

Original Contract
C003SPRC15
(Revised for Change Order No. 1
& Supersedes 2014 Version)





Department of Property & Procurement

Government of the United States Virgin Islands

3274 ESTATE RICHMOND, CHRISTIANSTED, U. S. VIRGIN ISLANDS 00820

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NOTICE TO PROCEED

October 16, 2015

John R. Wessel
Managing Member
GEC, LLC
P. O. Box 1656
Kingshill, VI 00851

Re: C003SPRC15 (GEC) Service Contract for Design-Build of Paul E. Joseph Stadium and Sports Complex (Lump Sum Contract Price) between Government of the Virgin Islands and GEC, LLC

Dear Mr. Wessel:

You are hereby notified to re-commence work on the above referenced contract on Monday, October 19, 2015 in accordance with the above referenced Service Contract and complete these items within one hundred twenty (120) calendar days from the Notice to Proceed for the Demolition Work as stated in Attachment 1 to Appendix A, at Line 1.5.14; and complete these items within one hundred eighty (180) calendar days from the Notice to Proceed for the 60% Design Work as stated in Attachment 1 to Appendix A, at Line 1.5.14. Your contract completion dates are therefore Friday, February 15, 2016 and Monday, April 15, 2016, respectively.

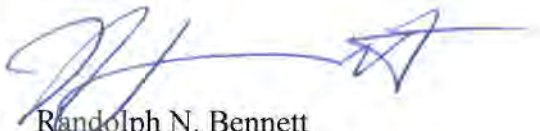
The Notice to Proceed approves the following Design/Build work:

1. Design to 60% completion for the following:
 - a. Schedule of Amounts Lines
 1. 2a – Design, Permits and Approvals for the Stadium
 2. 2b – Architectural and Engineering Services (Structures and Master Plan) for the Stadium
 3. 2c – Civil Engineering, Consultants and Management for the Stadium
 4. 3a – Design, Permits and Approvals for the Little League Field
 5. 4a – Design, Permits and Approvals for the Crucian Christmas Carnival Village
 6. 5a – Design, Permits and Approvals for the Site Improvements
2. Schedule of Amounts Line 6 – Demolition including Wall, Lights

The Contractor is to submit to the Government within five (5) calendar days of the re-commencement date a revised Contract Schedule for Government Engineer's and/or the Owner's Representative's review and approval.

If you have any questions or need any clarification, please do not hesitate to contact me at 340-773-1561 ext. 5229.

Sincerely,

A handwritten signature in blue ink, appearing to read 'RNB', followed by a long horizontal line that ends in a stylized, star-like flourish.

Randolph N. Bennett
Commissioner Designee

RNB/lrb/xxj

Enclosure

XC: *Sports, Parks & Recreation*
Department of Public Works
Property & Procurement Project File

SERVICE CONTRACT FOR DESIGN-BUILD OF

PAUL E. JOSEPH STADIUM AND

SPORTS COMPLEX

(LUMP SUM CONTRACT PRICE)

BETWEEN

GOVERNMENT OF THE VIRGIN ISLANDS

AND

GEC, LLC

REVISED FOR CHANGE ORDER 1 TO THE CONTRACT



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DESIGN-BUILD CONTRACT
(LUMP SUM CONTRACT PRICE)

THIS REVISED SERVICE CONTRACT FOR THE DESIGN AND CONSTRUCTION OF THE PAUL E. JOSEPH STADIUM AND SPORTS COMPLEX is made and entered into as of this ____ day of _____, 2015, between the Government of the United States Virgin Islands, a territory of the United States, by and through its Department of Property and Procurement, on behalf of the Department of Sports, Parks, and Recreation (hereinafter referred to as "**Government**"), and GEC, LLC, a limited liability company organized and existing under the laws of the United States Virgin Islands (hereinafter referred to as "**Contractor**") (said Service Contract for the Design and Construction of the Paul E. Joseph Stadium and Sports Complex hereinafter referred to as the "**Service Contract**").

RECITALS

WHEREAS, pursuant to Virgin Islands Legislative Act No. 7453, as amended by Act No. 7663, (said Act No. 7453, as amended by Act No. 7663, hereinafter referred to as the "Act" or the "**Authorizing Legislation**") the Department of Property and Procurement issued RFP-006-2013 (P) (the "**RFP**") requesting proposals for design/build services at Parcel 40D Estate La Grange and Parcel No. 3 Lagoon Street, Frederiksted, St. Croix, for the development of the Paul E. Joseph Stadium ("**PEJ Stadium**"), the Terance Martin Little League Field (the "**Little League Field**"), and a Cruzan Christmas festival village (the "**Festival Village**"), to provide amenities connected with the use of the PEJ Stadium and the Little League Field (said Parcel 40D La Grange and Parcel No. 3 Lagoon Street hereinafter referred to as the "**Project Site**" or the "**Site**") (the PEJ Stadium, Little League Field, and Festival Village hereinafter collectively referred to as the "**PEJ Stadium and Sports Complex**" or the "**PEJ Sports Complex**") (said design/build of the PEJ Sports Complex hereinafter referred to as the "**Project**" or the "**PEJ Complex Project**"); and

WHEREAS, based on the rankings given to each proposal by the Evaluation Committee utilizing the evaluation criteria set forth in the RFP and following the review and selection process identified in the RFP, the Government made a preliminary determination that the proposal submitted by Contractor was the most advantageous proposal received in response to the RFP; and

WHEREAS, pursuant to the Authorizing Legislation, the Government initiated contract negotiations (the "**Authorizing Legislation**"); and

WHEREAS, the negotiations resulted in the Evaluation Committee submitting to the Commissioner of the Department of Property and Procurement the recommendation that the Virgin Islands Department of Property and Procurement, on behalf of the Virgin Islands Department of Sports, Parks, and Recreation, enter into this Service Agreement with Contractor to provide the services requested under the RFP in the amount of TWENTY MILLION DOLLARS (\$20,000,000.00), as provided below; and

WHEREAS, the Commissioner of the Department of Property and Procurement approved the recommendation of the Evaluation Committee, which has concluded with the negotiation of the terms of this Service Contract (the "**Service Contract**"); and

WHEREAS, the Government desires to receive and the Contractor desires to provide design and construction services under the terms of this Service Contract; and

WHEREAS, the Government issued a suspension of Contract Letter dated March 18, 2015 which was received by the Contractor on March 26, 2015; and

WHEREAS, the Government desires that the Service Contract be changed from Cost Plus a Fee with Guaranteed Maximum Price with shared savings to Lump Sum Contract Price with no savings; and

WHEREAS, the Government and Contractor desire to establish a method for the Design/Build Work to proceed in phases after review of the design documents when such documents are 60% complete; and

WHEREAS, the Government and Contractor desire to add an Owner's Representative to the Project and define the Owner's Representative's role and responsibilities in the Service Contract; and

WHEREAS, the Government and Contractor desire that the Design/Build Work be resumed as provided herein;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:

1. DEFINITIONS

As used in this Service Contract, the following terms shall have the meanings hereinafter set forth unless the context would otherwise clearly indicate, except to the extent such terms may be expressly amended, altered, omitted, or changed in connection with the performance by the Parties of the terms of this Service Contract:

"A.S.T.M." means the American Society for Testing Materials.

"Actual Date of Substantial Completion" has the meaning set forth in Section 18 below.

"Baseline Site Condition" means the surface and subsurface geotechnical conditions of the Site that are observable or otherwise ascertainable without testing and geotechnical investigation prior to the execution of this Service Contract.

"Business Day" means a day which is not a Saturday, Sunday or legal holiday in the U.S. Virgin Islands.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

"Change Order" means a written agreement on an approved form signed by the Contractor and the Commissioners of DPP, DPW and DSPR, involving Changes or Extra work within the provisions of the Contract Documents.

"Concealed or Unknown Environmental Condition" means, and is limited to: (1) the presence anywhere in, on or under the Site on the Contract Date, to the extent not disclosed to the Contractor as part of the Baseline Site Conditions, of underground storage tanks (for the storage of chemicals or petroleum products); and (2) the presence anywhere in, on or under the Site of Hazardous Materials, not disclosed to the Contractor as of the Contract Date.

"Contract Date" means the date that the following actions and conditions have been taken and satisfied with respect to the Service Contract: (i) the Service Contract is duly executed by all representatives of the Contractor and the Government identified on the signature page of this Service Contract; and (ii) the Governor of the Virgin Islands has approved this Service Contract.

"Contract Documents" means the Service Contract executed and approved by the Government and the Contractor, covering the performance of the Design/Build Work, by which the Contractor is bound to perform the Design/Build Work and furnish labor and Materials and Equipment and by which Government is obligated to compensate the Contractor therefor at the mutually established and accepted contract considerations, together with attached Appendices, addenda (which pertain to the Contract Documents), the Notice to Proceed, the Plans and Specifications together with all written amendments, Change Orders, and Government Engineer's and Owner's Representative's written contract communications issued on or after the effective date of the Service Contract that effectively confirm or change and fund the Design/Build Work to be provided hereunder. Only printed or hard copies of the items listed in this Section or such copies that are duly and validly posted electronically to the electronic site for this Project are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by Government to Contractor are not Contract Documents, except to the extent that a party wrongfully refuses to permit such items to be electronically posted. The Contract Documents shall include the proposal, performance bond, payment bond, and any other written mutual Supplemental Agreements and understandings that are required to complete the construction of the Design/Build Work or performance of the services in an acceptable manner, including authorized extensions thereof.

"Contract Price" means the not to exceed Lump Sum Contract Price set forth in Section 4(b), which Lump Sum Contract Price is comprised of the lump sums for each Total Value and/or Cost per Unit of the Project set forth in the Schedule of Amounts, subject to adjustments as provided in this Service Contract.

"Contract Requirements" means the terms, conditions, methods, techniques and practices imposed or required by: (1) the various design, construction and operation deadlines set forth in this Service Contract; (2) Applicable Law; (3) the Design Requirements set forth in the Scope of Work for this Agreement attached as Appendix A; (4) Design Documents (including without limitation the Plans and Specifications); (5) the Performance Guarantees; (6) the Standard of Care; (7) good industry practice; (8) applicable equipment manufacturers specifications; (9) applicable Insurance Requirements (Appendix C); and (10) any other standard, term, condition or requirement specifically provided in this Service Contract or in its Appendices to be observed by the Company or the Government.

"Contractor" means GEC, LLC, a Virgin Islands Limited Liability Company.

"Contractor's Equipment" means all machines, implements, power tools, livestock, tools and apparatus necessary for the proper construction and acceptable completion of the Design/Build Work, together with the necessary supplies for the operation, upkeep and maintenance of the same.

"Cost of the Design/Build Work" shall have the meaning ascribed in Appendix B to the Service Contract.

"Date of Final Acceptance" has the meaning set forth in Section 18 below.

"Design/Build Work" has the meaning ascribed in Section 5 of the Service Contract.

"Design Documents" means the Contractor's plans, technical specifications, drawings, blueprints and other documents prepared in the performance of the Design/Build Work in accordance with the Scope of the Design/Build Work attached as Appendix A.

"Design Requirements" has the meaning ascribed in Appendix A.

"DPP" means the Virgin Islands Department of Property and Procurement.

"DPP Commissioner" means the Commissioner of the Virgin Islands Department of Property and Procurement or its authorized representative.

"DPW" means the Virgin Islands Department of Public Works.

"DPW Commissioner" means the Commissioner of the Virgin Islands Department of Public Works or its authorized representative.

"DSPR" means the Virgin Islands Department of Sports, Parks, and Recreation.

"DSPR Commissioner" means the Commissioner of the Virgin Islands Department of Sports, Parks, and Recreation or its authorized representative.

"Employees," when used to refer to personnel of Contractor and Subcontractors (as hereinafter defined), means not only full-time and part-time employees but also officers, directors and managers of Contractor and Subcontractor.

"Environmental Condition Assessment" has the meaning set out in Section 11 below.

"Environmental Impact Studies" has the meaning set out in Section 11 below.

"Extra Work" means Design/Build Work or services to be performed or labor and Materials and Equipment to be furnished by the Contractor to complete the Project in an acceptable manner but for which there is no applicable basis of payment, direct or indirect, provided in the Contract Documents.

"Final Acceptance" has the meaning set forth in Section 14 below.

"Government" means the Government of the United States Virgin Islands.

"Government Engineer" means the DPW Commissioner or the licensed professional engineer designated by the DPW Commissioner in writing and expressly approved in writing by the DPP Commissioner, acting directly or through an assistant or representative duly authorized by the Government Engineer, such assistant or representative acting only within the scope of the particular duties assigned to him or within the scope of the authority vested in him by the Government Engineer, in writing.

"Government Provided Materials and Equipment" means all equipment and materials provided by Government as set forth in Appendix A (Scope of Work).

"Governmental Approvals" means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, registrations, rulings, entitlements and approvals of whatever kind and however described that are required under Law to be obtained or maintained and approvals required of the Government hereunder to perform the Design/Build Work contemplated under this Service Contract with respect to execution and completion of the Design/Build Work.

"Governmental Authority" means with respect to Contractor, any Subcontractor, or the Project, the Government or any national, state, territorial, provincial, county, city or other political subdivisions that exercises jurisdiction over such Contractor, any Subcontractor, or the Project, and any court, agency, department, commission, board, bureau or instrumentality of any of them.

"Governmental Body" means any federal, state, or territorial legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

"Hazardous Material" means any chemical, waste, substance, object, agent or material deemed hazardous or toxic, or any chemical, waste, substance, object or material exposure to which is prohibited, limited or regulated, under Law, including without limitation, any "hazardous substance" as defined in CERCLA and "hazardous waste" as defined in RCRA.

"Laws" shall mean all federal, state, territorial, or local legislation, statutes, ordinances, codes and other laws, rules and regulations, executive orders, executive proclamations, and by-laws of any legally constituted public authority having a bearing on the Project or the Design/Build Work.

"Losses-and-Expenses" means any and all loss, liability, forfeiture, obligation, damage, delay, fine, penalty, judgment, deposit, cost, expense, charge, Tax, or expense, including all Fees and Costs, except as explicitly excluded or limited (including the limitation under Section 26) incurred by the Government under any provision of this Service Contract for which, pursuant to Section 26 of this Service Contract, Contractor is obligated to indemnify the Government.

"Lump Sum Contract Price" shall have the meaning ascribed in Appendix B to this Service Contract.

"Materials and Equipment" means all materials, articles and things of all kinds, or, as required by the context in the Contract Documents, all equipment, machinery and apparatus, to be provided

and incorporated in the Project by the Contractor under the Contract Documents (including the spare parts to be supplied by the Contractor under the Contract Documents, if any), but does not include the Contractor's Equipment or any other temporary equipment and equipment used and/or consumed in the performance of the Design/Build Work but not intended to be incorporated as part of the Project.

"Owner's Representative" means the individual or other entity designated in writing by the Government to perform the duties on behalf of or in conjunction with the Government Engineer as described in the Contract Documents.

"Payment Bond" means the security furnished by the Contractor to guarantee the prompt payment of all persons supplying labor and Materials and Equipment in the performance of the Design/Build Work provided in the Contract Documents.

"Performance Bond" means the security furnished by the Contractor to guarantee the completion of all the requirements of the Contract Documents within the original term of the Contract Documents and any extension that may be granted, in accordance with the terms of the Contract Documents.

"PFA" means Virgin Islands Public Finance Authority.

"Plans and Specifications" means the Design Documents that are the official approved plans, profiles, cross sections, working drawings and supplemental drawings, which show as appropriate, required alignments and grades, layout, and design of structures, cross sections, accessory features and the particular location, character, dimensions and details of the Project, and/or as the context requires, all directions, provisions and requirements setting forth or relating to the method and manner of performing the Design/Build Work, or to the kinds and qualities of Materials and Equipment and labor to be furnished under the Contract Documents created, approved, and used in accordance with the process and procedures set out in this Service Contract, or exact reproductions thereof prepared for the Design/Build Work, including all modifications thereof approved by the Government.

"Procurement Rules" shall mean any procurement rule or principle generally accepted and applied in connection with the procurement processes set out for Design/Build work pursuant to Title 31 Virgin Islands Code, Pertaining To Procurement Of Public Works Contracts, of the United States Virgin Islands Rules and Regulations. The Procurement Rules shall be cited as "V.I. R. & Regs. Tit. 31" followed by the application Section number of the Procurement Rules.

"Project" means all or any part of the overall facilities being provided pursuant to this Service Contract comprised of the PEJ Stadium, the Little League Field (including associated seating) and the Festival Village as more fully described in Appendix A and as may be modified by Change Order.

"Proposal" means the written response to the RFP submitted by the Contractor to perform the Design/Build Work described in the RFP.

"Punch List" means a list of minor items of Design/Build Work, the absence of which would not affect the Government's intended occupancy or use of the Project, that remain to be performed or

corrected by Contractor in order to satisfy its obligation to design, engineer, construct and equip the Project in accordance with all of the requirements of the Contract Documents, which Design/Build Work shall be described in a joint Punch List to be developed by the Government Engineer, Owner's Representative, and the Contractor and finally approved by Government in writing (which approval shall not be unreasonably withheld) as a condition to Substantial Completion. Unless otherwise provided in a written notice from Government to Contractor, Substantial Completion will not occur until (i) the aggregate value of the Design/Build Work (other than the amount retained) to be performed as described in the Punch List (including labor and equipment) is less than one and one-half percent (1.5%) of the Contract Price and (ii) the costs to complete any single item or component of the Punch List (including labor and Materials and Equipment) is less than \$25,000.

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C.A. § 6901 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

"Schedule of Amounts" means the detailed itemized list approved by the Government that establishes the value or cost of each detailed part of the construction portion of the Design/Build Work, and which is used as the basis for preparing progress payments set out in Attachment 1 to Appendix B.

"Separate Contractor" means a contractor hired by Government under a separate contract to perform work or provide material and equipment for the Project.

"Standard of Care" means that degree of skill, care, attention, business administration and judgment normally exercised by design/build firms with a reputation for performing high quality design, engineering, procurement, Site development and construction, for a project of similar nature and complexity to the Project in the United States Virgin Islands. As used herein, the "Standard of Care" shall apply to the exercise of technical, construction, engineering and management principles, practices, and procedures, appropriate to Government's requirements for health/safety, cost-effectiveness, minimization of import duties and local, state, territorial and Federal taxes in and outside of the United States Virgin Islands, schedule compliance and satisfaction of the programmatic requirements for the Project.

"Subcontractor" collectively means the individual, firm or corporation undertaking the execution of a part of the Design/Build Work under the terms of the Contract Documents (other than Employees of Contractor or its subsidiaries or affiliates) under the terms of an agreement with the Contractor entered into in accordance with the provisions of this Service Contract.

