

INTERIM AGREEMENT

THIS INTERIM AGREEMENT (Agreement) is entered into as of January ³¹, 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



1/30/23
Date

By: Matthew T. Schutte

Title: President

