close of business of the following working day on a form provided by or approved by the Owner's Representative or other form customarily used in the industry. The report shall indicate the number of people by trade or craft, and the type and location of Work. The report shall include subcontractors, safety and quality violations observed, corrective measures taken to correct the violations, and other information requested by the Owner's Representative. The Owner's Representative may modify the requirements of this report as the Project progresses.

2.7.10 The Owner's Representative may, in writing with a statement of the reasons for the request, require the Design-Builder to remove from the Work any employee of the Design-Builder, or any subcontractor or its employee, the Owner's Representative reasonably deems incompetent, careless, or otherwise objectionable. The Design-Builder shall immediately remove from the Work any employee or any subcontractor or its employee so designated. However, if Design-Builder does not agree with such action, the Design-Builder may within 3 days request the Deputy City Manager or City Manager on behalf of the Owner to review and make a decision on the matter, which decision shall be final.

2.8 Design-Builder's Responsibility for Project Safety.

2.8.1 Design-Builder is responsible for all injury to persons or damage to property that occurs as a result of its negligent actions or breach of any of its obligations herein. Design-Builder must take proper safety and health precautions to protect the Work, the workers, the public,

building occupants, and the property of others.

2.8.2 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.3 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.4 Design-Builder's responsibility for safety under this Article 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of suitable grade for the purpose intended, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder shall provide a list of extended warranties at 100% design that Design-Builder is providing, or will be providing, or is or will be assigning from manufacturers and which shall be in addition to the warranty mentioned above. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion. Design-Builder will also use commercially reasonable efforts to include provisions in the Specifications, that such warranties do not contain any limitation on liability, any reduction of the applicable statute of limitations, any indemnity requirements from the Owner, any venue or forum selection clause other than the City of Fredericksburg, Virginia, or any requirement for mediation

or arbitration.

2.9.2 Design-Builder warrants construction work (including installed equipment) for a period of one (1) year from the date of Substantial Completion (or any portion of the Work approved for partial Substantial Completion in accordance with Section 6.5). Design-Builder's Warranty shall be in addition to, and not in limitation of, any other special extended warranty specified by the Construction Documents.

2.9.3 Design-Builder agrees that if warranties set forth in the Contract Documents are in any respect breached, Design-Builder will pay to Owner any direct damages sustained by Owner as a result of such breach. These rights and remedies are in addition to and do not limit those rights and remedies otherwise available to Owner but are limited by the provisions of Sections 2.10.5 and 10.5.

2.10 Correction of Defective Work.

2.10.1 All materials and work not conforming to the Design-Builders Warranty, including substitutions not properly approved and authorized, may be considered defective. Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion (or any portion of the Work approved for partial Substantial Completion in accordance with Section 6.5), or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.10.2 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion, (or any portion of the Work approved for partial Substantial Completion in accordance with Section 6.5), or within such longer period to the extent required by any specific warranty included in the Contract Documents. ALL IMPLIED WARRANTIES INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.

2.10.3 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction, including reasonable attorney's fees. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.10.4 The one-year period referenced in Section 2.10.1 above applies only to Design-

Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

2.10.5 Design-Builder shall obtain each transferable guarantee or warranty of equipment, materials, or installation that is furnished by any manufacturer or installer in the ordinary course of the business or trade. Design-Builder shall obtain and furnish to the Owner all information required to make any such guarantee or warranty legally binding and effective, and shall submit both the information and the guarantee or warranty to the Owner in sufficient time to permit the Owner to meet any time limit requirements specified in the guarantee or warranty or, if no time limit is specified, before completion and acceptance of all Work under this Agreement. Owner agrees that with respect to any manufacturer warranty it will make any claim for a breach of such warranty directly to the manufacturer following the one-year period referred to in Section 2.10.1, subject to the privity of the warranty transfer to the Owner by the Design-Builder.

2.10.6 Owner, by accepting any warranties or guarantees under this Agreement, does not waive any legal right or remedy that Owner otherwise may have for breach of this Agreement and/or for breach of any such warranties or guarantees.

2.11 Use of Premises

2.11.1 The Design-Builder, and any subcontractors and their employees shall comply with the regulations governing access to, operation of, and conduct while on the site as shown in Exhibit R attached hereto and shall perform the Work required under this Agreement so as not to unreasonably interfere with the conduct of Owner's business or use and occupancy by Owner.

2.11.2 As permitted by the site conditions, the Design-Builder shall separate its personnel, and subcontractors' personnel from Owner visitors, employees, and Owner property not involved in the Project. The Design-Builder shall cordon off the construction area using barricades or other means to achieve this separation when feasible.

2.11.3 Any requests received by the Design-Builder from occupants, or occupants in the area, to change the sequence of Work shall be referred to the Owner's Representative as provided in Article 2.7.8.

2.11.4 The Design-Builder, any subcontractors, and their employees will not have access to any Owner facility outside the scope of this Agreement without permission of the Owner's Representative.

2.11.5 Where available, Design-Builder may use utility services of the building only if the Owner's Representative determines sufficient capacity is available to support the Work and confirms such determination in writing. Design-Builder or subcontractor employees may not use the toilet facilities. No cleaning of tools, including painting equipment/brushes, is permitted in the toilet or janitorial facilities.

2.11.6. Design-Builder shall provide a Site Utilization Plan for Owner review at the time of the 100% submission. Such plan should show access points, traffic control, storage of materials, phasing, lay down areas, fenced and protected areas, and mobile office locations at a minimum.

