

INTERIM AGREEMENT

THIS INTERIM AGREEMENT (Agreement) is entered into as of January __, 2023, between **THE CITY OF FREDERICKSBURG, VIRGINIA** (the Owner or the City), a political subdivision of the Commonwealth of Virginia, and **ULLIMAN SCHUTTE CONSTRUCTION, LLC** (the Design-Builder). Owner and Design-Builder are referred to individually as a "Party" and collectively as "the Parties".

Recitals

- A. On May 25, 2021, the City adopted "Public-Private Education Facilities and Infrastructure Act of 2002 Guidelines," establishing procedures for the development of public facilities through public-private partnerships (Guidelines), which procedures satisfy the requirements of the PPEA (as defined below).
- 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 would 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 on the basis of the criteria stated in the RFP and entered into negotiations with each of the Offerors.
- I. After conducting these negotiations, the City selected the Design-Builder as the offeror which, in its opinion, made the best proposal and provided the best value.
- J. The Parties have negotiated this Agreement consistent with the PPEA, other applicable law, the Guidelines, the Design-Builder's Proposal, and discussions between representatives of the City and Design-Builder.

- K. The Parties acknowledge and agree that this Agreement will function as the Interim Agreement for purposes of this Project.
- L. 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 under the criteria of Virginia Code § 56-575.4(C).

NOW, THEREFORE, in consideration of the Recitals set forth above, and good and valuable consideration as set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SCOPE OF WORK.

The Scope of Work is attached to this Agreement as **Exhibit A.**

2. COST.

In consideration of the provision of Services by Design-Builder, Owner shall pay to the Design-Builder the total amount of \$19,115,00.00 (Nineteen Million One Hundred Fifteen Thousand Dollars) (the Contract Amount). See **Exhibit B.**

Invoicing shall occur monthly and shall be accompanied by a schedule of values for the work that is the subject of the invoice. Invoices shall be submitted to the City of Fredericksburg Assistant City Manager David T. Brown, P.E., P.O. Box 7447, Fredericksburg, Virginia 22404, dtbrown@fredericksburgva.gov. Owner will remit payment within 30 days of receipt of a correct invoice. Incorrect invoices shall be subject to correction and/or rejection by Owner.

Design-Builder agrees that Owner has the unilateral right to offset any bill submitted to Owner by Design-Builder, or any payment owed to Design-Builder by Owner, by any amount due to Owner from Design-Builder pursuant to the Contract Documents, or any other agreement, contract or transaction between Owner and Design-Builder. Owner will give Design-Builder ten days advance written notice of its intent to exercise this offset right, which notice will set forth the amount of the offset and the contractual and factual basis for the offset.

3. TERM AND TERMINATION.

This Agreement shall commence on the Effective Date first written above and shall continue until superseded by the parties' agreement as to the Contract Cost Limit as stated in an executed Comprehensive Agreement or otherwise terminated pursuant to the terms of this Agreement. See **Exhibit C. THE TIME TO COMPLETE DESIGN OF THE PROJECT IS OF THE ESSENCE.**

This Agreement may be terminated in the event of substantial failure or default of Design-Builder or Owner to perform in accordance with the terms hereof through no fault of its own if the defaulting party fails to commence and thereafter continuously take action to cure such default within five days of receiving written notice setting forth the nature of the default.

Upon fourteen days' written notice to the Design-Builder, Owner has the unilateral right to cancel and terminate any contract with Design-Builder, in whole or in part, without penalty, merely out of convenience, and shall require no breach of contract by Design-Builder as a condition of termination. This right of termination for convenience may be exercised at the sole unconditional discretion of Owner. In such event, Owner shall pay Design-Builder for all work properly performed by Design-Builder in accordance with the Agreement within thirty (30) days following the date of the notice.

Any contract cancellation notice shall not relieve Design-Builder of the obligation to perform on all outstanding orders issued prior to the effective date of cancellation.

4. COMPREHENSIVE AGREEMENT.

Should the Parties both conclude that the Project is feasible, the Parties may proceed to negotiate a Comprehensive Agreement under the PPEA to address the completion of design, construction and commissioning of the Project without further procurement. Owner's participation in negotiation of a Comprehensive Agreement, however, shall not constitute an obligation of or commitment by Owner to execute such Comprehensive Agreement and may be granted, denied or conditioned in Owner's sole discretion. It is the intent of the parties that the Comprehensive Agreement will supersede this Agreement and govern all Services performed under this Agreement.

5. CONTRACTUAL CLAIMS.

The Parties shall first endeavor to resolve any disputes, claims and other matters in question between the Parties. Contractual claims or disputes by Design-Builder against Owner shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that Design-Builder shall give Owner written notice of its intention to file a claim or dispute within fifteen (15) days after the occurrence upon which the claim or dispute shall be based. Any written notice of Design-Builder's intention to file such a claim or dispute shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. Whether or not Design-Builder files such written notice, Design-Builder shall proceed with the work as directed. If Design-Builder fails to make its claim or dispute or fails to give notice of its intention to do so as provided herein, then such claim or dispute shall be deemed forfeited.

Owner, upon receipt of a detailed claim, may at any time render its decision and shall render such decision within sixty (60) days of its receipt of such notice. Each such decision rendered shall be forwarded to Design-Builder by written notice.

If Design-Builder disagrees with the decision of Owner concerning any pending claim, Design-Builder shall promptly notify Owner by written notice that Design-Builder is proceeding with the work under protest. Any claim not resolved, whether by failure of Design-Builder to accept the decision of Owner or under a written notice of Design-Builder's intention to file a claim or a detailed claim not acted upon by Owner, shall be specifically exempt by Design-Builder from payment request, whether progress or final. Pendency of claims shall not delay payment of

amounts agreed due in the final payment.

Owner's decision on contractual claims shall be final and conclusive unless Design-Builder appeals within six months of the date of the final decision on the claim by instituting legal action in the Circuit Court of the City of Fredericksburg, Virginia.

6. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Interim Agreement or any counterpart hereof to produce or account for the other counterparts. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

7. NOTICES.

All requests, notices and other communications required or permitted to be given under the Contract Documents shall be in writing. Delivery of a notice shall be deemed to have been made when such notice is either: duly mailed by first-class mail, postage prepaid, return receipt requested, or any comparable or superior postal or air courier service then in effect; or transmitted by hand delivery, telegram, telex, telecopy or facsimile transmission, to the party entitled to receive the same at the address indicated below or at such other address as such party shall have specified by written notice to the other party.

Notices to the Owner shall be sent to:

David T. Brown, P.E.
Assistant City Manager
City of Fredericksburg
P.O. Box 7447
Fredericksburg, Virginia 22404

and

Kathleen Dooley
Fredericksburg City Attorney
P.O. Box 7447
Fredericksburg, Virginia 22404

With a copy to:

Heather Hays Lockerman
Sands Anderson, P.C.

P.O. Box 1998
Richmond, VA 23218-1998

Notices to Design-Builder shall be sent to:

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.

8. ENTIRE AGREEMENT.

This Agreement contains the entire agreement of the Parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the Parties that this Agreement alone sets forth the terms on which the Parties have mutually agreed.

9. CONDITIONS PRECEDENT.

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

10. CONTRACT DOCUMENTS.

The term "Contract Documents" as referenced in this Agreement includes all of the following documents: the Interim Agreement, the Scope of Work attached as Exhibit A (2 pages), the Schedule of Pricing attached as Exhibit B (1 page), the Sequence and Schedule attached as Exhibit C (2 pages), the General Conditions of Contract attached as Exhibit D (41 total pages, 39 numbered pages), and the Supplemental Conditions of Contract attached as Exhibit E (24 pages).

IN WITNESS WHEREOF the undersigned have executed this Interim Agreement on the dates set forth beside their respective signatures.

THE CITY OF FREDERICKSBURG, VIRGINIA

Date

By: Timothy J. Baroody

Title: City Manager

Approved as to form:

By: _____

Kathleen Dooley, City Attorney

ULLIMAN SCHUTTE CONSTRUCTION, LLC

Date

By: Matthew T. Schutte

Title: President

Ulliman Schutte – Black & Veatch DB Team
City of Fredericksburg WWTP Upgrade & Expansion

Interim Agreement - Scope of Work

January 16, 2023

Design-Build Activities and Services: Task 1

- Design to 15%
 - Technology Selections
 - Process Sampling
 - Hydraulic Design
 - Preliminary Process Design - Interim & Final Phase
 - Initial Site Layout
 - Surveying
 - Geotechnical Studies
 - Categorical Exclusion/ Environmental Assessment
 - Wetlands Delineation
- Baseline Construction Scheduling
- Parameter Estimates to Support Technology Selections
- Identification of early work to be completed within Task 6

Design-Build Activities and Services: Task 2

- Design to 30%
 - P&IDs
 - Site layout of all major process elements and buildings
 - Preliminary grading and yard piping design
 - Power distribution functional diagram
 - Building mechanical system design concepts
 - Building structural design concepts
 - Equipment/process control strategies
 - Preliminary code review
 - Hydraulics finalization
 - Conceptual architectural design development
 - Major floor plans and wall sections development
- 30% Estimate
- Construction Schedule development
- Risk Register development
- **CCL Development**
- External Communications Plan
- Identification of early procurements to be completed within Task 5

Design-Build Activities and Services: Task 3

- Design to 60%
 - Site design and mechanical process designs completed
 - Sizing and layout of all subsystems completed
 - Primary structural elements are designed
 - Primary electrical one-lines completed
 - Specifications drafted
- Ongoing Construction Schedule development
- Ongoing Risk Register development
- Project Management Plan finalization
- Health and Safety Plan finalization
- Quality Management Plan finalization
- 60% Estimate

Design-Build Activities and Services: Task 4

- Design to 85%
 - Permit submittals
- Subcontractor outreach
- Local Business Outreach Meeting
- **GMP Development**

Design-Build Activities and Services: Task 5 (Allowance)

- Early procurement of equipment and material as mutually agreed
Examples:
 - Select process equipment
 - Select yard pipe
 - Select electrical gear

Design-Build Activities and Services: Task 6 (Allowance)

