

City of Alexandria, VA



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Request for Proposals (RFP)

Waterfront Implementation Project

RFP1047 – ADDENDUM 3

THIS RFP REPRESENTS THE SECOND STEP OF A TWO-STEP PROCUREMENT PROCESS. ONLY THE RESPONDENTS THAT WERE SHORTLISTED AS A RESULT OF THE FIRST STEP OF THE PROCUREMENT PROCESS ARE ELIGIBLE TO RESPOND TO THIS RFP.

In accordance with Code of Virginia § 2.2-4343.1, the City of Alexandria does not discriminate against faith-based organizations in the performance of its purchasing activity.

NOTICE

PROPRIETARY/CONFIDENTIAL INFORMATION

Any records submitted to the City of Alexandria, VA (City) are available for inspection and copying upon request by any person or entity pursuant to the Virginia Freedom of Information Act. **Any records the vendor believes to be exempt from disclosure shall be specifically identified by the vendor on the submitted documents. The vendor may designate documents as trade secrets or proprietary information exempt from disclosure when submitting documents; however, designating the entire submission, prices, or any portion of the submission that does not contain trade secrets or proprietary information is prohibited by Virginia law. The vendor agrees to indemnify and hold harmless the City for loss, cost or expense resulting in whole or in part from any such identification or any denial of inspection based thereon.**

Anticipated Timeline Overview

Listed below are the tentative timeframes for events related to the RFP and the City’s due diligence process. The activities with specific dates must be completed as indicated unless otherwise changed by the City. The City reserves the right to modify any timeframe or deadline in the RFP by issuing a written amendment.

Event	Timeframe
RFP Issuance	2/21/2023
Draft Interim Agreement and Draft Comprehensive Agreement Comments Due Date and Time	3/3/2023 11:00 AM EST
Legal Proprietary Meetings	Week of March 6, 2023
Deadline for Receipt of Respondent Questions	3/27/2023
Technical Proprietary Meetings (Optional)	Week of March 20, 2023
City Issues Responses to Respondent Questions via Amendment	4/3/2023
Proposal Due Date and Time – REVISED PER ADDENDUM 3	4/14/2023 3:00 PM EST
Interviews	April 25 – 28, 2023
Public Hearing on Proposals (as required per PPEA)	5/13/2023
City Council Authorization of Interim Agreement (anticipated)	6/13/2023
Execution of Interim Agreement (anticipated)	6/20/2023

DUE TO COVID CONCERNS

All Proposals shall be submitted electronically via email. **SUBMIT VIA EMAIL TO:**
wynndell.bishop@alexandriava.gov
CC:
darryl.jackson@alexandriava.gov; matthew.landes@alexandriava.gov

Proposals sent by mail or by hand will not be accepted.

All documents submitted shall be in PDF format. If a document is not in PDF format the City may determine that the Respondent is non-responsive.

If the PDF file size exceeds 15MB, please send a link via email (and any access instructions or passwords) for a file share protocol (such as an FTP site or emailed link for www.wetransfer.com).

Please refer also to the attachment for the revised Interim Agreement per this Addendum 3. All changes from the Interim Agreement as issued in Addendum 2 are tracked in red text.

INTERIM AGREEMENT

This **INTERIM AGREEMENT** (“Interim Agreement”) is entered into this ____ day of _____, 2023 (“Effective Date of this Interim Agreement”) by and between the City of Alexandria, Virginia (“City”) and _____ (“Design-Builder”), with its principal place of business located at _____.

RECITALS

WHEREAS, the City intends to design and construct certain improvements associated with the City’s Waterfront Implementation Project (“Project”), with the Project goals including, among other things, increasing pedestrian connectivity, improving the park system, and mitigating floods caused by heavy rainfall, tidal backflow, and storm surges; and

WHEREAS, the City determined that its goals for the design and construction of the Project would be best-served by implementing a “progressive design-build” delivery process through a two-step, best value procurement process, as allowed under the Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code § 56-575 et seq.) (“PPEA”) and the Public-Private Education Facilities and Infrastructure Act Guidelines adopted and issued by the City (“PPEA Guidelines”) to implement the PPEA; and

WHEREAS, under the PPEA and PPEA Guidelines, the progressive design-build process results in a public entity contracting with a design-builder to perform the following sequential phases of services:

(a) Phase 1 Services, whereby the public entity and design-builder enter into an interim agreement requiring the design-builder to: (1) perform programmatic, design and other preliminary services to help the public entity determine the scope, price and schedule of the project; and (2) prepare and submit to the public entity a guaranteed maximum price (“GMP”) proposal that, among other things, establishes the commercial terms associated with the Phase 2 Services; and

(b) Phase 2 Services, whereby the public entity and design-builder (presuming that they reached agreement upon the commercial terms associated with the Phase 2 Services) enter into a comprehensive agreement, requiring the design-builder to complete the Project design, construct the Project in accordance with such design, and perform any other required tasks under the comprehensive agreement; and

WHEREAS, on or about October 3, 2022, the City issued a Request for Qualifications (“RFQu”) soliciting interested parties to submit a Statement of Qualifications (“SOQ”) to serve as the design-builder for the Project; and

WHEREAS, on or about November 18, 2022, Design-Builder submitted an SOQ, and on or about _____, the City notified Design-Builder that it was one of the shortlisted proposers invited to respond to a Request for Proposals (“RFP”); and

WHEREAS, on or about _____, Design-Builder submitted its proposal (“Design-Builder’s Proposal”) in response to the RFP; and

WHEREAS, on or about _____, the City notified Design-Builder that it was the successful proposer; and

WHEREAS, on or about _____, the City, after negotiating the commercial terms for Design-Builder's performance of the Phase 1A Services, notified Design-Builder that it was awarded this Interim Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the City and Design-Builder hereby agree as follows:

ARTICLE 1
DEFINITIONS AND CONTRACTING APPROACH

1.1 **Definitions.** For the purposes of this Interim Agreement, the following words and terms shall have the meanings specified below. Terms that are not otherwise defined herein have the meaning set forth in the Comprehensive Agreement. When a definition refers to the definition in the Comprehensive Agreement, such definition means the definition set forth in the version of the Comprehensive Agreement set forth in Exhibit 1.1(a).

Affiliate means, (a) any person or entity which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Design-Builder or any of its members, partners or shareholders holding an interest in Design-Builder; and (b) any person or entity for which ten percent (10%) or more of the equity interest in such person or entity is held directly or indirectly, beneficially or of record by: (i) Design-Builder; (ii) any of Design-Builder's members, partners or shareholders that own ten percent (10%) or more of Design-Builder or Design-Builder's members, partners or shareholders; or (iii) any Affiliate of Design-Builder under clause (a) of this definition. For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a person and/or entity, whether through voting securities, by contract, family relationship or otherwise.

Basis of Design has the meaning set forth in Section 2.1.2 below.

Basis of Design Documents mean those documents developed as part of the Phase 1A Services as set forth in Section 2.1.2 below.

Baseline Schedule means the schedule submitted by Design-Builder with its GMP Proposal that demonstrates, among other things, how Design-Builder shall complete all Phase 2 Services timely and achieve Substantial Completion on or before the Scheduled Substantial Completion Date.

Books and Records means all documents (whether paper, electronic, or other media) and electronically stored information, including, but not limited to, any and all books, correspondence, receipts, vouchers, estimates, records, contracts, cost data, schedules, subcontracts, schedules, job cost reports, and other data, including computations and projections, of Design-Builder related to bidding, negotiating, pricing, or performing the Work.

City means the City of Alexandria, Virginia.

City-Furnished Information means any written information provided to Design-Builder by or on behalf of the City in connection with this Interim Agreement, including but not limited to that information set forth in Exhibit 2.5.1.

City Indemnitee means and includes each of the City and Owner's Advisor, and, with respect to each of the foregoing, each of its respective representatives, officers, employees, members, or other constituent entities, subconsultants, authorized agents, and other duly authorized representatives.

City's Project Criteria mean the City's programmatic requirements and objectives for the Project, and specific criteria and requirements, as set forth in the Conceptual Design Report, and upon which the Basis of Design Documents shall be based.

Completed Work Product means: (i) Work Product that has been sealed with a professional engineer's stamp for and on behalf of Design-Builder; and (ii) all other Work Product that has been accepted and acknowledged by both Parties in writing as having been fully performed as of the date the City terminates Design-Builder for convenience pursuant to Section 11.2.1 below.

- *Comprehensive Agreement* means that contract awarded by the City to Design-Builder for the Phase 2 Services, the form of which is set forth in Exhibit 1.1(a).

Conceptual Design Report means that document designated as such in the City-Furnished Information.

Confidential Information has the meaning set forth in Section 14.2 below.

Contingency has the meaning set forth in the Comprehensive Agreement.

Contract Price has the meaning set forth in Section 4.1 below.

Cost of the Work has the meaning set forth in the Comprehensive Agreement.

DB-Related Entity means Design-Builder, Design Consultants and Subcontractors of any tier, and anyone for whose acts any of them may be legally or contractually responsible.

Day(s) or day(s) mean calendar day or days, unless specifically stated otherwise.

Designated City-Furnished Information has the meaning set forth in Section 2.5.2 below.

Design-Builder has the meaning set forth in the Preamble.

Design-Builder's Fee has the meaning set forth in Section 4.6.1 below.

Design-Builder's General Conditions has the meaning set forth in the Comprehensive Agreement.

Design-Builder's Proposal has the meaning set forth in the Preamble.

Design Consultant is a qualified, licensed design professional, eligible to provide, among other things, professional engineering, architectural and/or land surveying services, who is not an employee of Design-Builder, but is retained by Design-Builder or another DB-Related Entity, to furnish design services required under the Contract Documents. For the avoidance of doubt, the Lead Designer is a Design Consultant.

Early Work Packages has the meaning set forth in Section 5.7 below.

Effective Date of this Interim Agreement shall mean the date set forth on the first page of this Interim Agreement.

Final Phase 1A Schedule has the meaning set forth in Section 3.2.1 below.

GMP Proposal means that proposal submitted by Design-Builder to the City under Article 5 hereof.

GMP Proposal Acceptance Period means sixty (60) days from the date the City receives the GMP Proposal from Design-Builder.

GMP Proposal Design Documents means those design documents referenced in Section 5.2 below and upon which the terms of the GMP Proposal are based.