2.12 Design-Builder's Additional Obligations

2.12.1 Unless otherwise specified, or unless directed otherwise by the Owner's representative in writing, the Design-Builder shall provide heat and take all necessary actions to protect all Work, materials, and equipment against injury from dampness and cold, and in the case of information technology equipment requiring the same, air conditioning, to protect it from heat and humidity.

2.12.2 Design-Builder's on-site superintendent must be able to speak, read, and write English to the extent necessary to permit reasonable communication with Owner personnel.

2.12.3 Where the Construction Documents permit Design-Builder to propose substitute materials, items, systems, or equipment, the selection of such options is subject to the following conditions:

2.12.3.1 Once a substitute has been selected and approved by the Owner's Representative, it must be used for the entire Project unless the Design-Builder has proposed, and Owner's Representative has approved, the substitute for a limited application.

2.12.3.2 Design-Builder must coordinate its selection with the Plans and Specifications and the Designer.

2.12.3.3 Substitutions proposed by Design-Builder shall be at no increase to the GMP.

2.12.4 Except with the Owner's Representative's prior written approval, Design-Builder agrees not to refer in its commercial advertising to imply in any manner that the Owner endorses its products.

2.12.5 Survey Monuments and Benchmarks.

2.12.5.1 Except as otherwise provided in Section 3.2, the Design-Builder will establish such general reference points, for written approval by the Owner's Representative, as will enable the Design-Builder to proceed with the Work. The Design-Builder shall provide new monuments where shown or specified. If the Design-Builder finds that any previously established reference points have been destroyed or displaced, or that none have been established, the Design-Builder shall promptly notify the Owner's Representative.

2.12.5.2 The Design-Builder must protect and preserve established benchmarks and monuments and make no changes in locations without the written approval of the Owner's Representative. Established reference points that may be lost, covered, destroyed, or disturbed in the course of performance of the Work under this Agreement, or that require shifting because of necessary changes in grades or locations, must (subject to prior approval of the Owner's Representative) be replaced and accurately located or relocated (as appropriate) by a licensed engineer or licensed land surveyor.

2.12.5.3 New monuments will be six (6) inches square by three (3) feet deep (unless otherwise specified), of concrete or stone, with a 3-inch copper or brass pin, 3/8-inch in diameter,

in the center, and must be set flush with the ground or pavement in locations indicated on the site plan.

2.12.5.4 Monuments will not be required where lines of buildings are coincident with property lines.

2.12.5.5 The Design-Builder shall verify the figures shown on the survey and site plan before undertaking any construction Work and will be responsible for the accuracy of the finished Work.

2.12.5.6 After completion of construction and before final payment, the Design-Builder must furnish the Owner blueprints (in triplicate) of plans showing the exact location of construction survey monuments with reference to true property lines.

2.12.6 Design-Builder agrees to participate in groundbreaking ceremonies at a time specified by the Owner.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's approved schedule.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1 Design-Builder confirms conducting site visits and site assessments in preparing the design of the Project and has had adequate opportunity to seek information of existing site conditions from the Owner. The Owner has provided an opportunity for due diligence by the Design Builder, which includes but is not limited to, access to facility documents and site exploration. Owner shall provide or has provided, at its own cost and expense the following, documents and information all of which the Design Builder is entitled to rely on as legacy information in performing the Work to the extent not contradicted or qualified by testing or due diligence consistent with the Standard of Care of the Designer as the engineer of record:

3.2.1.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

3.2.1.2 Geotechnical studies describing subsurface conditions, and other surveys

describing other latent or concealed physical conditions at the Site;

3.2.1.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

3.2.1.4 Omitted

3.2.1.5 To the extent available, record drawings of any existing structures at the Site including but not limited to:

- 1953 – Sewage Treatment Project – Witman, Requardt & Associates
- 1984 – Conversion of FMC Plant to Municipal Use – Hayes, Seay, Mattern & Mattern
- 1987 – Wastewater Treatment Plant Improvements – Witman, Requardt & Associates
- 1991 – Wastewater Treatment Plant Upgrade and Expansion – Witman, Requardt & Associates
- 2010 – Wastewater Treatment System Improvements – Reid Engineering

3.2.1.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.1.7 Hazen and Sawyer Final Preliminary Engineering Report

3.2.1.8 City of Fredericksburg Plant O&M Manual

3.2.1.9 City of Fredericksburg Plant Standard Operating Procedures

3.2.1.10 City of Fredericksburg Operational Data - 2017-2022

3.2.2 Design-Builder is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work other than the temporary laydown area shown on the 85% Design Submittal. Design-Builder is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information.

3.3.1 It is understood and agreed between the parties herein that Owner shall be bound hereunder only to the extent of the funds available and duly appropriated or which may hereafter become available and duly appropriated for the purpose of fulfilling Owner's Obligations with respect to the Contract Documents. Prior to commencement of construction and upon written request by Design-Builder, Owner shall furnish reasonable evidence that the Owner has made financial arrangements to meet its payment obligations for the Project in the amounts and at the times projected for progress payments. If Owner fails to furnish such financial information in a timely manner, Design-Builder may exercise its rights as permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources, including Legal Requirements as defined in Article 1.2.17.

Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner to the extent provided in the Contract Documents.