- Early work to benefit project as mutually agreed
Examples:
 - Site set-up, temporary facilities, and site preparation
 - Preparatory utility relocations
 - High-priority plant repairs

<p>EXHIBIT</p> <p>B</p>

Ulliman Schutte – Black & Veatch DB Team
City of Fredericksburg WWTP Upgrade & Expansion

Interim Agreement - Schedule of Pricing

January 16, 2023

Description	Total Amount
Task 1 - Design and Pre-Construction Services (0-15%)	\$2,289,000
Task 2 - Design and Pre-Construction Services (15-30%)	\$2,109,000
Task 3 - Design and Pre-Construction Services (30-60%), CCL Finalization	\$2,652,000
Task 4 - Design and Pre-Construction Services (60-85%), GMP Development	\$2,065,000
Task 5 - Allowance for the Early Purchase of Materials and Equipment	\$5,000,000
Examples: WAS Tank(s) Piping & Valves Alum / Caustic Feed Systems Temp Carbon System Rapid Mix Tertiary Filters Belt Filter Press #2 Misc. Yard Pipe Misc. Electrical Gear Procurement / Management	
Task 6 - Allowance for Necessary and Prudent On-site Construction and Maintenance Work	\$5,000,000
Examples: Early-start project work Valve replacements Relocation of distribution lines Tank modifications Erosion control installation Driveway access improvements High-priority interim-period plant repair	
Total:	\$19,115,000

Ulliman Schutte – Black & Veatch DB Team
City of Fredericksburg WWTP Upgrade & Expansion

Interim Agreement Sequence & Schedule

January 16, 2023

Interim Agreement	Notes	Time
Task #1	To 15% Design	April 14, 2023
Task #2	15-30% Design	June 30, 2023
Task #3	Develop & Approve CCL	August 25, 2023
	30-60% Design	September 29, 2023
Task #4	60% - 85% Design (if needed to continue progress pending approval of Comprehensive Agreement)	January 22, 2024
	Develop & Submit GMP	March 22, 2024
Task #5	Equipment as needed	Anticipated April – September 2023
Task #6	Construction as needed	Anticipated March 2023 – March 2024

Fredericksburg WWTP

Interim Agreement Sequence & Schedule

January 16, 2023

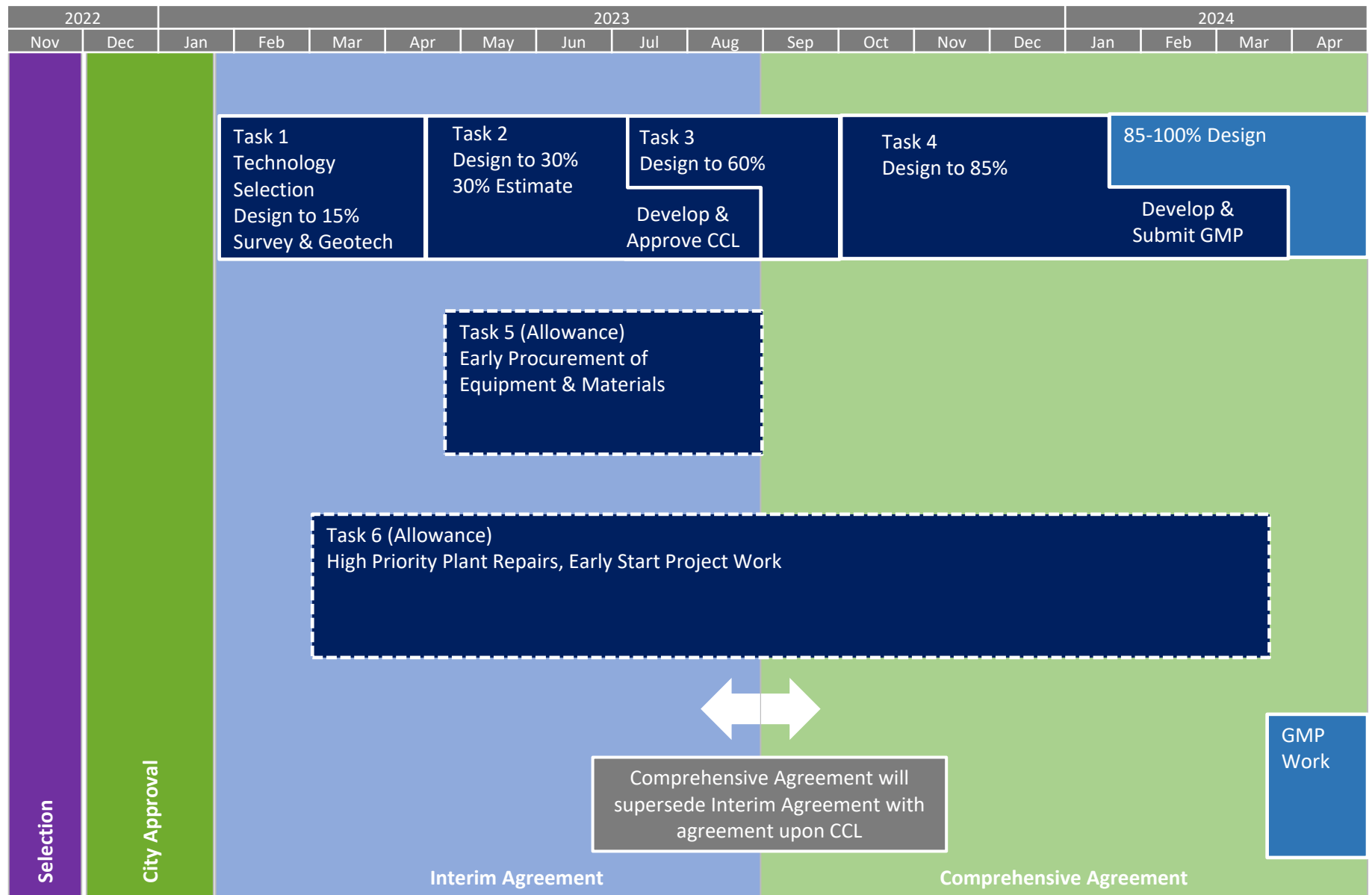


EXHIBIT D

General Conditions of Contract

Between

The City of Fredericksburg, Virginia

And

Ulliman Schutte Construction, LLC

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Article 1

General

1.1 Mutual Obligations.

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other, and proceed on the basis of trust and 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 Interim Agreement).

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

1.2.2 *Basis of Design Documents* are Design-Builder's Conceptual Phase Proposal and Design-Builder's Detailed Phase Proposal, the latter taking precedence over the former in the event of any conflict between them.

1.2.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by 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 Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

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

1.2.5 *Design-Build Team* is comprised of Design-Builder, the Design Consultant, and key Subcontractors identified by Design-Builder.

1.2.6 *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.

1.2.7 *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 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.8 *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,

epidemics, unusually severe weather conditions not reasonably anticipated, and other acts of God.

1.2.9 *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).

1.2.10 Omitted.

1.2.11 Omitted.

1.2.12 *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.

1.2.13 *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 most current Virginia Uniform Statewide Building Code the Americans with Disabilities Act. 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.

1.2.14 Omitted.

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

1.2.16 *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.

1.2.17 *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.

1.2.18 *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, commissioning and punch list (other than cosmetic items), so that it may be utilized and can be used for all of its intended uses, including that the Project is ready to accept move-in by Owner and all life/safety items are operational, and other items that are critical in nature are complete.

1.2.19 *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.

1.3 Additional Definitions

1.3.1 *Contract Cost Limit ("CCL")* is the initial limit established as the time of execution of this Agreement on total amounts payable to Design-Builder under this Agreement absent a Change pursuant to this Agreement and as further defined pursuant to the Scope of Work attached to the Agreement.

1.3.2 *Contractor or Prime Construction Contractor* means Design-Builder or, where appropriate, the entity to which Design-Builder subcontracts its responsibility for the construction portion of the work under the agreement. If Design-Builder has proposed the Construction Contractor for the Project in its proposals to the City Council, Design-Builder shall use Construction Contractor for the Project unless the City Council in its sole discretion approves otherwise in writing.

1.3.3 *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 is 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.

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

1.3.5 *Fixed Fees* mean the amounts payable to Design-Builder as specified in any later negotiated Comprehensive Agreement for the Services in addition to Reimbursable Costs.

1.3.6 *Guaranteed Maximum Price ("GMP")* means the amount established as the maximum amount payable to Design-Builder absent a Change and as further defined pursuant to the Scope of Work attached to the Agreement.

1.3.7 *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.

1.3.8 *Project Schedule* means the schedule for design and construction of the Project, which, in its initial version, is set forth in Exhibit C attached to the Interim Agreement.

1.3.9 *Reimbursable Costs* mean the amounts payable to Design-Builder as specified in any later negotiated Comprehensive Agreement for the Services in addition to the Fixed Fees.

1.3.10 *Requisition* means an application for payment.

1.3.11 *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 and properly operating Project, and all of which shall be provided by Design-Builder

within the GMP, which is set forth in Exhibit A attached to the Interim Agreement, except as may be modified by any Change.

1.3.12 *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.

1.3.13 *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.

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) [reserved], 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 Design-Builder or its Prime Construction Contractor 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 Design-Builder or its Prime Construction Contractor may be reduced with written approval of 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 Design-Builder's design professionals under this Agreement. Design-Builder must, without any changes to the CCL, GMP or schedule, correct any errors or deficiencies in any of the designs, drawings, specifications, and other Services, all at no costs to Owner, and, provided that such errors or deficiencies do not arise out of, or as a result of, information or directives furnished 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 the Interim Agreement and any later negotiated 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 time that is consistent with the turnaround times set forth in Design-Builder's schedule.

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'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 permit 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, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed

Maximum Price. 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 and 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 Design-Builder is responsible also for all materials delivered and Work performed until completion and acceptance by Owner of the entire construction Work. There shall be no mark-up on any permit or other costs paid for by the Owner for the items covered by the allowances.

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.

2.6.4 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. Owner will directly pay for permanent utility connection fees for the facility.

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 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.