Good Engineering and Construction Practices mean those methods, techniques, standards, and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good engineering, equipping, installation, construction, commissioning, and testing practices for the design, construction, and improvement of capital projects similar to the Project in scope and complexity using the design-build delivery method, as followed in the locality of the Project.

Governmental Approval means any authorization, consent, approval, license, lease, ruling, permit, certification, exemption, or registration by or with any Governmental Unit.

Governmental Unit means any national, state, or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other person and/or entity having jurisdiction over the performance of the Work, the Project or the Parties.

Gross Negligence means: (a) a marked and flagrant departure from the standard of conduct of a reasonable person acting in the circumstances at the time of the alleged misconduct; (b) intentional wrongdoing or such wanton or reckless conduct or omissions as constitutes a reckless disregard for harmful, foreseeable and avoidable risks or consequences; or (c) a lack of care that demonstrates reckless disregard for safety (whether human safety or the safety of property), *provided, however*, that Gross Negligence does not include any act or failure to act insofar as it: (x) constituted mere ordinary negligence; or (y) was done or omitted in accordance with the prior written approval of all Parties.

Guaranteed Maximum Price (sometimes referred to as the "GMP") means that monetary value designated as such in the Comprehensive Agreement.

Incomplete Work Product means all Work Product other than Completed Work Product, including any Work that remains in a state of partial completion as of the date the City terminates the Design-Builder for convenience pursuant to Section 11.2.1 below.

Initial 90-Day Schedule means that schedule attached as part of Design-Builder's Proposal and set forth in Exhibit 3.2.1.

Interim Agreement Liability Cap is the difference between the monies paid to Design-Builder by the City under this Interim Agreement and the monies paid to Design-Builder for any Early Work Packages.

Key Personnel means those individuals designated as such in Exhibit 2.4.1.

Lead Designer means _____.

Legal Requirements mean all applicable federal, state, and local laws, codes, ordinances, rules, statutes, regulations, orders and decrees, and other requirements of any Governmental Unit, including, without limitation, any interpretation of such items by the applicable Governmental Unit.

Marine Work Subcontractor means _____.

Non-Reimbursable Costs has the meaning set forth in the Comprehensive Agreement.

Notice of Intent to Award means the written notice provided from the City to Design-Builder that the City intends to award Design-Builder the Comprehensive Agreement.

Notice of Non-Award means the written notice provided from the City to Design-Builder that the City does not intend to award Design-Builder the Comprehensive Agreement.

Open-Book Basis means allowing the City to review all underlying assumptions, records, stand-alone Subcontractor quotes, and other data associated with each element of pricing, or any adjustment thereto, including assumptions as to Costs of the Work, schedule, composition of equipment, equipment rates, labor rates and burdens, production rates, estimating factors, contingency and indirect costs, risk pricing, inflation and deflation rates, profit, home office overhead rates, fees, charges, levies, incentives, and other items reasonably required by the City to satisfy itself as to the reasonableness and accuracy of the amounts proposed by Design-Builder.

Owner's Advisor means Carollo Engineers, Inc., and its subconsultants.

Party or Parties means, as applicable: (a) in the singular, the City or Design-Builder; or (b) in the plural, the City and Design-Builder.

Payment Bond has the meaning set forth in Section 7.1.1(b) below.

Performance Bond has the meaning set forth in Section 7.1.1(a) below.

Phase 1 Compensation has the meaning set forth in Exhibit 4.2 below.

Phase 1 Services mean the work performed by Design-Builder under this Interim Agreement, including but not limited to those Phase 1 Services set forth in Exhibit 2.1.1.

Phase 1A NTP means the Phase 1A Notice to Proceed described in Section 3.1.1 below.

Phase 1A Services mean those services described in Section 2.1.2 below.

Phase 1A Services Schedule means that schedule developed by Design-Builder and approved by the City in accordance with Section 3.2.1 below.

Phase 1B NTP means the Phase 1B Notice to Proceed described in Section 3.1.2 below.

Phase 1B Proposal means that proposal submitted by Design-Builder to the City under Article 5 hereof.

Phase 1B Proposal Acceptance Period means sixty (60) days from the date the City receives the Phase 1B Proposal from Design-Builder.

Phase 1B Services mean those services described in Section 2.1.3 below.

Phase 1B Services Schedule means that schedule developed by Design-Builder and approved by the City in accordance with Section 3.2.2 below.

Phase 2 Services mean the work to be performed by Design-Builder under the Comprehensive Agreement, including any work that is part of an Early Work Package.

Pre-Existing Intellectual Property has the meaning set forth in Section 9.4 below.

Project means the Waterfront Implementation Project.

Project Organizational Chart has the meaning set forth in Exhibit 2.4.1.

RFP has the meaning set forth in the Preamble.

Scheduled Substantial Completion Date means the date that is set forth in the Comprehensive Agreement, which is the date by which Design-Builder is obligated to achieve Substantial Completion of the entire Work, subject to adjustment as set forth in the Comprehensive Agreement.

Self-Perform Work means Work performed by employees of Design-Builder, Marine Work Subcontractor, or any of their Affiliates.

Subcontract means any contract entered into by Design-Builder and any other DB-Related Entity in connection with the carrying out a portion of the Work.

Subcontractor means any person or entity (other than Design Consultants) with whom Design-Builder has entered into any Subcontract for such person or entity to perform any portion of the Work, including Suppliers.

Sub-Subcontractor means any person or entity having a direct contract with a Subcontractor.

Substantial Completion has the meaning set forth in the Comprehensive Agreement.

Supplier means any person or entity retained by a DB-Related Entity to provide Equipment and Materials, or construction equipment, supplies or other goods to be used in the performance of the Work but not incorporated into the Work.

Willful Misconduct means the intentional or deliberate commission of an act, or omission to act, when the person taking such action or omitting to take such action: (a) knows the action or omission is wrongful; or (b) is recklessly or consciously indifferent as to whether the act or omission is wrongful or not.

Work means the Phase 1 Services and the Phase 2 Services, inclusive of all work, services, activities and other obligations to be performed by Design-Builder under this Interim Agreement and the Comprehensive Agreement, including without limitation, design, engineering, permitting, procurement of Equipment and Materials, project management, supervision, construction, commissioning, start-up, testing and all other services and deliverables reasonably inferable from the Contract Documents as required for the proper and safe operation of the Project with the operating characteristics set forth in the Contract Documents and to otherwise achieve Final Completion.

Work Product means all drawings, specifications, calculations, data, models, images, materials, products, documents, and work developed or produced by or on behalf of Design-Builder in connection with the Project, including, without limitation all materials, products, and such items developed or produced by all Design Consultants and Subcontractors of any tier, in all forms, whether in hard-copy, digital or electronic data, or any other medium.

1.2 Contracting Approach. The City has entered into this Interim Agreement with Design-Builder for the limited purpose of having Design-Builder perform the Phase 1 Services. The Phase 1 Services have been subdivided into Phase 1A and Phase 1B Services, with the primary goal of Phase 1A being to develop an agreed-upon Basis of Design to enable the City to obtain requisite approvals for the Project's scope and budget. After the Basis of Design has been agreed upon, and presuming that the Parties reach agreement on the commercial terms for Phase 1B, Design-Builder will advance the design and ultimately provide the City with a GMP Proposal that will establish the commercial terms for Design-Builder executing the Phase 2 Services in accordance with the Comprehensive Agreement. If the Parties agree upon the terms by which Design-Builder will execute the Work in accordance with the Comprehensive Agreement and the Alexandria City Council approves an award of the Comprehensive Agreement to Design-Builder, the City will issue Design-Builder a Notice of Intent to Award. If the Parties are unable to agree upon the terms by which Design-Builder will execute the Work in accordance with the Comprehensive Agreement, or if the City determines for any other reason not to recommend to the Alexandria City Council that Design-Builder be awarded the Comprehensive Agreement, or if the Alexandria City Council in its sole discretion elects not to award the Comprehensive Agreement to Design-Builder, the City will issue Design-Builder a Notice of Non-Award, which will end Design-Builder's involvement on the Project.

1.3 The City's Rights to Deliver the Project without Design-Builder's Involvement. For the avoidance of doubt, and notwithstanding anything else to the contrary in this Interim

Agreement, Design-Builder acknowledges that the City is under no obligation to enter into any further agreement with Design-Builder, including the Comprehensive Agreement. The City has the unconditional right to deliver the Project without Design-Builder's involvement and using, in the City's sole discretion, whatever means of delivering the Project that the City determines to be in its best interests.

1.4 Relationship between the City and Design-Builder. The City 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 this Interim Agreement.

ARTICLE 2

DESIGN-BUILDER'S SERVICES AND RESPONSIBILITIES

2.1 Scope of Work.

2.1.1 Phase 1 Services Generally. Design-Builder shall provide the Phase 1 Services specifically described in Exhibit 2.1.1. The Phase 1 Services consist generally of: (a) preparing the Project's design on a progressive basis; (b) preparing, submitting, and negotiating the GMP Proposal on an Open-Book Basis and in accordance with Article 5 below; and (c) providing services related to the design, including permitting activities, cost modeling, scheduling, risk assessment, value engineering, constructability reviews, site surveying, and geotechnical investigations. The Phase 1 Services are broken down into two sequential components, Phase 1A and Phase 1B, with the scope of work under each component being identified in Exhibit 2.1.1.

2.1.2 Phase 1A Services. The general purpose of Phase 1A is for Design-Builder to perform preliminary design services to develop a Basis of Design. The Phase 1A Services consist generally of: (a) meeting with the City and Owner's Advisor to determine how to achieve the Project goals, including the provision of operations and maintenance services; (b) reviewing the City-Furnished Information, including City's Project Criteria and the Conceptual Design Report, and determining what additional information is needed to develop the Basis of Design; (c) developing the Basis of Design Documents based upon City's Project Criteria, as such criteria may be revised by the City; (d) cost modeling, scheduling, and risk assessment associated with the Basis of Design Documents; and (e) preparing the Phase 1B Proposal.

2.1.3 Phase 1B Services. The general purpose of Phase 1B is for Design-Builder to advance the development of the Basis of Design Documents to a level that would enable a GMP Proposal to be reasonably prepared. The Phase 1B Services consist generally of: (a) developing the GMP Proposal Design Documents; (b) cost modeling, scheduling, and other preconstruction services associated with the GMP Proposal; and (c) preparing and negotiating the GMP Proposal.