3.5 Government Approvals and Permits.

3.5.1 Except as stated otherwise in the Contract Documents, Owner shall obtain and pay for all necessary building permits and initial third party inspection fees.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

3.7 Site Visits.

3.7.1 The Owner from time to time during construction may desire to conduct groups of guests on visits to the site of the Work. These tours will be authorized by the Owner's Representative or his/her appointed representative. In such event the Design-Builder shall cooperate by providing reasonable access to and posting signs to give notice of dangerous areas, providing hard hats, and making such other arrangements for the safety and convenience of the guests as may be required. The Owner's Representative shall give the Design-Builder as much advance notice of any such visits as is practical and to the maximum practicable extent shall schedule any such visits so as not to interfere with the progress of the Work.

3.8 Examination of Records

3.8.1 The Owner, its authorized representatives and federal and state regulators, shall, during the Project and until three (3) years after final payment under this Agreement, have access to and the right to audit, copy and/or examine any pertinent books, documents, papers, or other

records of the Design-Builder involving any transactions or items related to performance under of this Agreement, including payroll and payments.

3.8.2 The Design-Builder agrees to include in all subcontracts under this Agreement, to the extent specified by Legal Requirements, and to have included in all its subcontracts a provision to the effect that the Owner, its authorized representatives, and federal and state regulators will, until three (3) years after final payment under this Agreement, have access to and the right to audit, copy, and/or examine any pertinent books, documents, papers, or other records of the subcontractors involving any transactions or items related to the Work performed for which payment is made to Design-Builder and further providing that such individuals shall otherwise comply with the provisions contemplated by this Section 3.8. The term subcontract as used in this clause excludes Subcontracts for public utility services at rates established for uniform applicability to the general public. This audit right shall not apply to any Work performed by its subcontractors on a lump sum basis except as required by Exhibit I.

3.8.3 For the purposes of this Section 3.8, the Design-Builder agrees to provide Owner, at no cost to the Owner, adequate and appropriate work space at its offices in order to conduct such examinations.

3.9 Ownership of Work Product. Except as otherwise provided in Article 5 of the Comprehensive Agreement:

3.9.1 Work Product: Project specific Drawings and Specifications including electronic copies, furnished by the Design-Builder to the Owner under this Agreement ("Work Product") shall become the property of the Owner upon payment for such item(s) for them and all amounts due hereunder for the Work provided however, that Design-Builder and/or its Designers shall retain the rights to any copyrights and other intellectual property rights contained in the Work Product, subject to the license granted in Article 5 of the Comprehensive Agreement and in 3.9.2 below.

3.9.2 Owner may use the Work Product in connection with Owner's occupancy and use of the Project, including for maintenance and repairs, future renovations, and expansions of City utilities. Such Work Product is not intended or expected to be suitable for use on other projects. Owner shall not provide Work Product to any other entity for use on other projects except as record drawings, subject to State laws including open records provisions, except for renovations or expansions to this Project or City utilities.

3.9.3 Design-Builder shall include in its contract with its Designer and have included in contracts with any design professionals providing any services for this Project provisions that require all design professionals providing any services for the Project to agree to this Section 3.9, and Design-Builder shall indemnify, defend and hold harmless Owner and its agents, employees, architects, engineers, consultants and contractors from any claim of copyright infringement by any Person based upon Owner's use of the Work Product pursuant to this Section 3.9 for this Project.

3.9.4 Nothing in this Section 3.9 shall be deemed to relieve Design-Builder or any Designers providing services through Design-Builder of their obligation under this Agreement that all design and design services provided for this Project shall conform to the applicable standard of

care defined herein for the Designer providing such design or services.

3.10 Partial Occupancy Does Not Constitute Acceptance

3.10.1 The Owner's Representative reserves the right of partial occupancy or use of facilities, services, and utilities, before final acceptance, without implying completion or acceptance of any part of the Project by the Owner. Before such occupancy or use, the Owner's Representative must furnish the Design-Builder an itemized list of known Work remaining to be performed or corrected. Failure to list an item will not relieve the Design-Builder of the responsibility for complying with the terms of the Contract Documents. Responsibility for damage to the Work within the partially occupied area shall be transferred to the Owner for any such partial occupancy or use, provided that partial occupancy or use must be expressly acknowledged by a temporary certificate of occupancy and/or partial certificate of substantial completion for portions of the Project as distinguished from mere continued occupancy and operation of wastewater treatment by Owner during construction.

3.10.2 Costs incurred and delays to the completion of the Project as a direct result of such partial occupancy or use of facilities, services, and utilities are subject to equitable adjustment under Section 9 hereof.

3.11 Owner Property.

3.11.1 The Owner will provide access to Design-Builder and all rights needed for the Work to the Land, subject to reasonable coordination of continued occupancy and use of the Site for operation of wastewater treatment.

3.11.2 Title to the Land and tangible Owner Property will remain with the Owner even if incorporated in or affixed to property not owned by the Owner. The Design-Builder may use the Land and tangible Owner Property only in connection with this Agreement. The Design-Builder must maintain adequate property control records in a form acceptable to the Owner's Representative and must make them available for Owner inspection upon request. Owner represents that it will obtain good title to the Land (the real property described on the approved plans) subject to easements and other items of record and the authority to authorize Design-Builder contractors to perform work on such Land provided the Design-Builder complies with all applicable laws, ordinances, and regulations regarding work on such Land and obtains all required permits and licenses for such Work. The Land shall be made available to Design-Builder with the notice to proceed with the construction Work.

