



DUMFRIES, VIRGINIA
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17755 Main Street
Dumfries, Virginia 22026-2386
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www.dumfriesva.gov

TOWN OF DUMFRIES, VIRGINIA
REQUEST FOR PROPOSAL FOR DESIGN-BUILD SERVICES
FOR QUANTICO CREEK STREAM RESTORATION
RFP NUMBER 17-005

OPENING DATE: December 7, 2017

OPENING TIME 1:00 P.M.

The Request for Proposal and related documents may be obtained during normal business hours from the Public Works Department located at 17755 Main Street Dumfries, VA 22026.

**THIS PUBLIC BODY DOES NOT
DISCRIMINATE AGAINST FAITH-BASED
ORGANIZATIONS**

Date of RFP: October 12, 2017

REQUEST FOR PROPOSAL (RFP)

RFP No. 17-005

Issue Date: October 16, 2017

Title: Design-Build Services for Quantico Creek Stream Restoration

Issued By:

Town of Dumfries

John Wilmer Porter Building

17755 Main Street

Dumfries, VA 22026

Phone: (703) 221-3400

Fax: (703) 221-3544

Email: tmyers@dumfriesva.gov

Sealed proposals will be received on or before **1:00 P.M., December 7, 2017** for furnishing the services and/or items described herein. The time of receipt shall be determined by the time clock stamp in the Purchasing office.

All questions must be submitted before 5:00 p.m., November 1, 2017. If necessary, an addendum will be issued and sent directly to the Offeror at the e-mail address/facsimile number/address provided below.

If proposals are mailed, send directly to the Purchasing Division at the address listed above. If hand delivered, deliver to the Public Works Department, 17755 Main Street Dumfries, VA 22026.

THIS PUBLIC BODY DOES NOT DISCRIMINATE AGAINST FAITH-BASED ORGANIZATIONS.

The Town reserves the right to cancel this RFP and/or reject any or all proposals and to waive any informalities in any proposal.

This section is to be completed by the pre-qualified and selected Offeror and this page must be returned with the proposal. In compliance with this request for proposal and subject to all terms and conditions imposed herein, which are hereby incorporated herein by reference, the undersigned offers and agrees to furnish the services and/or items requested in this solicitation if the undersigned is selected as the Successful Offeror. No proposal may be withdrawn for a period of sixty (60) days after the opening of the proposal, except as provided in the RFP.

Legal Name and Address of Prime Offeror (according to your registration with the SCC): **REQUIRED**

_____ Date: _____

_____ By: _____
(Signature in Ink)

_____ Name: _____
(Please Print)

_____ Zip: _____ Title: _____

Phone: _____ FAX: _____

Email: _____ Business License# _____

Virginia State Corporation Commission

Identification Number: _____

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**TOWN OF DUMFRIES,
VIRGINIA REQUEST FOR
PROPOSAL FOR
DESIGN-BUILD SERVICES FOR QUANTICO CREEK STREAM
RESTORATION RFP NO. 17-005**

INTRODUCTION

The Town of Dumfries, Virginia, is seeking competitive proposals from pre-qualified Offerors, selected by the Department of Public Works following the review of Statements of Qualification as requested in RFQ 14-12-09, to provide Design-Build Services for Quantico Creek Stream Restoration, in accordance with all terms, conditions and specifications as set out in this Request for Proposal (RFP). This is the second step of a two-step qualifications-based competitive negotiation process as authorized by Section 2.2-4308 of the Code of Virginia and Town of Dumfries Ordinance Resolution adopting procedures governing the award of design-build contracts.

The Town's primary objective in utilizing the design-build approach is to allow designers, contractors, and Town staff to produce an effective, comprehensive design and construction process that will encourage the development of creative options to maximize the value of the product as a unique surface water resource. The Town would like to retain mature trees as part of the proposed design for this project, if possible. Challenges regarding this project include, but are not limited to abandoned storm drain and sanitary sewer pipes, which are exposed and/or cross the stream. To limit the Town's risk and liability, the design-build method of procurement would provide the appropriate third party structural and geotechnical engineering design support and inspections necessary to complement the normal design processes. **The work must be completed no later than May 18, 2018. Offerors are requested to provide a project timeline along with their submittal.**

The RFP and related documents may be obtained during normal business hours from the Public Works Department, Dumfries, VA 22026, Telephone #: (703) 221-3400.

There is a **Mandatory pre-proposal** conference scheduled for **1:00 P.M.** on **November 2, 2017** in the **Council Chambers at 17755 Main Street, Dumfries, Virginia 22026**. You must be prepared to demonstrate qualifications for Design/Build at this conference.

ONLY THOSE OFFERORS WHO ARE PRE-QUALIFIED BY THE DEPARTMENT OF PUBLIC WORKS FOR RFQ 17-005 PRIOR TO THE DECEMBER 7, 2017 DATE ARE INVITED TO RESPOND TO THIS RFP.

Proposals, to be considered and evaluated, must be sealed and received on or before 1:00 p.m. on **December 7, 2017**, in the Town Hall Offices, Town of Dumfries, 17755 Main Street, Dumfries, VA 22026. Proposals appropriately received will be opened at this time. **Proposals received after 2:00 p.m. will not be accepted or considered.** The time of receipt shall be determined by stamp in the Town Hall Office, or if it is not working, such time shall be determined by the Public Works officials who is to open the proposals. Faxed or e-mailed proposals are not acceptable. **Top ranked Offerors may be invited to provide additional information, clarification or presentations at 17755 Main Street, Dumfries, Virginia 22026.** Each proposal, one (1) original, marked as such and six (6) copies marked as such, must be appropriately signed by an authorized representative of the Offeror, and must be submitted in a sealed envelope or package. The notation “**DESIGN-BUILD SERVICES FOR QUANTICO CREEK STREAM RESTORATION**”, **RFP No. 17-005** and the specified opening time and date must be clearly marked on the front of that sealed envelope or package.

The Town of Dumfries, Virginia, and its officers, employees or agents will not be responsible for the opening of a proposal envelope or package prior to the scheduled opening if that envelope or package is not appropriately sealed and marked as specified.

The Town of Dumfries, Virginia reserves the right to cancel this RFP and/or reject any or all proposals, to waive informalities in any proposal, to award any whole or part of a proposal, and to award to the Offeror whose proposal is, at the sole discretion of the Town of Dumfries, determined to be in the best interest of the Town.

Project evaluation and award will be accomplished in accordance with this RFP and THE VIRGINIA PUBLIC PROCUREMENT ACT, Under Appendix II, of the Act, and as adopted by the Code of the Town of Dumfries, Virginia, including the price or value of the benefits offered the Town in the proposal. If an award of a contract is made, notification of such award will be posted for public review in the lobby of the John Wilmer Porter Town Hall in Dumfries, VA 22026.

No proposal may be withdrawn for a period of sixty (60) days after the opening of the proposal, unless the proposal is the subject of a clerical error as defined in Section 2.2-4330 (A) of the Code of Virginia. The submitter of the proposal must give the Town a notice of the request to withdraw within two (2) business days after the conclusion of the opening of the proposals, as set forth in Section 2.2-4330 (B)(1).

Inquires or information regarding procurement procedures and/or proposal submission to this RFP shall be directed to the Department of Public Works.

This RFP consists of this Introduction, ten (10) numbered sections, and the attachments hereto.

If you are invited to respond to this RFP by the Town and intend to submit a proposal, you should notify Public Works Department that you intend to do so. However, each Offeror is solely responsible for ensuring that such Offeror has the current, complete version of the RFP documents, including any addenda, before submitting a proposal. The Public Works Department will deliver (either via e-mail, facsimile or USPS) any addenda to all Prime Offerors who are known to have received the RFP documents. The Town is not responsible for any RFP obtained from any source other than the Town. Contact Purchasing by phone at 703-221-3400, by fax at 703-221-3544, or by email at tmyers@dumfriesva.gov

Respectfully,

Terry Myers
Acting Director of
Public Works

Date: September 21, 2017

Town of Dumfries, Virginia

Request for Proposal

No.17-005

Design-Build Services for Quantico Creek Stream Restoration

SECTION 1. PURPOSE.

The Town of Dumfries invites pre-qualified and selected Offerors to respond to this RFP by submitting a proposal for Design-Build Services for Quantico Creek Stream Restoration.

Any response shall include the necessary planning, design, equipment, surfacing, construction, labor and expertise to complete the requested services. The selected team shall be responsible to be in full compliance with all local and state permitting; to include both the application for and any associated fees. This project will employ the design-build procurement process to encourage a creative, problem solving approach through interactive efforts of an experienced, highly motivated Design-Build Team. The design-build process will foster a cooperative owner-designer-contractor effort to identify potential value enhancement concepts throughout the design and construction process.

The Town of Dumfries invites any qualified Offeror to respond to this RFP by submitting a proposal for Design-Build Services for Quantico Creek Stream Restoration consistent with the terms and conditions herein set forth. Final scope of services will be negotiated with the successful Offeror.

SECTION 2. BACKGROUND.

This project is located within an 800-foot reach of Quantico Creek, beginning at Town Limits along Mine Road. The restoration area continues downstream in a northeasterly direction through the Town to the Quantico Creek's Main Channel at the other Incorporated Town Limits. The project ends at a point identified as can be restored within the allotted funds. This project will be completed to effectively address a portion of the TMDL Action Plan requirements. This portion of Quantico Creek is within the Town of Dumfries jurisdictional boundary.

The professional services that may be required to undertake this project include, but are not limited to: Rosgen stream design expertise, Biology/Ecology, Fluvial Geomorphology, Surveying, Landscape Architecture, Horticulture, Civil Engineering, Structural Engineering, Geotechnical Engineering, Urban Planning, Cost Estimation, Construction Administration and Construction Services. Construction services will include all work efforts necessary to complete the project in conformance with plans, specifications and all applicable permit requirements. The Consultant(s) will be responsible for preparing all applicable permit applications related to construction and will manage construction and quality assurance functions required to ensure proper execution of the design.

This project involves the creation of riparian buffer areas along the entire reach, while maintaining an appropriate scale and opportunities for visual enjoyment of the creek. Riparian buffers will possibly include native tree species, riparian buffer seed mix (herbaceous, grass and E&S layers), potentially gabion baskets, and/or reinforced bank areas and plug/livestake plantings. Stream restoration methods will generally comply with Rosgen Stream Design Principles. Selected stream bank stabilization methods and erosion matting selection shall be based upon the results of stream flow analysis calculations.

The objective of this request is to establish a list of qualified firms that can provide professional services that include, but are not limited to: field surveying (topographic and layout) site assessment & remediation evaluation, stream restoration evaluation/design and stream restoration build services. This project was the recipient of SLAF Grant funding and must follow a more stringent time schedule. The guaranteed maximum budget is \$800,000 of which, \$400,000 will be SLAF funding.

SECTION 3. PROJECT BUDGET.

- A. The design and construction budget has been established and the Guaranteed Maximum Price (GMP) is \$800,000.00. The entire design-build process must provide for the complete design and construction of the required Quantico Creek Stream Restoration.
- B. The design-build budget may include but is not limited to the following fees:
 1. Professional Fees- including architects, engineers, specialty consultants, and subcontractors for design development and construction;
 2. Pre-Design Surveys and Investigations – including preliminary evaluation of the concept plan and a geotechnical feasibility study, constructability review and preliminary estimate, geotechnical soils report, and value engineering of concept plans, etc.;
 3. All required Town permitting;
 4. Site Development – demolition work including grading, drainage, irrigation, landscaping, and storm water quality & quantity mitigation;
 5. New Construction – includes stream restoration, removal and reinstallation of the existing bridge (as applicable), excavation and extraction of existing abandoned storm drain and/or sanitary sewer (as applicable), and other improvements depicted on the attached concept plans and any new items defined during design development;
 6. Utility Coordination Services - including water, waste water, electrical, and associated connection fees;
 7. Construction Inspection, Quality Control and Quality Assurance;
 8. Design and Construction Contingencies;
 9. Taxes;
 10. Complete field “as-built” documentation as required by permitting;

SECTION 4. INSTRUCTIONS TO PRE-QUALIFIED AND SELECTED OFFERORS.

- A. Proposals must be submitted in accordance with the instructions and requirements contained in this RFP, including the Introduction. Failure to do so may result in the proposal being considered non-responsive and it may be rejected. An Offeror must promptly notify the Public Works of any ambiguity, inconsistency, or error which may be discovered upon examination of the RFP. An Offeror requiring clarification or interpretation of this RFP should contact the Purchasing Manager at (703) 221-3400.
- B. Prospective Offerors, sometimes referred to as providers, operators, contractors, consultants, or vendors, are to address the criteria below at a minimum as part of their submitted proposal. Wherever the word "Offeror" is used in this RFP, it shall mean each or any of the individuals, firms, partnerships, corporations or Teams. Each proposal should include a transmittal letter and team overview of the proposal. Proposals are to include and may be evaluated on the following factors, together with such other factors as will protect and preserve the interests of the Town of Dumfries, which may also be considered.
 - 1. Organizational structure of the design-build team and qualifications of management personnel.
 - 2. Proposed concept design.
 - 3. Detailed project budget.
 - 4. Detailed project schedule.
 - 5. Payment schedule.
 - 6. The conditions, if any, of the proposal.
- C. Each Offeror is responsible for examining carefully the site of the Work and the Contract and Proposal Documents relating to the Work. By submitting a proposal, the Offeror acknowledges and agrees that it has examined and considered the conditions to be encountered at and adjacent to the site, the character, quality, and quantities of work to be performed, the material to be furnished, other requirements of the Contract Documents, and to have waived any claim or objection based thereon. Claims as a result of failure to have done such examination will not be considered by the Town. See Section 11 of the General Conditions entitled "Conditions at Site."
- D. **Liquidated Damages:** The amount indicated as liquidated damages in the Design Build Contract and as described in the General Conditions Section 29 shall be due from and paid by the Contractor to the Town and/or, in the Town's discretion, shall be withheld from the Contractor's Request for Payment, and/or retainage, for each consecutive calendar day of delay in excess of the stated time required to complete the Work, unless modified by a Change Order.

- E. **State License:** Offerors and all subcontractors are required to comply with all applicable Town, State, and Federal Laws, Ordinances, and Regulations, including, but not limited to, registration with the Virginia State Corporation Commission if required by law; and are required to be properly licensed in accordance with Sections 54.1- 1100, et seq., of the Code of Virginia, which presently requires one to be licensed as a "Class A Contractor" before submitting a proposal of One Hundred Twenty Thousand Dollars (\$120,000) or more; or to be licensed as a "Class B Contractor" before submitting a proposal of Ten Thousand Dollars to One Hundred Twenty Thousand Dollars (\$10,000 to \$120,000); or to be licensed as a "Class C Contractor" before submitting a proposal of One Thousand Dollars to Ten Thousand Dollars (\$1,000 to \$10,000). There are also cumulative total amounts which can require a certain class of license and Offerors should check these requirements as well. (See also Section 10 of the General Conditions.)
- F. **Other Licenses, Permits, Fees, and Taxes:**
1. Successful Offeror is responsible for paying on time for all licenses, permits, fees, and taxes applicable to the project. Such charges and fees include, but are not limited to the applicable environmental permits, building permits, mechanical and electrical permits, hauling and dumping of material, and such Offerors will have to possess a Town business license and be responsible for paying Town of Dumfries business license taxes, as applicable. See Section 3 of the General Conditions.
 2. Right of Way Excavation Permit – Offerors are advised that all work within the public rights of way requires a Right of Way Excavation Permit from the Town’s Department of Public Works and/or the Town’s Department of Planning, Building and Development. The successful Offeror, at its cost, shall be responsible for obtaining such permit(s) and providing a separate Excavation Permit Bond(s) in accordance with the requirements of the Town’s Right of Way Excavation and Restoration Standards.
- G. **Work Required:** The Town requires that the successful Offeror perform a complete and satisfactory job in accordance with the Contract Documents.
- H. **Conflicts in Contract Documents:** Anything called for by one of the Contract Documents and not called for by the others shall be of like effect as if required or called for by all Contract Documents. In the case of conflict between the Contract Documents, the Contract Documents shall take precedence in the following order: The Contract; addenda starting with the last issued addendum; the Supplemental General Conditions; the General Conditions; the Special Conditions; the specifications with attachments; and the drawings.
- I. **Work Not Described:** All work not specifically described in the Contract Documents, yet required to produce a fully functional and properly operating project shall be provided even though every item or minor detail for the proper installation or successful operation of the entire Work is not mentioned in the Contract Documents.