2.1.4 Construction Activities at the Project Site. As of the Effective Date of this Interim Agreement, the Phase 1 Services do not include the performance by Design-Builder of any construction activities at the Project site. If the City and Design-Builder determine that the best interests of the Project would be served by having Design-Builder perform one or more Early Work Packages involving construction activities at the Project site, they will proceed in accordance with Section 5.7 below. For the avoidance of doubt, Design-Builder's site visits and investigations shall not be construed as being construction activities.

2.1.5 Changes to Phase 1 Services. The City, without invalidating this Interim Agreement, may make changes to the Phase 1 Services by written notice to Design-Builder. If Design-Builder believes that any such change will affect the cost or time to perform its responsibilities under this Interim Agreement, Design-Builder shall, before proceeding with the change, comply with Sections 3.4 and/or 4.1.2 below and await further instruction from the City. Design-Builder shall not perform any additional Phase 1 Services unless approved in writing by the City. Compensation for additional work shall be based on the rates set forth in Exhibit 4.2.

2.1.6 Operations and Maintenance Services. As of the Effective Date of this Interim Agreement the City had not yet determined the manner in which operations and maintenance services would be provided after Substantial Completion and what role, if any Design-Builder might play in providing those services. The Parties will be discussing this during Phase 1A, and it is anticipated that the City will make a determination on this prior to executing the Phase 1B amendment.

2.2 Design Professional Services.

2.2.1 Use of Qualified, Licensed Professionals. Design-Builder shall, consistent with applicable state licensing Legal Requirements, provide or furnish through Design Consultants or qualified, licensed design professionals employed by Design-Builder, 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 Phase 1 Services.

2.2.2 Design Consultant Subcontracts. Design-Builder and Lead Designer may enter into Subcontracts with such Design Consultants as they deem necessary to assist in the performance of the Phase 1 Services, *provided, however*, that such Subcontracts shall be subject to the approval of the City, which approval will not be unreasonably withheld.

2.2.3 No Contractual or Legal Relationship with the City. Nothing in this Interim Agreement is intended or deemed to create any legal or contractual relationship between the City and any Design Consultant other than the intended third-party beneficiary rights in favor of the City as set forth in Section 2.2.5 below.

2.2.4 Incorporation into Subcontracts. Design-Builder shall incorporate all applicable obligations and understandings of this Interim Agreement applicable to design services in its respective Subcontracts with any Design Consultant and Subcontractors, and require that such obligations be flowed down to lower-tiered Design Consultants, including but not limited to the obligations relative to ownership and use of the Work Product set forth in Article 9 of this Interim Agreement.

2.2.5 Conditional Right of City to Contract with Design Consultants. Design-Builder acknowledges that the City's ability to successfully complete the Project may be significantly impacted if: (a) the City issues Design-Builder a Notice of Non-Award or terminates Design-Builder for either cause or convenience; and (b) certain Design Consultants (including the Lead Designer) are not available to continue working on the Project. Consequently, Design-Builder hereby agrees that if the City issues Design-Builder a Notice of Non-Award under Section 5.5.1 below, or exercises its rights to terminate under either Sections 11.1.1 or 11.2.1 below, the City shall have the right, but not the obligation, to contract directly with any and all Design Consultants for services related to this Project. Design-Builder shall take such steps as are

reasonably necessary to enable the City to implement such relationships, including having a provision in its Subcontracts with Design Consultants that, in the event Design-Builder is not awarded the Comprehensive Agreement or is terminated under this Interim Agreement for any reason, the Design Consultant will in good faith negotiate with the City the contractual terms (e.g., scope of work, compensation and other requirements) associated with such Design Consultant continuing to work on the Project. For the avoidance of doubt, Design-Builder shall have no liability to the City for those acts or omissions of a Design Consultant that take place after the Design Consultant enters into a contract with the City.

2.3 Standard of Care. All Phase 1 Services shall be performed in accordance with: (a) this Interim Agreement; (b) applicable Legal Requirements and Governmental Approvals; and (c) Good Engineering and Construction Practice. Notwithstanding the above, if any of (a), (b) or (c) in the preceding sentence conflict, the Phase 1 Services shall be performed in accordance with the more stringent standard.

2.4 Personnel and Subcontractors.

2.4.1 Key Personnel. Design-Builder's Key Personnel are set forth in Exhibit 2.4.1. Design-Builder acknowledges that the qualifications of its Key Personnel were an essential element to Design-Builder being awarded this Interim Agreement, and further acknowledges the importance of its Key Personnel in successfully performing the Phase 1 Services and, if a Comprehensive Agreement is awarded to Design-Builder, the Phase 2 Services. Absent separation of employment, none of the Key Personnel may be withdrawn from the Project without prior written approval of the City, with it being understood and agreed that Design-Builder will provide the City with at least thirty (30) days written notice of any request to withdraw any Key Personnel. Any replacement personnel shall have equivalent skill, experience and reputation, and the City shall have the right to determine whether any replacement personnel are qualified or otherwise approved to work on the Project. The City shall not unreasonably withhold approval of staff changes.

2.4.2 The City's Objection to Personnel. Design-Builder shall remove or replace, or have removed or replaced, any personnel, including Key Personnel, performing the Work if the City has a reasonable objection to such individual and the City considers such removal necessary and in the best interest of the Project. In such case, the City shall notify Design-Builder in writing and allow a reasonable period of time for the transition to different personnel.

2.4.3 Use of Subcontractors for Phase 1 Services. If Design-Builder believes that it is in the best interests of the Project to retain the services of a Subcontractor to assist in the performance of the Phase 1 Services, it shall so advise the City. The City shall have the right, in its sole discretion, to determine whether to allow such Subcontractor to be retained and the manner, if any, in which such Subcontractor will be retained and compensated.

2.5 City-Furnished Information.

2.5.1 Status of the City-Furnished Information. Except as set forth in Section 2.5.2 below, the City makes no representation or warranty as to the accuracy, completeness, or sufficiency of any City-Furnished Information, including that set forth in Exhibit 2.5.1. Design-Builder shall, as part of the Phase 1 Services, carefully study all City-Furnished Information and

independently verify and confirm the accuracy, completeness, and sufficiency of any City-Furnished Information that will be used in performing the Work.

2.5.2 Status of the Designated City-Furnished Information. Notwithstanding Section 2.5.1 above, Design-Builder shall be entitled to reasonably rely upon the accuracy of the City-Furnished Information set forth in Exhibit 2.5.2 (“Designated City-Furnished Information”) in the performance of its work. The City does not represent that the Designated City-Furnished Information is complete or sufficient for purposes of Design-Builder’s performance of the Work. Design-Builder shall, as part of the Phase 1A Services, be responsible for identifying to the City what, if any, information is required in addition to the Designated City-Furnished Information to develop a complete and sufficient design for the Project, and shall so advise the City of this during the performance of its Phase 1A Services.

2.5.3 Discovery of Material Inaccuracies. If Design-Builder discovers any material inaccuracies in the City-Furnished Information (including Designated City-Furnished Information), it shall promptly report such discovery in writing to the City. The Parties will meet and confer on how to address such material inaccuracies.

2.6 Project Kick-Off Meeting. The Parties will meet within seven (7) days after the Phase 1A NTP to discuss issues affecting the administration of this Interim Agreement, including the procurement of any outstanding Design Consultants, processes relating to submittals and payment, the potential for Early Work Packages, and other matters that will facilitate the ability of the Parties to perform their obligations under this Interim Agreement.

ARTICLE 3

TIME FOR RENDERING PERFORMANCE

3.1 Dates of Commencement.

3.1.1 Phase 1A Services. Design-Builder shall commence the Phase 1A Services upon Design-Builder’s receipt of the Phase 1A Notice to Proceed (“Phase 1A NTP”) for the Phase 1A Services. The City will issue to Design-Builder the Phase 1A NTP within seven (7) days after the Effective Date of this Interim Agreement, unless the Parties mutually agree otherwise in writing.

3.1.2 Phase 1B Services. Design-Builder shall commence the Phase 1B Services upon Design-Builder’s receipt of the Phase 1B Notice to Proceed (“Phase 1B NTP”) for the Phase 1B Services. The City will issue to Design-Builder the Phase 1B NTP within seven (7) days after the Effective Date of the Phase 1B Amendment, unless the Parties mutually agree otherwise in writing.

3.2 Schedule for Performance of Phase 1 Services.

3.2.1 Phase 1 Services Schedule. Within thirty (30) days from the Phase 1A NTP, Design-Builder shall submit to the City, for its review and approval, a proposed Final Phase 1A Schedule that includes, among other things, the order in which Design-Builder proposes to carry out the Phase 1A Services that includes, among other things: (a) the order in which Design-Builder proposes to carry out the Phase 1A Services; and (b) the times when submissions and approvals or consents by the City are required, *provided, however*, that such times shall be no less than twenty-one (21) days. The proposed Final Phase 1A Schedule shall be derived from

the Initial 90-Day Phase 1A Schedule. Upon approval of the Final Phase 1A Schedule, Design-Builder shall provide monthly updates depicting the actual progress of its performance of the Phase 1A Services as compared to the projected progress of the work associated with the Phase 1A Services. The Initial 90-Day Schedule shall be the basis for monitoring Design-Builder's performance of the Phase 1A Services until such time as the Phase 1A Services Schedule has been approved by the City.

3.2.2 Phase 1B Services Schedule. The Phase 1B Schedule shall be that schedule developed during Phase 1A and set forth in the Phase 1B Amendment. Design-Builder shall provide monthly updates depicting the actual progress of its performance of the Phase 1B Services as compared to the projected progress of the work associated with the Phase 1B Services.

3.2.3 Early Work Package Schedules. Each Early Work Package shall have a schedule that will be set forth in the Early Work Package Amendment. Design-Builder shall provide monthly updates depicting the actual progress of its performance of the Early Work Package as compared to the projected progress of the work associated with the Early Work Package. This schedule shall be distinct from the Phase 1A and Phase 1B Schedules.

3.3 Completion of Phase 1 Services.

3.3.1 Phase 1A Services. The Phase 1A Services shall be deemed complete upon the earlier to occur of: (a) the City and Design-Builder executing the Phase 1B Amendment; or (b) the City exercising its rights under Section 5.4.4(c) below to terminate this Interim Agreement for convenience.

3.3.2 Phase 1B Services. The Phase 1B Services shall be deemed complete upon the earlier to occur of: (a) execution by the City and Design-Builder of the Comprehensive Agreement; or (b) the City exercising its rights under Section 5.5.1 below to issue to Design-Builder of a Notice of Non-Award.