3.11.3 Upon delivery of the tangible Owner Property (other than the Land) to the Design-Builder, the Design-Builder assumes the risk and responsibility for its loss or damage, except:

1. For reasonable wear and tear;
2. To the extent property is consumed in performing the Agreement; or
3. As otherwise provided in the Contract Documents.

4. Loss or Damage due to the actions of persons other than Design-Builder or its subcontractors.

3.11.4 Changes in Owner-Furnished Tangible Property

1. By written notice, the Owner's Representative may; (a) decrease the Property provided or to be provided by the Owner under this Agreement; or (b) substitute other Owner owned Property for the Property to be provided by the Owner, or to be acquired by the Design-Builder for the Owner under this Agreement. The Design-Builder must promptly take any action the Owner's Representative may direct regarding the removal and shipping of the Property covered by this notice.

2. In the event of any decrease in or substitution of Property pursuant to Article 3.11.4.1 above, or any withdrawal of authority to use Property provided under any other contract or lease, or failure of Owner to make Land or tangible property available in a timely manner which Property the Owner had agreed in this Agreement to make available, the Owner's Representative, upon the Design-Builder's written request, or if substitution causes a decrease in the cost of performance, on the Owner's Representative's own initiative, may recommend equitable adjust any contractual provisions affected by the decrease, substitution, late delivery or withdrawal, in accordance with the "Changes" clause.

3.11.5 Design-Builder must maintain and administer a program or system acceptable to the Owner's Representative for the utilization, maintenance, repair, protection, and preservation of Owner Property until it is disposed of in accordance with this Section 3.11.

3.11.6 Owner, and any persons designated by it, shall at reasonable times have access to premises where any Owner Property is located for the purpose of inspecting it.

3.11.7 Within forty-five (45) calendar days after Notice to Proceed with construction, the Design-Builder must submit a schedule to the Owner's Representative, in an acceptable format and giving desired dates for delivery of items and Property furnished by the Owner. Approved dates of delivery must be confirmed by the Owner's Representative in writing. Approved dates of delivery must be confirmed by the Design-Builder thirty (30) calendar days prior to scheduled delivery. The Design-Builder must submit a written report to the Owner's Representative within forty-eight (48) hours after receipt, noting any shortages or damage to the Owner-furnished Property, other than for the Land.

3.11.8 If Owner-furnished equipment is to be installed and is not on the construction site, the Owner will make separate arrangements to provide delivery to the site. Direct costs to Design-Builder for labor associated with loading or unloading this Owner-furnished equipment may be claimed as Reimbursable Expenses.

3.11.9 Upon Substantial Completion, the Design-Builder shall follow the Owner's Representative's instructions regarding the disposition of all Owner Property not consumed in performing this Agreement or previously returned to the Owner. The Design-Builder shall prepare for shipment, deliver f.o.b. origin, or dispose of the Owner Property, as directed or authorized by the Owner's Representative. The net proceeds of any such disposal will be credited to award

amounts due Design-Builder or will be paid to the Owner as directed by the Owner's Representative.

3.12 Owner Property Furnished "As Is".

3.12.1 The Owner makes no warranty whatsoever with respect to the Land and tangible Owner Property furnished "as is" except that such Property is in the same condition specified in the solicitation as when inspected by the Design-Builder pursuant to the solicitation or (if not inspected by the Design-Builder) as when last available for inspection under the solicitation.

3.12.2 The Design-Builder may repair any Property made available to the Design-Builder "as is." Repair will be at the Design-Builder's expense except as otherwise provided in this clause. Such Property may be modified at the Design-Builder's expense, but only with the written permission of the Owner's Representative. Any repair or modification of Property furnished "as is" does not affect the title of the Owner.

3.12.3 If there is any change (between the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation) in the condition of tangible Owner Property furnished "as is" that will adversely affect the Design-Builder, the Design-Builder must, upon receipt of the Property, notify the Owner's Representative of that fact, and (as directed by the Owner's Representative) either (1) return the Property at the expense of the Owner or otherwise dispose of it, or (2) effect repairs to return it to the condition it was in when inspected under the solicitation, or (if not inspected) as it was when last available for inspection under the solicitation. Upon completion of (1) and (2) above, the Owner's Representative, upon written request from the Design-Builder, may equitably adjust any contractual provisions affected by the return, disposition, or repair, in accordance with the "Changes" clause. The foregoing provisions for adjustment are exclusive, and the Owner is not liable for any delivery of Owner Property furnished "as is" in a condition other than that in which it was originally offered.

3.12.4 Except as otherwise provided in this section, tangible Owner Property furnished "as is" is governed by this Section 3.12 of this Agreement.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless Design-Builder is the proximate cause of a Hazardous Condition as provided in Article 4.1.6, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner

shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder may be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been demonstrably, adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Designer, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site originating from Owner's strict liability or negligence. This provision is further limited by Design-Builder's express assumption of risk associated with known or reasonably anticipated hazards associated with an operating wastewater treatment facility.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for bodily injury, sickness or death, and property damage or destruction to the extent resulting from negligent acts, errors or omissions, reckless or intentionally wrong conduct of Design-Builder, Designer, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable as the result of (a) Hazardous Conditions introduced to the Site by anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable or (b) Hazardous Conditions on the site about whose existence the Design-Builder, Subcontractors or anyone for whose acts they may be liable reasonably knows. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from any liability, claim, demand, action, cause of action, suit, loss, damage, injury, expense, cost, settlement, or judgment of any kind or nature including but not limited to demands, fines remediations, or penalties asserted by any governmental entity, as a result of treatment, storage, disposal, handling, spillage, leakage, or presence in any form in soils, surface waters, ground-waters, air, or property, of any Hazardous Conditions, wastes or "hazardous waste" as defined in the Supplemental Conditions of Contract, section 13.2.3(f), caused or to the extent contributed to by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the site (i)

materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as “Differing Site Conditions.”