"Substantial Completion" means that the Design/Build Work is completed in accordance with the Plans and Specifications and other Contract Documents, except for items on the Punch List, so as to be fit for the safe, reliable and continuous beneficial occupancy and operation by Government for the use for which it is intended, and without interference from Contractor and without replacing, repairing or in any way completing the Design/Build Work, all equipment and systems are operational in accordance with the Contract Documents, all special tools required to operate and maintain the Project as provided herein have been acquired by Contractor and delivered to Government, and Government has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any Governmental Authority having jurisdiction thereof necessary for the beneficial use and occupancy of the Project for the purposes for which it

is intended. In the event that the Design/Build Work constitutes a phase or portion of a larger project, the date when the Design/Build Work is sufficiently completed in accordance with the Plans and Specifications and fit to be utilized for the use for which it is intended, so that Government or its Separate Contractors can occupy the Design/Build Work and proceed with the next or related phase of the Project, without interference from Contractor and without replacing, repairing or in any way completing the Design/Build Work.

"Supplemental Agreement" means a written agreement executed by the Contractor and Government, with the consent of the Contractor's surety, supplementing the Contract Documents to cover changes or changed conditions incidental to and necessary for the acceptable completion of the Project.

"Unknown Subsurface Conditions" means the presence at the Site of subsurface structures, materials or conditions: (1) which are utilities whose location was not disclosed prior to the Service Contract Date or at that time could not be determined from publicly available sources, prior to the Service Contract Date; or (2) geotechnical conditions that materially differ from the Baseline Site Conditions, which adversely affect the structural suitability of the Site or otherwise adversely impact the Contractor's excavation or schedules as described in this Service Contract.

"Vendor" means those individuals, firms, or corporations having a purchase order from Contractor for supply of any Materials and Equipment.

"Utilities" means any and all utility services and installations whatsoever (including gas, water, electricity, telephone, and telecommunications), and all piping, wiring, conduits, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

"Work Product" means Design Documents, reports, schedules, hard copy and electronic communications with Project participants, and Punch List and close-out documents prepared or furnished by Contractor or its Subcontractors in connection with the design and construction of all or any part of the Project.

2. TERMINOLOGY CLARIFICATION

(a) Unless otherwise expressly stated in this Service Contract, any authorization, approval, or acceptance of Government or the Government Engineer and/or Owner's Representative required under this Service Contract must be in writing. As used in this Service Contract, "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record. The additional requirement that such writing be "signed" by Government or the Government Engineer and/or Owner's Representative or his authorized representative shall mean a handwritten signature.

(b) Whenever in this Service Contract the words "or equal", "similar and equal" or words or phrases of like import are used in conjunction with the brand or trade name of any item of Materials and Equipment, such words shall mean that the brand- or trade-named item will be used as a basis of comparison and that all makes of purported similar or equal items will be considered so long as they have equal or better qualities, as determined by the Government Engineer and Owner's Representative in their sole judgment.

(c) Whenever in this Service Contract the words "furnish", "install", "provide" or words of similar import are used, they shall mean, unless otherwise expressly stated in this Service Contract, that Contractor shall design, engineer, procure, fabricate, complete, deliver, furnish, erect and install the item and shall include all operations, labor, Materials and Equipment, and all things (including all items, tools, supplies, articles, appurtenances, apparatus, machinery, appliances, scaffolding, utilities, services, sanitary facilities, supervision, transportation, incidentals, and expenses) necessary to complete the item in place, ready for operation or use, under the terms, conditions and provisions of this Service Contract.

(d) Whenever in this Service Contract the words "as shown", "as indicated", "as detailed", "as noted" or words or phrases of similar import are used, they shall be understood to refer to the Plans and Specifications.

(e) Whenever in this Service Contract the words "as ordered", "as directed", "as required", "as permitted", "as allowed", "as approved" or words or phrases of similar import are used, they shall mean that the order, direction, requirement, permission, allowance or approval of the Government Engineer and/or Owner's Representative is intended.

(f) Whenever in this Service Contract the word "or" is used, it shall be interpreted to mean "and/or" unless a contrary meaning is clearly intended from the context.

(g) Whenever in this Service Contract the words "knowledge", "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) in exercising the Standard of Care. Analogously, the expression "reasonably inferable" and similar terms in this Service Contract shall be interpreted to mean reasonably inferable by an experienced design/builder familiar with the Project and exercising the Standard of Care of a contractor or designer performing work in the United States Virgin Islands.

3. EFFECTIVE DATE AND CONTRACT TERM.

This Service Contract shall become effective on the Contract Date, as defined in Section 1 herein, and shall continue in effect for Thirty (30) months following the Commencement Date (said period hereinafter referred to as the "Contract Term"), unless earlier terminated pursuant to the termination provisions of Section 30 herein, in which event the Contract Term shall be deemed to have ended as of the date of such termination. All rights, obligations and liabilities of the parties hereto shall commence on the Contract Date, subject to the terms and conditions hereof. Prior to the Commencement Date, the Government shall have no obligation to make any payment under this Service Contract. At the end of the Contract Term, all other obligations of the parties hereunder shall terminate, except as provided in Section 32 of this Service Contract.

4. SCOPE OF THE WORK, LUMP SUM CONTRACT PRICE AND PHASING OF CONSTRUCTION

(a) Scope: The scope of the Design Build Work to be performed by the Contractor is set forth in Appendix A ("Scope of Work") attached to this Service Contract and made a part hereof. Except as otherwise specifically set forth in the Appendices and their

respective Attachments, which are a part hereof, the Contractor shall provide all personnel, supervision, services, field labor, materials, tools, equipment and supplies and all things, including, but not limited to, all items, tools, supplies, articles, appurtenances, apparatus, machinery, appliances, scaffolding, utilities, services, sanitary facilities, supervision, transportation, incidentals and expenses, all construction spare parts and lubricants, and all consumables and other things and services, whether of a temporary or permanent nature, and do all things necessary for the proper design and execution of the Design/Build Work as specified in the attached Appendix A.

- (b) Lump Sum Contract Price: Government agrees to pay and the Contractor agrees to accept as full payment for the proper and timely performance of the Design/Build Work and final completion of the Project, an amount not to exceed Twenty Million and 00/100 Dollars (\$20,000,000) (the "**Lump Sum Contract Price**"). The terms and conditions governing the computation and payment of the Lump Sum Contract Price are further set out in Appendix B (Lump Sum Contract Price Provisions) which is attached to this Service Contract and made a part hereof. The Lump Sum Contract Price includes all items described in the Scope of Design/Build Work at Paragraph 4(a) to this Service Agreement.
- (c) Phasing of the Design/Build Work: The initial allocation of the Lump Sum Contract Price to the categories comprising the Design/Build Work is set forth in Appendix B (the "**Schedule of Amounts**"). As is initially set out in Appendix A and within the preliminary time table set forth therein, the Contractor shall have the general responsibility for timely creating a more complete plan for the entire Project which may divide the Project into phases (each, a "**Phase**") As follows:
1. Lump Sum Contract Price for each Phase. The Lump Sum Contract Price for each Phase is to be developed and agreed to by the Government and Contractor after consideration of the cost of the program elements included within that Phase, such agreement to be negotiated reasonably and in good faith ("Applicable Phase Lump Sum Contract Price");
 2. Obligation to Design to the Applicable Phase Lump Sum Contract Price. The designs for a Phase are to be developed in accordance with the Applicable Phase Lump Sum Contract Price and program elements, as more fully described in Appendix A - Attachment 1, for such Phase. The Contractor will prepare a separate Schedule of Amounts for each approved Phase, without increasing the Lump Sum Contract Price for the entire Project, unless caused by a change to the program elements or other circumstances the parties agree justifies an increase, subject to approval by the Government Engineer and the PFA.
 3. Notice to Proceed for Phase. The Government may elect to have the Contractor begin any phase of the work independently of other phases according to the designs and budget agreed to in Section 4(c)(1) and (2) above, by issuing a written notice to proceed for each such separate phase at least fifteen (15) days prior to the commencement date of the applicable Phase.
 4. Contract Schedule for each Phase. Within five (5) calendar days after receipt of the notice to proceed, the Contractor shall submit to the Government a revised Contract Schedule for the applicable Phase, meeting the requirements of Section 12 of this Service Agreement. The Government shall have ten (10) working days to review the

proposed Contract Schedule. If the Government does not respond to the Contractor's proposed Contract Schedule for the applicable phase of Work within the ten-day review period, the proposed Contract Schedule for the applicable Phase shall be deemed to be accepted by the Government.

5. Government Review of Proposed Phases. The Government's review of the Contractor's proposed phases of the Design/Build Work shall be conducted by the Government Engineer and Owner's Representative or a committee appointed by the Government to perform part or all of this role in accordance with the terms of this Service Agreement. Such a committee, if appointed, shall be duly and timely constituted and authorized to conduct such reviews on behalf of the Government. Such approval shall not be unreasonably withheld; for these purposes "unreasonable" shall include, without limitation, imposing conditions which impose costs in excess of the Applicable Phase Lump Sum Contract Price."
 6. Contract Documents for the Phase. After the Government's approval of a Phase, whether explicitly or by the expiration of the time period allocated for Government review, a list of the Contract Documents so approved shall be appended to this Service Contract and their content shall then constitute the complete statement of the scope of Design/Build Work to be done under that Phase.
 7. After such approval, the Contractor shall diligently pursue the permitting, design and construction in accordance with the Design Standards, the Contract Schedule and the Applicable Phase Lump Sum Contract Price approved as part of this process.
- (d) Additional Attachments: All the Design/Build work shall be performed in accordance with the terms and conditions of this Service Contract (which include the Appendices and their attachments identified above) and the following Appendices and their respective attachments all of which are attached hereto and made a part hereof:

Appendix A (Scope of Work)
Appendix B (Lump Sum Contract Price Terms)
Appendix C (Insurance Requirements)
Appendix D (Key Personnel and Approved Subcontractors)
Appendix E (GEC's Standard Purchase Order Subcontract Agreement)
Appendix F (Official Zoning Map of Project Site)
Appendix G (Project Schedule)

5. **CORRELATION OF DOCUMENTS - INTENT**

- (a) Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in this Service Contract. The intent of the Contract Documents is to provide for the proper design and construction to Final Acceptance in every detail, within the time specified, of the Design/Build Work described in the Contract Documents, which the Contractor undertakes to do, in full and strict compliance with the Plans and Specifications and Contract Documents.

(b) The Plans and Specifications are complementary, and everything which is necessary for the proper and complete orderly execution and finishing of the Design/Build Work within the limits established by the Scope of Design/Build Work, whether described in the Plans and Specifications or reasonably inferable from the Plans and Specifications, shall be considered as a part of the Contract Documents and will be executed in the same manner and with the same character of material as other portions of the Contract Documents without extra compensation. There are certain design, engineering, procurement, construction, operations, labor, equipment, materials and things reasonably inferable from the Plans and Specifications as being necessary to produce the intended results; even if no specific mention thereof is made in said documents; such omission shall not relieve Contractor of its obligation to provide all such design, engineering, procurement, construction, operations, labor, equipment, materials and things for the Lump Sum Contract Price. The Contractor shall be responsible for the accuracy of the Plans and Specifications, and in the event Contractor shall discover any conflict, discrepancies, omissions or errors in either, or should the Plans and Specifications require Design/Build Work which does not conform to the actual Site conditions or conflict with Laws or requirements of Governmental Authorities having jurisdiction or Government's fire insurance carrier, including without limitation, approval by the fire insurance carrier of plans prior to construction, then in any of such events the matter shall be immediately reported in writing to Government for its determination. Failure of Contractor to so notify Government and secure Government's determination, shall render all Design/Build Work thereafter performed to be at Contractor's sole risk and cost and expense.

(c) Parts of the Design/Build Work described in words which, when applied, have a well-known technical or trade meaning shall be furnished or performed in accordance with the recognized construction industry standards, customs and usage applicable to such meaning.

(d) The Design/Build Work shall be executed in strict accordance with the Contract Documents and no deviations from the requirements thereof shall be made without the prior written approval of Government.

(e) To provide convenience of reference and to facilitate the letting of Subcontracts, the Plans and Specifications may be separated into sections. Such separation, if any, shall not operate to make the Government Engineer and/or the Owner's Representative the arbiter in establishing the scope of the Design/Build Work to be performed by a Subcontractor, nor relieve the Contractor of any of its obligations under this Service Contract.

(f) In the event of conflicts between the Contract Documents, the Government Engineer shall determine which of the conflicting requirements governs.

6. THE GOVERNMENT ENGINEER AND OWNER'S REPRESENTATIVE

Unless modified according to the Changes in the Work Section 19 of this Service Contract the role of the Government Engineer and Owner's Representative shall be as follows: (a) An approval, authorization or direction by Government under this Service Contract shall be deemed to mean the approval, authorization or direction of (i) either the Government Engineer or Owner's Representative under this Service Agreement when the term "Government Engineer and/or Owner's Representative" is used; or (ii) both the Government Engineer and the Owner's Representative when the term "Government Engineer and Owner's Representative" is used. The

Government Engineer and/or Owner's Representative or Government may delegate the functions and authority of the Government Engineer and/or the Owner's Representative to others, in whole or in part, confirming such action in writing to Contractor. The Government Engineer and/or the Owner's Representative shall be available as often as is reasonably necessary for reviewing the Design/Build Work and for authorizing Changes therein. No such approval, review, authorization or direction shall relieve Contractor of any of its obligations under the Contract Documents. Any approval, authorization or direction by Government or the Government Engineer and/or the Owner's Representative under Contract Documents shall be in writing and made within time periods that are provided in this Service Agreement or are reasonably necessary to permit the Parties to perform this Service Agreement in accordance with its terms. The Government Engineer and/or the Owner's Representative, however, will not be required to make exhaustive or continuous inspections to check the quality or quantity of the Design/Build Work, and will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

(b) The Government Engineer and/or the Owner's Representative shall not act in a manner that unreasonably delays or prevents the Contractor from properly conducting the Design/Build Work. In this context, the Government Engineer and the Owner's Representative may issue to the Contractor (at any time) reasonable instructions which may be necessary for the execution of the Design/Build Work and the remedying of any defects observed by the Government Engineer and/or the Owner's Representative, all in accordance with the Contract Documents. The Contractor shall only take instructions from the Government Engineer and/or the Owner's Representative, or from an assistant to whom the appropriate authority has been delegated in writing signed by the Government Engineer and/or the Owner's Representative and DPP Commissioner under this Section 6. If an instruction constitutes a Change to the Design/Build Work, Section 19 shall apply. The Contractor shall comply with the instructions given by the Government Engineer and/or the Owner's Representative or delegated assistant, on any matter related to the Service Contract. These instructions shall be given in writing.

(c) The Government Engineer and/or the Owner's Representative's exercise of its authority to act under this Service Contract shall not give rise to any duty or responsibility of the Government Engineer and/or the Owner's Representative or the Government to Contractor or any of the Subcontractors engaged by either Contractor or a Subcontractor. The Government Engineer and/or the Owner's Representative will not be responsible for the errors, acts, omissions, defective Design/Build Work or Design/Build Work that otherwise fails to comply with the Contract Requirements of Contractor, any of the Subcontractors, or any person, firm or corporation directly or indirectly employed or engaged by either Contractor or a Subcontractor.

(d) Contractor shall provide Government Engineer and the Owner's Representative with periodic reports regarding the status of the Design/Build Work. At any time upon the prior reasonable request of Government Engineer and the Owner's Representative, but in no event less than monthly, Contractor's representatives shall attend meetings with Government Engineer and the Owner's Representative and their designees to discuss the progress of the Design/Build Work. All meetings shall be held at the Site or such other reasonable location as designated by Government Engineer and/or the Owner's Representative.

7. DESIGN

(a) Design Services. Contractor shall prepare the construction Plans and Specifications for the Design/Build Work covered by this Service Contract, in accordance with the provisions of this Service Contract, the Standard of Care and the Contract Requirements. Contractor is responsible for the complete design of the Project in accordance with the Contract Documents, including the preparation of all preliminary, development and construction documents covering all required design disciplines and all drawings, Plans and Specifications, bills of material, schedules and estimates, and coordination with the design and engineering efforts of Contractor's and any Government suppliers regarding interface requirements. Government Engineer and the Owner's Representative reserve the right to review and approve all Plans and Specifications. Contractor shall be responsible for giving timely notice to Government of approval needs so as to not delay achievement of the Milestone Dates as initially set out in Appendix A or the Project Schedule as is initially set out in Appendix G and as may be refined in connection with the execution of Design/Build Work by the Contractor in accordance with Paragraph 4 of this Service Contract. Increments of design requiring Government approval under Paragraph 4 hereof are identified in Appendix A Scope of Work. Contractor shall submit such increments of design to the Government Engineer and the Owner's Representative for review and comments in accordance with a submittals schedule that permits reasonable time for Government Engineer and/or the Owner's Representative to review the same in accordance with the time periods required to facilitate the performance of this Service Agreement. The Government Engineer and/or the Owner's Representative shall notify Contractor in writing of his/their comments within a professionally reasonable time, and in no event more than Ten (10) working days, after the receipt thereof to permit the approval process set out in Paragraph 4 to be met. If the Government Engineer and/or the Owner's Representative do not provide written comments within ten (10) working days, the Government Engineer and the Owner's Representative will be deemed to have had no comments with respect to such increments of design and Contractor may proceed with the further development of the Plans and Specifications and other Design Documents. Any such drawings and specifications prepared by Contractor or others are included within the meaning of the terms "Plans and Specifications" as used herein and when issued by Contractor and approved by Government Engineer and/or the Owner's Representative said Plans and Specifications are thereby incorporated into and made a part of this Service Contract. If any portion of the Preliminary Design Documents or other design development work relating thereto has been performed by others, Contractor is nevertheless fully responsible for and accepts full responsibility for such Preliminary Design Documents and earlier work when Contractor performs Design/Build Work relating to the Plans and Specifications, as fully as if such preliminary and design development work had been performed by Contractor itself.

(b) Title Block. Contractor will furnish Government with prints of drawings prepared by Contractor, as required by the Government Engineer and/or the Owner's Representative. At the Government Engineer and/or Owner's Representative's request, such prints shall be certified to by an engineer or architect registered in the United States Virgin Islands and permitted by law to certify such materials. All drawings shall be done on drawing sheets bearing the Government title block with the confidential legend imprinted thereon. The format of drawings and the use of Contractor's title block shall be in accordance with the directions of the Government Engineer and/or the Owner's Representative or Government Engineer and/or the Owner's Representative's designee. Any drawings prepared by Contractor in connection with the Design/Build Work shall become a part of the Contract Documents when approved by Government.