3.4 Time Extensions. If Design-Builder believes that it is entitled to an adjustment in the Phase 1A Services Schedule, the Phase 1B Services Schedules, or an Early Work Package Schedule, it shall, within ten (10) days of becoming aware of the event or situation giving rise to the requested relief, submit to the City a written notice of its request for relief, describing the facts, circumstances and contractual basis for the relief sought, with sufficient specificity for the City to assess the matter.

3.5 Liquidated Damages under the Comprehensive Agreement. If Design-Builder does not achieve Substantial Completion on or before the Scheduled Substantial Completion Date set forth in the Comprehensive Agreement, the City will suffer damages which are difficult to determine and accurately specify. To compensate the City for those damages, Design-Builder will be obligated to pay the City liquidated damages in an amount to be established in the Comprehensive Agreement. The City will advise Design-Builder prior to Design-Builder's submission of the GMP Proposal as to the amount of such liquidated damages.

ARTICLE 4
CONTRACT PRICE AND PAYMENT

4.1 Contract Price and Changes to Contract Price.

4.1.1 Contract Price. As of the Effective Date of this Interim Agreement, the Contract Price is \$_____, which represents the compensation to Design-Builder for the Phase 1A Services. It is understood that the Contract Price will be increased as Design-Builder's scope of services for Phase 1B and Early Work Packages (if any) are implemented respectively through the execution of the Phase 1B Amendment and Early Work Package amendments. The Contract Price is deemed to include all sales, use, consumer, and other taxes mandated by applicable Legal Requirements.

4.1.2 Changes to Contract Price. If Design-Builder believes that it is entitled to an adjustment in the Contract Price, it shall, within ten (10) days of becoming aware of the event or situation giving rise to the requested relief, submit to the City a written notice of its request for relief, describing the facts, circumstances and contractual basis for the relief sought, with sufficient specificity for the City to assess the matter.

4.2 Basis for Phase 1 Compensation. The basis for the Phase 1 compensation is set forth in Exhibit 4.2, which exhibit includes, among other things, hourly rates and other information associated with pricing associated with the Phase 1 Services. The Parties commit to using Exhibit 4.2 in negotiating the Phase 1B Service compensation, as well as changes to the Phase 1 Services.

4.3 Payment Process.

4.3.1 Application for Payment. Design-Builder shall submit an application for payment to the City by the tenth (10th) day of each month following the performance of services for which Design-Builder is entitled to payment hereunder. Each application for payment shall: (a) be in the form approved by the City; (b) identify the services performed during the preceding month; (c) indicate the total amount requested for payment; (d) indicate the total amount paid Design-Builder through the date of the Application for Payment; and (e) include such other information or documentation as the City may reasonably require.

4.3.2 Payment by the City. The City shall make payment to Design-Builder of all properly supported invoiced amounts within thirty (30) days following receipt of an acceptable Application for Payment. In the event of a disputed or contested invoice, the City may withhold from payment only that portion so contested and shall pay the undisputed portion.

4.3.3 Retainage. No retainage will be withheld by the City for payments made to Design-Builder under this Interim Agreement, *provided, however*, in the event the City and Design-Builder execute an amendment to this Interim Agreement authorizing Design-Builder to perform an Early Work Package, such amendment will address what, if any, retainage will be withheld on such Early Work Package payments.

4.3.4 Final Payment. The City shall make final payment to Design-Builder of all monies due under this Interim Agreement within thirty (30) days after its receipt from Design-Builder of a Final Application for Payment. The Final Application for Payment shall be accompanied by such documentation as the City may require, including appropriate releases.

Design-Builder shall submit its final application for payment after, as applicable, the City exercises its right to: (a) terminate the Interim Agreement for convenience under Section 5.4.4(c) below; (b) issue a Notice of Intent to Award to Design-Builder the Comprehensive Agreement under Section 5.4.3 below; or (c) issue a Notice of Non-Award under Section 5.4.4(d) below.

4.4 Design-Builder's Right to Suspend and/or Terminate for Late Payment. If the City fails to make any undisputed payment due Design-Builder within forty-five (45) days after receipt of an acceptable Application for Payment, then Design-Builder may, after giving seven (7) days written notice to the City, suspend performing of services under this Interim Agreement until the City has paid Design-Builder in full all undisputed amounts due. If payment has not been made within sixty (60) days after Design-Builder has suspended, Design-Builder may exercise its termination rights under Section 11.1.1 below. Design-Builder shall have no rights to suspend work and/or terminate this Interim Agreement on the grounds that the City has failed to pay Design-Builder disputed amounts.

4.5 Interest. Payments due and unpaid by the City to Design-Builder shall bear interest commencing seven (7) days after payment is due in accordance with Va. Code § 2.2-4355.

4.6 Design-Builder's Fee.

4.6.1 Amount and Basis of Fee. Design-Builder's Fee is _____ percent (___%), which is that percentage fee proposed in Design-Builder's Proposal. Design-Builder's Fee will be used in the negotiation of the GMP Proposal and, if applicable, Early Work Package proposals. Design-Builder's Fee represents Design-Builder's compensation for profit and Non-Reimbursable Costs for work performed under the Comprehensive Agreement and any Early Work Package that may be authorized under this Interim Agreement.

4.6.2 Application of Design-Builder's Fee. Design-Builder's Fee shall be applied to the Cost of the Work, *provided, however*, that there shall be no Design-Builder's Fee applied to Design-Builder's premiums for the Performance Bond, Payment Bond and the Builder's Risk Insurance.

ARTICLE 5
PHASE 1B AND GMP PROPOSALS

5.1 Submission of Proposals.

5.1.1 Format of Proposal. Upon written authorization by the City, Design-Builder shall submit to the City, as applicable, a Phase 1B Proposal and a GMP Proposal. The specific format of a proposal, including the format of supporting documentation and line items of the Work, shall be initially developed by Design-Builder and provided to the City for its review and approval. The format of a specific proposal shall be agreed upon at least forty-five (45) days prior to the submittal of such proposal.

5.1.2 Status of the GMP Proposal Design Documents. The Parties acknowledge that the GMP Proposal Design Documents are not fully completed Released for Construction Documents and that such documents will be further developed under the Comprehensive Agreement. The GMP Proposal, including the GMP itself, represents Design-Builder's offer to fully complete the Project, including, without limitation, its offer to provide and construct, at no

increase in the GMP, items that are not shown in the GMP Proposal Design Documents, but which are a logical development of the design intent reflected in the GMP Proposal Design Documents.

5.2 Proposal Contents.

5.2.1 Phase 1B Proposal. The Phase 1B Proposal shall include the following, unless the Parties mutually agree otherwise:

- (a) A proposed compensation amount for the Phase 1B Services;
- (b) A detailed description of the Phase 1B Services, made in conformance with Exhibit 2.1.1.
- (c) A proposed Phase 1B Services Schedule;
- (d) A listing of any assumptions, clarifications or qualifications made by Design-Builder in providing the Phase 1B Services that are material to any part thereof;
- (e) A statement of additional services that may be performed in Phase 1B, but which are not included in the proposed compensation amount;
- (f) An updated commitment letter from Design-Builder's surety, verifying that Design-Builder has bonding capacity in the amount of the projected Project cost based on the Basis of Design Documents;
- (g) Such other information and materials as the City may reasonably request; and any other information reasonably requested by the City; and
- (h) Confirmation that the Phase 1B Proposal will remain valid during the Phase 1B Proposal Acceptance Period.

5.2.2 GMP Proposal. The GMP Proposal shall include the following, unless the Parties mutually agree otherwise:

- (a) A proposed GMP, which shall be the sum of:
 - (i) The estimated Cost of the Work, inclusive of the Contingency;
 - (ii) Design-Builder's General Conditions; and
 - (iii) Design-Builder's Fee.

The proposed GMP shall be supported by a detailed cost estimate organized by trade categories, including any Allowance Payment Items and Contingency.

- (b) The GMP Proposal Design Documents, with all such documents to be listed and attached to the GMP Proposal;
- (c) A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the GMP Proposal Design Documents, and shall include the Geotechnical Baseline Report ("GBR");
- (d) The Scheduled Substantial Completion Date upon which the proposed GMP is based, and the proposed Baseline Schedule;

(e) A schedule of submittals listing each required submittal and the times for submitting, reviewing, and processing each submittal;

(f) A proposed schedule of values for all of the Work which will include quantities and prices of items that when added together equal the GMP and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work;

(g) A cash flow projection estimating that portion of the GMP to be due during each month of performance;

(h) If applicable, a list of Allowance Payment Items, Allowance Payment Values, and a statement of their basis;

(i) If applicable, a schedule of alternate prices;

(j) If applicable, a schedule of unit prices;

(k) If applicable, a statement of additional services which may be performed but which are not included in the GMP and which, if performed, shall be the basis for an increase in the GMP and/or Scheduled Substantial Completion Date;

(l) A subcontracting plan for the Phase 2 Services which will, among other things, set forth a list of Subcontractors whose bids/proposals have been accepted by City and also identify proposed Self-Perform Work;

(m) A list of Early Work Packages that have been negotiated and agreed upon by the City and Design-Builder;

(n) An updated letter from its surety or sureties verifying that Design-Builder has bonding capacity in the amount of the GMP;

(o) An updated list of Key Personnel and Design-Builder's Project Organizational Chart;

(p) A specimen Builder's Risk Insurance policy with all appropriate attachments, sub-limits that has been approved by the City, and a letter of certification from Design-Builder or Design-Builder's insurance broker confirming that Builder's Risk Insurance in the form of such specimen policy shall be procured prior to the commencement of on-site construction;

(q) Such other information and materials as the City may reasonably request; and

(r) Confirmation that the GMP Proposal will remain valid during the GMP Proposal Acceptance Period.

5.3 Review and Adjustment to Proposals. After submission of a proposal under Section 5.2 above, Design-Builder and the City shall meet to discuss and review such proposal,

with the understanding that: (a) all information shall be provided by Design-Builder on an Open-Book Basis; (b) Design-Builder shall provide such information as the City may reasonably request relative to such proposal; and (c) Design-Builder shall identify and justify any costs that are significantly different than Design-Builder's latest cost model. If the City has any comments regarding the proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly notify Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of the City's notice, make appropriate adjustments to the proposal. Design-Builder is also on notice that the City may, at any time, submit the proposal to either the Owner's Advisor or an independent third party for review and verification.