4.2.2 Design-Builder must, upon encountering a Different Site Condition, provide prompt verbal notice to Owner of such condition, which notice shall be followed by written notification no later than 48 hours after such condition has been encountered to Owner. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered. Written notice may be electronic (email) provided receipt is confirmed by recipient.

4.2.3 If the Design-Builder encounters a Differing Site Condition Design-Builder will be entitled to: (i) submit a proposed adjustment to the Contract Price; and, (ii) may be entitled to an adjustment to the Contract Time(s) to the extent Design-Builders time of performance is adversely impacted by Differing Site Condition as demonstrated by the critical path.

4.2.4 No claim of the Design-Builder for any subsurface or latent conditions or any other Differing Site Conditions will be allowed unless the Design-Builder has given the written notice and otherwise complied with the requirements of this Section 4.2.

Article 5

Insurance and Bonds

5.1 Design-Builder’s Insurance Requirements.

5.1.1 Design-Builder shall obtain and maintain during the Contract Period such insurance coverages as specified in the Agreement and as further stated herein.

5.1.2 With all policies listed herein, the insurer or agent of the insurer must issue a certificate of insurance to show evidence of coverage and provide copies of applicable policies along with applicable endorsements, including but not limited to an endorsement listing Owner as additional insured.

5.1.3 Insurance policies shall provide for notification to Owner of non-payment of any premium and shall give Owner the right to make the premium payment thereunder within a reasonable time, if the insurance policy is in danger of lapsing during the Contract Period. Any premium payments made by Owner shall be deducted from Amounts due Design-Builder under the Agreement.

5.1.4 All insurance policies required under this paragraph, or otherwise required by the Contract Documents, shall include a clause waiving any and all subrogation rights against Owner.

5.1.5 Design-Builder’s insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the project.

5.1.6 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in Virginia such liability insurance to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project. Owner does participate in and will continue to participate in the Virginia Risk Sharing Association (VRSA) group self-insurance pool.

5.3 Omitted

5.4 Bonds and Other Performance Security.

Bonds and other performance security are as specified in Article 16 of the Agreement.

§Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by the Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work associated with each Milestone and (iii) serve as a metric for monthly progress payments made to Design-Builder throughout the Work.

6.1.2 The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder intend to timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work

performed as of the date of the Application for Payment. The Application for Payment shall be consistent with Project Schedule, include (i) Reimbursable Costs incurred by Design Builder, (ii) General Conditions Fees During Construction in an amount equal to 1/51 of the total Fixed Fees, and be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof. It is understood that the Designer Services Fee, Bonds, Insurance, and Design-Builders Fee During Construction shall be invoiced based on percent of completion of each item.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner's Representative is satisfied based on photos or site inspection as to the quantity, value and delivery of such equipment and materials and that the equipment and materials are suitably stored at either the Site or another acceptable location with labelling reflecting intended use on Site, (ii) the Owner's Representative receives confirmation that equipment and materials are stored in a bonded warehouse or supply house with proof of insurance coverage that specifically lists the equipment being stored and its value and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's certification that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier. This paragraph does not: (i) relieve Design-Builder of responsibility to protect and safeguard materials and Work for which payment has been made or for restoration of any damaged Work; or (ii) waive the right of the Owner to require fulfillment of all terms of the contract Documents.

6.3 Withholding of Payments.

6.3.1 Within thirty (30) days of recommendation by the Owner's Representative to make payment on a Payment Application, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing no later than ten (10) days after the recommendation of approval from the Owner's Representative. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement. Payment of Undisputed amounts does not preclude the Owner from applying a reduction in payment (set-off or withholding) based on any of the following for which written notice is given to Design Builder as provided in Section 6.3.1: (i) claims made against Owner based on Design-Builder's conduct in the performance or furnishing of the work, or Owner incurred costs, losses, or damages from Design-Builder's conduct, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with laws and regulations or terms and conditions of the Design-Build Contract, and intellectual property infringement; (ii) failure of Design-Builder to take reasonable and customary measures to avoid damage, delay, disruption, or interference with work at or adjacent to Site; (iii) Design-Builder's failure to provide or maintain required bonds or insurance; (iv) Design-Builder's responsibility for hazardous environmental conditions introduced to Site; (v) defective work requiring correction or replacement; (vi) contract price reduction by change order; (vii) event of default that would justify a termination for cause; (viii) applicability of liquidated damages for delay; (ix) undischarged liens asserted in connection with the Work; or (x) any other item for which the Owner is contractually entitled to set-off. The Owner at its sole election may apply partial or whole setoff without waiver of other contractual recourse.