- J. **Completion of Work:** The successful Offeror acknowledges and agrees that it has taken into account in its proposal the requirements of the RFP and Contract Documents, local conditions, availability of material, equipment, labor, and any other factors which may affect the performance of the Work. The successful Offeror agrees and warrants that it will complete the Work not later than the period or date indicated for completion
- K. Also include any other materials you may want to submit as part of your proposal response.
- L. Responses to this RFP must be in the prescribed format.
- M. The Town may request additional information, clarification, or presentations from any of the Offerors after review of the proposals received.
- N. The Town has the right to use any or all ideas presented in reply to this RFP, subject only to the limitations regarding proprietary/confidential data of Offeror.
- O. The Town is not liable for any costs incurred by any Offeror in connection with this RFP or any response by any Offeror to this RFP. The expenses incurred by Offeror in the preparation, submission, and presentation of the proposal are the sole responsibility of the Offeror and may not be charged to the Town.
- P. Only the Town will make news releases pertaining to this RFP or the proposed award of a Contract.
- Q. Each Offeror who is a stock or Nonstock Corporation, Limited Liability Company, business trust, or a limited partnership or other business entity shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if required by law. Each such Offeror shall include in its proposal response the Identification Number issued to it by the Virginia State Corporation Commission (SCC) and should list its business entity name as it is listed with the SCC. Any Offeror that is not required to be authorized to transact business in the Commonwealth as a domestic or foreign business entity as required by law shall include in its proposal response a statement describing why the Offeror is not required to be so authorized. (See Va. Code Section 2.2-4311.2).
- R. Each Offeror is required to state if it has ever been debarred, fined, had a contract terminated, or found not to be a responsible Offeror by any federal, state, or local government, and/or private entity. If so, please give the details of each such matter and include this information with the proposal response.

SECTION 5. MISCELLANEOUS.

- A. Ownership of Material - Ownership of all data, materials, and documentation originated and prepared for the Town pursuant to the RFP shall belong exclusively to the Town and be subject to public inspection in accordance with the *Virginia Freedom of Information Act*. Trade secrets or proprietary information submitted by the Offeror shall not be subject to public disclosure under the *Freedom of Information Act*, unless otherwise required by law or a court.

- B. **However, the Offeror must invoke the protection of Section 2.2-4342(F) of the Code of Virginia, in writing, either before or at the time the data or other material is submitted.** The written notice must SPECIFICALLY identify the data or materials to be protected and state the reason why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary, or trade secrets, is NOT ACCEPTABLE and may result in REJECTION of the proposal.
- C. As this is a RFP, no information regarding the proposal records or the contents of responses will be released except in accordance with Section 2.2-4342 of the Code of Virginia. Once an award has been made, all proposals will be open to public inspection subject to the provisions set forth above.
- D. Any interpretation, correction, or change of the RFP will be made by an addendum. Interpretations, corrections or changes of this RFP made in any other manner will not be binding and Offerors must not rely upon such interpretations, corrections, or changes. The Department of Public Works will deliver (either via e-mail or USPS) any addenda to all Prime Offerors who are known to have received the RFP documents. No Offeror shall confer with any public employee having official responsibility for a purchasing transaction any payment, loan, subscription, advance, deposit or money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.
- E. The Town may make investigations to determine the ability of the Offeror to perform or supply the services and/or items as described in this RFP. The Town reserves the right to reject any proposal if the Offeror fails to satisfy the Town that it is qualified to carry out the obligations of the proposed contract.
- F. The Successful Offeror must comply with the nondiscrimination provisions of Virginia Code Section 2.2-4311, which are incorporated herein by reference.
- G. The Successful Offeror must comply with the drug-free workplace provisions of Virginia Code Section 2.2-4312, which are incorporated herein by reference.
- H. It is the policy of the Town of Dumfries to maximize participation by minority and women owned business enterprises in all aspects of Town contracting opportunities.
- I. The Successful Offeror shall comply with all applicable Town, State, and Federal laws, Codes, provisions, and regulations. The Successful Offeror shall not during the performance of any resultant contract knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- J. Providers of any outside services shall be subject to the same conditions and requirements as the successful Offeror in regard to law, code, or regulation compliance. The Town reserves the right of approval for any subcontract work, including costs thereof.

- K. Ethics in Public Contracting. The provisions, requirements, and prohibitions as contained in Sections 2.2-4367 through 2.2-4377, of the Virginia Code, pertaining to bidders, offerors, contractors, and subcontractors are applicable to this RFP.
- L. Conflict of Interests Act. The provisions, requirements, and prohibitions as contained in Sections 2.2-3100, et seq., of the Virginia Code are applicable to this RFP.
- M. The procurement provisions of the Code of the Town of Dumfries (1979), as amended, Sections 23.2-1, et seq., as well as the Town Procurement Manual, apply to this RFP, unless specifically modified herein. The Town's Procurement Manual can be reviewed at the Public Works Department.
- N. Insurance Requirements.
Successful Offeror, and any of its subcontractors, shall, at its sole expense, obtain and maintain during the life of the resulting Contract the insurance policies and/or bonds required. Any required insurance policies and/or bonds shall be effective prior to the beginning of any work or other performance by successful Offeror, or any of its subcontractors, under any resultant Contract. All such insurance shall be primary and noncontributory to any insurance or self-insurance the Town may have. The policies and coverages required are those as may be referred to in the sample contract and/or the terms and conditions attached to this RFP.

SECTION 6. PROTESTS.

Any Offeror who wishes to protest or object to any award made or other decisions pursuant to this RFP may do so only in accordance with the provisions of Sections 2.2-4357, 4358, 4359, 4360, 4363, and 4364 of the Code of Virginia, and only if such is provided for in such Code section. Any such protest or objection must be in writing signed by a representative of the entity making the protest or objection and contain the information required by the applicable Code Sections set forth above. Such writing must be delivered to the Town Purchasing Manager within the required time period.

SECTION 7. SERVICES AND/OR ITEMS REQUIRED.

The following are the services and/or items that the successful Offeror will be required to provide to the Town and should be addressed in each Offeror's proposal.

A description and/or listing of the services and/or items that the successful Offeror will be required to provide to the Town under this RFP are those that are set forth below and/or referred to in any way in the sample contract, any terms and conditions, and/or any attachments to this RFP.

Each Offeror should carefully read and review all such items and should address such items in its proposal. However, the final description of the services and/or items to be provided to the Town under this RFP is subject to negotiations with the successful Offeror, and final approval by the Town.

1. Development and refinement of project scope: team shall work with Town staff to determine the final scope and fee associated with the project. Offeror's proposal should specifically address its plan for mitigating erosion during the winter season.
2. Conceptual and final designs: consultant shall meet with the Town's project manager

and their team to guide the consultant in the development of several conceptual options including total project cost estimations. A final design concept shall be approved by the Town in writing, and thereafter, the consultant shall develop final design plans and submit such for any state or local permitting requirements.

3. Permits: the consultant is solely responsible for determining what permits are required for the project as well as their compliance. The consultant should expect to work with various permitting divisions and agencies as applicable.
4. It is the responsibility of the Offeror to become familiar with Quantico Creek Stream existing conditions.
5. Utilities: It is the responsibility of the Offeror to be aware of all utilities, public and private, whether below or above ground. Any relocation will be the responsibility of the Offeror.
6. Offerors are encouraged to form multi-disciplinary teams to respond to this proposal.
7. Successful Offeror shall provide project coordination and management services (budget reporting and permitting included).
8. Successful Offeror shall identify and define existing conditions, prepare site topographic survey, assess site constraints/opportunities and remediation strategies.
9. Successful Offeror shall be responsible for all construction, excavation, and necessary demolition required to construct based upon the final design.
10. Successful Offeror shall be responsible for construction administration services throughout the construction period.
11. Successful Offeror shall provide progress reports as agreed upon by the parties, as well as, all final project completion report and close out documents.
12. Construction work hours may take place except where exempted by the Town due to possible prearranged events or programs held within the park. Exempt days as endorsed by the Town shall not be considered as working days for the construction phase.
13. Substantial Completion - Offerors shall be accountable to **construct to a state of substantial completion on or before_____**. A walk-through inspection shall be held by the Town and any items not finished shall be added to a 21-day punch-list. Once a Notice of Substantial Completion and project punch-list has been issued by the Town to the Offeror, the Offeror shall have 21 calendar days to complete the work for final inspection.
14. Final Completion – The Town shall schedule a final completion inspection of the work site. If all aspects of the punch-list have been completed to satisfaction, the Town shall issue a Notice of Completion. It is at this stage that all warranties shall begin.
15. The work herein shall be based upon the stated guaranteed maximum price with 5%

of the total fee to be held in retainage by the Town until final acceptance has been achieved.

16. Communications – All project related communications shall be through the respective Project Managers of both the Offeror and the Town.

SECTION 8. EVALUATION CRITERIA.

Offerors will be evaluated for selection based on those most qualified to meet the requirements of this RFP. Major criteria to be considered in the evaluation may include, but shall not necessarily be limited to the items referred to above and those set forth below:

- A. The ability of the Offeror's concept plan to reflect the Town's desired experience of Stream restoration design using Rosgen Stream Design Methodology and the ability to adapt to necessary field changes through the design build process.
- B. The ability of the Offeror to provide the maximum amount of streambank stabilization and floodplain (re)connection as well as optimizing benthic habitat. in relation to the project budget, and the ability of the Offeror to clearly detail how the project budget will be allocated to the stream restoration components.
- C. The ability of the Offeror to clearly articulate a project schedule in accordance with the Town's milestones and desired final acceptance date of March 15, 2018.
- D. The Offeror's proposed payment schedule.
- E. The Offeror's responsiveness and compliance with the RFP requirements and conditions.
- G. The quality of Offeror's performance in comparable and/or similar projects.
- H. Whether the Offeror can provide the services and/or deliver the items in a prompt and timely manner. **Offeror must have the capability to have the entire stream restoration fully constructed and operational for public use by June 30, 2018.**

SECTION 9. SELECTION PROCESS.

- A. Pursuant to Section 2.2-4308 of the Code of Virginia and Town of Dumfries Ordinance adopting written procedures governing the selection, evaluation, and award of design-build contracts, the process for Offeror selection is as follows:
 1. Based on the criteria established in the RFP, the Public Works Department shall evaluate each of the proposals. As part of the evaluation process, the Public Works Department may grant each of the Offerors an equal opportunity for direct and private communication with the Public Works Department. Each Offeror shall be allotted the same fixed amount of time.
 2. The Public Works Department will inform each Offeror of any adjustments necessary to make such Offeror's technical proposal fully compliant with the requirements of the RFP. In addition, the Town may require that any and/or all Offerors make design adjustments necessary to incorporate project improvements and/or technical detail information identified by the Public Works Department.

3. The Public Works Department shall evaluate and rank the proposals. Should the Town Manager determine in writing and in his/her sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror after approval of the Town Manager. The Public Works Department, in its discretion, either as a whole or designated member or members, may then negotiate with the Offeror or Offerors the Public Works Department selects in order to arrive at terms for a design-build contract the Public Works Department determines the Public Works Department can recommend to the Town Manager.
 4. The Public Works Department shall make its recommendation for the selection of a design builder to the Town Manager based on its evaluations of the technical and financial proposals. The contract shall be awarded to the Offeror who is fully qualified and has been determined to have provided the best value in response to the RFP and whose proposal is deemed to be in the best interest of the Town.
 5. The Town Manager or designee will notify all Offerors who submitted proposals which Offeror was selected for the project. The Notice of Intent to Award may be used to make this notification.
 6. Upon request and in accordance with Va. Code section 2.2-4342 documentation of the process used for the final selection shall be made available to the unsuccessful Offerors.
- B. All proposals submitted in response to this RFP will be reviewed by the Purchasing Division or its designee for responsiveness prior to referral to the Public Works Department. A Public Works Department consisting of Town personnel and/or others and/or an appropriate individual will then evaluate all responsive proposals, conduct the negotiations, and make recommendations to the Town Manager, or the Town Manager's designee, as appropriate. The award of a contract, if made, will be made to the Offeror whose proposal best furthers the interest of the Town, as determined by the Town Manager, or the Town Manager's designee. The Town reserves the right to reject any and all proposals, to waive any informality or irregularity in the proposals received, and to make the award to the Offeror whose proposal is deemed to be in the best interest of the Town.
- C. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the Public Works Department. This provides an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. Oral presentations are strictly at the option of the Town and may or may not be conducted.

SECTION 10. INFORMATION ON CONTRACT TO BE AWARDED.

The Sample Contract marked as Attachment B and the General Conditions to the Sample Contract marked as Attachment C to RFP No. 17-005 contain terms and conditions that the Town plans to include in any contract that may be awarded, but such terms and conditions may be changed, added to, deleted, or modified as may be agreed to between the Town and the Offeror during negotiations. However, if an Offeror has any objections to any of the terms or conditions set forth in the Sample Contract or any changes or additions thereto that the Offeror wants to discuss during negotiations, the Offeror should set forth such objections, changes, or additions in such Offeror's proposal submitted in response to this RFP. Otherwise, submission of a proposal by an Offeror will obligate such Offeror, if it is the Successful Offeror, to enter into a contract containing the same or substantially similar terms and conditions as contained in such Sample Contract. Other terms and conditions, if necessary, will be negotiated with the Successful Offeror.

END

ATTACHMENT A
TO RFP 17-005
DESIGN-BUILD SERVICES FOR QUANTICO CREEK STREAM RESTORATION
CONCEPT DESIGN AND QUANTICO CREEK COMMUNITY PLAN





ATTACHMENT B
RFP 17-005

DESIGN-BUILD SERVICES FOR QUANTICO CREEK STREAM RESTORATION

SAMPLE CONTRACT

TOWN OF DUMFRIES, VIRGINIA

DESIGN BUILD CONTRACT

THIS DESIGN BUILD CONTRACT is dated _____, 20____, between _____
_____, hereinafter referred to as the "Contractor", and
the Town of Dumfries, Virginia, a Virginia municipal corporation, hereinafter referred to as
the "Town" or "Owner."

RECITALS:

WHEREAS, After competitive negotiation pursuant to the Virginia Public Procurement Act, the Contractor has been awarded a contract by the Town for site design and development services, A/E design services, and construction services for the Project, so the result will be that the Town will have a restored stream that reduces erosion, is connected to the floodplain and optimizing aquatic and terrestrial habitat.in full accordance with the Contract Documents, hereinafter and in the Contract Documents referred to as the "Work" or "Project;"

WHEREAS, Contractor will be providing these services as a design-builder;

WHEREAS, Contractor generally will be compensated subject to the terms of this Contract but will be responsible for ensuring that the total cost of the Project to Town does not exceed the Contract Guaranteed Maximum Price (GMP) established by this Contract;

WHEREAS, Contractor will be responsible for completing the Project so that payments by Town will not exceed the GMP, except as may be adjusted by this Contract, even if the costs to Contractor to do so exceed the GMP;

WHEREAS, Because this is a design-build project, Town makes no warranty to Contractor, express or implied, regarding any design for the Project. Rather Contractor and its A/E warrant that all design and design services meet the highest standard of care in Virginia for the applicable design professional providing such design or services; and

WHEREAS, The Virginia licensed Architect / Engineer who will design the Work is identified as:
_____,(address).

THEREFORE, in consideration of the terms and provisions set forth herein, the Parties agree that the above Recitals are incorporated into this Contract and made a part hereof and the Parties further agree as follows:

ARTICLE 1. WORK TO BE PERFORMED AND DOCUMENTS.

For and in consideration of the sums of money hereinafter specified to be paid by the Town to the Contractor for the Work provided for in this Contract and in the Contract Documents to be performed by the Contractor, the Contractor hereby covenants and agrees with the Town to fully construct, perform, and complete the Work in a good and workmanlike manner in accordance with this Contract and the Contract Documents to produce a fully functional and properly operating project within the time stipulated, time being made of the essence of this Contract. It is also agreed by the parties hereto that the Contract Documents consist of this Contract and those items set forth in the definition of Contract Documents in Section 1 of the General Conditions and includes the following, all of which are and constitute a part of this Contract as if attached hereto or set out in full herein, viz:

Request for Proposal dated_____.