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. 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 Design-Builder must give personal superintendence to the Work either in person or by having a foreman or superintendent on the Prime Construction Contractor's or Design-Builder's payroll, approved by Owner's Representative, with authority to act on behalf of 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 Prime Construction Contractor 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. Design-Builder's material and equipment deliveries must not interfere with the arrival or departure of Owner employees, staff and visitors to existing facilities. The City Council may upon written request from Design-Builder waive or modify this requirement in its sole and exclusive discretion.

2.7.8 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 Owner's Representative for consideration of a possible Change Order.

2.7.9 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 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 Owner's Representative. Owner's Representative may modify the requirements of this report as the Project progresses.

2.7.10 Owner's Representative may, in writing, require Design-Builder to remove from the Work any employee of Design-Builder, or any subcontractor or its employee, Owner's Representative reasonably deems incompetent, careless, or otherwise objectionable. 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, Design-Builder may within 3 days request 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 actions. Design-Builder must take proper safety and health precautions to protect the Work, the workers, the public, 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 Section 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 represents and warrants that it has the requisite experience, skills, capabilities, and manpower to perform the Obligations in a good and workmanlike fashion. 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 30% 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 Owner, any venue or forum selection clause other than the City of Fredericksburg, Virginia, or any requirement for mediation.

2.9.2 Design-Builder warrants Design-Builder's Work for a period of one (1) year from the date of Substantial Completion of the entire Project. In no event shall Design-Builder's warranty period be less than or terminate earlier than any warranty provision specified in the Contract. Design-Builder's Warranty shall be in addition to, and not in limitation of, any other warranty or remedy required by law or by the Contract 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 up to the full contract price agreed to by Owner to be paid for the supplies, materials, equipment or services furnished under the bid or proposal. These rights and remedies are in addition to and do not limit those rights and remedies otherwise available to Owner.

2.10 Correction of Defective Work.

2.10.1 All materials and work not conforming to Design-Builder's 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 of the Work or any portion of the Work, or

within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.10.2 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, in the opinion of Owner, it is not expedient to correct or replace all or any part of rejected work or materials, then Owner, at its option, may deduct from the payment due, or to become due, to Design-Builder such amounts as, in Owner's judgment, will represent the higher of: (i) the difference between the fair value of the rejected work and materials and the value thereof, if the work had complied with the Contract Documents; or (ii) the cost of correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.10.3 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.

2.10.4 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 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 Owner in sufficient time to permit 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.

2.10.5 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 Design-Builder, the Prime Construction Contractor, and any subcontractors and their employees shall comply with the regulations governing access to, operation of, and conduct while on the Site 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, Design-Builder shall separate its personnel, the Prime Construction Contractor's personnel, and subcontractors' personnel from Owner visitors, employees, and Owner property not involved in the Project. Design-Builder shall cordon off the construction area using barricades or other means to achieve this separation.

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

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

2.11.5 Where available, Design-Builder may use utility services of the building only if Owner's Representative determines sufficient capacity is available to support the Work and confirms such determination in writing. Design-Builder, Prime Construction Contractor, 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 and approval at the time of the 15% and 30% design development 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 Owner's representative in writing, Design-Builder shall provide heat as necessary 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 Owner's Representative, it must be used for the entire Project unless 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 Owner's Representative's prior written approval, Design-Builder agrees not to refer in its commercial advertising to imply in any manner that Owner endorses its products.

2.12.5 Survey Monuments and Benchmarks.

2.12.5.1 Except as otherwise provided in Section 3.2, Design-Builder will establish such general reference points, for written approval by Owner's Representative, as will enable Design-Builder to proceed with the Work. Design-Builder shall provide new monuments where shown or specified. If Design-Builder finds that any previously established reference points have been destroyed or displaced, or that none have been established, Design-Builder shall promptly notify Owner's Representative. Vertical datum shall be based on NAVD 88.

2.12.5.2 Design-Builder must protect and preserve established benchmarks and monuments and make no changes in locations without the written approval of 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 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 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, Design-Builder must furnish 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 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 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 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

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 A legal description of the Site;

3.2.1.5 To the extent available, record drawings of any existing structures at the Site; and

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.

3.2.2 Owner 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. Owner 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. Design-Builder shall not be obligated to commence performance under the Agreement until Owner has demonstrated that funds in the amount of the Agreement have been appropriated. If, upon request of Design-Builder, 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. 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.

3.5 Government Approvals and Permits.

3.5.1 Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and 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 Owner from time to time during construction may desire to conduct groups of guests on visits to the Site. These tours will be authorized by Owner's Representative or his/her appointed representative. In such event 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. Owner's Representative shall give 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 Design-Builder hereby agrees to retain all books, records, and other documents relative to Design-Builder's Obligations and the Contract Documents for three (3) years after final payment or after all other pending matters are closed, whichever is longer. Owner and its authorized representatives shall, during the Project and during the above referenced record retention period, have access to and the right to audit, copy and/or examine any pertinent books, documents, papers, or other records of Design-Builder involving any transactions or items related to Reimbursable Costs under of this Agreement.

3.8.2 Design-Builder agrees to include in all subcontracts under this Agreement, to the extent commercially reasonable, and to have its Prime Construction Contractor include in all its subcontracts a provision to the effect that Owner and its authorized representatives 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 Prime Construction Contractor and 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.

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

3.9 Ownership of Work Product.

Except as otherwise provided in the Agreement:

3.9.1 Work Product: Unique elements of designs contained in the Drawings and Specifications, including electronic copy of them, furnished by Design-Builder to Owner under this Agreement and the copyrights thereto ("Work Product") shall become the property of Owner upon payment for such item(s) for them and all amounts due hereunder for the Work.

Design-Builder, Designer, and Prime Construction Contractor shall have the right to use Work Product except as a reuse of the same design on another Owner's project.

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, and for any other purpose Owner deems appropriate. 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, subject to State law, except for renovations or expansions to this project. Such use of Work Product by Owner or any other person to whom Owner has furnished such Work Product shall be at the user's sole risk of liability and without liability or legal exposure to Design-Builder, Designer, Prime Construction Contractor, or any of their subcontractors and consultants, or any of their officers or employees.

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 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 Owner. Before such occupancy or use, Owner's Representative must furnish Design-Builder an itemized list of Work remaining to be performed or corrected. Failure to list an item will not relieve 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 Owner for any such partial occupancy or use.

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 Owner will provide access to Design-Builder and all rights needed for the Work to the Land.

3.11.2 Title to the Land and tangible Owner Property will remain with Owner even if incorporated in or affixed to property not owned by Owner. Design-Builder may use the Land and tangible Owner Property only in connection with this Agreement. Design-Builder must maintain adequate property control records in a form acceptable to Owner's Representative and must make them available for Owner inspection upon request. Owner represents that it has good title to the Land subject to easements and other items of record and the authority to authorize Design-Builder contractors to perform work on such Land provided 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 Design-Builder, Design-Builder assumes the risk and responsibility for its loss or damage, except:

3.11.3.1 For reasonable wear and tear;

3.11.3.2 To the extent property is consumed in performing the Agreement; or

3.11.3.3 As otherwise provided in the Contract Documents.

3.11.4 Changes in Owner-Furnished Tangible Property

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

3.11.4.2 In the event of any decrease in or substitution of Property pursuant to the 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 Owner had agreed in this Agreement to make available, Owner's Representative, upon Design-Builder's written request, or if substitution causes a decrease in the cost of performance, on Owner's Representative's own initiative, may equitably 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 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, Design-Builder must submit a schedule to Owner's Representative, in an acceptable format and giving desired dates for delivery of items and Property furnished by Owner. Approved dates of delivery must be confirmed by Owner's Representative in writing. Approved dates of delivery must be confirmed by Design-Builder thirty (30) calendar days prior to scheduled delivery. Design-Builder must submit a written report to Owner's Representative within forty-eight (48) hours after receipt, noting any shortages or damage to 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, Owner will make separate arrangements to provide delivery to the Site. Any costs to Design-Builder for labor associated with loading or unloading this Owner-furnished equipment will be negotiated.

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

3.12 Owner Property Furnished "As Is".

3.12.1 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 Design-Builder pursuant to the solicitation or (if not inspected by Design-Builder) as when last available for inspection under the solicitation.

3.12.2 Design-Builder may repair any Property made available to Design-Builder "as is." Repair will be at Design-Builder's expense except as otherwise provided in this clause. Such Property may be modified at Design-Builder's expense, but only with the written permission of Owner's Representative. Any repair or modification of Property furnished "as is" does not affect the title of 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 Design-Builder, Design-Builder must, upon receipt of the Property, notify Owner's Representative of that fact, and (as directed by Owner's Representative) either (1) return the Property at the expense of 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, Owner's Representative, upon written request from 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 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 otherwise expressly provided in the Contract Documents to be part of the Work, 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 will 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 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.

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 the negligent acts, errors or omissions, recklessness or intentionally wrongful 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 or should have known. 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 the 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 the Supplemental Conditions of Contract, section 13.2.3(c), 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 that (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 During the initial stages of project, prior to the time that the Design-Builder has had sufficient access to the Site to cause a geotechnical engineer selected by it to conduct a geotechnical investigation to its own satisfaction of physical and subsurface conditions at the Site, Design Builder must, upon encountering a Differing Site Condition, provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

4.2.3 The Parties agree that as the Scope of Work progresses under this Agreement, however, Design-Builder will have access to and the ability to investigate the Site conditions.

4.2.4.a At the establishment of the GMP, if Design-Builder encounters a Differing Site Condition the cost of which is greater than \$100,000, Design-Builder will be entitled to: (i) an adjustment in the Contract Price in the amount of 50% of the actual, reasonable costs incurred in excess of \$100,000 (which first \$100,000 cost shall be paid by Design-Builder); and, (ii) an adjustment to the Contract Time(s) to the extent Design-Builder's time of performance is adversely impacted by the Differing Site Condition.

4.2.4.b Upon encountering a Differing Site Condition, Design-Builder shall provide

prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

4.2.5 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 bodily injury, liability and property damage liability insurance as shall protect it and Owner from claims for damages under the Virginia Workers' Compensation Act, for personal injury including death, as well as from claims for property damage, which could arise from Design-Builder's performance of its Obligations. All such insurance shall name the "City of Fredericksburg, Virginia" as an additional insured. Coverage shall be secured from insurance companies authorized to do business in Virginia and with at least an AM Best rating of A-.