6.3.3 Stored Materials – When payment is being requested for stored materials, the following documentation is required to be submitted with the Pay Application:

- Certificate of Insurance – Materials must be stored in a bonded warehouse, or a supply house. Design-Builder must provide a Certificate of Insurance that specifically lists the equipment being stored, the value of the equipment, and the address of the stored material. The City of Fredericksburg shall be named as an Additional Insured on the Certificate of Insurance.
- Bill of Sale/Invoice
- Photos of stored materials showing labels identifying the project.

6.4 Design-Builder's Payment Obligations.

6.4.1 Design-Builder will pay Designer and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Designers and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Article 7.3 hereof. Design-Builder agrees to comply with the provisions of Virginia Code Section 2.2-4354 regarding payments to others.

6.5 Substantial Completion.

6.5.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly

inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of known Work that have to be completed and/or rendered satisfactory before final payment (“Punch List”), (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner’s and Design-Builder’s responsibility for the Project’s security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion. Failure to list an item on the Punch List will not relieve the Design-Builder of the responsibility for complying with the terms of the Contract Documents.

6.5.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to 125% of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.5.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner’s use or occupancy will not interfere with Design-Builder’s completion of the remaining Work.

6.5.4 Within 30 days of Substantial Completion of each major phase of construction, Design-Builder shall prepare an application for a certificate to operate which the City will submit to the Department and promptly place the associated treatment units into operation. In the event that the Department denies said certificate based on Design-Builder’s act or omission, whether based on construction, design, or other contractual obligation such as failure to provide amendments to the operating manual, Design-Builder shall make the necessary corrections and re-prepare the application.

6.6 Final Payment.

6.6.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Comprehensive Agreement, provided that Design-Builder has achieved Final Completion of all Work except restoration of Dixon Park. Final payment of all Work except completion of restoration of Dixon Park shall be less an amount equal to 125% of the reasonable value of restoration.

6.6.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

6.6.2.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for

or in connection with the Work which will in any way affect Owner's interests;

6.6.2.2 A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

6.6.2.3 Consent of Design-Builder's surety, if any, to final payment;

6.6.2.4 All operating manuals, warranties and other deliverables required by the Contract Documents; and

6.6.2.5 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.6.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion, (iii) professional liability insurance claims or indemnification claims arising from acts or omissions of Design-Builder during the performance of Work and (iv) the terms of any special warranties required by the Contract Documents.

6.6.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole

expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

7.1.5 This clause must be included in all subcontracts that include design services of any type under this Agreement, but only to the extent that such infringement claim relates to design services provided by that party.

7.2 Omitted

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its governing body, officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction to the extent resulting from the willful or negligent acts or omissions of Design-Builder, Designer, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable. This provision shall be construed to exclude claims caused by or resulting solely by the negligence of the Owner as consistent with Virginia Code Section 11-4.1

7.4.2 If an employee of Design-Builder, Designer, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a

claim against Owner, its governing body, officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence, and diligently pursue, the performance of the Work and achieve the Contract Time(s) in accordance with the Agreement and the approved Project Schedule.

8.2 Delays to Work.

8.2.1 If Design-Builder is delayed in the performance of the Work on the Project Critical Path due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance may be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors) which disrupt the critical path, such as changes in the Work directed by the Owner by, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events. Design-Builder will attempt to mitigate the impact of any such event.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder may also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events.

8.3 Design-Builder's Notice of Delay. Immediately, and in no event later than ten (10) days after it first believes an event may give rise to or result in a Change due to any delay under this Comprehensive Agreement, Design-Builder shall so notify the Owner's Representative in writing of a notice of intent to file a claim. The notification must identify the difficulties, the reasons for them and the estimated period of delay anticipated. Failure to give such notice in substantial compliance with this Article 8.3 will waive any right by Design-Builder to make a claim based upon such delay. Such notice shall be a condition precedent to Design-Builder's right to pursue any claim pursuant to a claim otherwise subject to the timing and content provided at Article 10.1.1 for an adjustment to payment or schedule based upon such delay.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 Owner may at any time, without notice to any sureties, make a Change, including, without limitation, one that: (i) changes the Drawings and Specifications (including drawings and designs); (ii) changes the method or manner of performance of the Work; (iii) changes the Owner-furnished facilities, equipment, materials, services, or site; (iv) directs acceleration in the performance of the Work; or (v) implements other changes referred to in this Agreement. A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price; and

9.1.1.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes. **Design-Builder shall not proceed with any Change until the Owner has executed and delivered a Change Order or written Work Change Directive.**

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a separate Change Order may be negotiated to reimburse Design-Builder for any material reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.1.4 Any other written or oral order, direction, instruction, interpretation, or determination from the Owner or the Owner's Representative that causes a change to the Scope of Work or its time of performance will be treated as a Work Change Directive, allowing a change in compensation or schedule only if (1) the Design-Builder gives the Owner's Representative written notice promptly, but not later than within twenty one (21) calendar days, of the receipt by Design-Builder of such order, direction, instruction, or determination, stating (i) the date, circumstances, and source of the order, direction, instruction or determination, and (ii) that Design-Builder regards the order, direction, instruction or determination as a Change, and (2) Design-Builder does not incur additional costs attributable to such order, direction, instruction or determination without first receiving a Change Directive from Owner, unless waiting for a Change Directive is unreasonable under the circumstances. Such notice is a condition precedent to any such claim. Except as provided in this Article 9, no order, direction, instruction, interpretation, determination, statement, or conduct of the Owner's Representative may be treated as a Change or entitle the Design-Builder to any adjustment in compensation or schedule.