General Conditions of the Design Build Contract (included in the RFP) (referred to as the "General Conditions") dated_____.

Supplemental General Conditions, if any, dated_____.

Addendum No._____dated_____.

Plans and Drawings as contained or listed in the Request for Proposal dated_____.

Specifications as contained in the Request for Proposal dated_____.

Special Conditions or similar documents, if any, as may be contained in the Request for Proposal dated_____.

Cost Proposal completed by Contractor for this project.

Cost Proposal Modifications completed by the Contractor for this project,

if any; Technical Proposal completed by Contractor for this project.

Technical Proposal Modifications completed by the Contractor for this project, if any;

[Escrow Agreement, if any.]

Project Schedule dated _____

_____.

Project Budget dated _____.

All Work not specifically described in the Contract Documents, yet required to produce a fully functional and properly operating Project shall be provided even though every item or minor detail for the proper installation or successful operation of the entire Work is not mentioned in the Contract Documents.

ARTICLE 2. PROJECT DEVELOPMENT.

2.1 INITIAL NOTICE TO PROCEED.

Execution of this Agreement by Town constitutes Notice to Proceed with design and Construction Document preparation. Contractor shall commence Work under this Agreement immediately after the date of the Notice to Proceed. The Contractor further agrees that the Work shall be prosecuted regularly, diligently, and uninterruptedly at a rate of progress that will ensure full completion thereof in the shortest length of time consistent with the Contract Documents.

2.2 TIME OF COMPLETION.

The Contractor covenants and agrees to properly construct, perform, and substantially complete the Work by March 15, 2018, and to achieve Final Acceptance within twenty-one (21) consecutive calendar days thereafter.

2.2 DESIGN AND CONSTRUCTION.

The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, plans, specifications, and other services and/or materials furnished by the Contractor under this Contract. However, the responsibility of the Contractor does not relieve those providing such services and/or materials from also being responsible to the Town for such items. Town is hereby deemed to be a third-party beneficiary of any of Contractor's contracts with others for Work or materials on the Project so Town may, but is not required to, enforce any such contracts and Contractor will notify all such subcontractors of Town's right under this paragraph.

2.3 DRAWINGS AND SPECIFICATIONS.

Based upon the Scope of Work and/or requirements furnished by the Town in writing and included herein, the Contractor shall prepare the complete contract working plans and specifications. All design submissions for this Project shall be made in both paper drawing/document form and AutoCAD electronic file form compatible with Town's CAD system. Design submissions shall be made as outlined below. The Town review and/or approval period shall be in accordance with the Project Schedule (see Exhibit), but not less than ten (10) days for each of the following submissions.

a. **35% Design Development Submission:**

Following receipt of Town's approval of the Schematic Design submission, the Contractor shall prepare a 35% Design Development submission including updated drawings and specifications. Contractor shall submit the 35% Design Development submission to the Town for review and approval in accordance with the Project Schedule shown in Exhibit . The Town review period will be in accordance with the Project Schedule shown in Exhibit

b. **65% Construction Documents Submission:**

Following receipt of Town's approval of the 35% Design Development submission, the Contractor shall prepare a 65% Construction Documents submission. Contractor shall submit the 65% Construction Documents submission to the Town for review and approval in accordance with the Project Schedule shown in Exhibit. The Town review period will be in accordance with the Project Schedule shown in Exhibit

c. **100% Construction Documents Submission:**

Following receipt of Town's approval of the 65% Construction Documents submission, the Contractor shall prepare a 100% Construction Documents submission. Contractor shall submit the 100% Construction Documents submission to the Town for review and approval in accordance with the Project Schedule shown in Exhibit. On an exception basis, intermediate submissions may be provided for the design of foundations, structural steel, and other items or systems requiring either advance procurement or construction start prior to the completion of the overall design in accordance with the approved schedule. The Town review period will be in accordance with the Project Schedule shown in Exhibit.

2.4 CONSTRUCTION.

With Town's prior agreement in writing, and subject to imposition by Town of reasonable conditions to assure a satisfactory Guaranteed Maximum Price (GMP) for the Project, construction may be allowed to commence in accordance with the Project Schedule prior to the Town's Storm Water Manager's approval of all of the Construction Documents. Where phased/fast track construction is proposed prior to overall final approval, plans and specifications covering the system or components covered by that phase must be approved by the Town's Storm Water Manager prior to the start of construction of that phase.

ARTICLE 3. PRICES.

3.1. PRICES.

The Contractor must provide all Work called for under this Contract, including furnishing all material, services, labor, and equipment to perform the Work for the prices as indicated in Exhibit, but in no event shall the total of all such prices exceed the GMP except as may be authorized by a Change Order.

3.2. GUARANTEED MAXIMUM PRICE.

- a. A Guaranteed Maximum Price (GMP) has been established by the parties for the Project and such GMP is a total amount of \$400,000. See Exhibit for detail. The GMP is the maximum sum that the Town shall pay to the Contractor in total for this Project, except as may otherwise be provided in this Contract. It includes, but is not limited to all design fees and all construction labor, materials, expenses, permits, utility fees, and equipment needed to properly complete the Project.
- b. If at any time during design or construction it becomes apparent that the final Project costs will exceed the GMP, the Contractor shall immediately notify the Storm Water Manager and advise him/her of the action the Contractor proposes to take to reduce costs to be within the GMP. Such actions shall be at the Contractor's sole cost and subject to the Town's approval. If such costs cannot be reduced to be within the GMP in order to properly complete the Project, the Project shall be properly completed and the Contractor shall be solely responsible for any excess cost over the GMP amount.
- c. All proposed revisions or changes to the approved Plans and Specifications must be submitted to the Storm Water Manager for review and approval for conformance with the approved design development plans and specifications, regardless of whether or not they affect the GMP. Town's review and approval shall not be unreasonably conditioned, delayed or withheld. However, no such changes shall increase the GMP, except as may be specifically provided for in other provisions of this Contract. Also, no such review and/or approval by the Storm Water Manager or Town shall relieve the Contractor of the Contractor's responsibility to ensure all such Plans and Specifications are proper and in accordance with the Contract Documents.
- d. Contractor shall ensure that the GMP amount is not exceeded, but if such amount is exceeded, Contractor shall be solely responsible for any such excess amount.
- e. No payment shall be made to Contractor in excess of the GMP except as may be adjusted for any Changes made in accordance with this Contract. The Contractor shall be wholly responsible to complete the Project at no compensation above the GMP.

3.3. CHANGE IN FEES RELATING TO SERVICES FOR MODIFICATION OF DESIGN.

For changes to the drawings and specifications requested by the Town after Town's approval of the final drawings and specifications, if such changes substantially add to the Scope of Work, the Contractor shall, upon the written request of the Town's Storm water Division Manager/Storm Water Manager and/or Town designee, make the necessary design drawing and specification revisions; prepare and issue requests for proposal describing the modifications; prepare estimates, drawings and specifications as required; evaluate proposals and make recommendations to the Town's Storm water Division Manager/Storm Water Manager and/or Town designee. The amounts payable by Town for services under this paragraph will be negotiated, and if the amount payable cannot be agreed upon, will be based upon the rates indicated in Exhibit hereto and a determination of a reasonable amount of time to complete such additional services.

ARTICLE 4. LIQUIDATED DAMAGES.

Town and Contractor recognize that time is of the essence in the completion of the Work and that the Town will suffer loss or damages if the Work is not completed within the period of time stipulated above, plus any extensions thereof allowed in accordance with the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss or damages suffered by Town if the Work is not completed on time. Accordingly, if such Work is not fully and satisfactorily substantially completed within the period of time set forth in Article 2, the Contractor agrees it shall owe to and pay to Town as liquidated damages for loss of Town's full use or occupancy of the Work, but not as a penalty, the sum of Two Hundred Dollars (\$200.00) for each consecutive calendar day during which substantial completion of the Work is delayed or exceeds the date of substantial completion identified in Article 2 of this Contract to complete the Work and then to reach Final Acceptance as set forth above to fully and satisfactorily complete the Work. Provided, however, if Final Acceptance is not achieved by the Contractor within such additional time period, then the above-mentioned sum of liquidated damages shall be due and paid by the Contractor to the Town as additional liquidated damages for each consecutive calendar day Contractor does not achieve such Final Acceptance. Liquidated damages are defined in Section 29 of the General Conditions. Contractor further agrees that any liquidated damages Town assesses against Contractor may also be withheld by Town from any retainage or other sums Town may otherwise owe to Contractor. Contractor hereby waives any defense as to the validity of any liquidated damages stated herein on the grounds such liquidated damages could be void as penalties or are not reasonably related to actual damages. All such liquidated damages are in addition to any other damages the Town may be entitled to recover from Contractor.

ARTICLE 5. PAYMENT FOR WORK.

Construction estimates for payment, including the final payment request, submitted by the Contractor shall be in accordance with the provisions of Sections 28, 29, and 30 of the General Conditions and such other provisions of the Contract Documents that may be applicable. Final payment will not be made until the Work has been fully and satisfactorily completed, the Contract duly performed, and a Certificate of Final Acceptance has been issued by the Town Storm Water Manager, all as provided for in the Contract Documents.

ARTICLE 6. CONTRACTUAL CLAIMS.

Any contractual claims shall be submitted in accordance with the contractual dispute procedures set forth in Section 38 of the General Conditions and the supplemental instructions, if any, attached to this Contract.

ARTICLE 7. NONWAIVER.

Contractor agrees that the Town's waiver or failure to enforce or require performance of any term or condition of this Contract or the Town's waiver of any particular breach of this Contract by the Contractor extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or conditions of this Contract or a waiver of any other breaches of the Contract by the Contractor and does not bar the Town from requiring the Contractor to comply with all the terms and conditions of the Contract and does not bar the Town from asserting any and all rights and/or remedies it has or might have against the Contractor under this Contract or by law.

ARTICLE 8. FORUM SELECTION AND CHOICE OF LAW.

This Contract shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia, without application of Virginia's conflict of law provisions. Venue and any actions for any litigation, suits, and claims arising from or connected with this Contract shall only be proper in the Dumfries Town Circuit Court, or in the Dumfries Town General District Court if the amount in controversy is within the jurisdictional limit of such court, and all parties to this Contract voluntarily submit themselves to the jurisdiction and venue of such courts, regardless of the actual location of such parties.

ARTICLE 9. SEVERABILITY.

If any provision of this Contract, or the application of any provision hereof to a particular entity or circumstance, shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Contract shall not be affected and all other terms and conditions of the Contract shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 10. NONDISCRIMINATION.

- A. During the performance of this Contract, the Contractor agrees as follows:
 - 1. The Contractor will not discriminate against any Subcontractor, employee, or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by State law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal employment opportunity employer.

3. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

B. The Contractor will include the provisions of the foregoing Subsections A (1), (2), and (3) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

ARTICLE 11. FAITH-BASED ORGANIZATIONS.

Pursuant to the Code of Virginia, Section 2.2 - 4343.1, be advised that the Town of Dumfries does not discriminate against faith-based organizations.

ARTICLE 12. COMPLIANCE WITH FEDERAL IMMIGRATION LAW.

Contractor agrees that Contractor does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

**ARTICLE 13. COMPLIANCE WITH STATE LAW. FOREIGN AND DOMESTIC
BUSINESSES AUTHORIZED TO TRANSACT BUSINESS IN THE
COMMONWEALTH OF VIRGINIA.**

Contractor shall comply with the provisions of Virginia Code Section 2.2-4311.2, as amended, which provides that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Contract. The Town may void the Contract if the Contractor fails to remain in compliance with the provisions of this section.

ARTICLE 14. CONTRACT SUBJECT TO FUNDING.

This Contract is or may be subject to funding and/or appropriations from federal, state and/or local governments and/or agencies and/or from the Council of the Town of Dumfries. If any such funding is not provided, withdrawn, or otherwise not made available for this Contract, the Contractor agrees that the Town may terminate this Contract on seven (7) days written notice to Contractor, without any penalty or damages being incurred by the Town. Contractor further agrees to comply with any applicable requirements of any grants and/or agreements providing for such funding.

ARTICLE 15. "ALL RISK" BUILDER'S RISK INSURANCE.

As this project is new construction, in accordance with Section 12(a) - Contractor Controlled During Construction of the General Conditions, the requirements of Section 12(b) - Owner Controlled During Construction of the General Conditions do not apply.

ARTICLE 16. HEADINGS.

The captions and headings in this Contract are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of this Contract.

ARTICLE 17. COUNTERPART COPIES.

This Contract may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

ARTICLE 18. CONSTRUCTION OF TERMS.

The terms and conditions in all parts of this Contract shall be in all cases construed according to their fair meaning and not strictly for or against any party.

ARTICLE 19. NOT USED.

ARTICLE 20. ENTIRE CONTRACT.

This Contract, including any attachments, exhibits, and referenced documents, constitutes the complete understanding between the parties. This Contract may be modified only by written agreement properly executed by the parties.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have signed this Contract by their authorized representatives.

Attest/Witness:

Typed Legal Name of Contractor

By _____
President/Vice-President; Partner or
Owner

Typed or Printed Name and Title
(Contractor's Corporate Seal)

Typed or Printed Name and Title

Attest/Witness:

TOWN OF DUMFRIES, VIRGINIA

By _____

Typed or Printed Name and Title

Typed or Printed Name and Title

Appropriation and Funds Required
for this Contract Certified

Approved as to form:

Date: _____

Account #: _____

Approved as to execution:

Town Clerk

ATTACHMENT C
TO RFP 17-005
DESIGN-BUILD SERVICES FOR QUANTICO CREEK STREAM RESTORATION

GENERAL CONDITIONS OF THE DESIGN-BUILD CONTRACT

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TOWN OF DUMFRIES,
VIRGINIA

GENERAL CONDITIONS OF THE DESIGN-BUILD CONTRACT

SECTION 1. DEFINITIONS

Whenever used in these General Conditions of the Design-Build Contract or in the Contract Documents, the following terms have the meanings indicated, which are applicable to both the singular and plural and the male and female gender thereof, and where applicable to any other legal entity such as a corporation, partnership, limited liability company, etc.

The section and paragraph headings are inserted for convenience only.

Architect, Engineer, Architect/Engineer or A/E: The term used to designate the duly Virginia licensed persons or entities designated by the Design Build Contractor to perform and provide the Architectural and Engineering design and related services in connection with the Work.

Change Order: A document issued by the Town on or after the effective date of the Contract which is agreed to by the Contractor and approved by the Town, and which authorizes an addition, deletion, or revision in the Work, including any adjustment in the GMP and/or the Contract Time for Completion.

Town or Owner: The Town of Dumfries, Virginia, or its authorized representative.

Town Code: Refers to the Code of the Town of Dumfries (1979), as amended.

Town Engineer: The Town Engineer or his authorized representative.

Town Manager: The Town Manager or his authorized representative.

Code of Virginia: Refers to the Code of Virginia (1950), as amended. (Sometimes referred to as Va. Code or Virginia Code.)

Contract: The written agreement between the Town and Design Build Contractor concerning the performance of the Work and consisting of the Contract Documents.

Contract Documents: The Contract between Town and Design Build Contractor signed by the Town and the Contractor and any documents expressly incorporated therein. These documents include, but are not limited to, the Request for Proposal, the Contract, the Bonds or other Security, the Escrow Agreement, the General Conditions, Supplemental General Conditions, Special Conditions, the Specifications, Addenda or Change Orders, the Plans and Drawings, any Supplemental Drawings, and any additional documents incorporated by reference in the above. In the event of conflicts among the Contract

Documents, the Contract Documents shall take precedence in the following order: the Contract between Town and Contractor; the Supplemental General Conditions; the General Conditions; the Special Conditions; the approved specifications with attachments; and the approved plans.

Contract Completion Date: The date by which the Work must be Substantially Complete. The Contract Completion Date is customarily established in the Notice to Proceed, based on the Time for Completion. In some instances, however, the Contract contains a mandatory Contract Completion Date, which shall be stated in the Request for Proposal.