5.4 Negotiation of and City's Actions on Proposal.

5.4.1 Negotiation. If the City determines that there is merit in considering the proposal, it shall so notify Design-Builder, whereupon the Parties shall negotiate in good faith and attempt to reach agreement on the terms of the proposal.

5.4.2 Agreement on Phase 1B Proposal. If the Parties reach agreement on the Phase 1B Proposal, as such proposal may be amended by Design-Builder to reflect discussions between the Parties, the Parties will execute an appropriate amendment to this Interim Agreement reflecting such agreement.

5.4.3 Agreement on GMP Proposal. If the Parties reach agreement on the GMP Proposal, as such proposal may be amended by Design-Builder to reflect discussions between the Parties, and the Alexandria City Council approves an award of the Comprehensive Agreement to Design-Builder, the City will issue Design-Builder a Notice of Intent to Award.

5.4.4 Failure to Agree upon Proposal. If the Parties are unable to reach an agreement on either the Phase 1B Proposal or the GMP Proposal, the City may:

(a) Continue to evaluate and suggest modifications to the proposal, whereupon, if such modifications are accepted in writing by Design-Builder, then the Parties shall be deemed to have agreed upon the modified proposal, in which case the Parties shall proceed in accordance with, as applicable, Sections 5.4.2 or 5.4.3 above;

(b) Authorize Design-Builder to continue to advance the design of the Project under this Interim Agreement or as an additional service, as applicable, and/or have Design-Builder provide another proposal at a later point in time, which proposal shall comply with this Article 5; or

(c) In the case of the Phase 1B Proposal, exercise its rights to terminate the Interim Agreement for convenience under Section 11.2.1 below; and

(d) In the case of the GMP Proposal, exercise its rights to issue a Notice of Non-Award under Section 5.5 below.

5.5. Notice of Non-Award.

5.5.1 City's Right to Issue Notice of Non-Award. The City has the right, at any time and in its sole discretion, to issue Design-Builder a Notice of Non-Award. In addition to any other rights available to City under this Interim Agreement, the City shall have the right to contract with Design Consultants in accordance with Section 2.2.5 above upon its issuance of a Notice of Non-Award.

5.5.2 Furnishing of Documents. If the City issues a Notice of Non-Award, the City and Design-Builder shall promptly meet and confer about the documents and other materials prepared by Design-Builder, Design Consultants and, if applicable, Subcontractors as part of the Phase 1 Services. Design-Builder shall furnish, or cause to be furnished, to the City all design documents and other materials, including but not limited to schedules, bid packages, cost estimates, and procurement documents, requested by the City, which documents shall, to the extent they were not already Work Product, be deemed Work Product.

5.5.3 Remedies. If the City issues a Notice of Non-Award, Design-Builder's sole and exclusive right and remedy shall be to be paid for all Phase 1 Services properly performed through the date of the Notice of Non-Award. Design-Builder shall not be entitled to any overhead or profit on unperformed Work or services of any other kind. In no case shall Design-Builder or any other DB-Related Entity be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of the City's failure to award the Comprehensive Agreement to Design-Builder.

5.6 Design-Builder's Rights if the City Fails to Act. If the City fails to exercise any of its options under Section 5.4.4 within, as applicable, the Phase 1B Proposal Acceptance Period or the GMP Proposal Acceptance Period, as such times may be extended by mutual agreement of the Parties, Design-Builder may, after giving the City thirty (30) days written notice of its intention to do so, declare the applicable proposal null and void. Additionally, Design-Builder may: (a) relative to the Phase 1B Proposal, declare that the City has constructively terminated this Interim Agreement for convenience under Section 11.2.1 below, in which case Design-Builder's sole rights and remedies shall be as stated in Section 11.2.2 below; and (b) relative to the GMP Proposal, declare that the City has constructively issued a Notice of Non-Award, in which case Design-Builder's sole rights and remedies shall be as stated in Section 5.5 above.

5.7 Early Work Packages. The Parties anticipate that there may be some elements of the Phase 2 Services that are more appropriately undertaken by Design-Builder before the Parties enter into a Comprehensive Agreement or agree upon a GMP for the entire Work ("Early Work Packages"). The City shall have the sole discretion as to whether to consider and/or authorize an Early Work Package. If the City authorizes Design-Builder to prepare a commercial proposal for an Early Work Package, the Parties will agree upon the specific process for doing so, with the understanding that the process is intended to generally follow the submittal and negotiation process set forth above for a GMP Proposal. It is anticipated that agreed-upon Early Work Packages will be contracted for through an amendment to this Interim Agreement, which amendment shall set forth all commercial terms specific to that Early Work Package including, if applicable, any agreed-upon limitations of liability associated with such Early Work Package. For the avoidance of doubt, Early Work Packages are considered part of the Phase 2 Services.

5.8 Savings and Contingency. The Party negotiations of the GMP Proposal and the Comprehensive Agreement will define and establish the mechanism for addressing, among other things: (a) savings (i.e., the difference between the GMP and the actual Cost of the Work and Design-Builder's Fee); and (b) Contingency.

ARTICLE 6
SELF-PERFORM WORK AND SUBCONTRACTS

6.1 Subcontractor Participation in Performance of the Phase 1 Services. If Design-Builder wishes to retain any Subcontractor to provide assistance to Design-Builder in the performance of the Phase 1 Services, Design-Builder shall so notify the City. The Parties shall meet and confer about the most appropriate way of having such Subcontractors participate, and the City will have ultimate authority to determine whether and how any Subcontractor will be awarded a Subcontract to provide Phase 1 Services under this Interim Agreement and, if so, the commercial arrangement with the applicable Subcontractor. Notwithstanding the above, it is understood that the Marine Work Subcontractor will be providing Phase 1 Services, and that its compensation for Phase 1A Services is included in the Contract Price.

6.2 Self-Perform Work.

6.2.1 General. Self-Perform Work will be performed during both Phase 1 and Phase 2, with the understanding that the specific scope of Self-Perform Work will be determined by mutual agreement of the Parties during Phase 1. Self-Perform Work packages shall either be negotiated or subject to competition, as determined by the City in its sole and absolute judgment.

6.2.2 Self-Perform Work Subject to Negotiations. If the City determines that the Self-Perform Work package will be subject to negotiation, Design-Builder shall submit a proposal for such package based upon: (a) the estimated Cost of the Work for such Self-Perform Work, with the entity performing Self-Perform Work pricing its labor on actual wages plus the appropriate multiplier on such wages; and (b) Design-Builder's Fee being applied to such Cost of the Work. Self-Perform Work performed by the Marine Work Subcontractor will also include a fair and reasonable fee for such contractor to cover its profit and Non-Reimbursable Expenses. For the avoidance of doubt, the entity performing Self-Perform Work shall provide such information as the City may reasonably request, with the understanding that all information that formed the basis for the applicable estimate will be provided to the City on an Open-Book Basis. If the Parties are unable to reach an agreement on the proposal, the City may, in its sole and absolute judgment: (x) withdraw its permission that the applicable Work be deemed Self-Perform Work; or (y) give Design-Builder permission to submit a competitive proposal in accordance with Section 6.2.3 below.

6.2.3 Self-Perform Work Subject to Competition. If the City determines that the Self-Perform Work package will be subject to competition, Design-Builder shall be allowed to perform such package if: (a) Design-Builder submits its bid or proposal for such package in the same manner as all other Subcontractors; and (b) the City determines that Design-Builder's bid or proposal provides the best value for the City. If Design-Builder wishes to submit a bid or proposal for such package, the City shall have the right to require the submittal of all bids or proposals for such work directly to the City and/or Owner's Advisor (and not to Design-Builder) for review and evaluation. Design-Builder further acknowledges and understands that its bid or proposal shall be provided on an Open Book Basis.

6.3 Work to Be Performed through Subcontractors

6.3.1 Fixed-Price Subcontracts. It is contemplated that, with the exception of the Marine Work Subcontractor, all first-tier Subcontractors are to be awarded fixed-price Subcontracts through a low bid, competitive procurement process, unless otherwise expressly authorized by the City in writing.

6.3.2 Bidding Process. Design-Builder shall be responsible for dividing the Work associated with the Phase 2 Services into suitable bid packages. Design-Builder shall develop and discuss with the City a proposed list of bidders for each Subcontract and, unless the City agrees otherwise in writing, shall obtain bids from at least three (3) bidders for all Subcontracts where the budgeted amount for the Subcontract is in excess of \$250,000. The three (3) bidder requirement of the preceding sentence shall not apply if the Parties agree that Design-Builder will likely not be able to obtain three (3) bids or proposals from qualified and suitable bidders. In connection with all Subcontractor procurements, Design-Builder shall:

- (a) Develop procurement procedures in consultation with the City and prepare all necessary procurement documents;
- (b) Advertise for bids or proposals and receive bids or proposals;
- (c) Open and review all bids or proposals in a manner that does not disclose the contents of the bids or proposals to persons not employed by Design-Builder, the City or Owner's Advisor;
- (d) Evaluate the bids or proposals in accordance with the selection criteria established in the procurement documents; and
- (e) Recommend a bid or proposal for approval by the City in accordance with such evaluation.

All bids or proposals shall be made available to the City on request.

6.3.3 Selection. The City may accept Design-Builder's recommendation or may make its own selection against whom Design-Builder makes no reasonable objection. If the City selects a Subcontractor other than the one recommended by Design-Builder and if the City's selected Subcontractor's final contract amount is higher than the final amount proposed by Design-Builder's recommended Subcontractor, the GMP will be adjusted to reflect any difference. The City may, in its sole discretion, reject any or all bids and proposals received for any bid package, and may require Design-Builder to obtain new or revised bids or proposals.

6.3.4 City and Owner's Advisor Rights to Participate in Procurement Process. The City and Design-Builder shall meet and confer during Phase 1 about the role that City anticipates playing during the procurement of Subcontractors. Without limiting any of the foregoing, Design-Builder acknowledges and agrees that the City and Owner's Advisor shall have the right to: (a) review and comment on all procurement documents; (b) attend any bid or proposal openings; (c) attend any meetings with prospective Subcontractors, including scope review meetings; (d) review all bids, proposals, and other information developed or otherwise resulting from any competitive procurement, including Design-Builder's tabulation, scoring or evaluation materials; and (e) otherwise participate in the negotiation and contract award process. Unless the City decides otherwise, Design-Builder shall provide the City, upon award of a Subcontract, with a description of the competitive process undertaken in connection with such Subcontract

award, together with copies of all material documents used in connection therewith and agreements resulting therefrom.