(c) 60% Completion. The term "60% Completion" means, for any proposed Phase of the Project, the time at which the Plans and Specifications are developed and detailed so as to be accurately described as 60% complete construction documents according to the Standard of Care and the reasonable agreement by the Parties. At such time, the Parties shall either:

1. Agree that the Applicable Phase Lump Sum Contract Price and corresponding Project Schedule are acceptable; or
2. Reasonably negotiate adjustments to the Schedule of Amounts, Applicable Phase Lump Sum Contract Price and/or Project Schedule as may be deemed necessary by the Parties based on the Plans and Specifications that are 60% complete; or
3. If the Parties cannot reasonably negotiate adjustments to the Schedule of Amounts, Applicable Phase Lump Sum Contract Price, Lump Sum Contract Price and/or Project Schedule then any applicable line item or Phase on the Schedule of Amounts may, after written notice from either party declaring an impasse, be removed from the Service Contract in accordance with Section 19 Changes in the Work.
4. In the event the Paul E. Joseph Stadium, Little League Field, or Permanent Building for Annual Celebration of the Crucian Christmas Festival Village are to be removed from the Service Contract in their entirety the Lump Sum Contract Amount shall be reduced in accordance with Section 19 Changes in the Work.

(d) Government's Review subject to the Time Constraints Provided Under Paragraph 4 of this Service Agreement:

- (1) The Government Engineer and/or the Owner's Representative's review and/or approval of any Design Documents, Plans and Specifications or schedules prepared by Contractor shall not be construed as an exhaustive review and analysis; rather, it will indicate only that the general method of performing the Design/Build Work and detailing is satisfactory. Approval of such drawings, Plans and Specifications or schedules or failure to comment shall not relieve Contractor of entire design/build responsibility, for errors or omissions of any sort, for correctness of design, detail or dimensions, or for deviation therein from any drawings furnished by Government, as Contractor shall be solely responsible for the dimensions and design of adequate connections, details and satisfactory performance of the Design/Build Work.
- (2) All design submittals shall comply with the Plans and Specifications, Design Requirements, and the requirements of applicable Law and regulations. Any Contractor-requested change to the Plans and Specifications and the Design Requirements must be clearly identified by the Contractor in writing and shall be fully documented with reasonable justification for the Contractor's request for a change in the Plans and Specifications or the Design Requirements and the benefits to Government for consenting to such a change. Any Contractor requested change to the Plans and Specifications or the Design Requirements cannot be assumed to be accepted by the Government unless the Parties comply with the provisions of Section 19 of this Service Contract. In this context, the Contractor shall be

responsible for all risks associated with implementing a change without Government's prior written approval, including all costs to correct any unapproved changes to the Plans and Specifications or Design Requirements undertaken by Contractor, upon request by Government.

(e) Shop Drawings.

- (1) The Contractor shall be responsible for preparation of shop drawings and the preparation of submittal schedules to facilitate the Design/Build Work of the various trades, and shall submit shop drawings to Government for approval in sufficient time to prevent delay in performance of the Design/Build Work and completion of the Project. Prior to the submission of a Shop Drawing, the Contractor shall carefully check all Design/Build Work described therein for clearances, field conditions and coordination with other trades, and all Design/Build Work furnished must be in accordance with approved Shop Drawings. The approval of Shop Drawings by Government shall not relieve the Contractor of the responsibility for proper construction of the Design/Build Work and the furnishing of Materials and Equipment and labor required by the Plans and Specifications, even though the same may not be indicated on approved Shop Drawings. The Contractor shall make any and all corrections on the Shop Drawings as may be required by Government Engineer and/or Owner's Representative, and shall promptly file corrected copies thereof with Government Engineer and/or Owner's Representative.
- (2) The Contractor shall furnish necessary drawings, diagrams, schedules and other data specially prepared for the Design/Build Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work which shall be approved by the Government Engineer and/or the Owner's Representative before any Design/Build Work described by them is started, such approval to be given within Ten (10) working days of receipt by the Government Engineer and/or the Owner's Representative. If such documents are not approved within Ten (10) working days after their receipt, the documents will be deemed to have been approved by the Government Engineer and/or the Owner's Representative, but such approval shall not relieve the Contractor of any of its responsibilities under the Contract Documents and of the responsibility for the satisfactory completion of the Project. Reimbursement for any Materials and Equipment ordered prior to the approval of such documents shall be at the Contractor's risk. No deviation from said approved Plans and Specifications will be allowed without the Government Engineer and/or the Owner's Representative's written consent.
- (3) Shop Drawings for steel and concrete structures will consist of such detailed drawings, diagrams, schedules and other data as may be required for the successful performance of the Design/Build Work.
- (4) Such drawings, diagrams, schedules and other data furnished must conform to the Plans and Specifications and to the general stress sheets and other Contract Documents. It is mutually agreed that approved general plans-furnished by the

Government Engineer prevail over any plans, drawings or details prepared by the Contractor or his agents.

- (5) Shop drawings shall be 24 inches by 36 inches in size. Two (2) sets of blueprints shall be submitted to the Government Engineer and the Owner's Representative and one (1) set will be returned to the Contractor with desired revisions and other comments noted thereon. After correction and approval, five additional sets of prints or copies shall be furnished to the Government Engineer and the Owner's Representative. Upon completion of the fabrication, the original tracing or one set of reproducible vellum drawings, as well as an electronic set in PDF format, shall be given to the Government Engineer and the Owner's Representative. Payment for these plans or drawings shall be made in accordance with the provisions of Appendix B.
- (6) It is the responsibility of the Contractor to verify all quantities of Materials and Equipment on the Plans and Specifications before ordering same. Government shall pay only for acceptable Materials and Equipment required for the Project and properly installed in place or stored according to Section 8 (a) of this Service Contract. Contractor shall reject, after careful inspection, Materials and Equipment improperly fabricated or excess quantity, regardless of the quantity or dimensions shown on the Plans and Specifications. The Government Engineer and/or the Owner's Representative, when requested by the Contractor, will check any or all material orders prepared by the Contractor, but such check will not relieve the Contractor of responsibility for inspection and confirmation that the Materials and Equipment meet the Specifications.
- (f) Conformity with Plans and Specifications and Allowable Deviations. All Design/Build Work under the Contract Documents must conform strictly to the approved Plans and Specifications, and finished surfaces shall be true to line, grade, cross section and dimensions within the limits of reasonable tolerance as established in the Plans and Specifications, or reasonably determined by the Government Engineer and/or the Owner's Representative. Acceptance of any deviation from the approved Plans and Specifications that may be required by the exigencies of construction or otherwise will in all cases be determined by the Government Engineer and/or the Owner's Representative and authorized by him in writing. If any such deviation constitutes a Change, Section 19 of this Service Contract shall apply.
- (g) Record Drawings. Contractor shall be responsible for ensuring that as-built data including actual location of installed construction, if different from Plans and Specifications but where such differences have been approved by the Government Engineer and/or the Owner's Representative, is properly included in redline markups or equivalent on the master set of Plans and Specifications (Said as-built data hereinafter referred to as the "Record Drawings"). The Record Drawings requirements are defined in Appendix A (Scope of Work). Contractor shall be responsible for maintaining as-built data for all Subcontractors, suppliers or others performing Design/Build Work under its direction at the Site. Contractor shall furnish Government with one set of Record Drawings. As a requirement for Final Acceptance, Record Documents shall be prepared by the Contractor, and shall incorporate such field changes as may have been found necessary to suit conditions at the Site and any other revisions made in the course of the Design/Build Work.

Contractor shall also furnish Government one electronic copy of the Record Drawings in the AutoCad format required by the Government Engineer and the Owner's Representative.

(h) Delivery of Documents. All original tracings of the Plans and Specifications prepared by the Contractor shall become Government's property and shall be delivered to Government upon completion thereof, upon completion of the Project, or upon termination, abandonment or postponement of the Project, and Government thereafter shall have full right to use such drawings, designs, Plans and Specifications or instruments for any purpose in connection with its own properties without any claim on Contractor's part for additional compensation by reason of such use.

(i) Documents and Forms. The Contractor shall submit to Government, upon written request, the following:

- (1) The form and terms of the Contractor's purchase order and Subcontract forms are attached to this Service Agreement and, as appropriately edited, are hereby approved and shall be used in the execution of the Design/Build Work by the Contractor.
- (2) Copies of all Subcontracts and purchase orders for Materials and Equipment, including all applicable change orders and amendments thereto, promptly upon their issuance;
- (3) Listing of all Materials and Equipment to be supplied from stock or inventory owned by the Contractor or any Subcontractor, or by a subsidiary or source affiliated with the Contractor or any Subcontractor, together with the basis for pricing them;
- (4) The listing of wage rates and overtime rates included at Appendix B shall govern the Cost of labor for all Change Order work, if any, performed by Contractor's Employees on the basis of the Cost of the Work plus a fee. Subcontractor wage rates and overtime rates shall be approved, when and as needed, according to Appendix B.

(j) Transmittal of Plans and Specifications

1. As part of the Design the Contractor will provide Plans and Specifications (P&S) depicting the Project to the Government for the Government's ownership per Section 29(b).
2. The following qualifications are acknowledged by all parties as approved and acceptable terms and conditions for Steven E. Hutchins personally and/or Steven E. Hutchins Architects, Inc. (SEHA), as approved Architect of Record, providing the Contract P&S to the Government:
 - a. The P&S will be provided as paper hard copies and electronic files, in CAD, MS Word, MS Excel or other electronic formats as applicable.
 - b. No representation is made as to the compatibility of the electronic files with the Government, or any other user's, hardware or software.

- c. Any re-use of the P&S without SEHA's participation and written approval, other than for their intended use in the Project, by the Government or others is at the user's sole risk and without liability to SEHA.
- d. The Government agrees to make no claim and hereby waive, to the fullest extent permitted by law, any claim or cause of action of any nature against SEHA that may arise out of or in connection with the Government's use of the P&S to the extent that the Government alters them for use in the Project without SEHA's express written consent or uses the P&S for any purpose other than the Project.
- e. The Government shall, to the fullest extent permitted by law, indemnify and hold SEHA harmless against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising out of or resulting from the Government's use of the P&S for any purpose other than their intended use in the Project.
- f. The paper hard copy of the P&S, and not the electronic files, are the construction documents.
- g. The parties acknowledge that differences may exist between the electronic files and corresponding paper hard copy documents and that, in the event of such differences, the signed and sealed paper hard copy documents shall be deemed to be correct.
- h. SEHA reserves the right to remove all indications of ownership and/or authorship of the P&S on the electronic files prior to providing them to the Government.
- i. The delivery of the paper hardcopy documents and/or electronic files shall not be deemed a sale by SEHA of the P&S to the Government.
- j. SEHA makes no warranties, either express or implied, of merchantability and/or fitness for any particular purpose as it regards the use of the electronic files other than their intended use in the Project.
- k. In no event shall SEHA be liable for indirect or any consequential damages of any kind as a result of the Government or other's alteration of the electronic files.

8. MATERIALS AND EQUIPMENT

(a) Prior Approval. Prior to incorporation of any Materials and Equipment into the Design/Build Work, the Contractor shall submit to Government Engineer and/or Owner's Representative for his/their approval the following:

- (1) A listing of all major Materials and Equipment that the Contractor contemplates incorporating into the Design/Build Work, such listing to be furnished as promptly as practicable following award of the Service Contract and the approval of Plans and Specifications as provided in Paragraph 4 above.

- (2) Performance data and other information on Materials and Equipment; and
- (3) Samples of Materials and Equipment as may be required by Government, such samples to be submitted in a timely manner to allow Government ample time to review them without adversely impacting the schedule of Design/Build Work.

The installation or use of any Materials and Equipment without Government Engineer and/or Owner's Representative prior approval shall be at the risk of subsequent rejection for non-conformity, in which event Contractor shall replace such Materials and Equipment and recover any delay occasioned thereby as may be directed by Government Engineer and/or Owner's Representative, at Contractor's sole cost and expense.

The Contractor shall be entitled to payment for the purchase and storage of Materials and Equipment for the Project off site provided that it complies with the payment processing procedures required under Appendix B.

(b) Government Provided Materials and Equipment. Government may furnish certain Materials and Equipment for the Design/Build Work. The Contractor's responsibilities regarding Government Provided Materials and Equipment include:

- (1) Receiving them, including unloading and verification that they agree with the Bill of Lading and are undamaged;
- (2) Storing them as and if required; and
- (3) Installing or erecting them as set forth in the Plans and Specifications.

(c) Sources of Supply and Quality of Material.

- (1) Only Materials and Equipment conforming strictly to the requirements of the Plans and Specifications, first class in quality and approved by the Government Engineer and/or the Owner's Representative prior to use, shall be used in the Design/Build Work. All Materials and Equipment proposed to be used may be inspected or tested at any time during their preparation or use. If tests indicate that the Materials or Equipment will not meet the requirements of the Plans and Specifications, other sources shall be developed. The approved source of supply shall stand approved only so long as Materials and Equipment produced conforms to the requirements of the Contract Documents. No Materials and Equipment which, after approval, have in any way become unfit for use shall be used in the Design/Build Work.
- (2) The Government Engineer and/or the Owner's Representative may acquire and make available to the Contractor the right to use Materials and Equipment from sources designated on the Plans and Specifications, together with the right to use designated property adjacent to the Project Site as may be required for stockpiles and hauling roads. When sources of local Materials and Equipment are designated for use, the Contractor shall satisfy himself as to the quantity of acceptable material available at such locations and the Government will not assume any responsibility as to the quantity of acceptable material at the designated locations. When sources of supply are thus indicated on the Plans and Specifications, the conditions

governing the use will be fully set forth in the special provisions attached to the Contract Documents. Unless this arrangement is indicated on the Plans and Specifications for specific Materials and Equipment and covered by special provisions, all Materials and Equipment required for the satisfactory completion of the Design/Build Work shall be furnished by the Contractor.

(d) Protection. The Contractor shall receive, pile, store, and handle all Materials and Equipment and other items incorporated or to be incorporated in the Design/Build Work, including items furnished by Government, in a careful and prudent manner and shall protect them against loss and damage from every source. The Contractor shall provide security personnel and adopt other security measures as may be necessary and appropriate to meet this requirement. The Contractor shall be obligated to replace or pay for all Materials and Equipment including items furnished by Government, damaged or stolen prior to completion of the Design/Build Work.

(e) Ordering/Expediting. Except for Government Provided Materials and Equipment which shall be ordered and expedited by Government, the Contractor shall be wholly responsible for ordering, in a timely manner, all Materials and Equipment forming a part of the Design/Build Work, and Contractor shall expedite such orders and take all reasonable measures to ensure that such Materials and Equipment are delivered to the Site at such times and in such quantities as necessary for orderly and uninterrupted progress of the Design/Build Work and completion of the Project on time.

(f) Advances to Vendors. In the event Advances to Vendors are to be made by Contractor, Contractor shall make payments to Vendors for Materials and Equipment in fabrication only when necessary and after first obtaining Government's written consent. Should such advances be necessary and should Government consent thereto, Contractor shall (a) obtain security agreements and take all necessary steps to perfect a security lien in the advances and in the subject Materials and Equipment, in favor of Government, (b) maintain appropriate insurance on said Materials and Equipment, and (c) obtain such bonding as Government may request in order to adequately protect Government with respect to said advance payments and the subject Materials and Equipment. Should Contractor fail to comply with the foregoing provisions, Government may withhold monies for said Materials and Equipment until they are completed and delivered to the Site, and all risk of loss in the event of the Vendor's failure to perform shall be borne by Contractor.

(g) Samples and Tests.

- (1) The approval of preliminary samples shall not be considered as a guarantee that all Materials and Equipment from the same source will be accepted. Any material, which has been sampled and accepted, may be re-sampled and retested at any time before use. Samples upon which acceptance or rejection of Materials and Equipment is based shall be taken by a representative of the Government Engineer and/or Owner's Representative in accordance with the methods prescribed in the A.S.T.M. standards or any other standards especially adopted and set forth in the Plans and Specifications. The Contractor shall afford such facilities as the Government Engineer and/or the Owner's Representative may require for collecting and forwarding samples, and shall not use the Materials and Equipment represented by the samples until they have been found to satisfy the requirements of

the Plans and Specifications. The Contractor in all cases shall furnish the required samples without charge.

- (2) Tests of Materials and Equipment will be made by and at the expense of the Contractor, unless otherwise provided. The tests shall be made in accordance with the methods shown in the specifications using standards prescribed by the A.S.T.M. Standards especially adopted and set forth in the Contract Documents shall have precedence over standard specifications and the applicable standard and tentative specifications current at the time of advertisement for bids shall apply.
- (3) Periodic inspections and tests of all Materials and Equipment for the construction will be made to ensure that all Materials and Equipment are satisfactory and meet all the requirements of the Plans and Specifications. When the volume of Materials and Equipment, construction progress or other conditions warrant, the Government reserves the right to make inspections and tests of Materials and Equipment at the source of supply and to exercise field control over quality and gradings to ensure the delivery of acceptable satisfactory material on the Project. Scales, measures and weighing equipment may be checked at any time by the Government Engineer and/or Owner's Representative.

(h) Product Approval - Substitutions. Unless otherwise specified, all Materials and Equipment incorporated in the Design/Build Work shall be new and of the best grade and quality available, and any specifications by manufacturer's name are intended only to establish standards of quality, type and characteristics. Similar products produced by other manufacturers will be acceptable provided the established standards are met. In the event Government has specified to Contractor the names of the manufacturers, suppliers and dealers whom it requires to furnish certain specific Materials and Equipment as set forth on Appendix A (Scope of Work), no substitute manufacturer will be approved for furnishing any such specific Materials and Equipment in connection with the Design/Build Work unless, in the opinion of Government, to be exercised in its sole discretion, such substitute manufacturer, supplier or dealer is of good reputation, has a plant of ample capacity, is a successful producer of such Materials and Equipment, and the Materials and Equipment supplied by such manufacturer, supplier or dealer will not increase the costs or expenses of supplying, operating or maintaining the Project, or otherwise affect the efficiency of Government's operations. Should any question arise as to the acceptability of a particular product, the Government Engineer and/or the Owner's Representative will make the determination.

- (1) The Contractor shall submit Manufacturer's standard samples of Materials and Equipment and the samples specified in Appendix A (Scope of Work), all at the Contractor's cost, and additional samples instructed by the Government Engineer and/or the Owner's Representative as a Change. Each sample shall be labeled as to origin and intended use in the Design/Build Work.
- (2) In requesting prices, Contractor, subject to the provisions of Appendices A and B attached, along with the approved Plans and Specifications, shall provide the manufacturer, supplier or dealer with all pertinent information from the Plans and Specifications, plus all other pertinent information as to the requirements of this Service Contract.