Contractor or Design Build Contractor: The person or entity with whom the Town has entered into a contract to do the Work.

Date of Commencement: The date as indicated in the written Notice to Proceed, the receipt of the earliest Building Permit, or a date mutually agreed to between the Town and Contractor in writing, whichever is the latest.

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

Design Build Proposal: The Technical Proposal and the Cost Proposal including modifications submitted by the Design Build Contractor in response to the Town's RFP setting forth the design concepts, design criteria, pricing requirements, and other conditions of the Work to be performed.

Director of Parks and Recreation: The Town's Director of Parks and Recreation or his authorized representative.

Document(s): This term includes, but is not limited to: writings, drawings, items on which words, symbols, or marks are recorded; electronic data of any type; videotapes, recordings, photographs and negatives, digital or otherwise; and any other form of data, writing, or information compilation, however recorded or stored, and regardless of physical form or characteristics.

Drawing: A page or sheet of the Plans which presents a graphic representation, usually drawn to scale, showing the technical information, design, location, and dimensions of various elements of the Work. The graphic representations include, but are not limited to, plan views, elevations, transverse and longitudinal sections, large and small-scale sections and details, isometrics, diagrams, schedules, tables and/or pictures.

Emergency: Any unforeseen situation, combination of circumstances, or a resulting state that poses imminent danger to health, life or property.

Field Order: A written order issued by the A/E which clarifies the requirements of the Contract by giving a more complete expression of the drawings or specifications or other documents without any change in the design, the GMP, or the Time for Completion.

Final Acceptance: The Town's acceptance of the project from the Contractor upon confirmation from the Director of Parks and Recreation and the Contractor that the project is apparently complete in accordance with the Contract requirements.

Guaranteed Maximum Price ("GMP"): The amount established as the total maximum amount payable to the Contractor absent a Change Order.

Notice: All written notices, demands, instructions, claims, approvals, and disapprovals required to obtain compliance with the Contract requirements. Any written notice by either party to the Contract shall be sufficiently given if delivered to or at the last known business address of the person, firm, or corporation constituting the party to the Contract, or to his, her, their, or its authorized agent, representative, or officer.

Notice to Proceed: A written notice given by the Town at the Town's discretion to the Contractor (with a copy to A/E) fixing the date on which the Contract time will commence for the Contractor to begin the prosecution of the Work in accordance with the requirements of the Contract Documents.

Plans: The term used to describe the group or set of project-specific drawings prepared by the Design Build Contractor's A/E and acceptable to the Town which describe the proposed Work in sufficient detail and provide sufficient information for the Building Official to determine code compliance and for the Contractor to perform the Work and which are included in the Contract Documents.

Project Inspector: One or more individuals employed by the Town to inspect the Work and/or to act as Resident Inspector to the extent required by the Town. The Town shall notify the Contractor of the appointment of such Project Inspector(s).

Project Manager: The Project Manager as used herein shall be the Town's designated representative on the Project. The Project Manager shall be the person through whom the Town generally conveys written decisions and notices. All notices due the Town and all information required to be conveyed to the Town shall be conveyed to the Project Manager. The scope of the Project Manager's authority is limited to that authorized by the Town. The Contractor shall be on notice that it cannot rely on any decisions of the Project Manager outside the scope of his or her authority. Nothing herein shall be construed to prevent the Town from issuing any notice directly to the Contractor. The Town may change the Project Manager from time to time and may, in the event that the Project Manager is absent, disabled or otherwise temporarily unable to fulfill his or her duties, appoint an interim Project Manager.

Provide: Shall mean to furnish and install ready for its intended use.

Site: Shall mean the location at which the Work is performed or is to be performed.

Specifications: That part of the Contract Documents prepared by the Design Build Contractor's A/E and acceptable to the Town which contain the written design parameters and the technical descriptions of materials, equipment, construction systems, standards, and workmanship which describe the proposed Work in sufficient detail and provide sufficient information for the Building Official to determine code compliance and for the Contractor to perform the Work. (The General Conditions, any Supplemental General Conditions, various proposal information and instructions, and blank copies of various forms to be used during the execution of the Work are usually bound with the Specifications.)

Storm Water Manager- The Town's Storm Water Manager or his authorized representative.

Subcontractor: A person, firm, partnership, corporation, or other entity having a direct contract with the Contractor or with any other Subcontractor for the performance of the Work. It includes one who provides on-site labor, but does not include one who only furnishes or supplies material for the project.

Submittals: All drawings, diagrams, illustrations, brochures, schedules, samples, electronic data and other data required by the Contract Documents which are specifically prepared by or for the Contractor, Subcontractor, or Supplier, and submitted by the Contractor to illustrate the material, equipment, or layouts, or some other portion of the Work.

Substantial Completion: The date certified by the Storm Water Manager when construction is sufficiently complete, in accordance with the Contract Documents, so the Town can occupy or utilize the Work or designated portion thereof for the purposes for which it is intended.

Supplier: A manufacturer, fabricator, distributor, materialman, or vendor who provides only material or supplies for the project, but does not provide on-site labor.

Time for Completion: The number of consecutive calendar days following the Date of Commencement which the Contractor has to substantially complete all Work required by the Contract.

Utilities: Utilities include all public and private lines, cables, conduit, pipelines, and appurtenances, whether underground, on the surface, and/or aerial, that may exist on the project site and/or adjoining public streets and/or rights-of-way for the purpose of providing communications, gas, petroleum, electrical, water, sanitary sewer, storm drain system, drainage, energy, signals, or lighting service to the site or adjoining properties.

Work or Project: The entire completed construction or the various separately identifiable parts thereof as required by the Contract Documents, and all of which shall be provided by Contractor within the GMP. Work is the result of performing services, furnishing labor, and furnishing and incorporating material and equipment into the construction.

SECTION 2. INDEMNITY PROVISION

- 2.1 Indemnity:** Contractor shall indemnify and hold harmless Town and their officers, agents, and employees against any and all liability, losses, damages, claims, causes of action, suits of any nature, costs, and expenses, including reasonable attorney's fees, resulting from or arising out of Contractor's or its employees, agents, or subcontractors actions, activities, or omissions, negligent or otherwise, on or near Town's property or easement or arising in any way out of or resulting from any of the work to be provided under this Contract, and this includes, without limitation, any fines or penalties, violations of federal, state, or local laws or regulations, personal injury, wrongful death, or property damage claims or suits, breach of contract claims, indemnity claims, and any other damages, losses, and/or claims of any type.
- 2.2 Hazardous Material:** While on Town's property or easement and in its performance of this Contract, Contractor shall not transport, dispose of or release any hazardous substance, material, or waste, except as necessary in performance of its Work under this Contract and in any event Contractor shall comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, solid wastes, and other pollution, and relating to the storage, transport, release, or disposal of hazardous material, substances or waste. Regardless of Town's acquiescence, Contractor shall indemnify and hold Town, and their officers, agents, and employees harmless from all costs, claims, damages, causes of action, liabilities, fines or penalties, including reasonable attorney's fees, resulting from Contractor's violation of this paragraph and agrees to reimburse Town for all costs and expenses incurred by Town in eliminating or remedying such violations.

Contractor also agrees to reimburse Town and hold Town and their officers, agents, and employees harmless from any and all costs, expenses, attorney's fees and all penalties or civil judgments obtained against the Town as a result of Contractor's use or release of any hazardous substance or waste onto the ground, or into the water or air from or upon Town's premises. (See also Section 20.2 of these General Conditions.)

- 2.3 Patents:** The Contractor shall protect, indemnify, and hold harmless the Town from any and all demands for fees, claims, suits, actions, causes of action, or judgments based on the alleged infringement or violation of any patent, invention, article, trademark, arrangement, or other apparatus that may be used in the performance of the Contract or the Work.

SECTION 3. LAWS, REGULATIONS, PERMITS, AND IMMIGRATION LAW

- 3.1 Regulations:** The Contractor shall fully comply with all local, state, and federal ordinances, laws, and regulations, including without limitation all applicable building and fire code sections of the Occupational Safety and Health Act (OSHA), and the Virginia Uniform Statewide Building Code, and obtain all required licenses and permits, including business license, building permits, and pay all charges and

expenses connected therewith. Contractor further agrees that Contractor does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

- 3.2 Permits:** The Contractor shall, at its sole cost, obtain all required permits from the appropriate authorities, including a Right of Way Excavation Permit(s) from the Town of Dumfries. Contractor shall obtain an additional separate Excavation Permit Bond(s) in accordance with the requirements of the Town's Right of Way Excavation and Restoration Standards, Revised July 1, 2013, together with any other documents and/or items that may be required by the Town's Department of Public Works and/or Department of Planning, Building and Development. No delay or extension of time or any claim for additional compensation of any type shall be granted for failure to obtain any required permits.
- 3.3 Litter:** In accordance with the Virginia Anti-Litter Law, receptacles sufficient to contain workmen's litter and construction wastes capable of being spread by wind or water shall be located on the construction site. The number and size of receptacles required shall be determined by the Contractor.
- 3.4 Not Used.**
- 3.5** If the Contractor violates laws or regulations that govern the Work, the Contractor shall take prompt action to correct or abate such violation and shall indemnify and hold harmless Town and its officers, agents, and employees against any fines and/or penalties that result from such violation. To the extent that such violation is the result of negligence or other actionable conduct of the Contractor, the Contractor shall indemnify and hold harmless Town, and its officers, agents, and employees against any third-party claims, suits, awards, actions, causes of action or judgments, including but not limited to attorney's fees and costs incurred thereunder, that arise or result from such violation.

SECTION 4. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE

Neither the Contractor nor any subcontractor shall commence work under this Contract until the Contractor has obtained and provided proof of the required insurance under this Section to the Town, and such proof has been approved by the Town. The Contractor confirms to the Town that all subcontractors have provided the Contractor with proof of insurance, or will do so prior to commencing any work under this Contract. Contractor further warrants that proof of coverage as provided to the Town responds on a primary basis in the event of an uninsured or underinsured subcontractor. All such insurance shall be primary and non-contributory to any insurance or self-insurance the Town may have in force.

- 4.1 For All Contracts,** the following minimum insurance requirements apply:

a. Workers' Compensation and Employers' Liability:

The Contractor shall obtain and maintain the following limits:

Workers' Compensation:

Statutory coverage for Virginia Employers' Liability:

\$100,000 Bodily Injury by Accident each occurrence

\$500,000 Bodily Injury by Disease Policy Limit

\$100,000 Bodily Injury by Disease each employee

b. Commercial General Liability:

Coverage is to be written on an "occurrence" basis and such coverage shall include broad form extension endorsements for both liability and property damage.

Completed Operations coverage will be required to be maintained for the life of the Contract.

For Limits of Liability see Sections 4.2 and 4.3 of these General Conditions.

c. Automobile Liability:

Limits for vehicles owned, non-owned, hired or borrowed shall not be less than:

- \$1,000,000 Bodily Injury and Property Damage combined single limit per occurrence.

d. Additional Insurance Requirements:

Additional specific insurance coverage minimum requirements to be provided by Contractor may include the following or as detailed in the Supplemental General Conditions or in other Contract Documents:

- 1) Builder's Risk: At the discretion of the Town, the Contractor, at its cost, shall obtain and maintain in the names of the Town and the Contractor "all-risk" builders risk insurance (if approved by the Town) upon the entire structure or structures on which the Work of this Contract is to be done and upon all material in or adjacent thereto or those that are "off-site" but which are intended for use thereon, to one hundred percent (100%) of the completed value thereof.
- 2) Property Coverage: Installation Floater (and Rigger's Form, if applicable) will be required for the installation of contents or equipment, coverage will begin with supplier and continue until equipment/contents has been fully installed. Floater will be valued for the replacement cost value of equipment/contents including all costs. The Contractor shall provide coverage for portions of the work stored off-site after written approval of the Town at the value established in the approval and for portions of the work in transit.

- 3) Special Hazards: In the event special hazards are evident in the work contemplated, or if required by the Contract Documents, the Contractor shall obtain and maintain during the life of the Contract a rider to the policy or policies required, in an amount not less than that stipulated under the above Paragraphs. Should any unexpected special hazards be encountered during the performance of this Contract, the Contractor shall, prior to performing any work involving the special hazard, immediately obtain this insurance as instructed by the Town. In the event the special hazard requiring the additional coverage was not a part of the original proposal, the expense of such insurance shall be reimbursed to the Contractor by the Town, otherwise the Contractor shall assume full responsibility for the purchase with no charge back to the Town.
- 4) Deductible: Deductible/self-insured retention amounts shall be reduced or eliminated upon written request from Town. The insurer's cost of defense (and appeal), including attorney's fees, shall not be included within the coverages provided but shall remain the insurer's responsibility.
- 5) Term: Insurance shall remain in effect until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective work.
- 6) Limit of Liability: Nothing contained in these insurance requirements is to be construed as limiting the liability of Contractor or Contractor's insurance carriers. Town does not in any way represent that the coverages or the limits of insurance specified is sufficient or adequate to protect Contractor's interests or liabilities, but are merely minimums. The obligation of the Contractor to purchase insurance herein shall not in any way limit the obligation of the Contractor in any event and/or in the event that the Town should suffer an injury or loss in excess of the amount recoverable through insurance.

4.2 Contracts of \$100,000 or More: The following minimum insurance requirements apply in addition to the above requirements:

a. Limits of Liability: For the Commercial General Liability policy:

- \$2,000,000 general aggregate
- \$1,000,000 products/completed operations aggregate
- \$1,000,000 personal and advertising injury
- \$1,000,000 each occurrence

Coverage is to be written on an "occurrence" and "per project" basis and such coverage shall include:

b. Umbrella Liability Insurance:

This coverage shall be written for minimum limit of:

- \$5,000,000 each occurrence for Personal and Bodily Injury and Property Damage

This Policy shall apply in excess and follow the form of employer's liability, commercial general liability, and auto liability.

4.3 Contracts Less Than \$100,000: The following minimum insurance limits apply unless specified otherwise in the Supplemental General Conditions:

a. Limits of Liability: For the Commercial General Liability policy:

- \$1,000,000 general aggregate
- \$1,000,000 products/completed operations aggregate
- \$1,000,000 personal and advertising injury
- \$1,000,000 each occurrence

4.4 The Contractor's Architect/Engineer responsible for the design portion of the Work shall obtain and maintain in force during the contract period and for a period of 5 years after the final completion of the Work professional liability and errors and omission insurance in the amount of **\$1,000,000** per claim occurrence and **\$2,000,000** aggregate combined claims limit.

4.5 Proof of Insurance Coverage: The policies of insurance required by Sections 4.1, 4.2, 4.3, or 4.4 shall be purchased from a reputable insurer licensed to do business in Virginia and maintained for the life of the Contract by the Contractor. Other insurance requirements include the following:

- a. The Contractor shall furnish the Town with the required certificates of insurance showing the insurer, type of insurance, policy number, policy term, deductible, and the amount insured for property coverages and the limits for liability coverages.
- b. The Contractor shall notify the Storm Water Manager and Risk Manager in writing within five (5) consecutive calendar days if any of the insurance coverages or policies are cancelled or materially altered and Contractor shall immediately replace such policies and provide documentation of such to the Storm Water Manager and Risk Manager.
- c. The required insurance policies and coverages, excluding those for Workers' Compensation and Professional Liability, shall name the Town of Dumfries, and their officers, agents, volunteers and employees as additional insureds, and the certificate of insurance shall show if the policies provide such coverage. Waiver of subrogation is required with respect to any policy of workers' compensation and employers' liability insurance required under this Section. The certificate of insurance shall show if the policies provide such waiver. Additional insured and waiver endorsements shall be received by the

Town's Risk Manager from the insurer with the certificate of insurance unless the Town's Risk Manager agrees to another process. The Town's Risk Manager may approve other documentation of such insurance coverages.

- d. Insurance coverage shall be in a form and with an insurance company approved by the Town which approval shall not be unreasonably withheld. Any insurance company providing coverage under this Contract shall be authorized to do business in the Commonwealth of Virginia.