6.3.5 Best Value Proposals. Notwithstanding the expectation that all first-tier Subcontracts will be awarded on a low bid, competitive basis, the City and Design-Builder may agree that there is a benefit to the Project to awarding some Subcontracts on a best-value basis that would consider factors other than price. Design-Builder shall identify aspects of the Work where this procurement approach might be beneficial and discuss this with the City, including how price and other non-price factors will be considered in the procurement and award process.

6.4 Work to be Performed through Design Consultants. The City shall have the right to approve all Design Consultants on the Project, regardless of whether such Design Consultants were identified in Design-Builder's Proposal and/or evaluated by the City during the procurement process. In furtherance of this, the City and Design-Builder will, at the kick-off meeting established by Section 1.2.6 above, meet and confer to discuss Design-Builder's use of, and plan for procuring, Design Consultants.

ARTICLE 7

BONDS AND INSURANCE

7.1 Bonds. If the Parties enter into the Comprehensive Agreement, Design-Builder shall be obligated to provide a Performance Bond and a Payment Bond in accordance with the requirements of the Comprehensive Agreement.

7.2 Insurance. Design-Builder shall procure and maintain the insurance as required by Exhibit 7.2.

ARTICLE 8

LEGAL REQUIREMENTS

8.1 Compliance with Legal Requirements. 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.

8.2 Changes in Legal Requirements. Design-Builder will be entitled to an adjustment in the Contract Price and time of performance to the extent Design-Builder is adversely impacted by any changes in the Legal Requirements enacted after the Effective Date of this Interim Agreement, provided Design-Builder satisfies the requirements of Sections 3.4 and 4.1.2 above. Notwithstanding the above, the relief afforded by this Section 8.2 shall not apply to changes in Legal Requirements relating to: (a) Design-Builder's or any other DB-Related Entity's corporate existence or the maintenance of its business; (b) changes in Legal Requirements affecting payroll taxes or other taxes associated with labor; or (c) changes in Legal Requirements affecting taxes imposed on an entity's gross revenue, income or profits.

ARTICLE 9
WORK PRODUCT

9.1 City's Rights in Work Product. Design-Builder hereby assigns and conveys to the City all right, title, and interest, including all copyrights, patents, or any other intellectual property rights (but excluding Pre-Existing Intellectual Property) in all Work Product and all ideas or methods specifically developed for such Work Product. All Work Product will become the property of the City on the earlier of: (a) the City's payment to Design-Builder of monies due in accordance with this Interim Agreement and not subject to a good faith dispute; (b) the date any Work Product is delivered to the City; or (c) upon any termination of this Interim Agreement. The City's use of any Work Product for any purpose other than the Project, without the involvement of Design-Builder, shall be at its own risk, and Design-Builder shall have no liability to the City for or relating to any such use.

9.2 DB-Related Entities. Except as specifically provided in Section 9.4 below, no DB-Related Entity will own or claim any copyright, patent, or any other intellectual property right in or with respect to any Work Product or ideas or methods specifically developed for such Work Product.

9.3 Design-Builder's Right to Retain Copies of Work Product. Design-Builder may make and retain copies of the Work Product for information, reference and use by DB-Related Entities solely with respect to the Work. No DB-Related Entity may use the Work Product for any other purpose without the specific written consent of the City.

9.4 Pre-Existing Intellectual Property. The City acknowledges and agrees that in the performance of services under this Interim Agreement, a DB-Related Entity may use proprietary algorithms, software, hardware, databases, other background technology, and other proprietary information that the DB-Related Entity developed or licensed from third parties prior to the Effective Date of this Interim Agreement ("Pre-Existing Intellectual Property"). Without limiting the City's rights with respect to the Work Product or the Project, the DB-Related Entity will retain all right, title, and interest in such Pre-Existing Intellectual Property. However, the City shall have the irrevocable, perpetual, and unrestricted right from and after the Effective Date of this Interim Agreement to use (or permit use of) all Pre-Existing Intellectual Property incorporated in the Work Product or the Project, all oral information received by the City in connection with the Work, and all ideas or methods represented by Pre-Existing Intellectual Property incorporated in the Work Product or the Project, in each case without additional compensation. Design-Builder hereby licenses such irrevocable, perpetual, and unrestricted rights to the City. The City's use of such license rights for any purpose other than the Project shall be at its own risk, and Design-Builder shall have no liability to the City for or relating to any such use.

ARTICLE 10
BOOKS AND RECORDS

10.1 Proper Financial Management. Design-Builder shall keep full and detailed accounts and exercise such controls as required by Exhibit 2.1.1, as well as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles, consistently applied.

10.2 Retention and Audit of Books and Records. During the performance of the Work and for a period of three (3) years after Final Payment, the City and its accountants shall be

afforded access to, and the right to audit from time-to-time, upon reasonable notice, all Books and Records relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the Parties. The City may take possession of such Books and Records by reproducing such Books and Records for off-site review. When requested in the City's written notice of examination and/or audit, Design-Builder shall provide the City with copies of electronic and electronically stored Books and Records in a reasonably usable format that allows the City to access and analyze all such Books and Records. For Books and Records that require proprietary software to access and analyze, Design-Builder shall provide the City with the means to do so, including a license authorizing the City to access and analyze all such Books and Records.

10.3 Items Not Subject to Audit. For the avoidance of doubt, the City shall not have the right to audit any items for which it has accepted a lump sum proposal or agreed upon a fixed price/lump sum, including, but not limited to any agreed-upon billing rates, multipliers or markups agreed to by the City and Design-Builder as part of this Interim Agreement, which are only subject to audit to confirm that such agreed-upon billing rate, multiplier or markup has been charged in accordance with this Interim Agreement.

10.4 Flow-Down in Subcontracts. Design-Builder shall insert a clause containing all the provisions of this Article 10 in all Subcontracts having values over \$100,000.00.

ARTICLE 11

TERMINATION AND SUSPENSION

11.1 Termination for Cause.

11.1.1 Process. If either Party fails to perform material obligations under this Interim Agreement, then the other Party may provide written notice to the breaching Party that it intends to terminate this Interim Agreement unless the problem cited is cured, or commenced to be promptly cured, within seven (7) days of the breaching Party's receipt of such notice. If the breaching Party fails to cure, or reasonably commence and diligently continue to cure, such problem, then the non-breaching Party may give a second written notice to the breaching Party of its intent to terminate within an additional seven (7) day period. If the breaching Party, within such second seven (7) day period, fails to cure, or reasonably commence and diligently continue to cure, such problem, then the non-breaching Party may declare the Interim Agreement terminated for default by providing written notice to the breaching Party of such declaration. If Design-Builder's basis for termination is that the City has failed to pay Design-Builder undisputed amounts, Design-Builder shall, as a condition precedent to exercising its rights under this Section 11.1.1, first comply with Section 4.4 above. Notwithstanding anything to the contrary in this Interim Agreement, Design-Builder shall not have the right to terminate this Interim Agreement on the grounds that the City has failed to pay Design-Builder amounts in dispute.

11.1.2 Remedies. If Design-Builder terminates the City for cause pursuant to Section 11.1.1 above, Design-Builder's sole and exclusive right and remedy shall be that set forth in Section 11.2.2 below. If the City terminates Design-Builder for cause, the City shall have the remedies available to it under applicable Legal Requirements, subject to the terms of this Interim Agreement.

11.2 Termination for Convenience.

11.2.1 Process. The City may terminate this Interim Agreement, in whole or in part, for the convenience of the City, without prejudice to any right or remedy otherwise available to the City, if the City determines in its sole discretion that such a termination is in its interests. The City shall implement such termination by providing Design-Builder with a written notice of termination, specifying the extent of the termination and the effective date. Upon receipt of such notice, Design-Builder shall immediately comply with the directions given in such notice, including discontinuing all Phase 1 Services affected unless such notice directs otherwise.

11.2.2 Remedies. If the City terminates Design-Builder for convenience pursuant to Section 11.2.1 above, Design-Builder's sole and exclusive right and remedy shall be to be paid for all Phase 1 Services properly performed through the date of the notice of termination. Design-Builder shall not be entitled to any overhead or profit on unperformed Work or services of any other kind. In no case shall Design-Builder or any other DB-Related Entity be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of the City's termination for convenience.

11.2.3 Work Product Liability. If the City terminates Design-Builder for convenience pursuant to Section 11.2.1 above, the following shall apply.

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(a) Design-Builder's liability for any use of the Completed Work Product after the date of such termination shall be limited in accordance with Article 13 below.

(b) Design-Builder shall have no liability, except for fraud, fraudulent misrepresentation, Willful Misconduct, Gross Negligence, or criminal acts, for any use of any Incomplete Work Product after the date of such termination, including in circumstances where the City continues to make use of the Incomplete Work Product on the Project through engaging a Design Consultant to finish the Phase 1 Services and/or engaging a separate contractor to undertake the Phase 2 Services.

11.3 Right to Contract with Design Consultants. In addition to any other rights available to City under this Interim Agreement, the City shall have the right to contract with Design Consultants in accordance with Section 2.2.5 above if it terminates Design-Builder under either Sections 11.2 or 11.3 above.

11.4 Furnishing of Documents. If the City has exercised its rights to terminate under either Sections 11.1.1 or 11.2.1 above, the City and Design-Builder shall promptly meet and confer about the documents and other materials prepared by Design-Builder, Design Consultants and, if applicable, Subcontractors as part of the Phase 1 Services. Design-Builder shall furnish, or cause to be furnished, to the City all design documents and other materials, including but not limited to schedules, bid packages, cost estimates, and procurement documents, requested by the City, which documents shall, to the extent they were not already Work Product, be deemed Work Product.

11.5 City's Right to Suspend. City may order Design-Builder in writing to suspend all or any part of the Phase 1 Services without cause for such period of time as the City may determine to be appropriate for its convenience. Design-Builder will be entitled to an adjustment in the Contract Price and time of performance resulting from such suspension, provided Design-Builder satisfies the requirements of Sections 3.4 and 4.1.2 above.

11.6 Termination for Non-Appropriation of Funds. The City has the right to terminate this Interim Agreement based on the non-appropriation of funds, as set forth in Section 14.5 below.