9.1.5 If any Change under this Article adds to or increases the Scope of Work, other than minor changes, and causes an increase or decrease in Design-Builder's cost of, or the time required for, the performance of any part of the Work under this Agreement, the Owner shall issue a Change Order or Change Directive for such Change. However, no claim for any Change shall be allowed for which Design-Builder has not complied in all material respects with the requirements of Article 9 as well as all other requirements of this Agreement. No claims will be allowed for

Drawings or Specifications prepared by or for Design-Builder and not in conformance with this Agreement. The GMP shall be decreased for any Owner requested reduction to the Scope of Work. After approval of final Drawings and Specifications, except for the correction of errors and omissions, Design-Builder shall not make or allow any changes in the Drawings or Specifications, including drawings and designs, without approval of the Owner's Representative.

9.1.6 The GMP shall be adjusted for overruns and underruns in any allowances as agreed to by the parties in writing in accordance with the terms of this Agreement. Materials and equipment under an allowance shall be selected by the Owner's Representative in sufficient time to avoid delay in the Work.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

9.4.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

9.4.1.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

9.4.1.3 Costs, fees and any other markups set forth in the Agreement or Article 10.2.c of the Supplemental Conditions; or

9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting

from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices may be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any additional or different services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a compensable change to the Work.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief

requested and the basis of such request. No claim by Design-Builder will be allowed if first asserted after final payment under this Agreement, except as expressly provided herein.

10.2 Omitted

10.3 Omitted

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW OR TO THE EXTENT OF A RECOVERY OF INSURANCE PROCEEDS FOR THE REQUIRED POLLUTION OR SPECIAL HAZARD INSURANCE COVERAGE), NEITHER DESIGN-BUILDER OR DESIGNER, NOR OWNER, OR ITS REPRESENTATIVES SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING, BUT NOT LIMITED TO FRAUD, WILLFUL MISCONDUCT OR NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential. Unless expressly provided otherwise herein, the rights and remedies of the parties provided for under this provision are severable and apply to the extent allowed by law.

Article 11

Omitted

Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively “Electronic Data”).

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 5 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is

materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential and Critical Infrastructure or Proprietary Information.

13.1.1 Confidential Information is defined as information which is determined by the Owner to be exempt from public disclosure requirements as subject to the critical infrastructure exemption or other applicable exemption of the Virginia Freedom of Information or by the Design-Builder to be trade secret materials or proprietary in nature. Design-Builder will not release Construction Plans or operational or safety manuals to third parties on other than a need-to-know basis without express approval of the Deputy City Manager or City Manager. The Design-Builder's submittal of financial statements shall not be disclosed by the City as stated in Article 27 of the Agreement.

13.2 Assignment.

13.2.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns. Owner and Design-Builder each binds itself, its partners, successors and assigns to the other party to this Agreement and to the partners, successors, and assigns of such other party, in respect to all covenants contained in this Agreement.

13.4 Governing Law.

13.4.1 To ensure uniformity of the enforcement of the Contract Documents, and irrespective of the fact that either of the parties now is, or may become, a resident of a different state, this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to its principles of conflicts of law.

13.4.2 The parties hereby submit to the personal jurisdiction of, and venue in, the General District or Circuit Court of Fredericksburg, Virginia for resolution of any and all claims, causes of action or disputes between Design-Builder and Owner.

13.5 Severability.

13.5.1 If any provision or any part of a provision of the Contract Documents shall be

finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver.

13.6.1 Any failure of either party to demand rigid adherence to one or more of the terms of this Agreement, on one or more occasions, shall not be construed as a waiver of any provision hereof or of any such right, option or remedy as a waiver for the future of any such provision, right, option or remedy or as a waiver of subsequent breach thereof of the right to insist upon strict compliance with the terms of this Agreement. The consent or approval by either party of an act by other party requiring the party's consent or approval shall not be construed to waive or render unnecessary the requirement for the party's consent or approval of any subsequent similar act by the other party. Any waiver of a term of this Agreement, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

13.7 Headings.

13.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Amendments or Modifications.

13.8.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

13.9 Equal Opportunity Employment

13.9.1 During the performance of the Design-Build Contract, the Design-Builder agrees as follows:

13.9.1.1 The Design-Builder 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 federal or state law relating to discrimination in employment, except where there is a bona-fide occupational qualification reasonably necessary to the normal operation of the Design-Builder. The Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

13.9.1.2 The Design-Builder, in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder, will state that Design-Builder is an equal opportunity employer.

13.9.1.3 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 paragraph.

13.9.2 The Design-Builder will include the provisions of the foregoing subparagraph 13.10.1.1, .2, and .3 in every subcontract or purchase order exceeding \$10,000 in value, so that the provisions will be binding upon each Subcontractor or vendor.

13.10 Non-Discrimination pursuant to Virginia Code § 2.2-4343.1

13.10.1 Be advised that Owner does not discriminate against faith-based organizations. The Company shall not discriminate against faith-based organizations during the performance of this Agreement.

13.11 Drug-Free Workplace

13.11.1 During the performance of the Design-Build Contract, the Design-Builder agrees to (i) provide a drug-free workplace for the Design-Builder's employees; (ii) post in conspicuous places, available to employees and applicants for employment, statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Design-Builder'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 Design-Builder that the Design-Builder maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order exceeding \$10,000 in value, so that the provisions will be binding upon each Subcontractor or vendor.