SECTION 5. "ALL RISK" BUILDER'S RISK INSURANCE

- 5.1 **Contractor Controlled During Construction:** The Contractor, at the Contractor's cost, shall obtain and maintain in the names of the Town and the Contractor "all-risk" builder's risk insurance (or fire, extended coverage, vandalism and malicious mischief insurance, if approved by the Town and the Storm Water Manager) upon the entire structure or structures on which the Work of this Contract is to be done and upon all material in or adjacent thereto which is intended for use thereon, to one hundred percent (100%) of the insurable value thereof (i.e. construction costs, soft costs, FF&E, and the residual value of the existing structure to remain). Such insurance may include a deductible provision if the Town so provides in the Supplemental General Conditions, in which case the Contractor will be liable for such deductions, whenever a claim arises. The loss, if any, is to be made adjustable with and payable to the Town, in accordance with its interests, as they may appear. The Town and its officers, employees and its agents, shall be named as an additional insured in any policy of insurance issued. Written evidence of the insurance shall be filed with the Town's Risk Manager no later than thirty (30) days following the award of the Contract. In the event of cancellation of this insurance, not be less than thirty (30) days prior written notice must be sent to the Town's Risk Manager. A copy of the policy of insurance shall be given to the Town upon demand.
- 5.2 **Owner Controlled During Construction:** The Owner maintains insurance coverage on its buildings. On re-roofing, renovation, and interior modifications of existing building projects where the Owner continues to occupy the building, or a portion thereof, while the Work is being performed, the Contractor shall provide "all risk" builders risk insurance, as described above, in an amount equal to one hundred percent (100%) of the cost of the Work (i.e. construction costs, soft costs, and FF&E costs). In those instances, the Contract between the Owner and Contractor for the project shall expressly exclude the project from the requirements of Section 5.1. The Contractor is responsible for providing any desired coverage for Contractor's or Subcontractors' buildings, equipment, materials, tools or supplies that are on-site.
- 5.3 The value of the builder's risk insurance shall exclude the costs of excavations, backfills, foundations, underground utilities and Sitework.

- 5.4 Any insurance provided through the Town on buildings, construction, additions or renovations will not extend to Contractor's nor Subcontractors' buildings, equipment, materials, tools or supplies unless these items are to become property of the Town upon completion of the Project and the Town has assumed responsibility for such items at the time of the loss.

SECTION 6. PERFORMANCE BOND

6.1 PERFORMANCE BOND REQUIRED

The Contractor shall provide the Town, upon full execution of this contract, and shall keep same in full force and effect during the term of the Contract, "Performance Bond" in a form acceptable to the Town Manager and the Town Attorney, from a company duly authorized to do business in the Commonwealth of Virginia and conditioned on the faithful performance of this contract and the indemnification of the Town against all losses by reason of Contractor's negligence, willful misconduct, nonfulfillment or nonperformance of any of the provisions of the contract, or any and all claims and demands of any character whatsoever required to be indemnified and/or insured by the Contract.

SECTION 7. ARCHITECT/ENGINEER'S STATUS

- 7.1 The Design Build Contractor's Architect/Engineer shall be duly and properly licensed by the Virginia Department of Professional and Occupational Regulation to provide these services in Virginia. The Architect/Engineer shall provide the professional services to design the Work in conformance with the applicable standards indicated below.
- 7.2 The Architect/Engineer shall have authority to endeavor to secure the faithful performance by Town and Design Build Contractor of the Work under the Contract. The A/E shall review the Contractor's Submittals for conformance to the requirements of the Contract Documents and return copies to the Contractor with appropriate notations. The A/E shall interpret the requirements of the plans and specifications and issue Field Orders to the Contractor as may be required. The A/E shall recommend to the Town suspension of the Work (in whole or in part) whenever such suspension may be necessary to ensure the proper execution of the Contract. The A/E shall have authority to reject, in writing, Work, including material, installation or workmanship, which does not conform to the requirements of the plans and specifications. The A/E shall determine the progress and quality of the Work, subject to the right of the Town to make an overriding decision to the contrary. Upon request by the Contractor, the A/E shall confirm, in writing within fourteen (14) days, any oral order or determination made by him.
- 7.3 The Virginia Department of Transportation "Road & Bridge Specifications," 2002 edition or later, and Virginia Department of Transportation "Road Design Standards," 2001 edition or later, are included by reference and shall be used by the

Contractor's A/E as the referenced standards for design of the roads, parking areas, sidewalks, curbs, and other sitework.

- 7.4 The building design shall conform to the requirements of the Virginia Uniform Statewide Building Code. The current edition of the Virginia Uniform Statewide Building Code which is in effect at the time the construction documents are submitted to the Building Official for Building Permit shall be the applicable Building Code for that phase of the project.
- 7.5 The Architect/Engineer shall have no authority to approve or order changes in the Work which alter the approved plans and specifications which were the basis of the Building Permit without obtaining approval of the Building Official.
- 7.6 The provisions of this section are included as information only to describe the relationship between the Town, A/E, and Contractor. No failure of the A/E to act in accordance with this section shall relieve the Contractor from the Contractor's obligations under the Contract or create any rights in favor of the Contractor.

SECTION 8. EMPLOYMENT AND CONDUCT OF PERSONNEL

- 8.1 **Town Residents:** The Contractor is encouraged to try to use Town residents, and local, Small, Minority-Owned, Women-Owned, and Service Disabled Veteran-Owned businesses, when practical.
- 8.2 **Employee Qualifications:** Only skilled and reliable workers shall be employed for the Work. Should any person employed on the Work by the Contractor appear to the Storm Water Manager to be incompetent, unable to perform the Work, or disorderly, such person shall be removed from the Work immediately upon proper notice to the Contractor from the Storm Water Manager and such person shall not again be used for this Contract.
- 8.3 **Superintendence:** The Contractor shall have a competent foreman or superintendent, satisfactory to the Storm Water Manager, on the jobsite at all times during the progress of the Work. The Contractor shall notify the Town, in writing, of any proposed change in the foreman or superintendent including the reason therefore prior to making such change.
- 8.4 **Drug-free Workplace:** During the performance of this Contract, the Contractor agrees to provide a drug-free workplace for the Contractor's employees; (ii) 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 the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include

the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

The Contractor shall post a copy of the policy in a conspicuous place at the jobsite and assure that all Contractor, subcontractor, and supplier personnel entering the jobsite are informed of the policy.

SECTION 9. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

Every Contract of over \$10,000 to which the Town is a party shall contain the provisions in Sections 9.1 and 9.2 herein:

9.1 Nondiscrimination: During the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any Subcontractor, employee, or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by State law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal employment opportunity employer.
- c. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

9.2 Nondiscrimination by Subcontractor or Vendor: The Contractor will include the provisions of the foregoing Subsections 9.1 (a), (b), and (c) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

SECTION 10. SUBCONTRACTORS

10.1 Licensure: The Contractor shall comply with Title 54.1, Chapter 11, of the Code of

Virginia, with respect to licensure of itself and all subcontractors employed to work on the project. The Contractor represents that it has verified that all subcontractors hold all required state and local licenses, including State Contractor's license and Town business license. The Contractor shall verify that any additional subcontractors employed to work on the project, subsequent to the initial verification, hold all required state and local licenses, including State Contractor's license and Town business license. Upon request from the Storm Water Manager, Contractor shall provide documentation of compliance with this Section 10.1. Failure to comply constitutes a material breach of the Contractor's Contract with the Town.

- 10.2 Change of Subcontractors:** Subcontractors shall not be changed without the written approval of the Storm Water Manager.
- 10.3 Responsibility for Subcontractors:** The Contractor shall not employ for the project any subcontractor that the Town may, within a reasonable time, object to as unsuitable. The Contractor further agrees that it is as fully responsible to the Town for the acts and omissions of its subcontractors, suppliers, and invitees on the jobsite and of persons either directly or indirectly employed by them, as the Contractor is for the acts and omissions of persons directly employed by it.
- 10.4** The Town shall, on request, furnish to any Subcontractor, if practicable, the amounts of payments made to the Contractor and Requests for Payment submitted by the Contractor and any other documentation submitted by the Contractor which would tend to show what amounts are due and payable by the Contractor to the Subcontractor.
- 10.5** The Contractor shall be fully responsible to the Town for all acts and omissions of the Contractor's agents and employees and all succeeding tiers of Subcontractors and Suppliers performing or furnishing any of the Work. Nothing in the Contract Documents shall create any contractual relationship between Town and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of Town to pay for or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization, except as may otherwise be required by law.
- 10.6** The Contractor shall be fully responsible for the Contractor's invitees at the Site and for those of the Contractor's Subcontractors, Suppliers, and their employees, including any acts or omissions of such invitees.
- 10.7** The Contractor agrees that it alone is responsible for all dealings with the Contractor's Subcontractors and Suppliers, and their subcontractors, employees and invitees, including, but not limited to, the Subcontractors' or Suppliers' claims, demands, actions, disputes and similar matters unless specifically provided otherwise by the Contract or by statute.

SECTION 11. CONDITIONS AT SITE

- 11.1 Existing Conditions:** The Contractor shall have visited the site prior to submitting its proposal and is totally responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the site, and the character and extent of existing improvements and work within or adjacent to the site. Claims as a result of failure to have done so will not be considered by the Town and will be the sole responsibility of the Contractor.
- 11.2 Hidden Conditions:** If, in the performance of the Contract, hidden physical conditions of a building being modified are exposed revealing unusual or materially different conditions than those ordinarily encountered or inherent in work of this nature, or if subsurface or latent conditions at the site are found which are materially different from those frequently present in the locality, from those indicated in the Contract Documents, or from those inherent in work of the character required by the Contract, the Contractor must report such conditions to the Town and to the Architect/Engineer before the conditions are disturbed. Upon such notice, or upon the A/E's own observation of such conditions, the Architect/Engineer will make such changes in the Contract Documents as the A/E finds necessary to conform to the different conditions. Any change in the cost of the Work or the time needed for completion must be requested pursuant to Section 27 of these General Conditions.
- 11.3 Suspected Hazardous Material:** If the Contractor, during the course of the project, observes the existence of any material which it suspects or knows to be hazardous to human health or the environment, the Contractor shall promptly notify the Town. The Town will provide the Contractor with instructions regarding the situation. The Contractor shall not perform any work involving the material or any work causing the material to be less accessible prior to receipt of special instructions from the Town.

SECTION 12. SURVEYS AND LAYOUT

- 12.1 Surveying Services:** All necessary drawings showing the location of property lines, buildings, and other appropriate information shall be furnished to the Contractor through the drawings and specifications. The Contractor shall provide competent surveying and engineering services to verify the given information and to execute the Work in accordance with the Contract requirements and shall be responsible for the accuracy of Contractor surveying and engineering services. The Contractor shall immediately notify the A/E and Town of any discrepancies and confirm such notice in writing within five (5) calendar days.
- 12.2 Survey Control:** Such general reference points and bench marks on the building

site as will enable the Contractor to proceed with the Work will be established in the drawings and specifications. If the Contractor finds that any previously established reference points have been lost or destroyed, Contractor shall promptly notify the Town.

- 12.3 Damage to Survey Control:** The Contractor shall protect and preserve the established bench marks and monuments and shall make no changes in locations without written notice to and approval from the Town. Any of these which may be lost or destroyed or which require shifting because of necessary changes in grades or locations shall, subject to prior approval from the Town, be replaced and accurately located by the Contractor.

SECTION 13. DRAWINGS AND SPECIFICATIONS

- 13.1** The general character and scope of the Work are illustrated by the plans and the specifications prepared by the Contractor's Architect/Engineer. The level of detail shown on the plans and stipulated in the specifications shall be sufficient to clearly demonstrate to the Building Official that the design conforms to the requirements of the VUSBC and CPSM. The Contractor shall carry out the Work in accordance with the plans and specifications and any additional detail drawings and instructions provided by the A/E.
- 13.2** Measurements or dimensions shown on the drawings for Site features, utilities and structures shall be verified at the Site by the Contractor before commencing the Work. The Contractor shall not scale measurements or dimensions from the drawings. If there are discrepancies, the Architect/Engineer shall be consulted. If new Work is to connect to, match with or be provided in existing Work, the Contractor shall verify the actual existing conditions and necessary dimensions prior to ordering or fabrication.
- 13.3 As-Built Drawings:** The Contractor shall maintain at the Site for the Town one copy of all drawings, specifications, addenda, approved shop or setting drawings, Change Orders and other modifications (collectively referred to herein as "As-Built Drawings") in good order and marked to record all changes as they occur during construction. These shall be available to the Town, the Project Inspector, the Town's other inspectors and to the Town's testing personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction. The representation of such variations shall include such supplementary notes, symbols, legends, and details as may be necessary to clearly show the as-built construction.
- 13.4 Record Drawings:** Upon completion of the Work and prior to the final inspection, the Contractor shall deliver to the Town one complete set of "As-Built Drawings" in reproducible form.

SECTION 14. SCHEDULE OF THE WORK

- 14.1 Scheduling:** The Contractor is responsible for the sequencing, scheduling, and coordinating of the Work, for monitoring the progress of the Work, and for taking appropriate action to keep the Work on schedule. The Contractor is responsible for coordinating Contractor's work on the Project with any other work being carried on by the Town or by other Town consultants or contractors at the site or for the Project. The Contractor shall prepare and submit to the Storm Water Manager a schedule for accomplishing the Work based upon the completion time stated in the Contract and submit such to the Storm Water Manager at the pre-construction conference. No progress payments will be made to the Contractor until after Contractor has submitted a schedule which is acceptable to the Storm Water Manager. All schedules under Section 14 shall be in both paper and electronic form unless otherwise directed by the Storm Water Manager.
- 14.2 Progress:** The Contractor shall review the progress of the Work not less than each month, but as often as necessary to properly manage the project and stay on schedule. The Contractor shall collect and preserve information on Change Orders, including extensions of time. The Contractor shall evaluate this information and update the schedule monthly to finish within the contractually allowed time. The Contractor shall submit the updated schedule with each progress payment request. The scheduled completion date shall be within the period of time allowed by the Contract for completion of construction, except as amended by any Change Orders.
- 14.3 Delay and Recovery Schedule:** Should there be any delay, the Storm Water Manager may require the Contractor to prepare, without increase to the GMP, a plan of action and a recovery schedule for completing the Work by the contractual completion date. The plan of action and recovery schedule shall explain and display how the Contractor intends to regain compliance with the original schedule. The plan of action and recovery schedule, when required, shall be submitted and approved by the Storm Water Manager prior to Contractor's submission of the next monthly construction estimate. The Town may withhold progress payments until such schedule is submitted and approved.
- 14.4 Blackout Dates.** Construction work hours shall be unrestricted, except where exempted by the Town due to possible prearranged events which are currently scheduled for, which dates may be added to or deleted from at the discretion of the Town and with reasonable notice to the Contractor.

SECTION 15. PROJECT MEETINGS

- 15.1** The intention of this Section is that the Contractor and the Town have timely exchange of information and cooperate to accomplish the Work as required by the Contract Documents. The Contractor is responsible for managing the Work, obtaining approvals and requesting clarifications on a timely, reasonable basis. The

Town is responsible for making a reasonable effort to provide timely responses to the Contractor.

15.2 Preconstruction Meeting: Prior to the start of construction and no later than seven (7) calendar days after the Notice to Proceed, a "Preconstruction" meeting shall be held with attendees to include the Town's Project Manager and Project Inspector, the Architect/Engineer's project manager and representatives of each design discipline involved in the Project, the Contractor's project manager and superintendent (and scheduler, if Contractor desires), and representatives of the Contractor's major Subcontractors. The purpose of the meeting is to clarify and discuss the specifics related to, but not limited to, the following:

(1) Persons involved from each entity and their chain of authority including the names of persons authorized to sign Change Orders and any limits to their authority. Name of Contractor's on-site certified Responsible Land Disturber.

(2) Names, addresses, telephone numbers and FAX numbers to be used for Requests for Information (RFI), Requests for Clarification (RFC), Requests for Proposals (RFP), shop drawings, Submittals, and notices.

(3) Contractor's proposed construction schedule and Town's sequencing requirements, if any.

(4) Procedures for shop drawings, product data and Submittals.

(5) Procedures for handling Field Orders and Change Orders.

(6) Procedures for Contractor's request for time extension, if any.