5.1.1.1 General Liability: Design-Builder shall maintain a general liability policy with \$5,000,000 combined single limits. Coverage is to be on an occurrence basis. The endorsement must be issued by the insurance company. This coverage shall include contractual liability, underground hazard, explosion and collapse, hazard, property damage, independent contractor, and personal injury insurance in support of section 7 of these General Conditions of Contract entitled "Indemnification". This policy shall be endorsed to include Owner as an additional insured during the Contract Period and shall state that this insurance is primary insurance as regards any other insurance carried by Owner.

5.1.1.2 Workers' Compensation: Design-Builder shall maintain workers' compensation coverage in compliance with the Virginia Workers' Compensation Act (Act). The insurance shall not have a limit of liability less than the limits imposed by the Act. As an alternative, it is acceptable for Design-Builder to be insured by a group self-insurance association that is licensed by the Virginia Bureau of Insurance.

5.1.1.3 Employer's Liability: Design-Builder will also carry employers' liability insurance with a limit of at least \$2,000,000 bodily injury by accident/\$2,000,000 bodily injury by disease policy limit/\$2,000,000 bodily injury by disease each employee.

5.1.1.3 Comprehensive Automobile Liability: Design-Builder shall procure and maintain Comprehensive Automobile Liability Insurance covering all automobiles, trucks, tractors, trailers, or other automobile equipment, whether owned, not owned, or hired by Design-Builder, with a limit of at least \$1,000,000 for each occurrence involving personal

injury; \$1,000,000 for each occurrence involving property damage; and \$2,000,000 aggregate limits. The coverage is to be written with a symbol "1".

5.1.1.4 Professional Liability: Design-Builder will maintain professional liability insurance with a limit of at least \$5,000,000.00 each occurrence, and \$5,000,000.00 in the aggregate. It is preferred that the coverage be on an occurrence basis. If the policy is on a *claims made* basis, this should be noted. If Design-Builder has professional liability insurance on a *claims made* basis, agreement must be made that coverage will be maintained for at least three years beyond the expiration date of the policy in force at the time of this contract.

5.1.1.5 Design-Builder shall purchase and maintain insurance coverage in a sufficient amount to cover all potential claims on its tools, equipment and machinery.

5.1.2 With all policies listed above, 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 All wording limiting the insurer responsibility to notify Owner of any cancellation or non-renewal of the coverage must be removed. 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 Design-Builder with reasonable promptness according to 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.

5.4.1 Design-Builder shall furnish at commencement of construction, whether pursuant to this Agreement in which the terms of this General Conditions of Contract are incorporated, separate performance and payment bonds in the amount of one hundred percent (100%) of the costs of construction. All bonds shall be executed by a corporate surety or corporate sureties that are reasonably acceptable to Owner, 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 Owner. Design-Builder shall cooperate with Owner to fulfill any reasonable requirements in connection with the financing for the Project with respect to the form of performance and payment bonds provided hereunder.

5.4.2 Design-Builder shall also furnish any cash escrow, funds, cashier's checks, certified checks, or letters of credit required for the issuance of any earth-disturbing or other permit and any bonds or security required by VDOT or any other governmental authority.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by 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 and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

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

6.2 Monthly Progress Payments.

6.2.1 On a monthly basis, 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, 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.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied 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, (ii) the equipment and materials are protected by suitable insurance 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 Owner to require fulfillment of all terms of the contract Documents.

6.3 Withholding of Payments.

6.3.1 Within thirty (30) days of receipt of a correct invoice, 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 at least five (5) days prior to the date payment is due. 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.

6.4 Omitted.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder shall take one of the two following actions within seven (7) days after receipt of amounts paid to Design-Builder by Owner for work performed by a subcontractor under this Agreement:

- (a) Pay the subcontractor for the proportionate share of the total payment received from Owner attributable to the work performed by the subcontractor under this Agreement; or
- (b) Notify Owner and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

6.5.2 The Company shall pay interest to the subcontractor on all amounts owed by Design-Builder that remain unpaid after seven (7) days following receipt by Design-Builder of payment from Owner for work performed by the subcontractor under this Agreement, except for amounts withheld as allowed in subdivision a(2), above.

6.5.3 Unless otherwise provided under the terms of this Contract, such interest shall accrue at the rate of one percent (1%) per month.

6.5.4 The Company shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements to each lower-tier subcontractor.

6.5.5 The Company's obligation to pay an interest charge to a subcontractor pursuant to the payment clause above may not be construed to be an obligation of Owner.

6.5.6 Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 [Reserved]

6.7 [Reserved]

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.

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 Council Members, 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 (other than to the Work itself) to the extent resulting from the negligent acts, errors or omissions, recklessness or intentionally wrongful 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.

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 Council, Council Members, 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.

7.5 Omitted.

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 Project Schedule.

8.2 Delays to the 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 shall 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), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

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 shall 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.

8.3.1 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 Agreement, Design-Builder shall so notify Owner's Representative in writing. 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 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 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 Owner has executed and delivered a Change Order.**

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 Change Order shall be issued 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 Owner or 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) Design-Builder gives Owner's Representative written notice promptly, but not later than within twenty one (21) calendar days, of the receipt by Design-Builder or the Prime Construction Contractor whichever has first receipt 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 Owner's Representative may be treated as a Change or entitle 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, 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 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 this Article 9 of the General Conditions. Items covered by allowances shall be supplied for such amounts (without markup except as otherwise noted) and by such persons or entities as required to perform the Work, but Design-Builder shall not be required to employ persons or entities to whom Design-Builder has reasonable objection. Unless otherwise provided in this Agreement, (1) allowances shall cover the cost to Design-Builder of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts but no other costs; (2) Design-Builder's cost for unloading and handling at the Site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the GMP but not in the allowances; and (3) whenever costs covered by (1) are more or less than allowances, the GMP shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect

the difference between actual costs covered by (1) and the allowances. Materials and equipment under an allowance shall be selected by 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

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 shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any 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 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), NEITHER DESIGN-BUILDER, DESIGNER, CONTRACTOR OR PRIME CONSTRUCTION CONTRACTOR, NOR OWNER 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 [Reserved]

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 4 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 Information.

13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

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 and Forum Selection.

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 or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a 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 any 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. Moreover, it is the parties agree that the legal theories of Implied Waiver, Statute of Limitation, Estoppel, and Laches do not apply as defenses that either party may assert in any action between the parties. 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.

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 Agreement, Design-Builder agrees as follows:

13.9.1.1 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 Design-Builder. 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 Design-Builder, in all solicitations or advertisements for employees placed by or on behalf of 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 Design-Builder will include the provisions of the foregoing subparagraph 13.9.1.1, .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 Agreement, Design-Builder agrees to (i) provide a drug-free workplace for 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 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 Design-Builder that 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 Agreement 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 Virginia Code § 2.2-4311.2 are incorporated by reference. If Design-Builder, is a business entity described in Virginia 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 Virginia Code § 2.2-4308.2 are incorporated by reference. In accord with Virginia Code § 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 Council.

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

13.16 Independent Contractor.

13.16 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 Design-Builder shall use reasonable efforts to use minority and women-owned business enterprises 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 Modifications.

13.18 This Agreement shall not be amended, altered, or modified unless such amendment, modification or alteration is reduced to writing signed by both parties and attached hereto.

13.19 Attorneys' Fees

13.19 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 shall be entitled to recover its attorneys' fees, costs, charges, and expenses expended or incurred therein from the other Party.

13.20 Tax Exemption.

13.20 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 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. FCPS 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 FCPS 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 to a small quantity, with the approval of FCPS, Design-Builder may deduct the amount of damage or loss from his or her invoice to FCPS in lieu of replacement.

Supplemental Conditions of Contract



THE CITY OF FREDERICKSBURG, VIRGINIA

and

Ulliman Schutte Construction, LLC

for

DESIGN AND CONSTRUCTION

of

UPGRADE AND EXPAND THE CITY'S WASTEWATER TREATMENT PLANT PROJECT

SC Article 1
General

1.1 The Work

1.1.1. Work/Specifications.

1.1.2. Conditions Affecting The Work.

The Design-Builder is responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions that can affect the Work or its costs, including, but not limited to available parking and staging areas and existing building materials and components. Any failure by the Design-Builder to reasonably ascertain the conditions affecting the Work does not relieve the Design-Builder from responsibility for successfully performing the Work without additional expense to the Owner. Each party assumes no responsibility for any representations concerning conditions made by any of its officers, employees or agents before execution of this Agreement unless such representations are expressly stated in the Agreement.

1.1.3. Interpretation of Contract Documents.

- a. The Contract Documents are intended to be complementary and to be interpreted in harmony to avoid conflict if this can reasonably be accomplished.
- b. The following rules regarding correlation and intent of the Contract Documents are first to be employed in the event of any inconsistency, conflict, or ambiguity: (1) Anything mentioned in the Specifications and not shown on the Plans, or shown on the Plans and not mentioned in the Specifications, is of like effect as if shown or mentioned in both; (2) In case of conflicts between Plans and Specifications, the Specifications will govern; (3) In case of a difference between small and large-scale drawings, the large-scale drawings will govern; (4) Schedules on any contract drawing take precedence over conflicting information on that or any other contract drawing; and (5) On any of the drawings in which a portion of the Work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out will apply also to all other like portions of the Work.

SC Article 2

Design-Builder's Services and Responsibilities

2.1. Subcontractors.

- a. Design-Builder shall furnish to the Owner's Representative, for its information, not later than ten (10) days before the date scheduled for issuance of the notice to proceed with construction, a list of all Persons being considered to be subcontractors to the Prime Construction Contractor. The Owner's Representative shall, within five (5) days of receipt of this list, notify Design-Builder in writing if it has any objection to any such subcontractor. A failure to notify Design-Builder within this five-day period shall not waive the right of the Owner's Representative to later object to any proposed subcontractor for cause. The receipt of such list shall not require the Owner's Representative to investigate the qualifications of any listed subcontractor.
- b. Prior to performing any Work on the Project, the Contractor and subcontractors shall provide copies of their current licenses to the Owner's Representative.
- c. Subcontractors shall not be changed without the written approval of the Owner's Representative, whose approval shall not be unreasonably withheld.
- e. Nothing in this Agreement may be construed to create any contractual relationship between any subcontractors and the Owner. The divisions or sections of the Specifications are not intended to control Design-Builder in dividing the Work among subcontractors or to limit the Work performed by any trade.
- f. The Owner will not undertake to settle any differences among Design-Builder, the Prime Construction Contractor, the Designer, and any subcontractors of any of them.