- (3) Where several items are specified by name for one use, Contractor may select any specified item.
- (4) No approval under this Section shall relieve Contractor from responsibility for deviations from the requirements of this Service Contract or for the proper performance of the Design/Build Work.

9. **ACCESS TO AND SUITABILITY OF SITE**

(a) **Familiarity with the Site.** The Contractor represents that the Contractor's agents and representatives have visited, inspected and are familiar with the Site, its surface physical condition relevant to the obligations of the Contractor under this Service Contract, including normal and usual soil conditions, roads, utilities, topographical conditions and air and water quality conditions; that the Contractor is familiar with all local and other conditions which may be material to the Contractor's performance of its obligations under this Service Contract, including, but not limited to: transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor and Utilities, and has received and reviewed all information regarding the Site provided to it as part of the Site-related information or obtained in the course of performing its obligations hereunder; and that based on the foregoing, the Site constitutes an acceptable and suitable site for the construction of the Project in accordance herewith, and the Project can be designed, constructed, and accepted by the Final Acceptance Date on the Site at the Lump Sum Contract Price.

(b) **Access to Site Prior to Commencement of Construction.** The execution of this Service Contract shall be deemed to constitute the granting of a license to the Contractor to access the Site for the purposes of performing engineering, analysis and such additional subsurface and geotechnical studies or tests as deemed necessary by the Contractor prior to commencement of construction. Such access shall be subject to the Government's prior approval, which shall not be unreasonably withheld, as to time and scope. The Contractor shall assume all risks associated with such activities and shall indemnify, defend and hold harmless the Government in accordance with Section 25 from and against all Loss-and-Expense arising from any cause or condition on the site that is readily ascertainable without any testing or subsurface investigation, and shall account for all of the results of the Contractor's engineering, analysis, studies or tests in the Applicable Phase Lump Sum Contract Price and Project Schedule developed for each Phase of the Project.

(c) **"As-Is" Condition of Site.** Based on its review of the design drawings, plans and specifications pertaining to the Site conditions disclosed to Contractor as part of the Baseline Conditions report or other information known or given to the Contractor prior to execution of this Service Contract, its inspections of the Site and other inquiries and investigations made by the Contractor prior to the Commencement Date as defined in Section 13 (a), which the Contractor acknowledges to be sufficient for this purpose, Contractor assumes the risk of the adequacy and sufficiency of the existing "as-is" condition of the Site which is ascertainable without testing or subsurface investigation during the course of its being given access to the Site as provided above. Subject to the foregoing, the Parties agree that any latent and unknown defect, inadequacy or other condition at the Site which exists as of the Commencement Date or which may be revealed during the performance hereof shall constitute an Uncontrollable Circumstance. Contractor's assumption of risk under this subsection is subject to the limitations provided in subsection (d) of this Section.

(d) Limitations on the Contractor's Assumption of "As-Is" Risk: Uncontrollable Circumstances. It shall be specifically understood that the Contractor's assumption of the "as-is" risk of the condition of the Site as provided in subsection (c) of this Section shall not be deemed to limit or otherwise affect the scope of the Government's obligation with respect to Concealed or Unknown Environmental Conditions and Unknown Subsurface Conditions, as expressly defined in this Service Contract.

(e) The Contractor shall perform the Design/Build Work in accordance with the lines, grades, dimensions, typical cross sections and other data shown on the Plans and Specifications or as modified by Change Order, and shall be responsible for all dimensioning, calculations, field measurements and elevations, and for the true and proper setting-out of the Design/Build Work in relation to bench marks, reference marks and lines. Borings, profiles and water elevations, the exactness of grades, elevations, dimensions or locations shown on the Plans and Specifications were obtained for use of Government and are issued for reference only, and the Contractor is hereby cautioned that Government assumes no responsibility for the accuracy of this data. The Contractor warrants that, in preparing its proposal, Contractor accounted for the difficulty of accurately classifying all materials encountered in making investigations, the possible erosion of stream channels and banks after survey data was obtained, and the unreliability of water elevations other than for the data recorded. Any errors due to the Contractor's failure to verify all such grades, elevations, locations or dimensions as indicated in the Plans and Specifications or other documents provided by Government shall be rectified by the Contractor without any additional expense to Government. If, at any time during the progress of the Design/Build Work, any error shall appear in the position, level or alignment of the Design/Build Work, the Contractor shall forthwith notify Government of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of Government. For these purposes the Contractor is entitled to assume that the site of the Project has been serving as a stadium and ball park and that it is suitable for the execution of the Design/Build Work without major costs in excess of those that are set forth in Appendices B and C.

10. SURFACE AND SUBSURFACE GEOTECHNICAL CONDITIONS.

Government assumes the risk for all subsurface geotechnical conditions at the Site which are materially different from the Baseline Site Conditions, i.e. that which is ascertainable without testing or subsurface investigation, or concealed Site conditions not otherwise disclosed to Contractor as they may affect the Contractor's performance of the Design/Build Work, including the structural suitability of the Site or the Contractor's excavation or construction costs or schedules, assuming all of the following conditions for an Uncontrollable Circumstance, as defined in Section 15, are met:

(a) Site-Specific Investigation. The materially different surface or subsurface geotechnical condition is identified as a result of site-specific subsurface investigations performed by the Contractor as part of the Design/Build Work.

(b) Conditions of the Site. As a part of its performance of the Design/Build Work, Contractor shall make all soil test borings and conduct analyses of subsurface conditions, inspections and applicable site history reviews of the Site in each case as necessary under Good Engineering and

Construction Practice to prepare for excavation and construction hereunder in accordance with Law and to obtain all required Governmental Approvals.

(c) Geotechnical Report. The Contractor provides a certified report (a "Geotechnical Report") prepared, sealed and signed by a professional engineer specializing in geotechnical engineering with appropriate related experience that (a) provides the results of the site-specific subsurface investigations, (b) substantiates the Contractor's claim of a material difference from the Baseline Site Conditions, and (c) substantiates and details a resulting negative effect on the schedule and/or cost of the Contractor's performance of the Design/Build Work. The Contractor shall submit the Geotechnical Report within 120 days following the Contract Date.

(d) Value Engineering. The Contractor has minimized the cost and schedule impact of the Uncontrollable Circumstance by value engineering the issues raised by the changed conditions and presents the Government with alternative design and/or construction options that would be consistent with the Design Requirements but would minimize the impact of the Uncontrollable Circumstance.

(e) Prior Identification. The Contractor's request for a Change Order due to an Uncontrollable Circumstance, accompanied by the information provided in the prior paragraphs, is received by the Government prior to or as part of the Contractor's submittal of its Geotechnical Report submittal.

11. ENVIRONMENTAL CONDITION OF THE SITE.

(a) Discovery of Hazardous Materials. If Hazardous Materials are discovered on the Site through any environmental assessment or geotechnical investigations conducted by the Contractor or from any other information source, the Government shall elect either: (1) to cause the Hazardous Materials so identified to be removed from the Site at its sole cost and expense or, with the agreement of the parties to the Contract execute a Change Order for the Contractor to remove and properly dispose of the Hazardous Materials; (2) to designate another area within the Site for the construction of the Project, in which case the Lump Sum Contract Price, and the Final Acceptance Date shall be adjusted to the extent necessary to place the Contractor in the same position following the site re-designated as it was in hereunder as of the Contract Date; or (3) to terminate this Service Contract, with the same effect as if this Service Contract was terminated under Section 30 for the Government's convenience prior to the Commencement Date. The discovery of Hazardous Materials on the Site after the Commencement Date shall be addressed as agreed by the parties to the Service Contract.

(b) Environmental Studies. The Contractor shall, at its sole expense, prepare and submit all environmental notification forms and impact reports with respect to the Site that are required by Laws and any other environmental studies that are required to establish the environmental condition of the Site. These environmental forms, reports, and studies are hereinafter referred to as the "Environmental Impact Studies." The determination and assessment of the environmental condition of the Site is hereinafter referred to as the "Environment Condition Assessment." Contractor shall provide the Contractor's Project Manager with a copy of the Environmental Impact Studies. All Environmental Impact Studies prepared and submitted under this Contract

shall be the property of the Government.

12. PREPARATION FOR DESIGN/BUILD WORK AND PROJECT SCHEDULE

Preparation for Design/Build Work. In preparation for, and prior to the commencement of, the construction of each Phase of the Design/Build Work, Contractor shall, as enumerated in Appendix A, take the following steps, and such other steps as may be required by the Government, including pre-design and pre-construction meetings between the Government and Contractor, to prepare for the design and construction of the applicable Phase of the Project:

(a) Plans for Permits Related to the Phase. Contractor shall prepare and submit to the appropriate Governmental Body, as needed to support any permit applications or meet permit conditions, all Plans and Specifications related to the portion of the Site covered by the applicable Phase.

(b) Required Commencement Date Governmental Approvals Generally. Contractor shall prepare and submit, on its own behalf or on behalf the Government as applicant, completed applications and take all other steps which are necessary under Laws to obtain and maintain all Required Commencement Date Governmental Approvals required for the performance of the applicable Phase of the Design/Build Work.

(c) Information to Support Site Easements. In the event the Government is required to grant Utility easements on the Site in connection with the applicable Phase of the Design/Build Work, Contractor shall provide complete descriptions of all Utility connections and routes on the Site necessary for such purposes.

(d) Survey. For each Phase, Contractor shall prepare or have prepared by a surveyor or professional engineer licensed in the Territory a property line survey showing: (1) the exact dimensions and locations thereof; (2) the exact location of all means of access to and all easements relating thereto; (3) that the proposed location of each component of the Project on the Site is in compliance with all applicable building and setback lines and does not encroach on or interfere with existing easements (whether on, above or below ground); (4) existing elevations; (5) that there are no encroachments from the PEJ Sports Complex extending to adjacent property or from adjacent property onto the PEJ Sports Complex, nor any gaps, gores, projections, protrusions or other survey defects; (6) that the PEJ Sports Complex will comply with the zoning classification applicable thereto, if any; and (7) that the Site is or is not located in any special flood hazard zone.

(e) Zoning. This Service Agreement is being executed on the assumption of the Parties that Appendix F accurately states the zoning status of the parcels upon which the Project is being designed and constructed. Contractor shall apply to the appropriate Governmental Body for any required change in the zoning classification applicable to the Site based upon said Appendix F, so that, no later than the Commencement Date for the applicable Phase, a zoning ordinance, or a variance or special exception thereto, shall then be effective which permits the construction of the applicable Phase of the Project, and Contractor shall furnish confirming evidence thereof satisfactory to the Government.

(f) Utilities. Contractor shall make all arrangements necessary to secure the availability of all Utilities, including, without limitation electronic access to the Project Site, access roads and Utilities, required to construct the Project and required for it to function as it is intended. At its expense, the Government shall be responsible for providing off site availability for connection at or to the site for all such Utilities.

(g) Document Submittal Protocol. Within 30 days following the Contract Date, Contractor shall provide to the Government the document submittal protocol contained in this Service Agreement and in accordance with the requirements of Appendix A.

(i) Design Documents. Contractor shall provide to the Government copies of all Design Documents relating to the applicable Phase of the Project.

(j) Schedule of Amounts. Contractor shall prepare and submit to the Government the preliminary and final versions of the Schedule of Amounts for the entire Project and for any approved Phase of Design/Build Work in a form acceptable to the Government in accordance with the requirements of Section 4(c) and the Appendices to this Service Agreement.

(k) Plans for Design/Build Work and Pre-Design Conference. Contractor shall prepare and submit to the Government the draft and final versions of all plans required for the Design/Build Work in accordance with the requirements set forth in Appendix A and in accordance with time deadlines and procedures set out in this Service Contract. Contractor shall conference with the Government for Government review of said plans and designs all in accordance with the provisions of this Service Agreement and its Appendices. All plans shall be the property of the Government, as provided in Section 29(b).

(l) Pre-Construction Conference. The Contractor shall hold pre-construction conference with the Government with respect to materials, equipment, engineering and all other supplies and services for the construction services to be performed with respect to the applicable Phase of the Project.

(m) Progress Schedules. Contractor shall prepare and provide to the Government a preliminary progress schedule in sufficient detail to allow the Government to monitor the early stages of the Design/Build Work in accordance with the provisions of this Service Agreement and its Appendices.

(n) Design and Construction Subcontracts. Contractor shall negotiate and execute the Design Subcontracts for the entire Project and, for each Phase of the Project, the Construction Subcontracts in accordance with the requirements of Section 16 of this Contract and the terms and conditions of this Service Agreement and its Appendices.

(o) Project Schedule. In accordance with the procedures set forth in this Service Agreement and its Appendices, the Contractor shall prepare and provide to the Government a project schedule in sufficient detail to allow the Government to monitor the Design/Build Work (said project schedule hereinafter referred to as the "**Project Schedule**"). A copy of the initial approved Project Schedule for the Project is attached to this Service Agreement as Appendix G. The Project Schedule is based upon the initial Milestone Dates set forth in Appendix A. The Project Schedule will be revised in accordance with this Service Agreement in order to reflect (i) approved Phasing

of the Design/Build Work as described in Section 4(c), (ii) changes that may be required as a result of the evolution of the progress of the Project, and (iii) if needed, to implement more specifically the requirements for the elements of the Project Schedule set out below that may not have been sufficiently included. The Project Schedule and its revisions shall be used to judge the status and progress in the Contractor's performance of the Design/Build Work. The Project Schedule and its revisions shall state the Guaranteed Substantial Completion Date and the Guaranteed Final Acceptance Date for the Project and each approved Phase of the Project, said terms are hereinafter defined. The activities to be shown on such schedules should include, as a minimum, the following technical disciplines:

- design, civil engineering,
- structural engineering,
- mechanical engineering,
- pipng engineering,
- electrical engineering,
- instrument engineering,
- process engineering to the extent required;

and for the following activities where they apply to the Design/Build Work:

- specifying Materials and Equipment,
- equipment procurement cycle, including vendor data,
- specifying site work,
- material take-off cycles,
- site work procurement cycle,
- receipt of Materials and Equipment at Site,
- Site fabrication and erection (by key skill areas),
- construction and installation,
- checkout,
- testing.

The Project Schedule, and approved revisions thereof, shall be prepared using a detailed precedence-style critical path method, as prescribed by the Microsoft Project Schedule Program, which shall: (1) provide a graphic representation of all activities and events that will occur during performance of the Design/Build Work; (2) identify each phase of design, engineering, construction and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Design/Build Work in accordance with the requirements of the Service Contract (hereinafter referred to as "**Milestone Dates**"). Upon review and acceptance by the Government Engineer and the Owner's Representative of revisions or changes to the Project Schedule as detailed above, the revised Project Schedule shall be deemed part of the Contract Documents, and attached hereto as Appendix G (Project Schedule). If not reasonably accepted by the Government Engineer and/or the Owner's Representative, such revisions to the Project Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Government Engineer and the Owner's Representative and re-submitted for acceptance.

The Contractor shall monitor the progress of the Design/Build Work for conformance with the requirements of the Project Schedule and shall promptly advise Government of any delays or potential delays. The accepted Project Schedule shall be updated to reflect actual conditions as indicated in monthly progress reports, and as required by the Contract Documents. In the event

any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary ("**Recovery Plan**"). In no event shall any progress report constitute an adjustment in the Guaranteed Substantial Completion Date for any Phase, any Milestone Date or the Guaranteed Final Acceptance Date for any Phase of the Project unless any such adjustment is agreed to by Government in writing and authorized pursuant to a Change Order.

13. **COMMENCEMENT OF DESIGN/BUILD WORK**

(a) Commencement. Within fifteen (15) days following the effective date of this revised Service Contract, the Government shall issue to Contractor a formal notice to proceed with the Design/Build Work (such notice referred to herein as the "**Notice to Proceed**"). Within thirty (30) calendar days of issuance of the Notice to Proceed with the Design/Build Work, Contractor shall commence the Design/Build Work under this Service Contract (the "**Re-Commencement Date**"). Upon the Re-Commencement Date, Contractor shall diligently prosecute the Design/Build Work and shall complete the Design/Build Work in accordance with the Project Schedule for each approved Phase and the other requirements of the Contract Documents, within the time periods set forth therein.

(b) Completion. Contractor guarantees that Contractor shall achieve Substantial Completion and Final Acceptance of each approved Phase and the entire Project within the periods set forth below:

- (1) Substantial Completion of the Project within nine hundred (900) calendar days following the re-Commencement Date (the Substantial Completion of the Project within said period hereinafter referred to as "Substantial Completion" or "Substantial Completion Milestone").
- (2) Final Acceptance of the Project within nine hundred sixty calendar (960) days following the re-Commencement Date (the Final Acceptance of the Project within said period hereinafter referred to as "Final Acceptance").

(c) Liquidated Damages For Delay.

(1) Timely completion of the Design/Build Work is of the essence of the Service Contract. Should the Contractor fail to complete all the Design/Build Work within the time specified in the Contract Documents or as extended by written authorizations by the DPP Commissioner based on the provisions of V.I. R. & Regs. Tit. 31 § 242-86, such delay will cause substantial damage to the Government. The parties acknowledge that it is difficult to ascertain with accuracy at the time of execution of this Service Contract the extent of the actual damages the Government would suffer as a result of any delay in achieving the date of Substantial Completion of the Design/Build Work (or any approved Phase thereof). Therefore, in the event the Contractor does not achieve Substantial Completion of the entire Design/Build Work or an approved Phase thereof as required by the approved Project Schedule, as those dates may be otherwise adjusted in accordance with the provisions of this Service Contract, the Contractor shall pay the Government (or the Government shall deduct from any monies due, or that may become due the Contractor, as liquidated damages and not as a penalty, the sum of \$500.00 (five hundred dollars and no cents) for each and every calendar day until such time as the Design/Build Work is Substantially Completed.

but in no event shall liquidated damages exceed the sum of \$500.00 per calendar day. The liquidated damages shall compensate the Government for inconvenience to the public, added cost of engineering and supervision, loss of revenue from the use by the Government of the Project, increased construction period loan interest or carrying costs, additional insurance premiums, extended cost of administering the Contract Documents, and possible alteration of the tax consequences of the Project as planned and intended by Government, and other items which have caused an expenditure of public funds, resulting from Contractor's failure to complete the Design/Build Work within the time specified in the Contract Documents. The assessment of liquidated damages is the Government's exclusive remedy for the Contractor's failure to Substantially Complete the Design/Build Work (or any Phase thereof), therefore the Government is not entitled to access or collect any other kind or category of direct or consequential damages for such a delay.