(7) Construction Site requirements, procedures and clarifications to include:

- Manner of conducting the Work
- Site specialties such as dust and erosion control, storm water management, project signs, clean up and housekeeping, temporary facilities, utilities, security, and traffic
- Safety
- Layout of the Work
- Quality control, testing, inspections and notices required
- Site visits by the A/E and others
- Town's Project Inspector duties
- Running Punch List
- As-Built Drawings

(8) Procedures and documentation of differing or unforeseen Site conditions

(9) Monthly Pay Requests

(10) Assignment of responsibility for generation of meeting minutes of all project meetings.

(11) Project Close-Out requirements and procedures

(12) Project records

15.3 Weekly Meeting: In addition to Town and Contractor representatives, the following representatives, at a minimum, should be available to attend portions of the meeting, as applicable or necessary:

- o Town's Project Inspector
- o Contractor's project superintendent
- o A/E representative
- o A representative of each subcontractor who performed work included in the current pay request.
- o A representative of each subcontractor who is projected to perform work in the coming month.

The following topics should be included, as a minimum, in the weekly meeting:

- (1) Observations of status, quality, and workmanship of Work in progress
- (2) Conformance with proposed construction schedule
- (3) Outstanding Requests for Information, Requests for Clarification and Requests for Proposal
- (4) Submittals with action pending
- (5) Status of pending Change Orders
- (6) Status of Running Punch List items
- (7) Discussions of any problems or potential problems which need attention

15.4 Other Meetings: Requirements for other meetings, such as progress meetings, coordination meetings, pre-installation meetings and/or partnering meetings, may be included in the Contract Documents.

SECTION 16. TIME FOR COMPLETION

- 16.1** The Time for Completion for the project including any dates for completion of any designated Phase or Sub-phase shall be as stated in the Design Build Contract as agreed upon by the Town and Contractor, subject to Change Orders or written mutual agreement of Town and Contractor. The Work must be substantially completed by the Time for Completion or the Contract Completion Date. Unless otherwise specified, the Contractor shall achieve Final Completion within twenty-one (21) days after the date of Substantial Completion.
- 16.2** The Time for Completion shall be stated in the Contract between Town and Design Build Contractor and shall become a binding part of the Contract upon which the Town may rely in planning the use of the facilities to be constructed and for all other purposes. If the Contractor fails to substantially complete the Work within the Time for Completion or Contract Completion Date, as set forth in the Contract, the Contractor shall be subject to payment of actual damages incurred by the Town for liquidated damages, if provided for in the Contract.
- 16.3** The Contractor, in submitting the Contractor's proposal, acknowledges that the Contractor has taken into consideration normal weather conditions. Normal weather does not mean statistically average weather, but rather means a range of weather patterns which might be anticipated based on weather data for the past ten (10) years, (i.e., conditions which are not extremely unusual). Normal weather conditions shall be determined from the public historical records available, including the U.S. Department of Commerce, Local Climatological Data Sheets, National Oceanic and Atmospheric Administration / Environmental Data and Information Service, National Climatic Center and National Weather Service. The data sheets to be used shall be those for the locality or localities closest to the site of the work. No additional compensation will be paid to the Contractor because of adverse weather conditions; however, an extension of time for abnormal weather will be considered by the Town under the following conditions, all of which must be strictly complied with by the contractor:
- a.** The request for additional time shall be further substantiated by weather data collected during the period of delay at the Site. Said data must demonstrate that an actual departure from normal weather occurred at the Site during the dates in question.
 - b.** The extension requested must be supported by a delay in completion of the entire Project shown on the Project Schedule. Extensions will be granted only for delays in completion of the Project.
 - c.** A request for extension of time based on abnormal weather must be made in writing within fourteen (14) calendar days of the completion of the calendar month during which abnormal weather is claimed at the Site.

d. All the evidence and data supporting the request (including both historical data and the recordings at the Site during the time of delay) must be furnished to the Town before any consideration will be given to the request. That supporting data shall be submitted by the end of the calendar month following the month for which the request is made.

16.4 The failure by the Contractor to comply with any and all of the conditions in Section 16.3 shall constitute a waiver of claims for the extension of time for abnormal weather.

16.5 The Contractor represents and agrees that the Contractor has taken into account in the Contractor's proposal the requirements of the proposal documents, the Contract Documents, local conditions, availability of materials, equipment, and labor, and any other factors which may affect the performance of the Work.

The Contractor agrees and warrants that the Contractor will achieve Substantial Completion of the Work by the Time for Completion or the Contract Completion Date. The Contractor agrees and warrants that the Contractor will achieve Final Completion of the Work (the entire completion of all Work, including "punch list" items), not later than twenty-one (21) days after achieving Substantial Completion.

SECTION 17. SUPERINTENDENCE BY CONTRACTOR

17.1 The Contractor shall have a competent foreman or superintendent, satisfactory to the Town, on the Site at all times during the progress of the Work. The superintendent or foreman shall be familiar with and be able to read and understand the plans and specifications, and be capable of communicating orally and in writing with the Town's inspectors and the Contractor's workers. The Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures, for coordinating all portions of the Work under the Contract except where otherwise specified in the Contract Documents, and for all safety and worker health programs and practices. The Contractor shall notify the Town, in writing, of any proposed change in superintendent, including the reason therefore, prior to making such change.

17.2 The Contractor shall, at all times, enforce strict discipline and good order among the workers on the Project, and shall not employ on the Work, or contract with, any unfit person, anyone not skilled in the Work assigned to him, or anyone who will not work in harmony with those employed by the Contractor, the Subcontractors, the Town or the Town's separate contractors and their subcontractors.

17.3 The Town may, in writing, require the Contractor to remove from the Site any employee or Subcontractor's employee the Town deems to be incompetent, careless, not working in harmony with others on the Site, or otherwise objectionable,

but the Town shall have no obligation to do so.

SECTION 18. CONSTRUCTION SUPERVISION

18.1 The Contractor shall be solely responsible for supervising and directing the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. The Contractor shall be solely responsible for the means, methods, techniques, sequences and

procedures of construction and for coordinating all portions of the Work under the Contract, except where otherwise specified in the Contract Documents. The Contractor, in performing as the Design Build Contractor, shall also be responsible to the Town for the design or selection of any specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. The Contractor is solely responsible to the Town that the finished Work complies with the Contract Documents.

- 18.2** The Contractor shall be solely responsible for health and safety precautions and programs for workers and others in connection with the Work. No inspection by, knowledge on the part of, or acquiescence by the Architect or Engineer, the Project Inspector, the Town, the Town's employees and agents, or any other entity whatever shall relieve the Contractor from its sole responsibility for compliance with the requirements of the Contract or its sole responsibility for health and safety programs and precautions.
- 18.3** The Contractor shall be fully responsible to the Town for all acts and omissions of all succeeding tiers of A/E's, Subcontractors, and Suppliers performing or furnishing any of the Work just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between the Town and any Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the Town to pay for or see to payment of any moneys due any such Subcontractor, Supplier, or other person or organization except as may otherwise be required by law.

SECTION 19. ACCESS TO WORK

The Town, the Project Manager, the Town's inspectors and other testing personnel, inspectors from the Town of Dumfries, and others authorized by the Town, shall have access to the Work at all times. The Contractor shall provide proper facilities for access and inspection.

SECTION 20. STANDARDS FOR MATERIAL INSTALLATION AND WORKMANSHIP

- 20.1 Material and Equipment:** Unless otherwise specifically provided in this Contract, all equipment, material, and accessories incorporated in the Work are to be new and in first class condition. The Contractor shall furnish to the Storm Water Manager for approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capability, nature, and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the Work. Machinery, equipment, material, and articles installed or used without required approval may be subject to subsequent rejection by the Town.

- 20.2 Hazardous Substances:** Unless specifically approved by the Town or required by the specifications, the Contractor shall not incorporate any material into the Work containing asbestos or any material known by the Contractor to contain a substance known to be hazardous to human health. If the Contractor becomes aware that a material required by the specifications contains asbestos or other hazardous substances, it shall notify the Town and the Storm Water Manager immediately and shall take no further steps to acquire or install any such material without first obtaining Town approval. (See also Sections 2.2 and 11.3 of these General Conditions.)
- 20.3 Workmanship:** The workmanship shall be of the highest quality found in the building industry in every respect. All items of Work shall be done by workmen skilled in the particular task to which they are assigned. In the acceptance or rejection of work, no allowance will be made for lack of skill on the part of workmen. Poor or inferior workmanship (as determined by the Storm Water Manager, the Town, or other inspecting authorities) shall be removed and replaced to conform to the highest quality standards of the trades concerned, or otherwise corrected to the satisfaction of the Storm Water Manager, the Town, or other inspecting authority all at the Contractor's sole expense.
- 20.4 Instructions for Installation:** Under the various sections of the specifications, where specified items are supplied with the manufacturer's printed instructions, recommendations, or directions for installation, or where such instructions, recommendations, or directions are available, installation of the specified items shall be in strict accordance with the manufacturer's printed instructions unless those instructions contradict the drawings or specifications, in which case the Storm Water Manager will be notified by Contractor for an interpretation and decision.
- 20.5 Installation Procedures Without Instructions:** Where neither the manufacturer's printed instructions are available for installation of specific items, nor are specific code or standards given by reference to govern the installation of specific items; and where there is doubt concerning the installation procedures to be followed or the quality of workmanship to be maintained in the installation of specific items, the Contractor shall consult the Storm Water Manager for approval of the installation procedures Contractor proposes to follow or the specific standards governing the quality of workmanship Contractor proposes to maintain during the installation of the items in question.
- 20.6 Codes and Standards:** Under the various sections of the specifications, where reference is made to specific codes or standards governing the installation of specified items, installation shall in all cases be in strict accordance with the referenced codes and standards. Where no reference is made to specific codes or standards, installation shall conform to the generally recognized applicable standards for first-class installation of the specific item to be installed. Contractors are expected to be proficient and skilled in their respective trades and knowledgeable of the National Fire Protection Association (NFPA), the current edition of the Virginia Uniform Statewide Building Code (USBC) and its referenced

technical codes and standards, Occupational Safety and Health Act (OSHA) and other codes and standards applicable to installations and associated work by its trade and/or that are applicable to the Work.

SECTION 21. SUBMITTALS

- 21.1 Shop drawings, setting drawings, product data, and samples generated by the Design Build Contractor shall be known as submittals. Two copies of all submittals shall be provided to the Town when generated.
- 21.2 Submittals shall be approved by the Design Build Contractor and its licensed professional designer for conformance with the required codes, standards, and provisions of the Contract. Two copies of all approved submittals shall be provided to the Town. One copy of the "Approved" shop drawings / submittals shall be on file in the construction trailer for use by Inspectors.
- 21.3 Any submittal material, assembly, or product which deviates from the approved Building Permit Documents shall be submitted to the Building Official for VUSBC and CPSM approval prior to installation.
- 21.4 The Work shall be in accordance with approved Building Permit Documents as detailed by the approved submittals.

SECTION 22. EQUALS

- 22.1 **Brand names:** Unless otherwise stated in the Request for Proposals, the name of a certain brand, make or manufacturer denotes the characteristics, quality, workmanship, economy of operation and suitability for the intended purpose of the article desired, but does not restrict the Contractor to the specific brand, make, or manufacturer; it is set forth to convey to the Contractor the general style, type, character and quality of the article specified.
- 22.2 **Equal materials, equipment or assemblies:** Whenever in these Contract Documents, a particular brand, make of material, device or equipment is shown or specified, such brand, make of material, device or equipment shall be regarded merely as a standard. Any other brand, make or manufacturer of a product, assembly or equipment which in the opinion of the Town is the equal of that specified, considering quality, capabilities, workmanship, configuration, economy of operation, useful life, compatibility with design of the Work, and suitability for the intended purpose, will be accepted unless rejected by the Town as not being equal.

- 22.3 Substitute materials, equipment or assemblies:** The Contractor may propose to substitute a material, product, equipment, or assembly which deviates from the requirements of the approved plans and specifications but which the Contractor deems will perform the same function and have equal capabilities, service life, economy of operations, and suitability for the intended purpose. The proposal must include any cost differentials proposed. If the proposed substitute is acceptable to the Town, a Change Order will be proposed to the Contractor to accept the substitute and to deduct the proposed cost savings from the GMP. The Town shall have the right to limit or reject substitutions at its sole discretion.
- 22.4** The Contractor shall be responsible for making all changes in the Work necessary to adapt and accommodate any equal or substitute product which it uses. The necessary changes shall be made at the Contractor's expense.

SECTION 23. INSPECTION AND INDEPENDENT TESTING

- 23.1 Inspection and Testing:** All material and workmanship shall be subject to inspection, examination, and testing by the Storm Water Manager at any and all times during manufacture and/or construction. The Storm Water Manager shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefore, and the Contractor shall promptly segregate and remove the rejected material from the premises. If the Contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the Town may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, and/or may terminate the right of the Contractor to proceed as provided in Sections 34 or 35 of these General Conditions, the Contractor and surety being liable for any damage to the same extent as provided for in those Sections.
- 23.2 Payment for Inspection, Testing, and Certification:**
- a. Jobsite inspections, tests conducted on site, or tests of material gathered on site which the Contract requires to be performed by independent testing entities shall be contracted and paid for by the Contractor. The Contractor shall promptly furnish, without additional charge, all reasonable facilities, labor, and material necessary for making such tests. Except as provided in Section 23.3 below, whenever such examination and testing finds defective material, equipment, or workmanship, the Contractor shall not charge the Town for the cost of reexamination and retesting.
 - b. The Town will not contract and pay for tests or certifications of material, manufactured products or assemblies which the Contract, codes, standards, etc. require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual or ASTM. If there are any fees to be paid for such tests and certifications, they shall be

paid by the Contractor.

- c. The Contractor shall also pay for all inspections, tests, and certifications which the Contract specifically requires it to perform or pay, together with any inspections and tests which it chooses to perform for its own quality control purposes.

23.3 Where Work is related to or dependent on the Defective Work, the Contractor shall stop such related or dependent Work until the Defective Work or deficiency is corrected or an alternative solution is presented that is satisfactory to the Town. Where Work is rejected because of defective material or workmanship, the Contractor shall stop like Work in other areas or locations on the Project until the matter is resolved and the Town has approved corrective measures.

23.4 Examination of Completed Work: Should it be considered necessary or advisable by Town or the Storm Water Manager at any time before final acceptance of the entire Work to make an examination of any part of the Work already completed, by removing or tearing out portions of the Work, the Contractor shall on request promptly furnish all necessary facilities, labor, and material to expose the Work to be tested to the extent required. If such Work is found to be defective in any respect, due to the fault of the Contractor or its Subcontractors, Contractor shall pay for all the expenses of uncovering the Work, of examination and testing, and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Contract, the actual cost of the Contractor's labor and material necessarily involved in uncovering the Work, the cost of examination and testing and Contractor's cost of material and labor necessary for replacement shall be paid to the Contractor and it shall, in addition, if completion of the Work has been delayed thereby, be granted a suitable extension of time. Notwithstanding the foregoing, the Contractor shall be responsible for all costs and expenses in removing and replacing the Work if the Contractor had covered the Work prior to any inspection or test contrary to the instructions of the A/E, Town, or Project Inspector.

23.5 Suspension of Work: The Town may suspend the Work when in its judgment the drawings and specifications are not being followed. Any such suspension shall be issued in writing and continued only until the matter in question is resolved to the satisfaction of the Town. The cost of any such Work stoppage shall be borne by the Contractor unless it is later determined that no fault existed in the Contractor's Work.

23.6 Project Inspector: Failure of the Project Inspector to note or require correction of improper or defective work does not relieve the Contractor from its responsibility to correct such improper or defective work. The Project Inspector has no authority to and shall not:

- a. Enter into the area of responsibility of the Contractor's superintendent;
- b. Issue directions relative to any aspect of construction means, methods, techniques, sequences or procedures, or in regard to safety precautions and programs in connection with the Work;

- c. Authorize or suggest that the Town occupy the project, in whole or in part; or
- d. Issue a certificate for payment.