2.2 Preparation of Plans and Specifications

Based upon the Scope of Work and/or requirements furnished by the Owner in writing and included herein, Design-Builder shall prepare the complete contract working Plans and Specifications. All design submissions for this Project shall be made in both paper drawing/document form and AutoCAD electronic file form compatible with Owner's CAD system. The minimum scale for building drawings shall be 1/8 inch = 1 foot except for small scale drawings of the floor plan of the entire building with space tabulation. Design submissions shall be made as outlined in the Exhibit A and Exhibit C to the Interim Agreement. The Owner review and/or approval period shall be in accordance with the Project Schedule Milestones, but not less than ten (10) working days for each of the specified submissions.

2.3 Scheduled Submittals

- a. Upon receipt of a scheduled submittal by Design-Builder for the Owner's review and approval, the Owner shall provide its approval, conditional approval or a single

consolidated list of exceptions within the period of time specified, provided, however that the Owner shall have not less than ten work (10) days to review and act upon any initial submission. If a submittal is not specified in this Agreement, the period for review shall not exceed ten (10) workdays. Acceptance of a particular scheduled submittal(s) shall be deemed made by the Owner if the Owner's Representative has not delivered a consolidated list of exceptions prior to the expiration of the applicable period for review. Upon receipt of any "conditional" approval, work shall proceed on the approved portions of the Work and a re-submittal of the conditional Work will be submitted, or not submitted, as directed.

- b. Upon receipt of a consolidated list of exceptions from the Owner's Representative regarding any submittal, Design-Builder shall change or correct, and redeliver the submittal to the Owner's Representative within the period of time specified in the Schedule Milestones, or within ten work (10) days if not specified. The Owner's Representative shall then provide Design-Builder its approval or single consolidated list of exceptions within five work (5) days. Any re-review after the establishment of the GMP shall strictly confine itself to the corrections or changes relative to the original consolidated list of exceptions. All exceptions taken at any time must be relative only to the requirements set forth in this Agreement and identify the area of non-compliance.

2.4 Samples

- a. Sample Approval. After issuance of the notice to proceed with construction, the Design-Builder shall furnish to the Owner's Representative samples required by the Specifications or by the Owner's Representative, for the Owner Representative's approval. The Owner's review and approval shall not be unreasonably withheld, conditioned, or delayed and shall be made in a time frame so as not to delay the Design-Builder or Contractor. Samples shall be delivered to the Owner's Representative as specified or as directed. The Design-Builder shall prepay all shipping charges on samples. Materials or equipment for which samples are required may not be used in the Work until the Owner's Representative approves them in writing. Approval of a sample is only for the characteristics or use named in the approval and may not be construed to change or modify any requirement of the Contract Documents. Substitutions are not permitted unless approved in writing by the Owner's Representative.
- b. Labels. Each sample must be labeled to show:
 - i. Name of Project building or facility, Project title, and contract number;
 - ii. Name of Design-Builder and (if appropriate) Prime Construction Contractor and subcontractor;
 - iii. Identification of material or equipment, with specification requirement;
 - iv. Place of origin; and

- v. Name of producer and brand (if any).
- c. Markings. Samples of finish materials must have additional markings that will identify them under the finish schedules.
- d. Cover Letter. The Design-Builder shall mail, under separate cover, a letter, in triplicate, submitting each shipment of samples and containing the information required in this section 2.4. The Design-Builder shall also enclose a copy of that letter with the shipment and fax or send a copy to the Owner's Representative on the Project.
- e. Use of Samples. Approved samples not destroyed in testing will be sent to the Owner's Representative at the Project. Approved samples of hardware in good condition will be marked for identification and may be used in the Work. Materials and equipment incorporated in the Work must match the approved samples. Samples not destroyed in testing and not approved will be returned at the Design-Builder's expense if the Design-Builder so requests in writing at the time of submission.
- f. Failure. Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this Agreement, any further samples of the same brand or make of that material. The Owner reserves the right to disapprove any material or equipment that has previously proved unsatisfactory in service as determined in Owner's sole discretion.
- g. Testing. Samples of materials or equipment delivered on the site or in place may be taken by the Owner's Representative for testing. Failure of a sample to meet the requirements of the Contract Documents may void previous approvals of the item tested. The Design-Builder shall replace materials or equipment found not to have met requirements of the Contract Documents, unless Owner, in its sole discretion, elects to accept an equitable downward adjustment to the GMP in lieu of such replacement.
- h. Cost of Testing.
 - i. The Design-Builder shall pay for all costs of construction testing, including sampling, field tests, laboratory tests, and inspection services as required by the specifications. The Design-Builder shall provide written reports of observations, recommendations, and testing activities as the Project progresses. Design-Builder shall make a written report on a biweekly basis to the Owner. All tests pertaining to physical or chemical properties of materials must be made in a laboratory approved by the Owner's Representative. The Design-Builder shall include all applicable tests required by ASTM in the specifications. The specifications will also include all tests and inspections required by Codes and Standards.
 - ii. The Owner will pay for the costs of special inspections and any additional tests the Owner deems necessary. However, if such tests indicate that the workmanship or materials used by the Design-Builder are not in conformance with the Construction

Documents, approved shop drawings, or the approved materials, the Design-Builder shall pay for the tests and/or re-tests and remove all Work and material failing to conform, and replace with Work and materials in full conformity, without additional cost to the Owner, and to the Owner's satisfaction.

- iii. The Design-Builder shall provide a listing in the specifications of all testing, inspections, and special inspections required by the building commissioner.
- iv. The special inspections scope of work may include, but is not limited to sampling, field tests, laboratory tests, inspection services to verify soil classifications, moisture density of soils, observation of subgrades to receive compacted structural fill for building and pavement support, observation of pavement subgrades to receive compacted base course material, observation of fill placement and field density testing, observation of footing subgrades to evaluate suitable bearing, observation of concrete pours, field concrete slump testing, air content testing, molding of concrete cylinders, laboratory curing and compression testing of concrete, observation of steel installation, ultra-sonic testing of steel moment connections, steel weld testing and any other tests required by standards or codes referenced in the specifications to include, but not limited to IBC, IEC, IPC ASTM, ACI, PCI, AISC, NFPA, of NEC, etc. It shall also include reporting to the Owner and Design-Builder the status of the testing bi-weekly or at a schedule established by the Owner's Representative.
- v. If such tests indicate that the workmanship or materials used by the Design-Builder are not in conformance with the Construction Documents, approved shop drawings, or the approved materials, the Design-Builder shall pay for the re-tests. The Design-Builder shall remove all Work and material failing to conform, and replace with Work and materials in full conformity, without additional cost to the Owner, and to the Owner's satisfaction.
- i. Inventory of Samples. The Design-Builder shall maintain an inventory of all approved samples until final Inspection of the Project. Such samples shall be available to Owner for additional viewing, inspection and testing, as deemed necessary by the Owner, at reasonable times.

2.5 Measurements, Drawings, Specifications

2.5.1. Requirement for Verification of Measurements/On Site Documents.

- a. The Design-Builder shall keep at the site copies of the Contract Documents and shall at all times give the Owner's Representative and any designated representative access to them.
- b. When the word "similar" appears on the Plans, it has a general meaning and must not be interpreted as meaning identical, and all details must be worked out in relation to their location and connection with other parts of the Work.

- c. In case of discrepancy either in figures, Plans, or Specifications, the matter must be promptly submitted to Designer, who shall provide a determination in writing, for approval by the Owner's Representative in writing. Any adjustment by the Design-Builder without such approval will be at the Design-Builder's own risk and expense. The Design-Builder shall furnish from time to time such detailed Plans and other information as may be deemed reasonably necessary by Owner's Representative.

2.5.2. Plans and Specifications requirements.

The following requirements apply to Design-Builder's responsibility to cause the Plans and Specifications to be properly prepared:

- a. Required technical Specifications shall be prepared in accordance with the applicable standards. Specifications must be complete, concise, and reasonably free of repetition and ambiguity. Care must be exercised to avoid specifying the same Work in more than one section and to avoid duplication or conflict with the general provisions, special provisions, and the Plans.
- b. The Specifications shall be submitted on 8-1/2"x11" sheets in 3-ring binders for ease in adding addendum.
- c. If guide specifications are not furnished, typical specifications developed and used by the Designer in general practice shall be used in preparing contract Specifications. The CSI Format for Construction Specifications, CSI Document MP-2A, shall be used in the arrangement of Project Specifications.
- d. Testing to establish compliance with the Contract Documents for critical items or critical portions of the Work shall be specified as the Design-Builder's responsibility, subject to Supplemental Condition Section 2.4.g. Testing shall be consistent with that required under standard commercial practices as approved by Owner's Representative and/or the local building officials. Any testing requirements specified do not limit the Owner from having additional testing and inspection performed in Owner's discretion.
- e. Submittals such as shop drawings, samples, and certificates shall be specified as necessary to establish compliance with the Contract Documents for critical portions of the Work. The Design-Builder should not require submittals for minor commercial items or for items of marginal value. The Design-Builder shall include in the mechanical and electrical sections the extent of a manufacturer's literature, rating data, performance curves, spare part lists, and shop drawings that must be furnished for review and approval before procurement.
- f. The Specifications shall require the Design-Builder to make tests of heating and air conditioning systems, as installed, to demonstrate that the equipment will perform as required. The results of the tests are to be submitted before the final inspection.

Manufacturer's representatives may be required for inspection, start-up, and instructions in the operation and maintenance of equipment and the Design-Builder shall ensure their presence for such purposes if requested by the Owner. Commissioning may be provided by the Owner and the Design-Builder shall cooperate with the commissioning agent providing all documentation and demonstrations required.