(2) — The foregoing subparagraph (1) contains a reasonable estimate of the value of such damages, for each day following the Substantial Completion Milestone that the Substantial completion criteria have not been satisfied, and in the event that insufficient funds remain in the Service Contract from which the Government can withhold such liquidated damages, Contractor hereby warrants and agrees to pay to Government the liquidated damages within fifteen (15) days after Government's demand a sum equal to the liquidated damages amount. Permitting the Contractor to continue and finish the Design/Build Work or any part of it after the Substantial Completion Milestone, or the date to which the time for completion may have been extended, shall in no way operate as a waiver on the part of the Government of any of its rights to collect liquidated damages or any other rights under the Contract Documents.

(d) Completion of Design/Build Work. This Service Contract shall be considered complete and Contractor's obligations under this Service satisfied when all Design/Build Work covered under the same have been completely performed on the part of Contractor, and all parts of said work have been approved by the Government Engineer and/or the Owner's Representative.

14. EXECUTION OF DESIGN/BUILD WORK

(a) Right to Reschedule

Government shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Design/Build Work that may interfere with Government's operations so long as such a postponement or rescheduling does not interfere with or prevent the execution of the Design/Build Work. In such a case the Contractor shall, upon Government's request, reschedule any portion of the Design/Build Work interfering with the Government's operations during hours when the Design/Build Work would not conflict with such operations. Any postponement or rescheduling of the performance of the Design/Build Work required by the Government under this Paragraph shall not be grounds either for an extension of the Project Schedule, or an equitable adjustment in the Contract Price unless such rescheduling or postponement is required for the convenience of Government and not due to Contractor's fault.

(b) Stop Work Order.

- (1) Government, at any time by written order to Contractor, may reasonably require Contractor to stop all, or any part, of the Design/Build Work for a period of up to

ninety (90) days after the order is delivered to Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of a Stop Work Order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Design/Build Work covered by the Stop Work Order during the period of work stoppage. Within the ninety (90) day period of work stoppage, or any extension thereof to which the parties shall have agreed, Government shall either: (1) cancel the Stop Work Order or (2) terminate the Design/Build Work covered by such order.

- (2) If a Stop Work Order issued under this Section is cancelled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume the Design/Build Work upon Government's request and an equitable adjustment shall be made in the Project Schedule. However, this Service Contract shall be adjusted and modified in writing accordingly under this Section only if and to the extent that the Stop Work Order results in an increase in the cost of the Design/Build Work or the time required for the performance of the Design/Build Work.

(c) Step-In Rights.

- (1) If, in the reasonable opinion of the Government Engineer and the Owner's Representative, Contractor fails to prosecute the Design/Build Work properly or timely or fails to perform any term, condition or provision of this Service Contract, Government shall give written notice to Contractor. If Contractor fails to commence to correct such deficiency within ten (10) working days after receipt of such notice and diligently pursue same to completion, Government may, without prejudice to any other available remedy, take over all or any part of the Project and complete all or any part of the Design/Build Work and make good such deficiencies at Contractor's cost (said rights of the Government to take over and complete any part of the Project hereinafter referred to as the "Step-In Rights").
- (2) If Government exercises its Step-In Rights, Government may undertake such remedial steps or actions in relation to the Project or Design/Build Work as are reasonably necessary to cure the deficiency ("Step-In Work"). Any dispute regarding the existence of a deficiency or the right of Government to perform the Step-In Work at Contractor's cost will be settled through the dispute resolution procedures in Section 22 of the Service Contract; however, Government may exercise its Step-In Rights prior to the resolution of the dispute.
- (3) If Government exercises its Step-In Rights, Contractor will provide Government reasonable access to the Project Site, and to the Materials and Equipment ordered for the Project, whether or not delivered to the Site, as necessary to perform the Step-In Work and generally will cooperate with Government in connection with completion of the Step-In Work.

(d) Unavoidable Delays. If the Contractor's Design/Build Work is delayed (i) by additions, deletions, or alterations in the scope of the Design/Build Work ordered in writing by Government, or by (ii) events or circumstances constituting an Event of Force Majeure or Uncontrollable

Circumstance as defined in Section 15 below, or (iii) delays caused by the actions or inactions of the Government ((i), (ii) and (iii) are collectively "**Unavoidable Delays**"), the Contractor shall initiate a Recovery Plan to minimize its effect on the Substantial Completion Milestone. The Contractor recognizes that a delay in any one Phase of the Project does not necessarily result in any delay or a delay of equal duration in completion of the entire Project. In the event it is not possible to develop a Recovery Plan adequate to recover from the Unavoidable Delays without incurring additional costs which Government is not willing to assume, Government and Contractor shall agree on extending the Substantial Completion Milestone as may be reasonably necessary, but for no greater period than the period of the Unavoidable Delay. To be granted any such extension of time the Contractor must submit a claim in writing within seven (7) calendar days from when the event causing the Unavoidable Delay occurs. Failure to submit a timely claim for an extension of time arising out of Unavoidable Delays shall constitute a waiver by the Contractor to its claim rights to a time extension under the Service Contract. It is understood that extension of time granted shall be the Contractor's exclusive remedy in event of such delay, no matter how or by whomever caused, and the Contractor agrees that Government shall not be liable for any additional costs or damages arising out of or in connection with such delay.

(e) Construction stakes.

- (1) The Government Engineer and/or the Owner's Representative will furnish and set construction stakes establishing lines, slopes and grades in road and similar work and center line and bench marks for bridge and structure work, drainage and protective accessory structures and appurtenances as he may deem necessary, and will furnish the Contractor with all necessary information relating to lines, grades, slopes and technical data necessary to ensure complete and satisfactory construction in accordance with the Contract Documents. The Contractor shall furnish advance notice of its operations to the Government Engineer and the Owner's Representative so that all the Design/Build Work may be staked out before the Design/Build Work for any Phase begins. The Contractor shall furnish, free of charge, all additional stakes, all templates, batter boards, and other material necessary for marking and maintaining points and lines given, and shall furnish the Government Engineer and/or the Owner's Representative such labor as he may require to establish lines and points necessary to the execution of the Design/Build Work to satisfactory completion. The Contractor is responsible for the preservation of all stakes and marks, and if any of the construction stakes or marks have been carelessly or willfully destroyed or disturbed by the Contractor, the cost of replacing them shall be charged to the Contractor and shall be deducted from payments due for Design/Build Work. In case of Changes or changed conditions which involve any changes in stakeout, the Contractor shall cooperate fully with the Government Engineer and/or the Owner's Representative and facilitate the prompt establishment of the field control or benchmark for the altered or adjusted Design/Build Work.
- (2) If requested by the Contractor, the Government Engineer and/or the Owner's Representative may give the Contractor authorization to stake and mark, with the Contractor's own personnel and at Contractor's expense, lines and elevations for the construction of the Design/Build Work. The Government Engineer and/or the

Owner's Representative at any time may check the Contractor's stakes and marks as to conformance with the requirements of the Plans and Specifications.

(f) Separate Contractors.

Government reserves the right to perform construction or operations related to the Project with Government's own forces, and to award separate contracts in connection with other portions of the Project outside of the scope of the Design/Build Work or other construction or operations on the Site. The Contractor shall participate with Separate Contractors and Government in reviewing and reasonably coordinating their construction schedules and staging areas for the performance of work and storage of Materials and Equipment when directed to do so. The Contractor shall make any revisions to the Project Schedule and Site logistics plan deemed necessary after a joint review and mutual agreement.

(g) Inspection.

- (1) The Government and the Government Engineer and/or the Owner's Representative, and any authorized inspector shall have free access, at all times, to all parts of the Design/Build Work and to all Materials and Equipment intended for use in the Design/Build Work and incorporation into the Project, and Government shall, at all times and at its own expense have the right to review, examine, inspect, measure and test the Materials and Equipment and workmanship, and to check the progress of production and manufacture of Materials and Equipment and the progress of the Design/Build Work wherever said Design/Build Work may be performed, including but not limited to witnessing the inspection and testing of Materials and Equipment at the place of manufacture or fabrication, and, in so doing, Government shall cooperate with Contractor so as not to unreasonably interfere with Contractor's execution of the Design/Build Work. Contractor agrees to provide safe and proper facilities for both access and inspection by Government. If the specifications incorporated in the Plans and Specifications, the Government Engineer and/or the Owner's Representative's instructions, or any statutes, Laws, ordinances, codes, or any public authorities require the Design/Build Work, or any part thereof, to be specially tested or approved, Contractor shall give the Government Engineer and the Owner's Representative timely notice of its readiness for inspection and, if the inspection is by an authority other than the Government Engineer and/or the Owner's Representative, of the date fixed for such inspection; and Contractor shall secure all required certificates of inspection.
- (2) Contractor shall grant the Government Engineer and/or the Owner's Representative and Government's duly designated representatives free access to review, at all reasonable times, and shall provide copies upon request, of Contractor's basic and detailed engineering design calculations, support materials and data and all other information concerning the Design/Build Work, including test records and available computer printouts, to facilitate the Government's review and inspection of the Design/Build Work, which records will be maintained in accordance with industry custom for design-builders. The Contractor shall furnish the Government Engineer and the Owner's Representative with every reasonable facility for ascertaining whether or not the Design/Build Work as performed is in

accordance with the requirements and intent of the Contract Documents. No Design/Build Work shall be done nor Materials and Equipment used without suitable opportunity for observation and inspection by the Government Engineer and/or the Owner's Representative. Failure to reject any defective Design/Build Work or Materials and Equipment shall not in any way prevent later rejection when such defects are discovered unless such defects were readily apparent at the time they were observed. Accordingly, in such event neither shall such failure obligate Government to declare Substantial Completion or Final Acceptance. The Contractor shall furnish the Government Engineer and/or the Owner's Representative and inspector such information and assistance as may be required to make complete and detailed inspections. If the Government Engineer and the Owner's Representative require it, the Contractor, at any time before Final Acceptance of the Design/Build Work, shall remove or uncover such portions of the finished Design/Build Work as may be directed. After examination by the Government Engineer and/or the Owner's Representative, the Contractor shall restore said portions of Design/Build Work to the standard required by the Plans and Specifications. Should the Design/Build Work thus exposed and examined prove acceptable, the uncovering or removing and replacing of the covering or making good of the parts removed shall be paid for as Extra Work; but should the Design/Build Work so exposed and examined prove unacceptable, the uncovering and correction of the Design/Build Work and replacement of all items uncovered shall be at the Contractor's expense.

- (3) Government shall have full power to reject at any time any Design/Build Work that as a result of such inspection or test has been found defective or inferior in quality of material, workmanship or design contemplated by the Contract Documents. Design/Build Work so rejected shall be immediately replaced or, subject to Government's prior approval, modified or repaired by Contractor (provided that Government's consent shall not be necessary where the modification or repair may be made without adversely affecting the use or reducing the expected life of such Design/Build Work) at no expense to Government, and Contractor shall then resubmit the replaced, modified or repaired Design/Build Work for re-inspection. Contractor, its Subcontractors and Vendors shall make available all tools, instruments, apparatus, equipment, facilities, materials and services for carrying out such inspections or tests on the Design/Build Work, at no expense to Government.
- (4) Neither Government's inspection of or failure to inspect, nor approval or acceptance of, or payment for any of the Design/Build Work shall be construed to operate as a waiver of any rights of Government under this Service Contract or of any cause of action arising out of any failure of performance of this Service Contract, and hence Contractor shall nonetheless be and remain liable to Government in accordance with this Service Contract.
- (5) Inspectors properly and expressly appointed in writing by the Government Engineer and/or the Owner's Representative in accordance with the terms of this Service Agreement will be fully empowered to represent the Government Engineer and/or the Owner's Representative in all matters pertaining to inspection of

Design/Build Work done and Materials and Equipment furnished. Such inspection may extend to all or any part of the Design/Build Work and to the preparation or manufacture of the Materials and Equipment to be used. In case of any dispute between the Contractor and an inspector as to material furnished or the manner of performing the Design/Build Work, the inspector shall have the authority to reject Materials and Equipment or suspend the Design/Build Work until the question at issue can be referred to and decided by the Government Engineer and the Owner's Representative. The Inspector shall not be authorized to revoke, alter, enlarge, relax or release any requirements of the Plans and Specifications, or to approve or accept any portion of the Design/Build Work, or to issue instructions contrary to the Plans and Specifications. Any advice the inspector may give the Contractor shall in no way be construed as binding either the Government Engineer and/or the Owner's Representative and/or the Government in any way, or as releasing the Contractor from fulfillment of any of the terms of the Contract Documents. In all events, however, the Government shall have the risk that all such inspections are competently and timely performed. If an inspection is incompetently or untimely performed, the time of performance and the Lump Sum Contract Price shall be equitably adjusted.

(h) Removal of Defective and Unauthorized Work.

Any element of the Design/Build Work, where the variation from allowable specified limits is exceeded or where the Plans and Specifications are not complied with in every respect, shall be corrected by Contractor before Final Acceptance. All Design/Build Work which has been rejected shall be remedied or removed and replaced in an acceptable manner by the Contractor at its own expense. Design/Build Work done beyond the lines and grade as shown on the plans or as given, except as specifically provided or ordered in writing by the Government Engineer and the Owner's Representative, or any Extra Work done without written authority, will be considered as unauthorized and done at the expense of the Contractor and will not be paid for. Design/Build Work so done may be ordered removed at the Contractor's expense. Upon failure on the part of the Contractor to comply with any order of the Government Engineer and the Owner's Representative made under the provisions of this paragraph, the Government Engineer and the Owner's Representative will have authority to cause defective Design/Build Work remedied or removed and replaced and unauthorized Design/Build Work removed, and the cost thereof may be deducted from any money due or to become due to the Contractor.

(i) Supervision and Discipline.

- (1) The Contractor shall authorize a competent individual, who shall be approved by the Government, to act for Contractor in the performance of the Design Build Work under this Contract (the "Contractor Project Manager"). The Contractor Project Manager shall be available when Design/Build Work is performed. The Contractor Project Manager shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for supervising the Design/Build Work of the Subcontractors and Vendors and coordinating all portions of the Design/Build Work. The Contractor Project Manager shall at all times enforce discipline and good order among all persons employed on the Project by Contractor and Contractor's Subcontractors and Vendors. The Contractor Project Manager

shall monitor all work performance on the Project and shall discontinue the employ of any person on the Project that is unfit or not skilled in the work assigned to them.

- (2) Contractor shall promptly take any and all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements, if applicable, and jurisdictional disputes and secondary boycotts including, without limitation, the filing of appropriate processes with any court or administrative agency having jurisdiction to settle, enjoin or to award damages resulting from violations of collective bargaining agreements or jurisdiction disputes, or violation of the appropriate federal, state and territorial labor Laws.
- (3) Contractor shall advise Government promptly, in writing, of any actual, anticipated, or threatened labor dispute that might affect the performance of the Design/Build Work by Contractor or by any of its Subcontractors.
- (4) Contractor shall promptly undertake all reasonable efforts to prevent or resolve any strikes or other labor disputes among its Employees or the Employees of its Subcontractors, and to minimize any resulting disruption of the progress of the Design/Build Work.
- (5) Contractor agrees and will cause its Subcontractors and suppliers to agree that there will be no Design/Build Work stoppage caused directly or indirectly by any strikes, picketing, boycotts, or other labor disputes.

(j) Use of the Site.

The Contractor shall confine operations at the Site to areas permitted by Laws, ordinances, permits, and the Service Contract, and shall not unreasonably encumber the Site with any materials. The Contractor shall keep the Site and adjoining premises clean of rubbish caused by it or its Subcontractors, and at the completion of Design/Build Work shall remove all rubbish, tools, Contractor's Equipment, surplus material and temporary structures and installations, leaving the premises clean and ready for use.

(k) Detours on highway construction.

- (1) Any existing traveled road within the limits of the Site shall be kept continuously open to permit its customary, usual public traffic access. All trails, roads and highways intersecting the road under construction shall be kept open and passable, temporary approaches and crossings shall be provided and maintained in safe condition. In lieu of maintaining traffic along the improvement, the Contractor may bypass the traffic over detours constructed and maintained at Contractor's own expense. The location, character of construction and maintenance of all detours shall be approved by the Government Engineer and/or the Owner's Representative. All expense of construction and maintenance of acceptable traffic ways over the Project and of detours and passageways shall be borne by the Contractor without direct compensation except such detours as may be covered by an item in the proposal for "Special Detours". If such an item is included, the Design/Build Work

will be covered by a special provision and the detour will be shown on the Plans and Specifications for the Project.

- (2) If during the construction under this Service Contract adjacent sections of highway are under construction by the Government, the Contractor shall allow access to the other sections over that part of the road already constructed which is in condition to support traffic, provided authority is granted by the Government Engineer and/or the Owner's Representative for the use of the highway for this purpose. This authorization shall be furnished to the Contractor in writing and it shall prescribe the limitations and regulations to be observed by the traffic thus granted permission to use the roadway. It is understood that the organization or Contractor granted such authority shall be held responsible for any or all damages which may be caused to any of the roadway already completed or under way on this Service Contract and both parties shall be bound to observe the decision of the Government Engineer and the Owner's Representative in regard to the estimated damages.

(l) Structures and obstructions.

All structures, fences, buildings, or encumbrances of any character, upon or within the limits of the Site, shall be carefully removed by the Contractor and disposed of as indicated on the Plans and Specifications or directed by the Government Engineer and/or the Owner's Representative. Any material so removed, with the exception of materials resulting from the demolition of the existing outfield wall and stadium lights and poles, that was added via Change Order 1, which the Government Engineer and/or the Owner's Representative may order salvaged shall be carefully stored and remain the property of the Government and may be used in the construction if so ordered. Unless otherwise provided, material from any existing structure may be used temporarily by the Contractor in erection of the new structure with the approval of the Government Engineer and/or the Owner's Representative. Unnecessary damage to such material shall be avoided.

(m) Materials found on job.

The Contractor, with the prior written approval of the Government Engineer and/or the Owner's Representative, may use in the construction any suitable stone, gravel, sand or other acceptable material found in the earthwork operations. The Contractor shall pay the Government fair market value for such material. The Contractor shall not excavate or remove any material from within the right-of-way or property which is not within the area of excavation as indicated by the Plans and Specifications and established in the field, without prior written authorization by the Government Engineer and/or the Owner's Representative.

(n) Storage of Materials and Equipment.

Materials and Equipment requiring storage shall be located so as to facilitate prompt inspection and shall not be piled except where and as permitted by the Government Engineer and/or the Owner's Representative. Materials and Equipment shall be inspected and accepted prior to use in the Design/Build Work and shall be stored so as to ensure preservation of their quality and fitness for the Design/Build Work. The Materials and Equipment may be rejected for failure to meet requirements of the Plans and Specifications at the time of placing in stockpiles or storage, at the

time of delivery or at any subsequent time that a defect or other noncompliance with Plans and Specifications is discovered. Stockpile sites shall be restored as nearly as possible to their natural condition immediately after removal of the stored material.