ARTICLE 12 **INDEMNIFICATION**

12.1 Design-Builder's Indemnity. Design-Builder, to the fullest extent permitted by applicable Legal Requirements, shall indemnify, hold harmless and defend the City Indemnitees 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 Gross Negligence, Willful Misconduct or negligent acts or omissions of Design-Builder or any DB-Related Entity. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 12.1.

12.2 No Limitation. If an employee of Design-Builder or any DB-Related Entity has a claim against any City Indemnitee, Design-Builder's indemnity obligation set forth in Section 12.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder or any DB-Related Entity under any employee benefit acts, including workers' compensation or disability acts.

ARTICLE 13 **LIABILITY LIMITATIONS**

13.1 Interim Agreement Liability Cap.

13.1.1 General. Subject to Sections 13.1.2 and 13.3 below, Design-Builder's liability to the City under this Interim Agreement with respect to damages arising out of the performance or unexcused non-performance of any work performed by a DB-Related Entity under this Interim Agreement, whether such damages are based upon contract, breach of warranty (express or implied), tort (including negligence), strict liability, or any other legal theory, shall not exceed the Interim Agreement Liability Cap.

13.1.2 Purpose. The purpose of the Interim Agreement Liability Cap is to limit Design-Builder's liability to the City for the Phase 1 Services if the Parties do not enter into the Comprehensive Agreement. Design-Builder acknowledges and agrees that the Interim Agreement Liability Cap: (a) is not intended to, and will not, limit Design-Builder's liability for any Phase 2 Services, including Early Work Packages, regardless of whether or not such liability arises out of or relates to the performance or unexcused non-performance of the Phase 1 Services performed under this Interim Agreement; and (b) shall cease to apply, and shall be of no further force or effect, once the Parties enter into the Comprehensive Agreement.

13.2 Waiver of Consequential Damages. To the fullest extent permitted by law, and notwithstanding any other provision of this Interim Agreement (other than Section 13.3 below), in no event, whether arising out of contract, breach of warranty (express or implied), tort (including negligence), strict liability, or any other cause of or form of action whatsoever, shall either Party be liable to the other for any consequential damages (including, without limitation, damages for loss of use, loss of profits or anticipated profits, loss of revenue, and loss of business opportunity)

arising out of or in connection with the performance or non-performance of its obligations under this Interim Agreement.

13.3 Exclusions. Notwithstanding Sections 13.1 or 13.2 above, or anything else in the Interim Agreement, Design-Builder's liability for the following shall not be limited or released in any way for the following liabilities, losses, damages, costs, or expenses:

(a) Any loss, cost or expense, to the extent such loss, cost or expense is paid by the proceeds of insurance (excluding payment of deductibles) up to the specific amounts Design-Builder is required to carry under Section 7.2 above;

(b) Any loss, cost or expense arising out of or connected with Design-Builder's fraud, fraudulent misrepresentation, Willful Misconduct, Gross Negligence, or criminal acts;

(c) Any loss, cost or expense incurred by Design-Builder in connection with Design-Builder's indemnification obligations set forth in Article 12 above; and

(d) Any loss, cost, expense or penalties incurred by Design-Builder to any person or entity (other than the City) in any legal proceedings.

13.4 Applicability

13.4.1 Other Persons and Entities. The provisions of this Article 13 shall be binding on and extend to the benefit of all successors, assignees, employees, officers, directors and Affiliates of each Party; provided, however, that the amount of Design-Builder's liability shall not exceed the aggregate the limits set forth in Section 13.1 above.

13.4.2 Binding Effect. Except to the extent prohibited by applicable Legal Requirements or specific terms to the contrary in this Article 13, the releases, waivers, limitations of liability and other terms in this Article 13 shall apply even in the event of the fault, negligence (in whole or in part), tort, strict liability, breach of contract or otherwise, of the person or entity in whose favor such provisions operate

ARTICLE 14 MISCELLANEOUS

14.1 Defined Terms. Capitalized terms used in this Interim Agreement, to the extent not defined in Section 1.1 above, have the meanings indicated in the Comprehensive Agreement.

14.2 Confidentiality. The term "Confidential Information" means information which is determined by the transmitting Party to be of a confidential or proprietary nature and: (a) the transmitting Party identifies as either confidential or proprietary; (b) the transmitting Party takes steps to maintain the confidential or proprietary nature of the information; and (c) 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.

14.3 Representations and Warranties. Design-Builder represents and warrants that:

(a) It is qualified to do business in the Commonwealth of Virginia and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

(b) It is not in arrears with respect to payment of any monies due and owing the Commonwealth of Virginia, or any department of unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Interim Agreement;

(c) It shall comply with Va. Code § 40.1-29 and Va. Code § 11-4.6 regarding non-payment of wages.

14.4 Ethics in Public Contracting. The provisions of law set forth in Article IV of the Virginia Public Procurement Act, entitled "Ethics in Public Contracting," (Va. Code § 2.2-4367 et seq.), Alexandria City Code § 3-3-121 et seq.; the State and Local Government Conflict of Interest Act, Va. Code § 2.2-3100 et seq.; the Virginia Governmental Frauds Act, Va. Code § 18.2-498.1 et seq.; and Articles 2 and 3 of Chapter 10, Title 18.2 of the Code of Virginia, all as the same may be amended from time to time and are incorporated herein by reference. Design-Builder shall incorporate the above clause in its Subcontracts with each Design Consultant and Subcontractor.



14.5 Non-Appropriation of Funds. This Interim Agreement is conditioned upon an annual appropriation made by the City Council of the City of Alexandria of funds sufficient to pay the compensation due Design-Builder under this Interim Agreement. If such an appropriation is not made in any fiscal year, and the City lacks funds from other sources to pay the compensation due under this Interim Agreement, the City will be entitled, at the beginning of or during such fiscal year, to terminate this Interim Agreement. In that event, the City will not be obligated to make any payments under this Interim Agreement beyond the amount properly appropriated for Interim Agreement payments in the immediately prior fiscal year. The City will provide Design-Builder written notice of termination of this Interim Agreement due to the non-appropriation of funds at least fifteen (15) calendar days before the effective date of the termination. However, the City's failure to provide such notice will not extend this Interim Agreement into a fiscal year in which funds for Interim Agreement payments have not been appropriated.

14.6 Equal Employment Opportunity.

14.6.1 Discrimination Prohibited. Design-Builder hereby agrees not to discriminate against any employee or applicant for employment on account of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation, disability, when such person is a qualified person with a disability, or any other basis prohibited by applicable Legal Requirements 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.

14.6.2 Affirmative Action. Design-Builder hereby agrees to implement an affirmative action employment program as defined in Section 12-4-3 of the Alexandria City Code to ensure nondiscrimination in employment under guidelines to be developed by the Human Rights Commission of the City of Alexandria (the "Commission") and approved by the City Council of the City of Alexandria.

14.6.3 EOE Statement. Design-Builder hereby agrees to include in all solicitations or advertisements for employees placed by or on behalf of Design-Builder the words "Equal Opportunity Employer" or a symbol approved by the Commission meaning the same.

14.6.4 Notice to Labor Unions. Design-Builder hereby agrees to notify each labor organization or representative of employees with which Design-Builder is bound by a collective bargaining agreement or other contract of Design-Builder's obligations pursuant to this equal employment opportunity clause.

14.6.5 Reports to the City. Design-Builder hereby agrees to submit to the City Manager and the City's Human Rights Administrator, upon request, no more frequently than annually, regular equal employment opportunity reports on a form to be prescribed by the City's Human Rights Administrator with the approval of the City Manager, except that the Administrator may request more frequent special reports of particular employers provided the Commission has found such employers to have violated any provision of Chapter 4 of Title 12 of the Alexandria City Code.

14.6.6 Compliance with Federal Requirements Sufficient. Notices, advertisements, and solicitations placed in accordance with federal Legal Requirements shall be deemed sufficient for the purpose of meeting the requirements of this section.

14.6.7 Accommodation of Disabled Workers. Design-Builder hereby agrees to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified person with a disability who is an applicant or employee, unless Design-Builder can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

14.6.8 Reasonable Accommodations. For the purposes of this section, reasonable accommodation may include: (i) making facilities used by employees readily accessible to and usable by persons with a disability; and (ii) job restructuring, part-time or modified work schedules, the acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

14.6.9 Undue Hardship. In determining whether an accommodation would impose an undue hardship on the operation of Design-Builder's business, factors to be considered include but are not limited to the following:

- (a) The overall size of Design-Builder's business with respect to the number of employees, the number and type of facilities, and the size of the budget;
- (b) Design-Builder's type of operation, including the composition and structure of Design-Builder's work force; and
- (c) The nature and cost of the accommodation needed.

14.6.10 Refusal to Employ. Design-Builder may not deny any employment opportunity to a qualified person with a disability who is an employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

14.6.11 Subcontracts. Design-Builder hereby agrees to include the provisions in Sections 14.6.1 through 14.6.10 in every Subcontract so that such provisions will be binding upon each Design Consultant and Subcontractor.

14.6.12 Non-compliance. In the event of Design-Builder's noncompliance with any provision of this equal employment opportunity clause, upon a finding of such noncompliance by the City's Human Rights Commission and certification of such finding by the City Manager, the City Council of the City of Alexandria may terminate or suspend or not renew, in whole or in part, this Interim Agreement.

14.7 Drug-Free Workplace.

14.7.1 Drug-Free Workplace. During the performance of this Interim Agreement, Design-Builder agrees to: (a) provide a drug-free workplace for Design-Builder's employees; (b) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Design-Builder's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (c) 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 (d) include the provisions of the

foregoing clauses in every Subcontract over \$10,000, so that the provisions will be binding upon each Design Consultant and Subcontractor.

14.7.2 Definition. For the purposes of this Section 14.7, “drug-free workplace” means a site for the performance of work done in connection with this Interim Agreement, in accordance with Chapter 3, Title 3, of the Code of the City of Alexandria, the employees of which are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Interim Agreement.

14.8 Compliance with the Immigration Reform and Control Act of 1986. During the performance of any Work, Design-Builder shall not knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986, as amended.

14.9 Design-Builder’s Payment Obligations to Design Consultants and Subcontractors. Design-Builder is obligated as follows:

(a) Design-Builder is to be liable for the entire amount owed to any first-tier Design Consultant and Subcontractor, provided, however, that Design-Builder shall not be liable for amounts otherwise reducible due to Design Consultant’s or Subcontractor’s noncompliance with the terms of its Subcontract. In the event Design-Builder withholds all or a part of the amount promised to Design Consultant or Subcontractor under the Subcontract, Design-Builder shall notify such Design Consultant or Subcontractor, in writing, of its intention to withhold all or a part of Design Consultant’s or Subcontractor’s payment with the reason for nonpayment. Payment by the City shall not be a condition precedent to Design-Builder’s payment to any first-tier Design Consultant or Subcontractor, regardless of Design-Builder receiving payment for amounts owed to Design-Builder.