SECTION 24. USE OF PREMISES AND REMOVAL OF DEBRIS

- 24.1 Jobsite Coordination:** The Contractor shall perform the Contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the work of any other contractor.
- 24.2 Storage of Material:** The Contractor shall store apparatus, material, supplies, and equipment in such orderly fashion at the site of the Work as will not unduly interfere with the progress of its Work or the work of any other contractor.
- 24.3 Jobsite Appearance:** The Contractor expressly undertakes, either directly or through its Subcontractor(s), to clean up frequently all refuse, rubbish, scrap material, and debris caused by the Contractor's operations, to the end that at all times the jobsite shall present a neat, orderly, and workmanlike appearance. No such refuse, rubbish, scrap material, and debris shall be left within the completed Work nor buried on the building site, but shall be properly protected and removed from the site and properly disposed of in a licensed landfill or otherwise as required by law.
- 24.4 Final Cleaning:** The Contractor expressly undertakes, either directly or through its Subcontractor(s), before final payment, to remove all surplus material, false work, temporary structures, including foundations thereof, and debris of every nature resulting from its operations and to put the site in a neat, orderly condition, to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the Contract; and to thoroughly clean all glass installed under the Contract including the removal of all paint and mortar splatter and other defacements. If a Contractor fails to clean up at the completion of the Work, the Town may do so and charge for costs thereof to the Contractor in accordance with these General Conditions.
- 24.5 Erosion Control:** During and at completion of the Work, the Contractor shall prevent site soil erosion, the runoff of silt and/or debris carried by water from the site, and the blowing of dust or debris off the site in accordance with the applicable requirements and standards of the Virginia Erosion and Sediment Control Handbook, latest edition, and of the Contract Documents and the requirements of the Town's Department of Planning, Building and Development.

SECTION 25. PROTECTING PERSONS AND PROPERTY

- 25.1 Protection on Site:** The Contractor expressly undertakes, both directly and through its Subcontractor(s), to take every reasonable precaution at all times for the protection of all persons and property which may come on the jobsite or be affected by the Contractor's operation in connection with the Work.
- 25.2 Safety and Health Precautions:** The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety and health precautions and programs in connection with the Work, including but not limited to provision of appropriate sanitation facilities, if applicable.
- 25.3 Protecting the Public:** The Contractor shall in all cases protect the public and the Work, during its execution, by posting and maintaining, at its expense, appropriate signs, barricades, barriers, lights, flagmen, and other safety devices in accordance with the current edition of the "Virginia Work Area Protection Manual."
- 25.4 Protecting the Work and Adjacent Property:** The Contractor shall continuously maintain adequate protection of all the Work from damage and shall protect the Town's property from injury or loss arising in connection with this Contract. The Contractor shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. The Contractor shall provide and maintain all passageways, guard fences, lights, and other facilities for protection required by public authority, local conditions, any of the Contract Documents or erected for the fulfillment of its obligations for the protection of persons and property.
- 25.5 Emergencies:** In an emergency affecting the safety or life of persons or of the Work, or of the adjoining property, the Contractor, without special instruction or authorization from the Storm Water Manager, shall act, at Contractor's discretion, to prevent such threatened loss or injury. Also, should Contractor, to prevent threatened loss or injury, be instructed or authorized to act by the Storm Water Manager, Contractor shall so act immediately, without appeal.

SECTION 26. DAMAGES TO THE WORK AREA

- 26.1 Damage to the Work:** The Contractor shall have charge of and be solely responsible for the entire Work and be liable for all damages to the Work including, but not limited to any of the damages hereafter mentioned, and to any property in the vicinity of the Work, until its completion and acceptance by the Storm Water Manager
- a. Where the work involves alterations, renovations, or modifications to any existing building, the Contractor shall familiarize itself with the structural condition of such building before proceeding with any work. It shall be the Contractor's responsibility to take all necessary safeguards to protect and maintain all parts of the building in a safe condition at all times during the process of construction and to protect from damage those portions of the building that are to remain.

- b. Under no condition shall any load be placed on any part of a building, whether new or existing, in excess of the load the structure will safely support, and no structural member(s) shall be cut or altered without the written consent of the Storm Water Manager
- c. The Contractor shall conduct all operations in such a manner as to avoid damage to existing work and surfaces within any existing building that are to remain. Any and all damaged work and surfaces shall be repaired, replaced, or restored to their original condition at the time when this work was started, and the expense of such work shall be borne by the Contractor.

26.2 Damage to Utilities: The respective Utility Company shall be given a minimum of forty- eight (48) hours' notice prior to any adjustment of utilities, and the Contractor shall comply with the provisions of the Virginia Underground Utilities Damage Prevention Act, Section 56-265.14 et seq., of the Code of Virginia. Damages that may occur to the utilities during the Work shall be the sole responsibility of the Contractor.

26.3 Relocation of Utilities: Should any utilities require adjustment during the Work, it shall be the Contractor's responsibility to have such utilities relocated as a part of the Work and to contact and cooperate with the respective Utility Company in performance of such operations.

26.4 Damage to Other Work and Existing Structures: The Contractor shall take into account all other work which shall be done by other parties on the jobsite, either now known or which may become necessary during the progress of the Work, and shall be responsible for any damage done to the other work. Damage to concrete curbs, gutters, sidewalks, or any existing facility that may occur during the construction shall be repaired or replaced by the Contractor, at its sole expense, as directed by and to the satisfaction of the Storm Water Manager

26.5 Weather Damage: Damage with respect to the Work caused by the weather shall be the responsibility of the Contractor.

26.6 Blasting: Any damage that may occur due to blasting shall be the sole responsibility of the Contractor.

SECTION 27. CHANGES IN THE WORK

27.1 Changes in the Work: No change with respect to the Work, except in an emergency situation threatening life or property, shall be made by the Contractor without the prior written approval of the Town. The Contractor shall deliver any request for a change in the Work, GMP, and/or completion time in writing to the Storm Water Manager within ten (10) calendar days of the occurrence requiring the change. The Contractor shall be required to certify the cause of the change order and, if appropriate, length of time involved. Payment for such changes approved by the Storm Water Manager shall be as set forth in Section 27.7. This written request is a condition precedent to the consideration of any such request by the Town. There will be no monetary adjustment to the GMP under this Contract except when the Scope of Work has been modified by the Town by a Change Order and as allowable under the other provisions of this Contract. All other changes required to complete the Work shall be the sole responsibility of the Contractor.

27.2 Delays:

- a. In the event a delay is caused by the Town, the Storm Water Manager, any other separate contractor employed by the Town, or any party for whom the Contractor deems the Town responsible, or the agents and employees of any of them, the Contractor shall inform the Town and the Storm Water Manager immediately at the time of the occurrence by the fastest means available and shall give written notice within a reasonable time, not to exceed ten (10) calendar days. The Contractor's notice to the Storm Water Manager shall specify the nature of the delay claimed by the Contractor, the cause of the delay, and the impact of the delay on the Contractor's work schedule to the fullest extent possible. The Town will within a reasonable time, not to exceed ten (10) calendar days, respond to the Contractor's notice with a resolution, remedy, or direction to alleviate the delay or with a notice rejecting the claim for delay alleged to be caused by the Town or parties for whom the Town is responsible. If the delay is not then resolved, the Contractor may then submit a request for change order in accordance with Sections 27.1 and 27.3. In the event of other delays, the Contractor shall give the Town and Storm Water Manager written notice within ten (10) calendar days of the occurrence causing the delay. If and to the extent that a delay is caused by or due to the Town or A/E taking any actions permitted or required by the Contract, the Contractor shall be entitled to an extension of time or additional compensation only for the portion of the delay that is unreasonable, if any.
- b. No extension of time or compensation shall be allowed for a delay if the Contractor failed to give notice in the manner and within the time prescribed in Subsection 27.2(a). Furthermore, no extension of time shall be given or additional compensation allowed for any delay unless a claim therefore is made in writing to the Town, with a copy to the Storm Water Manager, within ten

(10) calendar days of the occurrence causing the delay. The claim shall state the cause of the delay, the number of days of extension requested, and any compensation requested by the Contractor. The Contractor shall report the termination of the delay to the Town and Storm Water Manager not less than ten (10) calendar days after such termination. Failure to give notice of either the inception or the termination of the cause of delay or failure to present a claim for extension of time and/or monetary compensation within the times prescribed are conditions precedent to the assertion of any such claims by Contractor and shall constitute a waiver by Contractor of any such claims for compensation or extension based upon that cause.

- c. Requests for compensation for delays must be substantiated by itemized data and records clearly showing that the work delayed was progressing according to the approved schedule and that the costs are directly attributable to the delay in the Work claimed. The Contractor shall provide written schedules demonstrating how the Work being delayed affects the approved schedule.
- d. No extension of time, additional compensation, or change in the GMP shall be allowed for any delays caused in whole or in part by the Contractor, any subcontractors, or any supplier. (For unavoidable justified delays, see Section 27.7 of these General Conditions.)

27.3 Change Orders: All change orders shall clearly define changes to the Work, the Contract amount or price, and the Contract Time for Completion. Incomplete or partial change order requests may not be considered by the Storm Water Manager All change orders must indicate that the Contract Time for Completion is not changed or is either increased or decreased by a specific number of days. Any change or requested change in the GMP shall also be included in the change order request. The Contractor must provide written justification for an extension of the Time for Completion to the Storm Water Manager The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. Storm Water Manager approved increases or decreases in time required to complete the Work shall be added or deducted, respectively, to the Time for Completion. The change to time or GMP allowed by each change order shall include all time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project. Failure to include a change to time and/or GMP in a change order shall waive any claims the Contractor may have for any change to the time and/or GMP unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. However, the Contractor shall continue with the Work as may be directed by

the Storm Water Manager and shall not stop work on the Project unless directed to do so by the Storm Water Manager

27.4 Extra Work: The Town reserves the right to make alterations or changes in the Work as the Work progresses. When any work is necessary to the proper completion of the project which was not provided for in the Contract, the Contractor shall do such work, but only when and as ordered in writing by the Storm Water Manager Payment for such extra work shall be made as hereinafter provided in Section 27.5.

27.5 Payment Methods for Extra Work: The extra work done by the Contractor as authorized and approved by the Storm Water Manager shall be paid for in the manner hereinafter described; and the compensation thus provided shall be accepted by the Contractor as payment in full for all labor, material, tools, equipment, incidentals, all superintendents' and timekeepers' services, all insurance, bonds, and all other reasonable overhead expenses incurred in the performance of the extra work. Payment for extra work may be made by one of the following methods, as agreed on in writing by the Storm Water Manager and the Contractor before said extra work is commenced, subject to all other conditions of the Contract:

- a. Unit prices; or
- b. Lump sum price; or
- c. The cost of change in work plus ten percent (10%) of allowable costs. Allowable costs for purposes of this paragraph shall only include labor, material, sales tax, the rental of power tools and equipment actually used, or a reasonable price for the use of power tools and equipment owned by the Contractor based upon their life expectancy and purchase price, utilities, pro rata charges for foremen, and all payroll charges such as employer's FICA contribution, Public Liability and Workers' Compensation Insurance, but only if all such costs are incurred as the direct result of the changes in the Work. The change in cost for labor and material bonds and for performance bonds relative to the value of the extra work shall be allowable cost but shall not be marked up.

27.6 Disputed Claims for Extra Work: If one of the payment methods set forth in Section 27.5 is not agreed on by the Storm Water Manager, the Town may retain either an independent contractor to perform such extra work or use its own forces to perform such extra work and the Contractor shall cooperate fully with the independent contractor or Town in its performance of the extra work. However, the Storm Water Manager may also direct Contractor to perform such extra work and any dispute will be handled as set forth in Section 38 of these General Conditions.

- 27.7 Change in Contract Time for Completion or GMP:** The Contractor may request an extension of time or change in the GMP should the Work be obstructed or delayed by any justified unavoidable delays not caused in whole or in part by the Contractor, any subcontractor, or suppliers. However, delays caused by weather conditions will not be considered justified unavoidable delays unless they are caused by unusual weather as set forth in Section 16.3 of these General Conditions, in which case only an extension of time may be considered by Town, but no additional compensation will be allowed for unusual weather. Furthermore, Contractor agrees that for any delays not caused by the Town or any delays beyond the control of the Town, no additional compensation will be due the Contractor and no change in the GMP will be allowed by the Town, only an extension of the Contract Time for Completion will be considered by the Town. The Contractor shall deliver requests for changes in the GMP and/or completion time in writing to the Storm Water Manager within ten (10) calendar days of the occurrence requiring the change. Approved changes that alter the time of the Contract shall extend the completion time by a period equivalent to the certified time lost by such occurrence. No change in GMP and/or completion time shall be allowed if the above notice has not been properly given, such notice being a condition precedent to any such request by the Contractor. However, the Contractor shall continue with the Work as may be directed by the Storm Water Manager and shall not stop work on the Project unless directed to do so by the Storm Water Manager.
- 27.8** Accordingly, the GMP shall only be increased if there is a substantial addition requested by Town to the Scope of Work and increased cost to the Contractor. The GMP shall be decreased for any Town requested reduction to the Scope of Work.
- 27.9 Cost for A/E Services:**
- a. There will be no monetary adjustment to Architect/Engineer Services under this Contract except where the Scope of Work has been modified by the Town as noted above. The A/E component of such Scope of Work changes will only be adjusted when the Town-requested change requires a duplication of Work that has already been accomplished, causes an appreciable increase in direct labor, material or other costs to work included under the A/E component, or requires new labor, material or other direct costs of work not included under the existing A/E component. All other changes required to properly complete the Work will be the responsibility of the Contractor.

- b. Adjustment in the A/E component will be based upon the extent of change to the Work and not upon a percentage of construction costs. The Town will negotiate an adjustment on the basis of the costs per discipline for the production of drawings, calculations, specifications, estimating and other services. Prior to negotiations, the Contractor shall submit an Estimate of Fee for Modification of Design.

SECTION 28. PAYMENT FOR WORK

- 28.1 Monthly Construction Estimates:** Monthly construction estimates shall be submitted to the Storm Water Manager, 17755 Main Street, Dumfries, Virginia 22026, no more than once every thirty (30) calendar days.
- 28.2 Preparing Progress Payment Requests:** In preparing construction estimates, the Contractor may request a progress payment based on the actual percentage of work completed during the preceding month. The estimate shall contain a breakdown of the total Contract amount, to include a separate breakdown of all approved change orders, into principal items of construction, showing the estimated quantity, unit price, and total for each item. In preparing progress payment requests, the material delivered on the site and preparatory work done may be taken into consideration, if properly documented, or as may be required by the Storm Water Manager so that quantities can be verified. In addition to material delivered on the site, material such as large pieces of equipment and items purchased specifically for the project, but stored off the site, may be considered for payment, provided prior written approval is given by the Storm Water Manager
- 28.3 Progress Payments:** The Town will make a progress payment to the Contractor on the basis of a duly certified and approved progress payment request for the work performed under the Contract. In the event that the Town disagrees with the monthly construction progress payment request submitted by the Contractor, or in the event the As-Built Drawings are not being kept current, the Town may withhold all or a portion of the progress payment until such dispute is resolved to the satisfaction of the Town. If there are any objections or problems with the progress payment request, the Town will notify the Contractor of such matters. If the progress payment request is approved by the Town, payment will be made by the Town to the Contractor not more than thirty (30) calendar days after such request has been approved. However, if there is an objection or problem with a progress payment request, the Contractor shall continue with the Work as may be directed by the Storm Water Manager and shall not stop work on the Project unless directed to do so by the Storm Water Manager any such disputes shall be handled as set forth in Section 38 of these General Conditions.
- 28.4 Retainage:** To ensure proper performance of the Contract, the Town shall

retain, unless stipulated otherwise, five percent (5%) of each progress payment until Final Acceptance of all work covered by the Contract. The Contractor may request that such retainage be paid into an escrow account on certain Contracts, pursuant to Section 2.2-4334 of the Code of Virginia.

28.5 Ownership of Material and Work: All material and work covered by progress payments shall become the property of the Town. This provision shall not relieve the Contractor from the responsibility for all material and to maintain all completed work and to repair all damaged work. The Contractor shall not deem a progress payment as a waiver to complete the terms of the Contract or shift the risk of loss from the Contractor to the Town. The Contractor warrants that Contractor has good title to all material, equipment, and supplies which Contractor uses in the Work or for which Contractor accepts payment in whole or in part.