(o) Control and Protection of the Design/Build Work.

- (1) Contractor is solely responsible for the means, methods, techniques, sequences, procedures and safety and security programs and precautions in connection with the performance of the Design/Build Work.
- (2) Contractor is responsible for all cutting, fitting, patching and alterations required to complete the Design/Build Work. Contractor shall not damage or endanger any portion of the Design/Build Work or the activities or work of Government or any other person on the Site by excavation or by any cutting, fitting, patching or alteration. If Contractor damages any such work or activity, Contractor shall promptly and completely restore the same to its original condition.

(p) Contractor is responsible for all layout and protection of its Design/Build Work.

- (1) Where field measurements are required to establish existing conditions or to determine the size, length, elevation of the Design/Build Work, Contractor shall furnish such by field measurements or by survey. Government shall have the right to review and approve any and all layouts and measurements prior to execution of the Design/Build Work related thereto, but Contractor shall remain responsible for such layouts and measurements.
- (2) Prior to the actual date of Substantial Completion, Contractor shall at all times protect and prevent damage to all finished and unfinished phases of the Design/Build Work and the Project including, without limitation, the protection thereof from damage by the elements, theft, terrorism, or vandalism.

(q) Final cleaning up.

- (1) The Design/Build Work will not be considered completed and ready for Final Acceptance until all the details of every item have been fully completed in accordance with the Plans and Specifications in a manner acceptable to the Government Engineer and the Owner's Representative. The area covered by the construction, all borrow pits and all ground occupied by the Contractor in connection with the Design/Build Work shall be cleared of all rubbish, excess materials, temporary structures and buildings, and all fragmentary rocks and boulders, wasted excavation and unsightly material shall be disposed of, so as to leave the entire Project in a neat and presentable condition. Temporary detours visible from the roadway and used only during construction shall be removed. Adjacent property, public or private, used during the construction, shall be cleaned and any damages incurred during the construction shall be repaired in an acceptable manner. Slope intersections shall be neatly rounded as shown on the Plans and Specifications and all gutters and ditches shall be cleaned and left so that they will drain. Borrow pits, quarries and other excavations in connection with the

Design/Build Work shall be trimmed up in a workmanlike manner and surplus material removed or leveled and necessary drainage shall be provided.

- (2) As a part of the completion of any structure, all excess material cofferdams, construction buildings, temporary structures and debris resulting from construction shall be removed. Falsework piles shall be removed to the ground level. Where Design/Build Work is in a stream, all debris shall be removed from the bed of the stream and the stream channels, structure and highways left unobstructed and in a neat and presentable condition.
- (3) Materials cleared from the construction area and deposited on property adjacent thereto will not be considered as satisfactorily disposed of, unless approved by the Government Engineer and/or the Owner's Representative. This Design/Build Work shall be considered necessary Design/Build Work auxiliary to the accomplishment of the Contract Documents and no direct payment shall be made therefor.

(r) Compliance with Laws and Rules and Regulations.

The Contractor shall comply with the Procurement Rules and all requirements of all applicable Laws, and all pertinent rules and regulations issued pursuant thereto, including but not limited to those governing building construction, equal opportunity employment, use of equipment and safety of persons and property. All Laws and rules and regulations issued pursuant thereto of Government which may be in effect at the Site regarding employment, passes, badges, smoking, fire prevention and conduct on the property shall be observed by Contractor, its Subcontractors and each of their respective Employees.

(s) Safety.

The Contractor shall take all necessary precautions for the safety of all persons on the Project, and shall erect and properly maintain at all times, as required by job conditions and progress of the Design/Build Work, all necessary safeguards for the protection of the workers and the public; shall post danger signs warning against the hazards created by such features of construction as protruding nails, bad hoists, well holes, hatchways, scaffolding, window openings, stairways and dangers from falling materials; shall not load or permit any part of the Design/Build Work to be loaded so as to endanger its safety; and shall designate a responsible member of Contractor's organization whose duty shall include the prevention of accidents. In any emergency affecting the safety of persons or property, Contractor shall act, at Contractor's discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of such emergency Design/Build Work shall be determined by agreement of the parties.

(t) Advertising Signs.

Contractor may display no more than two advertising signs on the Site, and the size, design and wording thereof requires the reasonable prior approval of Government Engineer and/or the Owner's Representative. Such signs shall be furnished, erected and, upon completion of the Design/Build Work, removed, all at Contractor's sole cost and expense.

15. **EVENTS OF FORCE MAJEURE**

(a) **"Event of Force Majeure" or "Uncontrollable Circumstance"**

An "Event of Force Majeure" or "Uncontrollable Circumstance" means any act, event, circumstance or condition (other than lack of finances) that is beyond the reasonable control of and unforeseeable by the Contractor, or which, if foreseeable, could not be avoided in whole or in part by the exercise of due diligence in accordance with good industry practices exercised by prudent design-builders, and that materially interferes with or materially increases the cost of performing the Contractor's obligations under this Service Contract, which the Contractor is unable to prevent, avoid, mitigate or overcome, to the extent that such act, event, circumstance or condition is not the result of the willful or negligent act, error or omission or breach of this Service Contract by the Contractor or any Subcontractor or Affiliate thereof. Subject to the requirements specified in the foregoing sentence and the Contractor having given the Government notice within fifteen (15) calendar days from the occurrence thereof, an "Event of Force Majeure" or "Uncontrollable Circumstance" shall include, without limitation:

- (1) Acts of war or the public enemy, whether war be declared or not;
- (2) Public disorders, insurrection, rebellion, sabotage, riots or violent demonstrations;
- (3) Earthquakes, hurricanes, tornadoes, hail storms, floods or other natural calamities and acts of God;
- (4) Fire or explosion; or
- (5) Strikes or lockouts or other industrial action, other than personnel of Contractor and any Subcontractor that prevents the orderly progress of the Design/Build Work.

(b) **Certain Delays not Excused**

Notwithstanding that an Event of Force Majeure or Uncontrollable Circumstance otherwise exists, events or circumstances described in the following provisions of this Section 15 shall not excuse the Contractor from timely performance within the Lump Sum Contract Price and such shall not be considered an Event of Force Majeure or Uncontrollable Circumstance:

- (1) Subcontractor non-performance or late performance, except to the extent such non-performance is caused by an Event of Force Majeure or Uncontrollable Circumstance described in this Section 15 affecting such Subcontractor;
- (2) noncompliance with Law; or
- (3) Late delivery of Materials and Equipment, machinery, plant, materials or Contractor's Equipment unless such late delivery is caused by an Event of Force Majeure.

(c) Mitigation.

The parties shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Event of Force Majeure or Uncontrollable Circumstance by, among other things, recourse to alternate acceptable sources of services, Materials and Equipment and Contractor's Equipment; and shall use their best efforts to ensure resumption of normal performance of this Service Contract after the termination of any Event of Force Majeure or Uncontrollable Circumstance and shall perform their obligations hereunder to the maximum extent practicable and agreed between the parties.

(d) Effect of Force Majeure.

Neither party shall be considered to be in default or in breach of its obligations under this Service Contract to the extent that performance of such obligations is prevented by any Events of Force Majeure or Uncontrollable Circumstance that arise after the Commencement Date. The additional delay incurred by Contractor as a result of any Event of Force Majeure or Uncontrollable Circumstance shall be subject to the procedures set forth in Section 19 with respect to Changes.

(e) Burden of Proof.

If the parties are unable in good faith to agree that an Event of Force Majeure has occurred, the parties may submit the dispute for resolution pursuant to Section 22 of this Service Contract, and Contractor shall have the burden of proof as to whether such Event of Force Majeure has occurred.

(f) Government Self-Help.

If within a reasonable time after an Event of Force Majeure has occurred that has caused Contractor to suspend or delay performance of the Design/Build Work, reasonable action that Contractor could lawfully and reasonably initiate to remove or relieve either the Event of Force Majeure or its direct or indirect effects has been identified and recommended to Contractor by Government, and Contractor has failed to take such action, then Government may, in its sole discretion and after three (3) days written notice to Contractor initiate such reasonable measures as will be designed to remove or relieve such Event of Force Majeure or its direct or indirect effects, and thereafter require Contractor to resume full or partial performance of the Design/Build Work in accordance with the provisions of this Service Contract. The costs of any such action taken by Government shall be reimbursed by Contractor to Government and Government may offset any such costs in whole or in part against any amount due or thereafter becoming due to Contractor under this Service Contract.

16. SUBCONTRACTORS

(a) Use Restricted. Subcontractors may be used to perform other Contract Services, subject to the limitations and the Government's right of approval set forth in this Section.

(b) Limitations on Subcontracting.

Contractor warrants and agrees that, with the exception of the Design Work which shall be performed exclusively by the Architectural and Engineering firms approved at Appendix C, no

more than 49% of the combined construction services required to complete the Design/Build Work, shall be subcontracted and that Contractor shall at minimum perform 51% of the non-Design Work. For these purposes, the Contractor is permitted to include in the calculation of subcontracted work the full value of materials contracts or purchase orders it places with vendors for the Project.

(c) Limited Government Review and Approval of Permitted Subcontractors.

The Government shall have the right, based on the criteria provided below in this Section, to approve all Subcontractors which the Contractor is permitted to engage for Contract Services valued in excess of \$ 250,000, except: (1) Affiliates of the Contractor; (2) equipment suppliers; (3) Governmental Bodies; and (4) Subcontractors hired by the Contractor for purposes of remedying an emergency situation. The Contractor shall furnish the Government written notice of its intention to engage such Subcontractor, together with all information requested by the Government pertaining to the Subcontractor in the following areas:

- (1) Any conflicts of interest;
- (2) Any record of felony criminal convictions or pending felony criminal investigations;
- (3) Any final judicial or administrative finding or adjudication of illegal employment discrimination;
- (4) Any unpaid federal, Government or local Taxes; and
- (5) Any final judicial or administrative findings or adjudication of non-performance in contracts with the Government or private sector clients in the Territory.

The approval or withholding thereof by the Government of any proposed Subcontractor shall not create any liability of the Government to the Contractor, to third parties or otherwise. In no event shall any Subcontract be awarded to any person or company debarred, suspended or disqualified from federal contracting or to any Subcontractor for which Government approval is required under this provision and for which approval is withheld.

(d) Subcontract Terms and Subcontractor Actions.

The Contractor shall retain full responsibility to the Government under this Service Contract for all matters related to the Contract Services notwithstanding the execution or terms and conditions of any Subcontract. No failure of any Subcontractor used by the Contractor in connection with the provision of the Contract Services shall relieve the Contractor from its obligations hereunder to perform the Contract Services. The Contractor is responsible for settling and resolving with all Subcontractors all claims arising out of delay, disruption, interference, hindrance, or schedule extension caused by the Contractor or inflicted on the Contractor or a Subcontractor by the actions of another Subcontractor.

(e) Indemnity for Subcontractor Claims.

The Contractor shall pay or cause to be paid to all direct Subcontractors all amounts due in accordance with their respective Subcontracts. No Subcontractor shall have any right against the Government for labor, services, materials or equipment furnished for the Contract Services. The Contractor acknowledges that its indemnity obligations under Section 25 shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Contract Services.

(f) Design Subcontract.

Any Design Subcontract shall be subject to review and reasonable comment by the Government for consistency with the applicable requirements of this Service Contract, and shall not contain any provision which is materially adverse to the Government. No such review or comments shall amend, alter or affect this Service Contract or the Contractor's obligations hereunder in any manner, nor shall the Government incur any liability or expense as a result thereof.

(h) Notice to Government of Amendments, Breaches and Defaults.

The Contractor shall give prior written notice to the Government of any proposed and final amendments the Design Subcontract, and shall not enter into any such amendment which is material and adverse to the rights and obligations of the Government hereunder without the Government's prior written consent, which such consent shall not be unreasonably or untimely withheld. The Contractor shall notify the Government promptly of any material breach or event of default occurring under the Design Subcontract and the probable effect on the Design/Build Work. The Contractor shall keep the Government apprised of the status of the dispute and shall advise the Government of its ultimate resolution.

(i) Assignability.

All Subcontracts entered into by the Contractor with respect to the Design/Build Work shall be assignable to the Government, without cost or penalty, upon the lawful termination of this Service Contract. In addition, each Subcontract for a portion of the Design/Build Work shall be assignable, and is hereby assigned, to the Government on a contingent assignment basis, provided that: (1) each such assignment is effective only after lawful termination of this Service Contract by the Government pursuant to Section 30, and only for those Subcontracts which the Government accepts by notifying the Subcontractor in writing; and (2) each such assignment is subject to the prior rights of the Surety obligated under the Performance and Payment Bonds.

(j) Except as expressly provided for elsewhere in the Service Contract, the Contractor may perform such portions of the Design/Build Work with its own forces as Contractor's qualifications and experience shall permit, and shall otherwise subcontract out the Design/Build Work as Contractor sees fit. Prior to the award of any Subcontract, the Contractor agrees to obtain from the proposed Subcontractor, and to submit for Government's approval, such Subcontractor's proposed percentage mark-up for field overhead and fee, which percentages, once approved, shall be applied to calculate the value of added or omitted Design/Build Work. All Subcontracts shall be in accordance with the terms of the Contract Documents and this Service Contract insofar as applicable to the portion of the Design/Build Work covered by such Subcontracts.

17. **CONTRACTOR PROJECT MANAGER AND GOVERNMENT ENGINEER
AND/OR OWNER'S REPRESENTATIVE COOPERATION**

(a) Contractor's Project Manager. The Contractor Project Manager, as defined in Section 14 of this Service Contract, shall be responsible for managing Contractor's performance of the services under the Service Contract and shall have the skills, knowledge and experience to competently and effectively carry out said responsibility. Contractor acknowledges that effective cooperation between the Government and the Contractor Project Manager will be essential to effectuating the intent and purposes of this Service Contract. Contractor shall replace the Contract Project Manager at the request of the Government, after notice and a reasonable opportunity for corrective action, in the event the Government determines in its sole discretion that an unworkable relationship has developed between the Contractor Project Manager and the Government.

(b) The Government Engineer and/or the Owner's Representative shall serve as the Government's liaison with Contractor in connection with the services under this Service Contract. Contractor understands and agrees that the Government Engineer and/or the Owner's Representative cannot bind the Government with respect to any Contract amendment or to incurring costs in excess of the Lump Sum Contract Price, the Applicable Phase Lump Sum Contract Price and other amounts provided in the Service Contract, except in accordance with the provisions of this Service Contract. Within such limitations, the Contractor shall be entitled to rely on the written directions of the Government Engineer and/or the Owner's Representative, including, without limitation, his or her reviews and approvals of the Design Documents and Design/Build Work in connection with the Project and any approved Phase thereof.

(c) Cooperation. The Government Engineer and/or the Owner's Representative and the Contractor Project Manager shall cooperate to effectuate the intent and purposes of this Service Contract. Among other duties, the Government Engineer and the Owner's Representative and the Contractor Project Manager shall review disputes between the parties and, by meeting with representatives of the parties, discuss the issue in dispute, including any proposed solution or compromise, to facilitate a resolution to the dispute.

(d) Key Personnel. Contractor shall designate the Contractor Project Manager and other "Key Personnel", if any, for review and approval by Government. Thereafter, Contractor shall not reassign or transfer the Contract Project Manager or such other Key Personnel without Government's prior written approval, and in any event such reassignment or transfer shall be made upon written notice to Government of not less than thirty (30) days. If Contractor must replace any such Key Personnel for reasons beyond its control (resignation or serious illness or disability), Contractor shall furnish Government as much advance notice as possible under the circumstances. In the event of a need for replacement of any Key Personnel, Contractor shall furnish Government with the name(s), resume(s), and reference(s) of any proposed replacement. No replacement shall be made without Government's prior written approval, and Contractor shall not be entitled to recover cost(s) or extend the Project Schedule on account of training and/or background briefing(s) required for such replacement Key Personnel. The Key Personnel included at Appendix D are accepted by Government as of the execution of this Service Contract by all parties.

18. **SUBSTANTIAL COMPLETION AND FINAL ACCEPTANCE**

(a) Use of Completed Portions of the Project. Government shall have the right to take and use, or permit any designated person to occupy or use, any completed or partially completed portions of the Project, notwithstanding that the time for completing the entire Project or such portions may not have expired, but such taking possession and use shall not be deemed an acceptance of any Design/Build Work not completed in accordance with the Contract Documents. Any such use by Government will not relieve Contractor of its obligation to maintain insurance in accordance with the terms of the Contract Documents except to the extent that the portion of the Project at issue is completed and can be excised so as to permit the Government to purchase and maintain property, casualty, and liability coverage for such portion. Government shall notify Contractor of any such taking or use prior to the proposed commencement thereof, and Contractor shall deliver a list to Government promptly after its receipt of such notification, of the items in the applicable portion of the Project which, in Contractor's judgment, are either fully completed or require further Design/Build Work, and, in the latter case, the unfinished portions of such items. Such list shall be subject to the reasonable approval of Government. Immediately prior to such partial occupancy or use, the Government, Owner's Representative and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

(b) Notice of Substantial Completion. Contractor shall provide written notice to Government and Government Engineer and the Owner's Representative when Contractor has satisfied all of the conditions for Substantial Completion for each approved Phase and for the entire Project. Upon receipt of such notice by Government and Government Engineer and the Owner's Representative, Government, Government Engineer and/or the Owner's Representative and Contractor shall schedule one or more inspections of the Project to take place within ten (10) days of receipt of such notice to determine if Substantial Completion has occurred and to identify a Punch List. Government and Government Engineer and/or the Owner's Representative shall promptly advise Contractor in writing of any dispute with the representations set forth in Contractor's notice. Contractor shall then perform corrective measures necessary to satisfy the conditions necessary to achieve Substantial Completion, and upon completion of such corrective measures, shall again notify Government and Government Engineer and the Owner's Representative in writing that it has satisfied the requirements for Substantial Completion. Government and Government Engineer and/or the Owner's Representative will have five (5) Business Days after each subsequent notification to advise Contractor, in writing, of any remaining defects, deficiencies and/or discrepancies which must be corrected by Contractor. That procedure will be repeated as necessary until the Project has reached Substantial Completion.

(c) The Actual Date of Substantial Completion. Promptly after verification by Government and Government Engineer and/or the Owner's Representative that Contractor has achieved Substantial Completion, Government will issue a Certificate of Substantial Completion which shall specify the Actual Date of Substantial Completion as the date of the final notice of Contractor to Government and Government Engineer and the Owner's Representative issued pursuant to the immediately preceding Section. Issuance of the Certificate of Substantial Completion by Government shall in no way relieve Contractor of any of its obligations under the Contract Documents. Contractor shall use reasonable efforts to minimize interference with Government's operation of the Project while completing the Punch List. No action properly taken by

Government or Government Engineer and/or the Owner's Representative pursuant to this Section shall affect the Substantial Completion Milestone unless specifically agreed to in writing by Government.