- g. The Specifications shall require that the Design-Builder furnish manufacturer's manuals, spare parts lists, diagrams, instructions, performance data, curves, and shop drawings as approved for major items of equipment to be installed in the Work.
- h. All required Plans shall be prepared and furnished as reproducible tracings. All final Plans must be 8-1/2" x 11", 11" x 17", 18" x 24", 24" x 36", or 30" x 42", trim-to-trim, with Owner title block, graphic scale, and metric conversion table. Drawing methods and quality must permit satisfactory, clear, and legible one-half (1/2) size reproduction. Lettering on the Plans will not be smaller in height than .12 (1/8) inch freehand or .10 inch mechanical.
- i. All final Plans shall be detailed as necessary for efficient execution of the construction Work. They must conform to the above general requirements and the requirements previously stated. All original Plans must be prepared at an adequate scale to properly present the design data development including detailed features. Drawing scales for buildings or structures smaller than 118-inch = 1'-0" are not permitted without prior written approval of the Owner's Representative.
- j. The electrical design must be separated into two Plans, when necessary to avoid congestion: one devoted to the power, receptacle, telephone, fire alarm and intercommunication systems, and the other to lighting. Similarly, the plumbing and heating/air conditioning must be separated, when necessary to avoid congestion. A minimum scale of 1/4-inch = 1'-0" must be used for all details of areas of congestion such as mechanical rooms, toilet rooms, and the like, and as may otherwise be reasonably designated by the Owner's Representative. Drawing scale for site, utility, or other related Work outside five foot building line), including details (engineer's) must clearly and adequately reflect the design data developed. Plans must be organized and provide appropriate details of the site Work (layout, grading, paving, and drainage) and the utilities (water, sewer, gas, power, and communications) separate from the building and/or structure Plans.
- k. All design submissions prepared using CADD support shall be accompanied by electronic files of the submission in AutoCAD, in a version compatible with the Owner's computer system which uses Autodesk® Architectural Desktop.
- l. Any discrepancies in figures, Plans, Specifications, or submittals shall be promptly resolved by the Design-Builder. Design-Builder shall immediately notify the Owner's

Representative of any discrepancies in such Plans and/or Specifications and confirm such notice in writing within five (5) calendar days.

- m. The Specifications shall include, to the satisfaction of the Owner, training of Owner's personnel on the operation and maintenance of systems and equipment. In addition, the Specifications shall include, to the satisfaction of the Owner, the development and submittal of operations and maintenance manuals, to include three (3) copies of each such document.
- n. Design-Builder shall be responsible for making all changes in the Work necessary to adapt and accommodate any equivalent product or item that it uses. The necessary changes shall be made at the Design-Builder's sole expense.
- o. The Design-Builder shall, as requested by the Owner's Representative, provide all design calculations, which may include, but are not limited to, structural steel, mechanical, electrical, plumbing and civil calculations.

2.5.3 Shop Drawings, Submittals, Coordination Drawings, and Schedules.

- a. The Design-Builder shall submit to the Owner's Representative, in triplicate, a schedule listing all items that will be furnished for review and approval no later than thirty (30) days after Owner's final approval of Plans and Specifications. For example, the schedule must include shop drawings and manufacturer's literature, test procedures, test results, certificates of compliance, material samples, and special guarantees, etc. The schedule must indicate the type of item, contract requirement reference, the Design-Builder's scheduled date for submitting the above items, identification of the first scheduled activity and projected needs for approval answers to support procurement or installation. In preparing the schedule, reasonable time will be allowed for review, approval, and possible re-submittal. Also, the scheduling shall be coordinated with the approved construction progress chart. The Design-Builder must revise and/or update the schedule as the Owner's Representative reasonably directs. Such revised schedule must be made available to the Owner's Representative for monitoring.
- b. The Design-Builder shall submit to the Owner's Representative shop drawings, coordination drawings, and schedules for approval as required by the Specifications or requested by the Owner's Representative, as follows:
 - i. Shop drawings shall include fabrication, erection, and setting drawings, schedule drawings, manufacturer's scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.
 - ii. Drawings and schedules, other than catalogs, pamphlets and similar printed material, shall be reviewed, signed and submitted in reproducible form with three prints made by a process approved by the Owner's Representative. Upon

approval, the reproducible form will be returned to the Design-Builder who shall furnish the number of additional prints, not to exceed ten. The Design-Builder shall submit shop drawings in catalog, pamphlet, and similar printed form in a minimum of four copies plus as many additional copies as the Design-Builder may desire or need for the use of subcontractors.

- iii. Approval by the Owner's Representative is to validate conformance with the owner's intent, and does not relieve the Design-Builder from any design liability for the approved submittals.
- c. Before submitting shop drawings on the mechanical and electrical Work, the Design-Builder shall obtain the Owner's Representative's written approval of lists of mechanical and electrical equipment and materials as required by the Specifications.
- d. The Design-Builder must check the drawings and schedules and coordinate them (by means of coordination drawings whenever required) with the Work of all trades involved before submission, indicating approval on them. Drawings and schedules submitted without evidence of subcontractors/trades' approval may be returned for resubmission.
- e. Each shop drawing or coordination drawing must have a blank area 5 x 5 inches, located adjacent to the title block. The title block must display:
 - i. Number and title of drawing;
 - ii. Date of drawing or revision;
 - iii. Name of Project building or facility;
 - iv. Name of Design-Builder and, if appropriate, of Subcontractor submitting drawing;
 - v. Clear identity of contents and location on the Work;
 - vi. Project title and contract number; and
 - vii. A unique 9 digit alphanumeric transmittal number containing the Specification number (5 digits), sequence number (3 digits), and iteration letter (1 digit) clearly identifying the stage of the submittal process.
- f. Unless otherwise provided in this Agreement, or otherwise directed by the Owner's Representative, shop drawings, coordination drawings, and schedules must be submitted by Design-Builder sufficiently in advance of construction requirements to permit fourteen (14) calendar days, excluding delivery time to and from the contractor, for checking and appropriate action by the Designer. Such items shall be

submitted to the Owner's Representative (2 copies) for review concurrently with the Designer's review.

- g. Except as otherwise provided in Subparagraph h. below, approval of drawings and schedules will be general and may not be construed as:
 - i. Permitting any departure from the requirements of the Contract Documents; or
 - ii. Relieving the Design-Builder of responsibility for any errors, including details, dimensions, and materials.
- h. If drawings or schedules show variations from the requirements of the Contract Documents because of standard shop practice or for other reasons, the Design-Builder must clearly describe the variation in the letter of transmittal. If acceptable, the Owner's Representative may approve any or all variations and issue an appropriate Change Order. If the Design-Builder fails to describe these variations, it is not relieved of the responsibility for executing the Work in accordance with the Contract Documents, even though the drawings or schedules have been previously approved.
- i. Shop drawings, samples, color schedules, catalog cuts, construction schedule, etc. submitted to Owner's Representative must first be reviewed by the Designer to verify compliance with the Construction Documents. The Owner's Representative reserves the right to review building shop drawings, and formwork and falsework drawings. Such submittals shall be only in response to a specific request by the Owner's Representative.
- j. The Design-Builder shall prepare and submit equipment room layout drawings and drawings of areas where the equipment proposed for use could present interface or space difficulties. Room layout drawings must conform to the requirements established for drawings. Layouts must be submitted within forty (40) calendar days after completion of final construction drawings. Submittals describing the various mechanical and electrical equipment items which are to be installed in the areas represented by the layout drawings must be assembled and submitted concurrently and accompanied by the room layout drawings. Room layout drawings must show all pertinent structural and fenestration features and other items such as cabinets required for installation and which will affect the available space. All mechanical and electrical equipment and accessories must be shown in scale in plan and also in elevation and/or section in their installed locations. Duct work and piping also must be shown. Equipment room layout designs must ensure all equipment is accessible for maintenance, repair and replacement.
- k. All shop drawings, ductwork drawings, and sprinkler drawings must be on 30" x 42" sheets to fit the size of the Project Plans.

- l. At the completion of the Project, updated ductwork drawings and sprinkler drawings must be submitted as part of the "As-Built" drawings submission.
- m. All certificates required for demonstrating proof of compliance of materials with Specification requirements, including mill certificates, statements of application, and extended warranties, must be executed in quadruplicate and furnished to the Owner's Representative. It is the Design-Builder's responsibility to review all certificates to ensure compliance with the requirements of the Contract Documents and that all affidavits are properly executed prior to submission to the Owner's Representative. Each certificate must be signed by an official authorized to certify on behalf of the manufacturing company. Each certificate must contain the name and address of the manufacturer, the Project name and location, and the quantity and date(s) of shipment or delivery to which the certificate(s) apply. Copies of laboratory test reports submitted with certificates must contain the name and address of the testing laboratory and the date(s) of the tests to which the report applies. Certification shall not be construed as relieving the Design-Builder from furnishing satisfactory material, if, after test(s) are performed on selected sample(s), the material is found not to meet the specified requirements.
- n. Designer shall review and take action on all shop drawings and samples. All approvals must be in accordance with the terms of the Contract Documents. Processing will be accomplished in accordance with the following procedure:
 - i. Prime Construction Contractor shall transmit reproducible copies of shop drawings etc. to the Designer for review. Information copies of the letter of transmittal, clearly identifying shop drawings, etc., shall at the same time be furnished to the Owner's Representative.
 - ii. As a result of Designer's review, each submittal will be marked by Designer as follows:

"Approved": The fabrication, manufacture and/or construction may proceed providing the Work is in compliance with the Contract Documents.

"Approved as Noted": The fabrication, manufacture and/or construction may proceed providing the Work is in compliance with Designer's notations and the Contract Documents.

"Rejected": No Work shall be fabricated, manufactured or constructed and a new submittal is required. No Work for a submittal marked "C-Action" shall be permitted on site.
 - iii. The Design-Builder is responsible for obtaining prints of all "Approved" and "Approved as Noted" reproducible shop drawings and distributing them to the

field and to the subcontractors. Concurrently, two (2) copies of each print shall be provided to the Owner's Representative.