28.6 Payments to Others by Contractor: The Contractor agrees that Contractor will comply with the requirements of Section 2.2-4354 of the Code of Virginia regarding Contractor's payment to other entities and that Contractor will take one of the two actions permitted therein within seven (7) calendar days after receipt of amounts paid to Contractor by the Town. The Contractor agrees that Contractor shall indemnify and hold the Town harmless for any claims resulting from failure of the Contractor to make prompt payments to all persons supplying him equipment, labor, tools, or material in prosecution and completion of the Work provided for in the Contract.

28.7 Final Payment: After the Final Acceptance of the Work by the Town, and after Final Payment is requested in writing by the Contractor, and the Storm Water Manager has received and approved the items listed below, the Town shall pay the Contractor the Final Payment, less all prior payments, damages, setoffs, liquidated damages, any amounts withheld from retainage, or any other amounts Contractor may owe the Town for any reason whatever. If the sum of all progress payments and the final invoice is greater than the GMP, the final invoice shall be adjusted so that the sum of all progress payments and the final payment is not greater than the GMP. Such final payment is subject to the Storm Water Manager receiving and accepting all documents to finalize the Work or Project, such as, but not limited to:

- a. As-Built drawings, operation and maintenance manuals, written warranties (if applicable).
- b. Affidavit of Payment of Claims.
- c. Certificate of Final Acceptance.
- d. Such other documents or items as the Storm Water Manager may request in writing from the Contractor.

28.8 Payment and Acceptance: No payment, final or otherwise, nor partial or entire use, occupancy, or acceptances of the Work by the Town shall be an

acceptance of any work or material not in accordance with the Contract, nor shall the same relieve the Contractor of any responsibility for any faulty material or workmanship or operate to release the Contractor or its surety from any obligation under the Contract or the Performance Bond or the Labor and Material Payment Bond.

- 28.9 Right to Audit and Maintenance of Records:** The Contractor agrees that the Town, and any approving Federal or State Agency or any of their duly authorized representatives, shall have access to any books, documents, papers, records, schedules and electronic data of the Contractor which are pertinent to this Project for the purpose of making an audit, examinations, excerpts, copies, or transcriptions and that Contractor will provide copies of such items to Town upon Town's request, at no cost to Town. Contractor shall maintain all books, records, electronic data, and other documents relating in any way to this Contract or Project for a period of five (5) years after Final Acceptance.

SECTION 29. LIQUIDATED DAMAGES

If liquidated damages are provided for by the Contract, the following provisions shall apply:

- a. Subject to the provisions of the General Conditions for extension of time allowed for completion of the Work, if the Work is not substantially completed by the date required in the Contract, the Contractor shall owe to the Town, not as a penalty but as liquidated damages, the sum stated in the Contract for liquidated damages for each and every calendar day of delay in substantial completion.
- b. Once the Work is substantially complete, the accrual of liquidated damages shall stop and the Contractor shall have twenty-one (21) calendar days in which to achieve Final Acceptance of the Work.
- c. Provided, however, if Final Acceptance of the Work is not achieved by the twenty-first (21st) calendar day after substantial completion, and if any extension of time is not granted by the Town, the Contractor shall owe to the Town, not as a penalty, but as additional liquidated damages, the sum stated in the Contract as liquidated damages for each and every calendar day of delay in Final Acceptance. All such liquidated damages set forth in this Section 29 are in addition to any other damages the Town may be entitled to recover from the Contractor.

SECTION 30. INSPECTION FOR SUBSTANTIAL COMPLETION AND FINAL ACCEPTANCE

30.1 Substantial Completion: The Contractor shall notify the Town, in writing, that the Work will be ready for inspection to determine if it is substantially complete and ready for testing on or after a certain date, which date shall be stated in the notice. The notice shall be given at least ten (10) calendar days in advance of said date and shall be forwarded through the Storm Water Manager Inspection and testing shall take place at a time mutually agreeable to the Contractor, Town, and Storm Water Manager. The inspection and testing shall determine if substantial completion has been accomplished. If so, the Storm Water Manager will issue a Certificate of Substantial Completion and attach a written list of unfinished Work and defective Work, commonly referred to as a "punch list," which must be finished and corrected to obtain Final Acceptance.

After successful completion of the inspection and testing and the Architect/Engineer determines that, in its opinion, the Work, either in whole or in part, is substantially complete, the Architect/Engineer shall notify the Town, in writing that the Work, or a specified portion thereof, is recommended to be declared substantially complete. The Town shall notify the Contractor, in writing, of the date the Town accepts the Work, or the specified portion thereof, as substantially complete or the Town shall notify the Contractor of the deficiencies to be corrected or completed before such Work will be accepted as substantially complete.

30.2 Request for Final Acceptance: The Contractor shall notify the Storm Water Manager, in writing, that the Work will be ready for final inspection and testing on or after a certain date, which date shall be stated in the notice. That inspection and any necessary testing shall be conducted in the same manner as the inspection for substantial completion. When the Work is finally and totally complete, including the elimination of all known deficiencies, the Work shall be finally accepted by the Town and final payment shall be made in accordance with Section 28.7 of these General Conditions.

30.3 Final Inspection: The Storm Water Manager will conduct the final inspection, and may elect to have other persons of his/her choosing also to participate in the inspection. If one or more reinspection is required, the Contractor shall reimburse the Town for all costs of reinspection or, at the Town's option, the costs may be deducted from payments due to the Contractor.

30.4 As-Built Drawings: No Contract retainage will be released prior to receipt of all approved As-Built Drawings.

- 30.5 Final Acceptance:** Upon successful completion of the final inspection and all Work required by the Contract, including, but not limited to, the delivery of the following documents and items; As-Built drawings; operation and maintenance manuals; written warranties; Certificate of Substantial Completion; and Affidavit of Payment of Claims; the Storm Water Manager will furnish a written Certificate of Final Acceptance of the Work to the Contractor. The Storm Water Manager may accept the Work for occupancy or use while asserting claims against the Contractor, disputing the amount of compensation due to the Contractor, disputing the quality of the Work, its completion, or its compliance with the Contract Documents, and the like.
- 30.6 Release by Contractor:** The acceptance by the Contractor of the final payment or a payment designated as such shall be and does operate as a release by the Contractor of all claims by the Contractor against Town and of all other liability of the Town to the Contractor whatever, including liability for all things done or furnished in connection with the Work or the Contract.

SECTION 31. WARRANTY OF MATERIAL AND WORKMANSHIP

- 31.1** The Contractor warrants that, unless otherwise specified, all material and equipment incorporated in the Work under the Contract shall be new, in first class condition, and in accordance with the Contract Documents. The Contractor further warrants that all workmanship shall be of the highest quality and in accordance with the Contract Documents and shall be performed by persons qualified at their respective trades.
- 31.2** Work not conforming to these warranties shall be considered defective.
- 31.3** These warranties of material and workmanship are separate and independent from and in addition to any of the Contractor's other guarantees or obligations in this Contract, or that may arise by law.

SECTION 32. GUARANTEE OF WORK

- 32.1 One Year Warranty:** The Contractor further guarantees and warrants the Work against defects or deficiencies in the Work and as to all material, equipment, and workmanship for a period of one (1) year from the date of Final Acceptance. However, any manufacturer's guarantees or warranties or any other guarantees or warranties required by the Contract Documents shall be for the period of time provided for therein.
- 32.2** The Contractor shall obtain and furnish to the Town any available guarantees and warranties from manufacturers, installers, subcontractors, or others and any guarantees and warranties called for in the Contract and have such guarantees and warranties issued to the Town, or transfer such guarantees and

warranties to the Town, in a timely manner. All guarantees and warranties shall be subject to the reasonable approval of the Town. However, any such approval or disapproval does not relieve the Contractor of any of Contractor's guarantees and warranties. Contractor shall use its best efforts to ensure that all such guarantees and warranties do not contain any indemnity requirements from the Town, any limitation of liability, any reduction of the applicable statute of limitations, any venue or forum selection other than the Town of Dumfries, Virginia, or any requirement for mediation or arbitration. Any such language in a guaranty or warranty shall be deemed to be void and the Contractor along with the entity providing the guaranty or warranty shall be responsible for such guaranty or warranty with any such items being deemed deleted. All such guaranties or warranties shall be provided to the Town before or within ten (10) days after Contractor's completion of the Work and the Town may withhold payments to the Contractor until receipt of all such guaranties and warranties.

32.3 All guarantees and warranties from the Contractor or others, whether set forth above, in other parts of the Contract or other documents, or that may arise by law, shall be cumulative so as to maximize Town's guarantee and warranty protection. The Town, by accepting any of the guaranties or warranties provided for in the Contract does not waive, and specifically reserves any legal rights and remedies that the Town may have for breach of the Contract and/or breach of any such guarantees or warranties.

32.4 Defective Work: The Contractor agrees it shall repair or replace, at Contractor's sole expense, and to the satisfaction of the Storm Water Manager, any work, material, equipment, or part that is found, by the Storm Water Manager, to be defective.

32.5 Repairs: If, within any guarantee period, defects are noticed by the Storm Water Manager which require repairs or changes in connection with the guaranteed work, those repairs or changes being in the determination of the Storm Water Manager rendered necessary as the result of the use of material, equipment, or workmanship which is defective, inferior, or not in accordance with the terms of the Contract, then the Contractor shall, promptly upon receipt of notice from the Storm Water Manager, such notice being given not more than four weeks after the expiration of any such guarantee period, and without any expense to the Town:

- a. Place in satisfactory condition all guaranteed work and correct all defects therein; and
- b. Make good all damage to the structure, site, equipment, or contents thereof, which in the determination of the Storm Water Manager is the result of the use of material, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the Contract; and

- c. Make good any work or material or the equipment and contents of structures or the site disturbed in fulfilling any such guarantee.

32.6 Warranty Extension: In any case, where in fulfilling the requirements of the Contract or any guarantee embraced in or required thereby, the Contractor disturbs, damages or repairs any work guaranteed under the Contract, Contractor shall restore such work to a condition satisfactory to the Storm Water Manager and guarantee such restored work to the same extent and for a like additional period of time as it was originally guaranteed under this Contract.

32.7 Correction of Defects: If the Contractor, after notice, fails to proceed promptly, but in no event longer than thirty (30) calendar days after such notice, unless otherwise agreed to by the Storm Water Manager, to comply with the terms of the guarantee and/or correct the Work, the Town may have the defects corrected by its own forces or another contractor and the Contractor and its surety shall be liable to the Town for all costs and expenses incurred in doing so.

32.8 Nothing contained in this section shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents or the law of Virginia, including liability for defective work.

SECTION 33. STOP WORK ORDER

In the event that conditions exist such that no work can or should continue, other than the routine closing of the site, the Contractor may submit to the Storm Water Manager request to stop work or the Storm Water Manager on his/her own may issue a Stop Work Order. The Storm Water Manager will, if he/she approves the request or issues the order himself/herself, deliver a written "Stop Work Order" to the Contractor stipulating the effective date and the Contract time remaining. The Work, other than the routine closing of the site, and Contract time shall not again be started until a written "Resume Work Order" is received by the Contractor from the Storm Water Manager. When the Work is stopped at the request of the Contractor and through no fault of the Contractor, the Contractor may only recover from the Town payment for the cost of the Work actually performed, together with reasonable overhead and profit thereon up to that time, but profit shall be recovered only to the extent that the Contractor can demonstrate that it would have had profit on the entire Contract if it had completed the Work. The Contractor may not receive profit or any other type of compensation for parts of the Work not performed, including, but not limited to, home office overhead or any other such costs. The Contractor may also recover the actual cost of physically closing down the jobsite, but no other costs of the Stop Work Order. The Town may offset any claims it may have against the Contractor against the amounts due to the Contractor. In no event shall the Stop Work Order to the Contractor relieve in any way the obligations of the Contractor's surety on its payment

and performance bonds. When work is stopped by the Storm Water Manager due to any fault of the Contractor, the Contractor may not recover any of the above costs or items or any other costs, profits, expenses, or damages of any type.

SECTION 34. TERMINATION OF CONTRACT FOR CAUSE

34.1 Termination for Cause: If the Contractor should file a petition for relief as a debtor under any applicable bankruptcy law or should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, the Town may terminate the Contract. If the Contractor should refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper material, or if it should fail to make prompt payment to subcontractors or suppliers of material or labor, or disregard laws, ordinances, or the written instructions of the Storm Water Manager, or otherwise fails to comply with any of the terms or provisions of this Contract including, but not limited to, poor services, work or material, then the Town may terminate this Contract. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.

34.2 Possession of Work: Upon termination of the Contract, the Town may take possession of the premises and of all material, tools, and appliances thereon and finish the Work by whatever method the Town may deem expedient. In such case the Contractor shall not be entitled to receive any further payment of any type. If the expense of finishing the Work, including compensation for additional managerial and administrative services, shall exceed the unpaid balance of the GMP, the Contractor shall pay the difference to the Town, together with any other cost or expenses of terminating the Contract and having it completed by others, together with any and all other damages the Town may be entitled to from the Contractor.

34.3 Alternative Termination: If it should be judicially determined that the Town improperly terminated this Contract for cause, then the termination shall be deemed to be a termination for the convenience of the Town.

34.4 Termination Rights: Termination of this Contract under Section 34 or Section 35 is without prejudice and in addition to any other rights or remedies of the Town against the Contractor.

SECTION 35. TERMINATION FOR CONVENIENCE OF TOWN

35.1 Termination for Convenience: The Town, at its discretion, may terminate this Contract at any time without cause, in whole or in part, upon giving the

Contractor written notice of such termination. Upon such termination, the Contractor shall immediately cease work and remove from the jobsite all of its labor forces, equipment, and material as the Town elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as Town may require to assign to the Town the Contractor's interest in all subcontracts and purchase orders designated by the Town. After all such steps have been taken to the Town's satisfaction, the Contractor shall receive as full compensation for termination and assignment only the following:

- a. All amounts then otherwise due under the terms of this Contract for actual work performed and approved by the Town; and
- b. Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination. The Contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage, other than those provided by the preceding sentence, including any on site or home office overhead. Upon payment of the foregoing, the Town shall have no further liabilities or obligations to Contractor of any nature.

35.2 Termination Effect on Surety: In no event shall termination for the convenience of the Town terminate the obligation of the Contractor's surety on its payment and performance bonds.

SECTION 36. PROJECT SIGN(S)

The Contractor shall supply, erect, and maintain Project Sign(s) in accordance with the Town of Dumfries Standard Detail. The sign(s) shall be located as directed by the Storm Water Manager the Contractor shall not display any other signs or advertisements.

SECTION 37. ASSIGNMENTS

The Contractor shall not assign or transfer this Contract in whole or in part except with the prior written consent of the Town, which consent shall not be unreasonably withheld. If consent to assign is given, no such assignment shall in any way release or relieve the Contractor from any of the covenants or undertakings contained in this Contract and the Contractor shall remain liable for the Contract during the entire term thereof.

SECTION 38. CONTRACTUAL DISPUTES

Contractual claims, whether for money or for other relief, including any disputes as to change orders or extra work, shall be submitted, in writing, no later than sixty (60) calendar days after final payment or payment designated by the Town as a final payment; however, written notice of the Contractor's intention to file such claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such notice is a condition precedent to the assertion of any such claim by the Contractor. A written decision upon any such claims will be made by the Town Manager or his/her designee (hereafter Town Manager) within thirty (30) calendar days after submittal of the claim and any practically available additional supporting evidence required by the Town Manager. The Contractor may not institute legal action prior to receipt of the Town's decision on the claim unless the Town Manager fails to render such decision within one hundred twenty (120) calendar days from submittal of its claim. The decision of the Town Manager shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim or from expiration of the 120-day time limit, whichever occurs first, initiates legal action as provided in Section 2.2 - 4364, of the Code of Virginia. Failure of the Town to render a decision within said one hundred twenty (120) calendar days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the Town's failure to render a decision within said one hundred twenty

(120) calendar days shall be Contractor's right to immediately institute legal action. No administrative appeals procedure pursuant to Section 2.2 - 4365, of the Code of Virginia, has been established for contractual claims under this Contract.