(d) Care, Custody and Control of the Project. Care, custody, and control of the Project or an approved Phase thereof, including security, maintenance, heat, utilities, damage to the Design/Build Work and insurance, will be turned over to Government upon issuance of the Certificate of Substantial Completion.

(e) Final Acceptance and Final Payment. Following the Actual Date of Substantial Completion and the completion of any Punch List items, Contractor shall furnish Government with the following:

- (1) detailed statement of the cost of the Design/Build Work, distributed in accordance with the requirements of Government, for Government's and the Government's permanent record;
- (2) A statement signed by an officer of Contractor, stating that "The Design/Build Work has been finally completed, including all Punch List Items, strictly in accordance with the terms and conditions of the Contract Requirements and the Service Contract (Lump Sum Contract Price) between Government and Contractor";
- (3) A written statement, certified and notarized by an officer of Contractor, that all payrolls, all Materials and Equipment bills and all other indebtedness or claims arising out of or in connection with the Design/Build Work have been paid or otherwise satisfied;
- (4) Releases from all claims arising out of labor, Materials and Equipment or services furnished by or on behalf of Contractor or any of the Subcontractors;
- (5) Electronic and hard copy of all Plans and Specifications and other documents to which Government is entitled under the Contract Documents, such as all master Plans and Specifications sets including the final master drawing "stick file" obsolete drawing and specifications, plus all other information and data (including data stored on computer) relating to actual as-built conditions of the Project;
- (6) All Record Drawings, 3-D models, specifications and design sheets indicating the "as installed" condition of the Project.
- (7) Certificates evidencing that all insurance required by the Contract Documents is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, and a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- (8) Consent of the surety to final payment: and

- (9) A loose leaf binder of complete installation, operation, and maintenance manuals, including all manufacturers' literature, of equipment and materials used in the Work, keys, Contractor, Subcontractor and Vendor guarantees and warranties.

The items described in this Section shall be delivered to the Government Engineer and the Owner's Representative within thirty (30) days after issuance of the Certificate of Substantial Completion. Failure to supply the requested information and releases shall be grounds for withholding final payment until such time as the requested information and releases are provided.

The Government Engineer and/or the Owner's Representative may in good faith reasonably dispute any portion of the completeness and accuracy of the items described in this section, and advise Contractor in writing of the disputed portion and the contractual basis for the dispute, within thirty (30) days following receipt of the items. Subject to the completeness and accuracy of such documents, the expiration of such thirty (30) day period without dispute in good faith by the Government Engineer and/or the Owner's Representative shall constitute "Final Acceptance" of all Design/Build Work performed or provided by Contractor under this Service Contract. Government Engineer and/or the Owner's Representative shall issue a Certificate of Final Acceptance at such time (referred to herein as the "Date of Final Acceptance").

(f) Upon the Date of Final Acceptance of the Project, the Contractor shall submit to Government a final Periodic Estimate for Payment, covering the balance due under this Service Contract. Within forty-five (45) days of the Date of Final Acceptance and receipt of final Periodic Estimate for Payment, Government shall pay the Contractor the remaining balance of monies owed to Contractor, including the retainage, provided said payment does not exceed the Lump Sum Contract Price as adjusted by additions and deletions agreed to under the terms of this Service Contract. Neither the making of Final Payment to Contractor, nor the partial or entire use or occupancy of the Design/Build Work by Government shall constitute an acceptance of the Design/Build Work or any part thereof which has not been performed in accordance with the Contract Documents.

19. CHANGES IN THE WORK

(a) Government shall have the right to request and subsequently to order the Contractor from time to time during the performance of the Design/Build Work to make any change, modification, addition or deletion to, in or from the Design/Build Work (hereinafter called a "Change"). The Contractor may from time to time during its performance of the Design/Build Work propose to Government any Change which the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Design/Build Work. Government may at its discretion approve or reject any Change proposed by the Contractor. The Contractor is also entitled to make a claim that any order or action committed by the Government constitutes grounds for a Change in the Design/Build Work and an equitable adjustment to the Lump Sum Contract Price or the Project Schedule, provided that Contractor gives written notice to the Government within twenty (20) days of the occurrence of such an event that it considers the Government's order or action to constitute a Change including a projection of the possible cost and time consequences of such a Change. The Government's response to any such claim that an order or action committed by the Government constitutes grounds for a Change in the Design/Build Work shall be governed by Section 19 of this Service Contract.

(b) No default of the Contractor or its Subcontractors in the performance of the Contractor's obligations under the Contract Documents shall give rise to a Change, and the Contractor's and Subcontractors' actions made necessary to rectify the default shall not result in any adjustment of the Lump Sum Contract Price or the Project Schedule. In addition, under no circumstances shall any adjustment to the Lump Sum Contract Price or Project Schedule be made after Final Payment has been received by Contractor, subject to Government's right to audit Contractor.

(c) If either party proposes a Change pursuant to this Section, the Contractor shall prepare and furnish to Government as soon as reasonably practicable a written statement setting out full details of any such Change, the reasons therefor if proposed by the Contractor, the Design/Build Work and/or Materials and Equipment required or no longer required, an estimate of the increase or decrease in the Lump Sum Contract Price, any requisite adjustment to the Project Schedule, and any proposed modifications to the Contract Documents and/or any effect such Change would have on the Design/Build Work and/or on any other provisions of the Service Contract if the contemplated Change is effected, as the case may be. To the extent Contractor can reasonably demonstrate that a Change specifically requested in writing by Government affects Contractor's ability to perform the Design/Build Work, or Contractor's costs, or Contractor's ability to meet the Project Schedule, or any other Contractor obligation under the Contract Documents, then, in the event Government thereafter directs Contractor to proceed with such Change, Contractor shall be entitled to an equitable adjustment as appropriate to the Lump Sum Contract Price, the Project Schedule, the Scope of Work, and/or such other parts of this Service Contract as may be affected by such Change.

(d) The amount, if any, to be added to or deducted from the Contract Price in respect of any Change shall as far as practicable be calculated in accordance with Appendix B (Lump Sum Contract Price Terms) to the Service Contract. If, in the above-referenced Appendix B (Lump Sum Contract Price Terms), the unit rates are unavailable, the parties hereto shall agree to specific rates for the valuation of the Change.

(e) If, in the case of a Change proposed by either Government or the Contractor, Government and the Contractor reach agreement on all matters identified in the written statement furnished by the Contractor, then Government shall issue a Change order giving effect thereto (hereinafter called "Change Order"). Such Change Order shall contain full particulars of the Change, any adjustment of the Lump Sum Contract Price and/or Project Schedule and all other modifications to the Service Contract and shall be signed by Government and the Contractor. Such Change shall thereupon be deemed to form part of the Design/Build Work. Adjustments to the Lump Sum Contract Price and Project Schedule once executed are final. Such adjustments shall be deemed to include any effect on this and all previous Changes and the cumulative effect on all other portions of the Work. Agreement between the Government Engineer and/or the Owner's Representative and Contractor on any Change shall constitute a final settlement of all matters relating to the change in the Design/Build Work which is the subject of the Change, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Lump Sum Contract Price and the Project Schedule.

(f) If the Contractor fails to furnish the statement referred to herein within ten Working Days following receipt of a request for Change from Government, or, if Government, after negotiation with the Contractor, does not agree within a reasonable period to the amount of the increase or decrease in the Lump Sum Contract Price, the adjustment of the Project Schedule, and/or any other

modification to the Contract Documents proposed by the Contractor, Government shall have the right to decide whether or not to effect such Change. Government may issue a written instruction to the Contractor to carry out the Change pending agreement on such matters with the Contractor. If an agreement is not reached between Government and the Contractor within a commercially reasonable time after Government's instruction to carry out the Change, concerning the increase or decrease in the Contract Price and all of the other matters described above, either party may refer the dispute to the Government Engineer and the Owner's Representative pursuant to the dispute resolution procedure set forth in Section 22 of the Service Contract.

(g) Requirement of Writing. In giving oral instructions, the Government Engineer and/or the Owner's Representative shall have authority to make minor changes in the Design/Build Work not involving extra cost and not inconsistent with the purposes of the Design/Build Work; but otherwise, no Changes in the Work shall be made except pursuant to a Change Order from the Government Engineer and the Owner's Representative. Accordingly, no course of conduct or dealings between the parties, which is not punitive or unreasonable, nor express or implied acceptance of alterations or additions to the Design/Build Work, and no claim that Government has been unjustly enriched by any alteration or addition to the Design/Build Work, whether or not there is, in fact, any unjust enrichment to the Design/Build Work, shall be the basis of any claim to an increase in any amounts due under the Service Contract or a change in any time period provided for in the Service Contract. Performance by the Contractor of any Design/Build Work requested by Government in connection with this Service Contract, in the absence of a Change Order signed by Government, shall constitute an acknowledgment by the Contractor that such services or Design/Build Work falls within the scope of services already contemplated by this Service Contract, and shall act as a waiver of any and all claims by the Contractor against Government for additional costs and additional time that might be asserted in connection therewith.

(h) The timing, length of time constraints and documentation requirements set out above with respect to each Party shall ultimately be reasonably adjusted, governed and evaluated by the Parties in the context of the then prevailing circumstances of the Parties and the status of Project.

20. ENTIRE AGREEMENT

The Contract Documents that comprise this Service Contract constitute the entire agreement and supersede all prior negotiations, representations, agreements and understandings, both written and oral, relating to the subject matter of this Service Contract. This Service Contract may be amended, modified or supplemented, and any right hereunder may be waived, if, but only if, that amendment, modification, supplement or waiver is in writing and signed by Government. The waiver of any of the terms and conditions hereof shall not be construed or interpreted as, or deemed to be, a waiver of any other term or condition hereof.

21. APPLICABLE LAW

(a) Applicable Law. The validity, interpretation and performance of this Service Contract and the Contract Documents shall be governed by and construed in accordance with the Laws and judicial decisions of the United States Virgin Islands without regard to its principles of conflicts of law, and all questions of performance hereunder shall be determined in accordance with such Laws and judicial decisions. SUBJECT TO THE PROVISIONS OF SECTION 22, BY EXECUTION OF THIS SERVICE CONTRACT, CONTRACTOR IRREVOCABLY AGREES TO SUBMIT

TO THE JURISDICTION OF THE COURTS OF THE UNITED STATES VIRGIN ISLANDS, AND AGREES THAT VENUE OF ANY LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS SERVICE CONTRACT SHALL BE IN THE UNITED STATES VIRGIN ISLANDS, AND AGREES TO ACCEPT THE PERSONAL JURISDICTION OF SUCH COURT. ADDITIONALLY, IN ANY CONTROVERSY OR CLAIM, WHETHER BASED IN CONTRACT, TORT OR OTHER LEGAL THEORY, ARISING OUT OF OR RELATING TO THE CONTRACT DOCUMENTS, THEIR NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED THEREUNDER, ALL PARTIES HEREBY WAIVE THEIR RIGHT TO TRIAL BY JURY.

22. DISPUTE RESOLUTION

(a) In the event any conflict or disagreement arises under this Service Contract, neither party shall file any claim or suit against the other party unless it has first provided written notice to the other party of the alleged dispute and unless the following dispute resolution procedure has been followed and exhausted.

(b) The parties shall first submit the dispute in writing to the Government Engineer and the Owner's Representative and the Contractor Project Manager for review and resolution. The Government Engineer and the Owner's Representative and the Contractor Project Manager shall meet with representatives of the parties to discuss the issue in dispute, including any proposed solution or compromise. If the Government Engineer and/or the Owner's Representative and the Contractor Project Manager agree on a resolution to the dispute that is accepted by both parties, the dispute shall be deemed resolved and the parties shall execute a writing memorializing the resolution of the dispute. In the event that the Government Engineer and/or the Owner's Representative and the Contractor Project Manager have not resolved the dispute between the parties within thirty (30) calendar days following receipt of the written notice of dispute, the parties shall proceed directly with the dispute resolution procedure provided for in this Section. For purposes of this Section, the Government Engineer and the Owner's Representative and the Contractor Project Manager are deemed to have not resolved an issue between the parties if the Government Engineer and the Owner's Representative and the Contractor Project Manager cannot agree on a resolution or if the parties do not accept the resolution proposed by the Government Engineer and the Owner's Representative and the Contractor Project Manager.

(c) In the event the dispute is not resolved under the procedure provided in subsection (b) above, the parties shall submit the dispute to mediation in the U.S. Virgin Islands administered by the American Mediation Institute in accordance with the mediation procedures adopted for the conduct of the courts in the United States Virgin Islands. No lawsuit, claim or controversy shall be filed until the conclusion of the mediation and certification by the mediator that an impasse has been reached or until 60 days from the date submitted to the American Mediation Institute has passed, whichever comes first. Each party shall bear equally the cost of the mediator and all other American Mediation Institute charges.

(d) Any matter that cannot be amicably resolved by mediation as aforesaid and any other matter arising out of or relating to the subject matter of this Service Contract shall be determined by arbitration in accordance with the Construction Industry Arbitration Rules administered by the American Mediation Institute. Such an arbitration shall be conducted by a panel of three

experienced arbitrators, each of whom must have experience in the design, construction and/or development industries in the United States Virgin Islands. Within 15 days of the filing of any such arbitration, each party shall choose an arbitrator at their sole discretion. Within 15 days of such appointment, the third arbitrator shall be selected by and acceptable to both the Contractor and the Government. The matter shall then be determined by said panel and the award thereon may be entered in any court of competent jurisdiction in accordance with the provisions of 9 USC §1 et. seq. The prevailing party in any such arbitration shall be entitled to an award of its reasonable attorney's fees and costs.

(e) Pending any and all dispute resolution during the 60 day mediation period set forth herein and pending any and all resolution of any lawsuit or claim filed in the event mediation is not successful, Contractor shall continue to perform work under the Service Contract and the Government shall, pursuant to the payment and compensation provisions of Sections 23 and 24 of this Service Contract, continue to compensate Contractor for such work that is not the subject of a good faith dispute.

(f) The provisions of this Dispute Resolution Section shall not apply to the Conflicts of Interest, Termination for Default, Termination for Convenience, Indemnification, and Limitation of Government Liability provisions of this Service Contract.

23. COMPENSATION

(a) Contract Price. Government agrees to pay and the Contractor agrees to accept as full compensation and consideration for the proper, complete and timely performance of the Design/Build Work and all obligations under the Contract Documents, and for all costs incurred in connection therewith (other than the taxes and duties to be paid by Government under the express terms of this Service Contract), the Lump Sum Contract Price as defined in, and in accordance with, Appendix "B.". Contractor guarantees that the Lump Sum Contract Price shall not exceed TWENTY MILLION DOLLARS (\$20,000,000.00) (the "Lump Sum Contract Price"). All payments shall be made in accordance with the provisions of Section 24.

24. PAYMENT

Except to the extent that the terms and conditions for payment of the Contractor may be altered or changed as provided in Appendix B hereof, the Contractor shall be paid under the following terms and conditions:

(a) Requisitions for Payment. On or before the 10th day of each month during progress of the Design/Build Work, the Contractor shall submit to Government a Periodic Estimate for Partial Payment showing the percentage of completion of each portion of the Design/Build Work as of the end of the preceding calendar month. (Such Periodic statements submitted by Contractor to Government are hereinafter referred to as "**Periodic Estimate(s)**"). The Periodic Estimate shall be prepared using a standard format required by the Government Engineer and/or Owner's Representative, and shall be as detailed as may be required by the Government Engineer and/or Owner's Representative to adequately review the amount of Design/Build Work for which Contractor seeks payment. The submission of a Periodic Estimate shall constitute a certification by the Contractor that all previous payments which have been received have been applied to the Service Contract, including the Contractor's payment of all sums due to Subcontractors and

Vendors therefrom. In the initial Periodic Estimate for any Phase or Sub-Phase, the Contractor may at the Government's sole discretion be entitled to requisition payment for mobilization for such Phase or Sub-Phase in an amount equal to five percent (5%) of the amount of that Phase or Sub-Phase. If so approved such mobilization payment shall be deemed to have been earned at the beginning of each Phase or Sub-Phase.

(b) Supporting Documentation. Along with each Periodic Estimate, the Contractor shall submit such documentation as is required at Appendix "B" "Lump Sum Contract Price Terms". For each Periodic Estimate, Contractor shall submit a sworn statement for all Design/Build Work completed and Materials and Equipment provided for which payment is requested, as of the date of such Periodic Estimate (in accordance with the waiver form required by Government Engineer and/or the Owner's Representative), representing that Contractor has made all payments due to all Subcontractors and Vendors for Design/Build Work and Materials and Equipment for which Government has previously made payment to Contractor. Contractor acknowledges that it and its Subcontractors and Vendors have no lien rights in connection with this Project, as provided in 28 V.I.C. Sec. 254.

(c) Within ten (10) business days after the Government Engineer and/or the Owner's Representative receives a Periodic Estimate the Government Engineer will either approve the Periodic Estimate or return the Periodic Estimate to the Contractor with comments for correction. If the Government Engineer and/or the Owner's Representative do not respond to the Contractor's Periodic Estimate after ten (10) business days, then the Periodic Estimate will be deemed to have been approved as submitted by the Contractor. Within thirty (30) calendar days after the approval of any Periodic Estimate, the Government shall pay the requested amount, less any deductions or other authorized withholding, or for defective Design/Build Work, loss, damage, cost or expense for which the Contractor may be liable or for which previous payments were not supported by proper documentation, and less applicable retainage.

After fifty percent (50%) of the Design/Build Work is properly and timely completed, the Government shall cease holding retainage on subsequent progress payments. Periodic Estimates may not include requests for payment for portions of the Design/Build Work for which the Contractor does not intend to pay a Subcontractor or Vendor, unless such Design/Build Work has been performed by others whom the Contractor intends to pay. If any dispute arises with respect to the payment of any such Subcontractor or Vendor, Contractor shall provide to the Government Engineer and/or Owner's Representative evidence of the payments that Contractor has made, or has represented it has made, to such Subcontractor or Vendor.

Upon achievement of Substantial Completion the Government shall release retainage to the Contractor, via the next Periodic Estimate occurring after Substantial Completion, except an amount equal to 150% of the value of any remaining Work, Punch List items, and/or unsettled claims, such value to be reasonably determined in the sole discretion of the Government Engineer and the Owner's Representative.