- iv. The Design-Builder is responsible for obtaining copies of all "Approved" and "Approved as Noted" manufacturer's descriptive literature, literature, catalog cuts and brochures and distributing them to the Contractor. Concurrently, two (2) copies of each shall be provided to the Owner's Representative.
- v. The Design-Builder is responsible for submitting new shop drawings, brochures and/or samples to replace all "Rejected" items and furnishing two (2) copies to the Owner's Representative.
- vi. The Design-Builder is responsible for maintaining the Shop Drawing Log. An updated copy of the Log shall be furnished to the Owner's Representative no less than monthly.

2.5.4. Record "As Built" Drawings.

- a. The Design-Builder shall, during the progress of the Work, keep a master set of prints on the job site (Record or also referred to as "As-Built" drawings) on which is kept a complete, careful and neat record of all deviations from the Construction Documents made during the course of the Work.
- b. The Design-Builder shall provide the Owner with one, complete, reproducible set of the Construction Documents incorporating the revisions and changes made during construction up to acceptance of the Project. These updated Plans and Specifications shall reflect all changes to the Construction Documents to indicate the "As-Built" conditions, including revisions in site and building area tabulations. These Plans and specifications must be certified as to their correctness by the signature of the Design-Builder and Designer and used in preparing a permanent set of "As-Built" drawings.
- c. In addition to reproducible submissions, the Design-Builder must submit a CADD system electronic file for these "As Built" documents prepared with a CADD system compatible with the Owner's AutoCAD system.
- d. The Owner reserves the right to review "As-Built" documents at any time during the Project.
- e. The Design-Builder shall forward all "As-Built" drawings, specifications and photographs to the Owner's Representative not later than thirty (30) calendar days after Project completion.
- f. Any part of the costs associated with the preparation and completion of the "As-Built" drawings will not be paid to Design-Builder by Owner until the As-Built drawings are provided to and approved by the Owner's Representative.

2.5.5 Spare Parts Data.

- a. The Design-Builder shall furnish spare-parts data for each different item of equipment furnished. The data must include a complete list of parts and supplies, with current unit prices and sources of supply; a list of parts and supplies that are either normally furnished at no extra cost with the purchase of the equipment, or specified to be furnished as part of the Contract Documents, and a list of additional items recommended by the manufacturer to ensure efficient operation for a period of 360 days at the particular installation.
- b. The foregoing does not relieve the Design-Builder of any responsibilities under any of the guarantees specified and/or provided.

2.6 Owner's Representative Field Office.

- a. The Field Office for the Owner's Representative shall be adjacent to the construction contractor's trailer ready for use and occupancy within fourteen (14) days from the construction Notice to Proceed through Final Completion.
- b. The Field office shall be an approved prefabricated office trailer equal to Williams Scotsman model MO 5010, 10' x 46', with restroom, vinyl or wood paneled walls, vinyl tile floors, gypsum ceiling, private office furnished with built-in desks, file cabinets, plan table, overhead shelves, overhead fluorescent lights, breaker panel, central HVAC, windows with insect screens, security window screens, entry door security bars and locks, skirting, anchors, entry steps and/or ramp. Furniture shall include a plan rack to hold working drawings, padded swivel armchair for each representative, drafting stools, two (2) four drawer legal size metal filing cabinets, and one (1) 36" x 30" inch tack board. Temporary utility service shall be provided, including, but not limited to, water, sewage, trash, electric (generator if needed), telephone and high speed internet service. Design-Builder shall provide a minimum of two (2) telephone lines and a high speed internet service, modem and router. The restroom shall be connected to sanitary sewer and water lines, or approved equal. Drinking water shall be provided by bottled water from an outside vendor. Weekly janitorial cleaning and maintenance service, and daily trash removal and disposal shall be provided. At the completion of work, or as directed by the Owner's Representative, remove off-site the field office and related structures and restore area to the original site condition or as indicated in the Construction Documents.

SC Article 3 Owner's Services, Rights and Responsibilities

[See General Conditions of Contract]

**SC Article 4
Hazardous Conditions and Differing Site Conditions**

[See General Conditions of Contract]

**SC Article 5
Insurance and Bonds**

[See General Conditions of Contract]

**SC Article 6
Payment**

6.1 Payment for Equipment Purchase

Notwithstanding anything in this Agreement to the contrary, Design-Builder is not entitled to payment for any equipment purchases until Design-Builder submits to Owner a request to purchase such equipment and Owner approves the request in writing. Design-Builder shall supply additional information as requested by Owner to enable Owner to make a decision on the submittal. Upon approval of such submittal(s), Design-Builder may invoice Owner for not more than ten (10%) percent of the Contact Price attributable to that item as demonstrated by a supporting invoice from the equipment supplier.

For all other payment provisions, see the General Conditions of Contract.

**SC Article 7
Indemnification**

[See General Conditions of Contract]

**SC Article 8
Time**

8.1 Construction Schedule / Progress Chart.

- a. Within ten (10) working days after receiving Notice to Proceed for each phase, the Design-Builder shall prepare and submit to the Owner's Representative a complete detailed design and construction schedule in the form of a electronic file and six (6) copies of a practical progress chart. The schedule shall show the principal categories of work,

corresponding with those used in the breakdown on which progress payments are based, the order in which the Design-Builder proposes to carry on the Work, the date on which it will start each category of Work, and the contemplated dates for completion. The design and construction schedule must be in suitable scale to indicate graphically the total percentage of Work scheduled to be in place at any time. The Design-Builder shall use a Critical Path Method (CPM) format. This schedule shall use Primavera Scheduling software (Primavera Contractor P6), with at least 100 activities including sitework, procurement, delivery, commissioning, significant owner activities, and installation of construction materials and equipment. Activities shall be organized by work areas, and work breakdown structure, and shall be fully cost loaded such that the sum of all activities equals the total GMP. An "earned value report" shall be used as the feeder report for the Schedule of Values for the purpose of determining progress payment. No activity shall have a value exceeding \$40,000 dollars, or a duration longer than 10 working days, without prior approval of the Owner's Representative. A critical path shall be developed based on scheduling logic that identifies all successor and predecessor activities and float. Activities of like duration, programmed for different times of the year shall be modified to account for weather that can reasonably be expected by the Design-Builder. Activity constraints shall be avoided. Such software and schedule shall be compatible with the Owner's computer system and scheduling software. This will allow the Owner's Representative to efficiently process each pay application in Expedition, using the AIA G702/G703 format where the G703 back up listing will be the Schedule of Values in CSI division format so that the Owner will only be paying for work actually completed by the Design-Builder.

At the end of each progress payment period, or at such reasonable intervals as directed by the Owner's Representative, the Design-Builder shall:

1. Revise the design and construction schedule to reflect any changes in the Work, completion time, or both, as approved by the Owner's Representative;
 2. Enter on the design and construction schedule the total percentage of Work actually in place; and
 3. Submit three (3) copies of the adjusted design and construction schedule, and a complete electronic update, to the Owner's Representative.
- b. If at any time the Work falls behind the design and construction schedule after taking into consideration any excusable delays as defined in General Condition Article 8, Design-Builder shall take such action as necessary to improve progress. The Owner's Representative may require the Design-Builder to submit a revised design and construction schedule demonstrating its proposed recovery plan to make up the lag in scheduled progress. The plan shall show how the Design-Builder shall achieve recovery by increasing resources and/or work times (if approved by Owner). If the Owner's Representative finds the proposed plan unacceptable, the Design-Builder may be required to submit a new plan. If the new plan submitted is not reasonable, after

consultation with the Design-Builder, the Owner's Representative may require the Design-Builder to increase the work force, accelerate the planned construction volume, increase assigned construction equipment, or the number of work shifts, or take other appropriate action, all without increase to the GMP.

- c. Design-Builder shall update the schedule and issue a progress report each month. If after the update has been performed the actual durations of recurring activities are longer than the original durations, the Design-Builder shall issue a written plan that indicates the additional resources to be allocated to those activities showing how they will achieve the planned duration. Alternatively, the durations of all subsequent occurrences of that type of activity shall be increased to reflect actual production, and the Design-Builder shall issue a recovery plan to the Owner's Representative within ten (10) days showing how the project will get back on schedule.
- d. Failure of the Design-Builder to comply with any of these requirements will be considered grounds for a determination by the Owner's Representative that the Design-Builder is failing to prosecute the Work with such diligence as will ensure its completion within the time specified.

8.2 Exception to Completion Schedule and Liquidated Damages.

In cases where the parties agree in writing that sodding and/or planting and/or specified maintenance thereof is not feasible during the construction period, such Work will be excepted from the completion schedule and the liquidated damages provision of Comprehensive Agreement Article 8. However, such Work must be accomplished or completed during the first sodding and/or planting period or the specified maintenance period following the original completion date within the same number of days originally scheduled for such activity. This shall also include items not contracted to the Design-Builder, but directly contracted by the Owner with other vendors and which is required to complete and provide a fully functional facility; the failure of Owner's other vendors to provide or complete their work shall not affect either Substantial Completion or Final Completion of the Work by Design-Builder.

SC Article 9 Changes to the Contract Price and Time

[See General Conditions of Contract]

SC Article 10 Contract Adjustments and Disputes

[See General Conditions of Contract]

**SC Article 11
Stop Work and Termination for Cause**

[See General Conditions of Contract]

**SC Article 12
Electronic Data**

[See General Conditions of Contract]

**SC Article 13
Miscellaneous**

13.1 Inspections and Acceptance

13.1.1 Omitted.

13.1.2 Omitted.

13.1.3 Technical Supervision.

- a. Performance of the Work is subject to technical input by representatives of the Owner. Technical input includes suggestions to the Design-Builder which fill in technical details, suggest possible lines of inquiry, or otherwise clarifies the Scope of Work, but do not constitute new scopes of Work.
- b. The Owner reserves the right to use Project Management Support Services (PMSSC) personnel, or other qualified personnel under contract to the Owner, to provide such technical supervision.

13.1.4 Approval of Design.

- a. The Owner's Representative must approve all final Plans and Specifications. However, phased or fast track construction may commence prior to approval of final Plans and Specifications, provided the Owner's Representative has approved Plans and Specifications covering only that phase of the Work. The Owner's Representative's review will be primarily for general arrangement and compliance with Owner requirements included as part of the Agreement.