(b) Design-Builder shall take one of the two following actions within seven (7) days after receipt of amounts paid to Design-Builder by City for work performed by a first-tier Design Consultant or Subcontractor: (i) pay Design Consultant or Subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by Design Consultant or Subcontractor; or (ii) notify the City and Design Consultant or Subcontractor, in writing, of Design-Builder’s intention to withhold all or a part of Design Consultant’s or Subcontractor’s payment with the reason for nonpayment.

(c) Design-Builder shall provide the City with its federal employer identification numbers.

(d) Design-Builder is obligated to pay interest to its first-tier Design Consultants and Subcontractors on all amounts owed by Design-Builder that remain unpaid after seven (7) days following receipt by Design-Builder of payment from the City for work performed by Design Consultant or Subcontractor, except for amounts withheld as allowed in Paragraph (b) above. Interest shall accrue at the rate of one percent (1%) per month. Design-Builder’s obligation to pay an interest charge to Design Consultants and Subcontractors pursuant to this Paragraph (d) shall not be construed to be an obligation of the City, and any such interest charge shall be deemed a non-reimbursable expense. No change orders shall be allowed for the purpose of providing reimbursement for any interest charge.

(e) Design-Builder shall flow down to each first-tier Design Consultant and Subcontractor the provisions of this Section 14.9, thereby obligating such Design-Consultants and Subcontractors to meet the same payment and interest requirements to its Design Sub-Consultants and Sub-Subcontractors as Design-Builder is obligated to its Design Consultants and Subcontractors.

14.10 Claims and Disputes.

14.10.1 Notice of Intent to File a Claim. If Design-Builder believes that it is entitled to relief against the City for matters that are unresolved under Sections 3.4 or 4.1.2 above, or for any other matters, then Design-Builder may make a formal claim against the City on such matters. Design-Builder shall initiate the claim process by submitting to the City a written notice labeled "Notice of Intent to File a Claim" no later than fifteen (15) days of the time of the occurrence or the beginning of the work upon which the claim is based.

14.10.2 Notice of Claim. If Design-Builder decides to pursue its claim, it shall submit to the City a written notice labeled "Notice of Claim." In no event shall the Notice of Claim be submitted to the City more than sixty (60) days after Final Payment. The Notice of Claim shall include a statement of Design-Builder's position, specification of the remedy sought, and supporting documentation, which supporting documentation shall include, as applicable, information submitted by Design-Builder pursuant to Sections 3.4 and 4.1.2 above. Design-Builder shall also include with its Notice of Claim a statement certifying that the claim is made in good faith, that supporting documentation is accurate and complete, and that to the best of Design-Builder's knowledge and belief, the relief requested accurately reflects the full relief to which Design-Builder is entitled.

14.10.3 Substantiation of Claim. Responsibility to substantiate a claim shall rest solely and exclusively with Design-Builder and compliance with all notice, submittal and documentation requirements in the Contract Documents, including those under Sections 3.4 and 4.1.2 above and this Section 14.10 shall be a condition precedent to the assertion of any claim. Any claim failing to comply with the preceding sentence shall be barred.

14.10.4 City Decision. The City shall render a final written decision on a claim within ninety (90) days after the delivery of the Notice of Claim. If the City does not take action on the claim within the time required above, the claim will be deemed to be denied by the City.

14.10.5 Design-Builder Response to City Decision. The City's denial of the claim will be final and binding on the Parties unless Design-Builder delivers written notice to the City of its intent to pursue litigation within thirty (30) days following the written decision or deemed denial of the claim, and files appropriate pleadings to initiate litigation within six (6) months following the written decision or deemed denial of the claim. Design-Builder shall have no right to initiate litigation prior to its receipt of the City's final determination on the claim, or, if the City has not made a final determination, the date the claim is deemed denied pursuant to Section 14.10.4 above.

14.10.6 City's Right to Institute Litigation. Nothing in the Contract Documents shall be construed to prevent the City from instituting legal action against Design-Builder at any time.

14.10.7 Continuation of Work. No dispute between Design-Builder and the City shall interfere with the progress of the Work. Design-Builder shall have the duty to diligently proceed with the Work in accordance with the City's instructions despite any dispute, including but not limited to those events where the Parties are in disagreement as to whether instructions from the City constitute a change to the Work and justify adjustments to the Contract Price or schedule of work. Design-Builder's sole recourse in the event of such a dispute will be to pursue its rights under Section 14.11.1 above. For the avoidance of doubt, this Section 14.10.7 shall not be construed as affecting Design-Builder's rights to suspend and/or terminate for late payment under Section 4.4 above.

14.10.8 Claims against City Officials. Design-Builder shall make no claim whatsoever against any elected official, appointed official, authorized representative or employee of the City for, or on account of, anything done or omitted to be done in connection with this Interim Agreement.

14.11 Choice of Law and Venue. This Interim Agreement shall be governed by the laws of the Commonwealth of Virginia, without giving effect to its conflict of law principles. Any and all legal proceedings between the Parties shall be solely and exclusively initiated and maintained in either the Circuit Court of the City of Alexandria, Virginia or the United States District Court for the Eastern District of Virginia. These two courts shall have exclusive and binding jurisdiction and venue over any and all disputes arising under the Contract, and City and Design-Builder each irrevocably consents to the jurisdiction of such courts in any such proceeding and waives any objection it may have to the jurisdiction of any such proceeding. Any legal proceedings shall consist of a bench trial and not a trial by jury, and each party hereby waives its right to a jury trial in connection with any legal proceedings.

14.12 Notice. All notices required by the terms of this Interim Agreement shall be in writing. Notice will be deemed to have been validly given: (a) if delivered in person to the individual intended to receive such notice; or (b) one business day after being sent by overnight delivery via a nationally recognized courier service (e.g., FedEx or UPS), postage, transmittal or shipping charges prepaid, to the address set forth below:

If to Design-Builder:

If to the City:

City of Alexandria, Virginia

With copies to:

Office of the City Attorney, City of Alexandria

and

Director of Department of Project Implementation, City of Alexandria

14.13 No Third Party Beneficiaries. Nothing under this Interim Agreement shall be construed to give any rights or benefits in this Interim Agreement to anyone other than the City and Design-Builder, and all duties and responsibilities undertaken pursuant to this Interim Agreement will be for the sole and exclusive benefit of the City and Design-Builder and not for the benefit of any other party. For the avoidance of doubt, this provision is not intended to affect the City's rights under Section 2.2.5 above.

14.14 Assignment. Neither the Interim Agreement nor any right, privilege, delegation, or interest thereunder may be assigned or transferred in whole or in part by the City or Design-Builder without the prior written consent of the other Party, and any attempted assignment or transfer without such written consent shall be void. Notwithstanding the above, Design-Builder's consent of the City's assignment or transference shall not be required for assignments relating in any way to the financing of the Interim Agreement, Work or Project. Design-Builder shall execute such assignments, consents, and other documents as may be reasonably requested to give effect to or implement any assignment or conveyance of the Interim Agreement or any right, privilege, delegation, or interest thereunder.

14.15 Severability. The invalidity or unenforceability of any portion of this Interim Agreement will not affect the validity or enforceability of the balance of this Interim Agreement, which will be construed and enforced as if this Interim Agreement did not contain the invalid or unenforceable portion, unless deletion of the invalid portion would defeat the clear purpose of this Interim Agreement.

14.16 Survival. Any provision of this Interim Agreement that contemplates performance subsequent to any termination or expiration of the Interim Agreement shall survive any termination or expiration of this Interim Agreement and shall remain in full force and effect according to their terms.

14.17 Non-Waiver. The failure of Design-Builder or the City to exercise any right, power or option arising under this Interim Agreement or to insist upon strict compliance with the terms of this Interim Agreement shall not constitute a waiver of the terms and conditions of this Interim Agreement with respect to any other or subsequent breach thereof or a waiver by Design-Builder

or City of its rights at any time thereafter to require exact and strict compliance with all the terms thereof.

14.18 Sovereign Immunity. Notwithstanding any other provision of this Interim Agreement to the contrary, nothing in this Interim Agreement nor any action taken by the City pursuant to this Interim Agreement nor any document which arises out of this Interim Agreement shall constitute or be construed as a waiver of the sovereign immunity of the City, or of its elected and appointed officials, officers and employees.

14.19 Entire Agreement. This Interim Agreement, inclusive of all Exhibits, constitutes the entire agreement among the Parties pertaining to the work and supersedes all prior and contemporaneous agreements and understandings of the Parties in connection therewith.

14.20 Oral Modification. No oral statements of any person whatsoever shall, in any manner or degree, modify or otherwise affect the terms of this Interim Agreement.

14.21 FEMA Grant Requirements. Because the Work may be funded, in whole or in part, with grant(s) from the Federal Emergency Management Agency (“FEMA”), an agency under the U.S. Department of Homeland Security, this Interim Agreement may be subject to certain requirements associated with the grants. Grants from FEMA mandate the inclusion of certain contract provisions, which are set forth in Exhibit 14.21. Consequently, Design-Builder agrees that it will fully comply with all of the provisions contained in such Exhibit, and that in the event any other provision of this Interim Agreement conflicts with any provision in Exhibit 14.21, the provisions contained in Exhibit 14.21 shall govern.

14.22 Exhibits. The following exhibits (“Exhibits”) are specifically made part of, and incorporated by reference into, this Interim Agreement:

Exhibit 1.1(a)	Form of Comprehensive Agreement
Exhibit 2.1.1	Scope of Phase 1 Services
Exhibit 2.4.1	List of Key Personnel and Project Organizational Chart
Exhibit 2.5.1	City-Furnished Information
Exhibit 2.5.2	Designated City-Furnished Information
Exhibit 3.2.1	Initial 90-Day Schedule
Exhibit 4.2	Phase 1 Compensation
Exhibit 7.2	Insurance Requirements
Exhibit 14.21	FEMA Grant Requirements

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Interim Agreement as of the Effective Date of this Interim Agreement.

CITY:

DESIGN-BUILDER:

City of Alexandria, Virginia

(Name of Design-Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____