13.11.2 For the purposes of this paragraph, "*drug-free workplace*" means a site for the performance of work done in connection with the Design-Build Contract by Design-Builder where its employees 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 Agreement.

13.12 Authorization to Conduct Business in Virginia.

13.12.1 The provisions of Va. Code § 2.2-4311.2 are incorporated by reference. If Design-Builder, is a business entity described in Va. Code § 2.2.4311.2.A, Design-Builder, must be authorized to transact business in Virginia if required by law to be so authorized and shall not allow its existence or certificate authority or registration to transact business to lapse or be revoked or cancelled during the term of this Agreement.

13.13 Tax ID Number

13.13.1 The provisions of Va. Code § 2.2-4308.2 are incorporated by reference. In accord with Code of Virginia § 2.2-4308.2 registration and participation in the E-Verify program (electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C, Title IV, § 403(a), as amended) is required. Design-Builder agrees to provide its federal tax D number to the City.

13.14 Ethics in Public Contracting

13.14.1 Design-Builder certifies that:

13.14.1.1 It has not offered or received any kickback from any other bidder or contractor, supplier, manufacturer, or subcontractor in connection with this Agreement. A kickback is defined as an inducement for the award of the contract, subcontract, or order, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, no person shall demand or receive any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

13.14.1.2 It is not party to nor has he participated in nor is obligated or otherwise bound by agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning bids, prices, terms or conditions upon which this Agreement is to be performed.

13.14.1.3 Design-Builder understands that collusive bidding is a violation of the Virginia Governmental Frauds Act and federal law, and can result in fines, prison sentences, and civil damage awards.

13.14.1.4 Neither Design-Builder, Design-Builder's subcontractors, nor any person acting on Design-Builder's behalf, have conferred, or will confer, on any public employee having official responsibility for a 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 is exchanged.

13.15 Immigration Reform and Control Act of 1986

13.15.1 Design-Builder does not, and shall not during the performance of this Agreement for goods and services in the Commonwealth of Virginia, knowingly employ unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

13.16 Independent Contractor

13.16.1 The parties understand and agree that Design-Builder, in performing its obligations under this Contract, shall be deemed an independent contractor and not an agent, employee or partner of Owner.

13.17 Minority and Women-Owned Business Enterprise and Small Business Certification

13.17.1 Design Builder shall use reasonable effort to use minority and women-owned business enterprise and small businesses for Work on the project. Design-Builder shall complete and submit the "Minority and Women-Owned Business and Small Business Certification" form from time to time as requested by Owner. Failure to complete and sign this statement is considered a material violation of this Agreement.

13.18 Prompt Payment of Subcontractors and Vendors

13.18.1 Design-Builder must pay subcontractors within sixty (60) days of the receipt of an invoice following satisfactory completion of work or provide sooner notice in writing of the intent to withhold payment as provided further at Virginia Code Section 2.2-4354.

13.18.2 Within seven days of receipt of payment by the Owner, Design-Builder must: (1) pay the subcontractor for the proportionate share of total payment received from the Owner attributable to the work performed by the subcontractor; or (2) notify the Owner and the subcontractor in writing of an intention to withhold all or part of the subcontractor's payment with the reason for nonpayment.

13.18.3 The Design-Builder shall pay interest of 1% per month to subcontractors on all amounts owed that remain unpaid following receipt by the Design-Builder of payment from the Owner. This interest shall not be construed as an obligation of the Owner, and Design-Builder may not seek reimbursable costs of interest paid under this Article 13.18.3 from the Owner.

13.18.4 The Design-Builder must require subcontractors to include the same payment and interest requirements in this Article 13.18 in all sub-subcontracts.

13.19 Attorney's Fees

13.19.1 Should either Party employ an attorney to either (i) institute and maintain a suit against the other Party arising out of the Contract Documents or the other Party's Obligations; (ii) assist in enforcing or defending any of that Party's rights under the Contract Documents; (iii) protect a Party's interest in any matter arising under the Agreement; (iv) collect damages for the breach of a contract or any other amounts owed to a Party; or (v) maintain an action to recover on a surety bond given by Design-Builder, then the prevailing Party after any final, unappealable judicial order on the merits shall be entitled to recover reasonable attorneys' fees, costs, charges, and expenses expended or incurred therein from the other Party.

13.20 Tax Exemption

13.20.1 To the fullest extent allowed by law, Owner, as a political subdivision of the Commonwealth of Virginia, is exempt from any federal excise tax and Virginia sales and use tax.

13.21 Loss or Damage in Transit

13.21.1 Delivery by a Design-Builder to a common carrier does not constitute delivery to Owner. Any claim for loss or damage incurred during delivery shall be between Design-Builder and the carrier. Owner accepts title only when goods are received regardless of the F.O.B. point noted in the Solicitation or the Contract Documents. City of Fredericksburg will note all apparent damages in transit on the freight bill and notify Design-Builder. Discovery of concealed damages or loss will be reported by City of Fredericksburg to the carrier and Design-Builder within 15 days of receipt and prior to removal from the point of delivery if possible. Design-Builder shall make immediate replacement of the damaged or lost merchandise or be in default of the Contract

Documents. It shall be Design-Builder's responsibility to file a claim against the carrier. If damage is too small a quantity, with approval of City of Fredericksburg, Design-Builder may deduct the amount of damage or loss from his or her invoice to City of Fredericksburg in lieu of replacement.

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