Owner's Representative's approval shall not be construed as:

1. Permitting any departure from the Agreement requirements, without specific prior written approval.
 2. Relieving the Design-Builder of responsibility for any errors including, but not limited to, details, dimensions and materials.
 3. Relieving the Design-Builder of responsibility for compliance with all applicable codes of local, state, or federal codes, regulations and laws.
- b. After approval of Plans and Specifications, the Design-Builder shall be responsible for revising Plans and Specifications to correct all deficiencies from requirements of this Agreement. Copies of revised Plans and Specifications will be furnished to the Owner's Representative. There will be no modification to any fee or to the GMP to the Agreement, as a result of corrections of such deficiencies.

13.1.5 Project Closeout.

Unless specified for an earlier date elsewhere in this Agreement, the Design-Builder must process all documents, changes, claim submissions, complete all Project closeout items, provide warranties, as-built drawings, and submit a final report certifying that this action has been taken not later than sixty (60) days after the date of Substantial Completion.

13.1.6 Asbestos Free and Lead-Based Paint Free Certification.

The Design-Builder must certify that no asbestos-containing building materials or lead-based paints (interior or exterior) were used in this Project. The Design-Builder must include completed and unaltered asbestos free and lead-based paint certifications as a closeout submittal document. The only acceptable alternative for asbestos and lead based paint certification is to conduct a post-construction asbestos and lead paint survey in accordance with AHERA requirements.

13.2 Protection of Persons And Property

13.2.1 Accident Prevention.

- a. All construction and other Work on this Project must be performed in compliance with the Occupational Safety and Health Act of 1970 and with local, state and federal occupational safety and health regulations enforced by an agency of the locality or state under a plan approved by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). Where requirements are different or in conflict, the more stringent requirement will apply.
- b. The Design-Builder shall maintain or require maintenance by the Prime Construction Contractor of an accurate record of exposure data and all accidents incidental to Work performed under this Agreement resulting in death, traumatic injury, occupational disease, or damage to property, material, supplies, or equipment. The Design-Builder

must submit regular Project safety reports, exposure data, and accident reports, as prescribed by the Owner's Representative.

c. Health and Safety Plans are required as follows:

1. Prior to commencing on-site Work, the Design-Builder must submit to the Owner's Representative, in triplicate, a Health and Safety Plan designed to provide a system by which hazards on the Project site will be controlled to minimize or eliminate occupational injuries or illnesses during performance of the contract.
 2. The Health and Safety Plan must state that the Prime Construction Contractor, Designer, and all subcontractors are required to comply with the Design-Builder's Project safety rules and requirements issued under the authority of that program.
 3. The Health and Safety Plan must identify, by name, the Design-Builder's representative responsible for the execution of the Project safety program. The Design-Builder's Project safety representative must have the express written authority from the Design-Builder to stop work, to abate hazardous conditions or unsafe practices, and to eject any Design-Builder, Subcontractor, or vendor employees from the Project site for failure to comply with safety requirements.
 4. The Health and Safety Plan must include the precautionary measures to be taken to protect Owner staff, employees and the public.
- d. The authority, responsibilities, and duties of the Design-Builder's Project safety representative must be incorporated as part of the written Health and Safety Plan. The safety responsibilities include, but are not limited to, conducting subcontractor construction safety program reviews, conducting employee safety orientation training, conducting weekly safety meetings, conducting daily site safety inspections, auditing Subcontractor safety compliance, and preparing required periodic and special safety reports.
- e. In addition to the general requirements of Health and Safety Standards, the Design-Builder, Designer and Prime Construction Contractor, specifically must comply with applicable OSHA requirements concerning Hazard Communications Standards. Details of the Design-Builder's hazard communications program shall be included in the Health and Safety Plan.

13.2.2 Health and Safety Standards.

a. In performing this contract, the Design-Builder must:

1. Comply with applicable Occupational Safety and Health Standards promulgated pursuant to the authority of the Occupational Safety and Health Act of 1970 (OSHA).

2. Comply with any other applicable federal, state, or local regulations governing workplace safety to the extent they do not conflict with a.1. above; however, the more stringent shall apply.
 3. Comply with any Owner standard unless the OSHA standard contains more rigorous or stringent safety requirements, in which case the OSHA standard governs and takes precedence.
 4. Take all reasonable precautions to protect the safety and health of the Design-Builder's employees, Owner staff, employees, and the public.
- b. The Design-Builder must coordinate its use of existing Owner premises with the Owner's Representative. Subjects of this coordination include the designation of work and storage areas; the extent, if any, of use by the Design-Builder of Owner tools and equipment; the furnishing by the Design-Builder of appropriate signs and barricades to exclude unauthorized personnel from the work areas and to call attention to hazards and dangers; and other matters relating to the protection of Owner staff, employees, property and the public.
 - c. Materials, supplies, articles, or equipment manufactured or furnished under this Agreement or order must conform to the Occupational Safety and Health Standards pursuant to the authority of OSHA, and to other safety and health requirements specified in this Agreement or order. When conducting work on existing facilities, the Design-Builder must provide the Owner's Representative copies of Material Safety Data Sheets (MSDS) for any hazardous material, as defined by OSHA's Hazard Communications Standards, to be used on the job.
 - d. If no OSHA standard exists, federal or other nationally recognized standards apply. Copies of current Occupational Safety and Health Standards are available from regional and/or area offices of the U.S. Department of Labor, Occupational Safety and Health Administration.

13.2.3 Protection of the Environment, Existing Vegetation, Structures, Utilities, and Improvements

- a. The Design-Builder shall perform all Work necessary to implement and accomplish a program to prevent environmental pollution during or as a result of construction performed under this Agreement. As a minimum, the Design-Builder's Work must conform to all requirements of applicable federal, state and local law.
- b. The Design-Builder must preserve, protect and maintain all existing vegetation (such as trees, shrubs, and grass), landscape features, athletic fields, and structures on or adjacent to the site of Work that are not to be removed. Care must be taken in removing trees authorized by the Owner's Representative for removal, to avoid damage to vegetation that will remain in place. Any trees or other landscape features

scarred or damaged by the Design-Builder's equipment or operations must be restored by the Design-Builder. The Owner's Representative decides what method of restoration must be used and whether damaged trees and/or shrubs will be treated or replaced. The Design-Builder shall use guard posts or barriers as necessary to control vehicular traffic passing close to trees and/or shrubs to remain. Areas disturbed, such as temporary roadways or embankments, must be restored to near natural conditions that will permit the growth of vegetation. Disturbed areas must be graded and filled as required, covered with six inches of topsoil and landscaped as per the Contract Documents.

- c. The Design-Builder shall protect from damage all existing buildings, improvements or utilities at or contiguous to the site of the Work, the location of which is known, and must repair or restore any damage to these facilities resulting from failure to comply with the requirements of this Agreement or to exercise reasonable care in performing the Work. If the Design-Builder fails or refuses to repair such damage promptly, the Owner's Representative may have the necessary Work performed and charge the cost to the Design-Builder, who shall pay such costs to the Owner in a prompt manner.
- d. The Design-Builder shall obtain approval from the Owner's Representative for any temporary roads, embankments and disposal areas not included in Project Specifications or Plans and restore such areas to original conditions, including appropriate landscaping, upon the completion of Work.
- e. Monuments, markers and works of art must be protected. Items discovered that have potential historical or archeological interest must be preserved. The Design-Builder must leave the archeological find undisturbed and must immediately report the find to the Owner's Representative so that the proper authority may be notified. The GMP and time shall be equitably adjusted in accordance with the provisions of this Agreement if the Design-Builder incurs additional cost or time to perform as a result of any such discovery.
- f. Design-Builder shall follow all Environmental Protection Agency, Virginia Department of Environmental Quality and other applicable governmental regulations and guidelines, as to the labeling, use, storage and disposal of "hazardous waste", which shall for the purposes of this agreement be defined as (a) any chemical, substance, material, mixture, contaminant or pollutant now or hereafter defined as a "hazardous substance" under the comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time; (b) petroleum, crude oil, or any fraction thereof; (c) any pollutant, contaminant, special waste or toxic substance now or hereinafter listed, defined by or subject to regulation under any federal, state or local statute, ordinance, rule, regulation, standard, policy, guidance, permit, order, administrative or judicial decision or pronouncement, previously, currently or hereafter in effect, as amended from time to time, pertaining to health, safety, or the

environment, including without limitation, natural resources, environmental regulation, contamination, pollution, cleanup, or disclosure.

13.2.4 Access to Site.

- a. The Design-Builder's access to the site and use of existing roads will be as agreed to by the Design-Builder and the Owner's Representative including issuing vehicle passes for construction and private vehicles.
- b. Design-Builder shall not permit workers to carry firearms or other deadly weapons onto any Owner construction site or into any facility, including in their personal or construction vehicles. This supersedes any state or local law permitting the carrying of firearms or weapons. Violation of this clause shall be grounds for removal of individuals or contractors from the site or termination for default.

13.2.5 Elevator Work-Qualifications.

- a. The Design-Builder, Prime Construction Contractor, or the subcontractor whom the Design-Builder uses for performance of the elevator work, must have had at least three (3) years of successful experience in installing and servicing elevators.
- b. In addition, the Design-Builder, the Prime Construction Contractor, or its subcontractor must have installed, on at least two prior projects, elevators comparable to those required for this Project that have performed satisfactorily under conditions of normal use for a period of not less than one (1) year. To be considered comparable, prior installations must have not less than the same number of elevators operating together in one group as the largest number in any group specified for this Project, except that a group of four may be considered comparable to a large group specified for this Project.
- c. A list of the prior comparable installations by the Design-Builder, the Prime Construction Contractor, or its subcontractor, together with the names and addresses of the buildings, the names of the owners or managers, and any other pertinent information required must be submitted promptly upon request of the Owner.
- d. The names, addresses, experience, and statement of work to be performed by each subcontractor or second-tier subcontractor whom the Design-Builder, Prime Construction Contractor, or the principal subcontractor, as the case may be, will use for performance of minor portions of the installation of elevators must also be submitted promptly upon request of the Owner.
- e. The Owner's Representative may reject the proposed elevator subcontractor if it is determined that it has failed to meet the experience requirements, or if it has been found to have an unsatisfactory record of prior elevator installations. In the case of

rejection, the Design-Builder must resubmit another name within ten (10) days for renewed consideration.