(d) Payment of Subcontractors. The Contractor shall promptly pay each Subcontractor and Vendor, upon receipt of payment from Government, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Design/Build Work, the amount to which said Subcontractor or Vendor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's or Vendor's portion of the Design/Build Work. The

Contractor shall, by appropriate agreement with each Subcontractor and Vendor, require each Subcontractor and Vendor to make payments to Sub-subcontractors in a similar manner. Government shall not have an obligation to pay or to see to the payment of money to a Subcontractor or Vendor except as may otherwise be required by law. Notwithstanding anything in this Service Contract to the contrary, Government may elect, in Government's sole discretion, to make any payment requested by the Contractor on behalf of a Subcontractor or Vendor of any tier jointly payable to the Contractor and such Subcontractor or Vendor. The Contractor and such Subcontractor or Vendor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment.

(e) Payment of Taxes. As a condition to Government's obligation to make any payment under the Contract Documents, Contractor shall pay all payroll, employee benefit and gross receipts taxes, together with all other taxes measured by Contractor's net income that are incurred in, or result from, the performance by Contractor of its obligations under this Service Contract.

(f) The Contractor must take out and maintain during the Term, worker's compensation insurance, according to the practices and laws of the United States Virgin Islands, for all of its employees working as part of this Agreement; and in the event any work is subcontracted, the Contractor must require any subcontractor similarly to provide worker's compensation insurance for all the latter's employees working as a part of this Agreement.

(g) Withholding Of Payment. Government may, at its option, to protect Government from loss, decline to make payment, withhold funds in an amount no more than the amount then reasonably believed by Government to be adequate to cover the penalties, damages, and potential losses resulting or likely to result from:

- (1) The existence of defective Design/Build Work;
- (2) Delays in the progress of the Design/Build Work attributable to Contractor or its Subcontractors;
- (3) Claims or potential claims of third-parties against Government or Government's property not properly insured or bonded;
- (4) Failure by the Contractor to pay undisputed amounts to Subcontractors, Vendors or others in a prompt and proper fashion;
- (5) Determination by the Government Engineer and the Owner's Representative, in their sole but reasonable discretion, that the Actual Date of Substantial Completion will not occur on or prior to the Substantial Completion Date;
- (6) Failure or refusal by the Contractor to perform the Design/Build Work in accordance with the Contract Documents; or
- (7) Damage to Government or to a third party to whom Government is, or may be, liable.

Within thirty (30) days of Government's declining to make payment, withholding funds, demanding return of previously paid sums or obtaining a credit (all as set forth more particularly above), Contractor may, by written request, require that Government provide Contractor with written details regarding such action. Government shall provide such written details within thirty (30) days of receipt of said request from Contractor. Contractor shall, within (30) days of receipt of said details, notify Government in writing of any disputes regarding such action including material justification therefor. In the event that Contractor does not timely: (a) so require said details, or (b) so notify Government of disputes, then Government shall be entitled to retain 15% of the amount so withheld for each thirty day period until such details or notice is provided, and Contractor thereupon shall quitclaim to Government and waive the right to seek payment for such retained amount.

(h) Final Payment. Final Payment shall be made in accordance with this Section 24, and Contractor acknowledges and agrees that the compensation provided for in this Service Contract constitutes full payment to Contractor for its entire performance of the Design/Build Work and includes all allowances for: salaries and wages; payroll burden (i.e., payroll taxes, insurance, vacations, sick leave, holidays, excused absences, fringe benefits, etc.); overhead, general and administrative expenses (i.e., management, staff, general office clerical and stenographic costs; drafting and office supplies; rent, utilities, depreciation, and maintenance; non-technical and non-productive payroll expenditures and maintenance of staff to provide readiness to serve; local telephone calls and letter postage; taxes, insurance; etc.); profit; fee; and all costs and expenses of whatever kind except as otherwise specifically set forth in this Service Contract.

(i) No Acceptance. Payments are subject to post-payment audit and shall not preclude Government from subsequently challenging any of the items of cost contained in a prior Periodic Estimate nor shall the same be construed as a waiver of any of Government's other rights under this Service Contract. In addition, neither the making of partial payments to Contractor, nor the partial or entire use of the Design/Build Work or Work Product (or any part thereof) by Government, shall constitute an acceptance of the Design/Build Work or the Project or any part thereof not performed in accordance with the terms of the Service Contract and the Contract Documents.

(j) Accounting Systems and Records. The Contractor shall carefully check, and prepare and maintain, detailed accounting records of all Materials and Equipment, labor and other items entering into the Design/Build Work. Such accounting, as well as all other systems of filing, accounting, and financial controls pertaining to the Design/Build Work, employed by the Contractor, or any of his Subcontractors performing under this Service Contract, shall be subject to Government's approval and must be of such accuracy and detail as to permit Government to fully assess and protect its financial interest in the Project. The Contractor shall permit or arrange for Government's representative to have access at all reasonable times to all such records, correspondence, account books, invoices, canceled checks, payroll details and other records relating in any way to the Design/Build Work, Project and Contract Documents; the Contractor shall preserve all records at its sole cost and expense for a period of at least three (3) years following final payment by Government under this Service Contract.

(k) Contractor's Audits. The Contractor shall obtain from Subcontractors performing the Design/Build Work on the Project, copies of their (a) sub-subcontracts and purchase orders (including all change orders and amendments thereto); (b) daily labor reports; and (c) payroll

registers, and shall retain same for periodic review by Government. Contractor shall audit all such records, as well as all invoices for subcontract and purchase order payments, to ascertain whether or not, and to what extent, payment is due for items then or subsequently billed. Contractor shall also make periodic independent field audits of all labor and material being incorporated into the Design/Build Work. All such audits shall be performed in a timely, thorough, accurate and professional manner, and records thereof shall be retained for review by Government.

25. **INDEMNITY**

(a) **Indemnities.** Contractor shall indemnify, defend, and hold harmless Government, and its officers, directors, Employees, agents, servants and other representatives from and against the following (collectively referred to as "Losses-and-Expenses" or "Losses"): all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages cleanup and remedial obligations, interest, fines (including fines or penalties assessed under any Permit), fees, penalties, costs and expenses (including all attorneys' fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing this indemnity obligation), arising out of (or alleged to be arising out of) or in any way connected to personal injuries or property casualties occurring during the execution of the Design/Build Work to be performed by Contractor under this Service Contract or the actions of any parties subcontracted, at any tier, by Contractor to perform under this Contract, including, but not limited to:

- (1) Any violation of Law by Contractor or any Subcontractor.
- (2) Any claim for any injury to, or illness or death of any person or loss or damage to property of any person to the extent it arises from the act or omission of Contractor, any Subcontractor or their respective Employees, agents or representative.
- (3) Any claim for infringement of intellectual property rights in the Design Documents. Any claim by employee of Contractor, any Subcontractor or any employee of any Subcontractor or any damage to the property of Contractor, its Subcontractor, or their respective Employees, regardless of the negligence of any person, including that of the party being indemnified.
- (4) Any claim arising from any environmental contamination or release occurring prior to Final Acceptance or after Final Acceptance if arising directly (i) from negligent or wrongful act or omission of Contractor or their respective Employees or representatives performing warranty obligations or (ii) from a defect in the Design/Build Work that results in any injury to, illness or death of, any person, or damage to or required remediation of any property, except to the extent that a contamination or release occurring after Final Acceptance arises from a failure to operate or maintain the Project in accordance with the provisions of any proper and reasonable storage, operation or maintenance instructions provided by Contractor to Government and included within the training program provided by Contractor.

(b) Contractor indemnification obligations shall be reduced by any determination that Government was partially at fault due to its negligence or other wrongful act in hiring or failing to supervise Contractor or any Subcontractor or their respective Employees, agents, or representatives, Contractor's failure to maintain in full force and effect any insurance required to

be provided under this Service Contract, or Contractor's failure to comply fully with any of the insurance provisions of this Service Contract, or if any insurance company providing such insurance shall become insolvent or bankrupt.

(c) Indemnification Procedure. Whenever any claim arises for indemnification under this Service Contract, Government shall notify Contractor in writing as soon as practicable after Government has knowledge of the facts constituting the basis for such claim (the "Notice of Claim"). Such Notice of Claim shall specify all facts known to Government giving rise to such indemnification right in the amount or an assessment of the amount of the liability arising therefrom. If the facts giving rise to any such indemnification shall involve any actual or threatened claim or demand by any third party (including without limitation, an inquiry or audit by any Governmental Authority with respect to any period in whole or in part prior to the date of this Service Contract) against Government or any possible claim or demand by Government against any such third party, the Contractor shall (without prejudice to the right of Government to participate at its expense through counsel of its own choosing) defend such claim in the name of Government at the Contractor's expense and through counsel of Contractor's own choosing. The parties hereto shall cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony and attend such conferences and discovery as reasonably requested in connection therewith.

(d) Notwithstanding the Contractor's obligation to assume and conduct the defense of a claim for indemnification with counsel of its choice, the Contractor will not consent to the entry of any judgment or enter into any settlement with respect to a claim for indemnification without the prior written consent of Government (not to be unreasonably withheld) unless the judgment or proposed settlement involves the payment of money damages and does not impose an injunction, other equitable relief, or administrative remedy upon Government or any acknowledgment of the validity of any claim. Until the Contractor assumes the defense of a claim of indemnification arising out of a third party claim, Government may defend against the third party claim in any manner it may deem reasonably appropriate provided that in no event shall Government consent to the entry of any judgment or enter into any settlement with respect to the third party claim without the prior written consent of Contractor (not to be unreasonably withheld).

26. LIMITATIONS ON LIABILITY

(a) Neither Contractor nor Government shall be responsible for the consequential, incidental, indirect, exemplary or punitive loss, damage or expenses of the other party including, but not necessarily limited to loss of use, loss of actual or anticipated profits, business interruption, loss of revenues or product, loss by reason of shutdown, non-operation, or increased expense of operation, increased expenses of borrowing, financing or operation, loss of productivity, loss of shop space, or other consequential, indirect, special, incidental or punitive damages, even if it has been notified of their possible existence and however the same may be caused, including, without limitation, damages related to the negligent acts or omissions, strict liability or other tort of Contractor or Government. Notwithstanding the foregoing, there shall be no waiver of, or limitation on, Contractor's liability for Government's consequential, indirect, exemplary or punitive loss, damage or expenses, for claims: (i) arising out of a breach of Contractor's confidentiality obligations under the Contract Documents; (ii) arising out of Contractor's indemnification obligations under the Contract Documents; (iii) made by third parties for bodily injury, death, or damage to real or personal property; (iv) included with any liquidated damages for delay indicated

in the Contract Documents; or (v) resulting from Contractor's gross negligence, reckless conduct, or the willful misconduct of Contractor's or its Subcontractor's Employees, officers or agents.

(b) Notwithstanding any provision in this Service Contract to the contrary, the Government's contract liability under or relating to this Contract shall be limited to actual, direct damages and shall in no event exceed the total annual compensation under the specific contract year of the contract term within which the event giving rise to the claim of liability arose. In no event shall the Government be liable to Contractor for any indirect, special, incidental, exemplary or consequential damages (including, without limitation, lost profits or good will) related to this Contract.

(c) The Government does not waive any rights or immunities provided by law to the Government.

27. SECURITY FOR PERFORMANCE.

Performance and Payment Bonds. On or before the date specified by the Government as the commencement date of construction activities set forth in the Notice to Proceed, the Contractor, in order to ensure the faithful performance by Contractor of the Design/Build Work in accordance with the Contract Requirements and Contract Documents, and payment of obligations arising thereunder, shall provide the Performance Bond and the Payment Bond, each in an amount equal to \$20,000,000.00, as financial security for the faithful performance and payment of its construction obligations hereunder. The Performance Bond and the Payment Bond shall be issued by a surety company. (1) approved by the Government having a rating of "A" in the latest version of the A.M. Best Company's Insurance Report; (2) be listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies"; and (3) holding a certificate of authority to transact surety business in the Territory. The Contractor shall cause the surety to name the Government and the Virgin Islands Public Finance Authority as obligees on the Performance Bond and the Payment Bond. The Performance Bond and the Payment Bond shall remain open until Final Completion.

28. GUARANTEES AND WARRANTIES

(a) Cooperation. Contractor will at all times cooperate with Government and perform the Design/Build Work in a manner that will promote the best interests of Government, and Contractor shall prevent any actions or conditions by its Employees, Subcontractors or Vendors which could result in a conflict with Government's or the Government's best interests.

(b) Contractor Liability. The Contractor shall remain primarily responsible and liable for performance of the entire Design/Build Work, including the acts and omissions of all of its Employees and all Subcontractors and Vendors, their respective Employees, agents, invitees, and all other persons performing any of the Design/Build Work, regardless of whether Government has given approval or consent to a particular Subcontractor or Vendor, or any Subcontract, or any other matter in connection with either.

(c) Passage of Title. Title to all Materials and Equipment incorporated, or to be incorporated, into the Project (or to be stored for future incorporation into or used with respect to the Project) shall pass to Government at the earlier of (i) the time of payment therefor by Government regardless of whether then delivered to the Site, any other staging area for the Design/Build Work, or any storage facility maintained by Government or (ii) delivery to the Site or incorporation into the Project. No such passage of title shall relieve Contractor of its obligations under this Service Contract with respect to the protection of and care for such Materials and Equipment. Contractor warrants and guarantees that legal title to all Design/Build Work and Materials and Equipment incorporated, or to be incorporated, into the Project or to be stored for future incorporation into or use with respect to the Project shall pass to Government free and clear of any and all liens, claims, security interests or other encumbrances.

(d) Government and Contractor acknowledge that title to all Materials and Equipment to be transported to the Site by the Contractor remains with the Contractor until the earlier of the date payment is made or the date it arrives at the Site, and that Government has rights in such Materials and Equipment as a result of having made payment therefor, even if delivery has not been completed. To evidence such rights, Contractor hereby grants to Government a lien and security interest (including, to the extent applicable, a security interest under the Uniform Commercial Code) in the Materials and Equipment held by Contractor, or held by any Subcontractor and identified as goods to which this Service Contract (or any agreement with any Subcontractor or Vendor) refers, regardless of whether such Materials and Equipment are parts, inventory, Design/Build Work in progress or finished goods. Such security interest shall secure Contractor's obligations under this Service Contract, including the obligation to transfer title to Government upon termination as provided in Section 30 of this Contract. Contractor agrees to execute (and cause to be executed) such security agreements, financing statements or other lien or evidentiary documents as Government may reasonably request to evidence and perfect Government's rights in such Materials and Equipment. Until and to the extent such security agreements are entered into, this Service Contract shall operate as a security agreement.

(e) Contractor assumes all liability and risk until the Date of Substantial Completion related to damage to, or loss or destruction of (i) the Materials and Equipment (including consumables and regardless of where stored or located) and (ii) the Project. Contractor shall at its sole cost and expense promptly repair, restore or replace any property for which it has responsibility for risk of loss.

(f) General Warranty. Contractor warrants that the Design/Build Work will be performed in accordance with the Contract Requirements and that the Project will be completed in strict accordance with the Plans and Specifications and that the Project will be feasible, constructible and of high quality, fit, proper and sufficient for its intended use. To the extent that any further engineering, design, equipment, fabrication, procurement, construction, erection or assembly, services or other requirement shall prove to be necessary for the fulfillment of said warranty, such further requirements shall be provided by Contractor promptly and at its sole cost and expense.

(g) Materials and Equipment Warranty. All Materials and Equipment shall be installed in accordance with the Contract Requirements, shall be new and undamaged, free from defects in design, material and workmanship or any breakage or physical failure due to defects in design, materials and workmanship, and shall be in good quality and operating condition at the time installed and at all times through the end of the Warranty Period, as hereinafter defined.

(h) Duration of Warranty. The warranties and guarantees set forth in this Article shall commence on the date of Final Acceptance and shall continue in force and effect for a period of one (1) year from the date of Final Acceptance of the entire Project by Government, regardless of any prior use or occupancy of all or any part thereof, and all bonds which may have been required of Contractor by Government shall remain in full force and effect during this one-year period or such longer periods as may be specified by the Contract Documents (the "Warranty Period").

(i) Correction of Defects during Warranty Period. If during the Warranty Period any portion of the Design/Build Work or the Project is found not to comply with the warranties set forth in this Article, Government shall promptly notify Contractor of the defect. Contractor shall remedy such defect at Contractor's expense, including repairs to any element of the Site (or to property not constituting a portion of the Project) that are damaged or harmed by the defect or in the repair thereof by Contractor or its agents. If Contractor fails to promptly remedy such defect, Government may do so on behalf of Contractor and without limiting or nullifying the obligations of Contractor under this Service Contract or Government's other rights under this Service Contract or applicable Law, Government may deduct the costs thereof from any amount due or to become due to Contractor and immediately recover any excess costs from Contractor. Notwithstanding anything in this Service Contract to the contrary, any portion of the Design/Build Work, Materials and Equipment, or the Site that is repaired or replaced by Contractor (or repaired or replaced in accordance with Contractor's guidelines) within the Warranty Period shall be warranted by Contractor for a period ending one year from the date of completion of such repair or replacement. With respect to any item repaired or replaced, if it is again later repaired or replaced, the Warranty Period shall be further extended for a period of one year from the date of such repair or replacement, but the Warranty Period for such repaired or replaced item shall not be extended for a period longer than one year from the end of the initial 12-month Warranty Period. Contractor shall be responsible for enforcing the warranties of all Subcontractors (including Vendors of Materials and Equipment) during the Warranty Period.

(j) Warranties and Guarantees from Subcontractors. All guarantees and warranties from Vendors and Subcontractors shall be issued in the name of the Government and be enforced by Contractor at Contractor's sole cost and expense. To the extent not issued in the name of the Government, Contractor hereby assigns to the Government any and all rights under any warranties it may receive or be entitled to from Subcontractors (including Vendors of any Materials and Equipment) to the extent such warranties extend beyond the period of Contractor's repair and replacement obligations hereunder. Contractor shall execute such additional assignment documents as the Government Engineer and the Owner's Representative shall reasonably request to evidence the assignment to Government of all such warranties regardless of when such warranty arises.

(k) Damaged Work. The Contractor shall be held responsible for damages to the Design/Build Work and property of Government and other Separate Contractors caused by Contractor's Design/Build Work or workers, or the Design/Build Work or workers of Subcontractors or Vendors.

(l) Liens. Contractor shall keep the Design/Build Work and all Materials and Equipment free and clear of all liens and charges arising out of the Design/Build Work, including materialmen's, laborers' and mechanics' liens, and Contractor shall defend Government against all claims and

suits by reason thereof and indemnify and save Government harmless from all resulting loss and cost and expense, including attorneys' fees. Contractor shall give Government prompt written notice of actual and prospective claims of any such liens or charges known to Contractor, and of the steps Contractor intends to take to protect Government. Government shall have the right to retain so much of the monies due under the Service Contract as Government deems necessary for its protection until such time as any such claims have been settled or paid and all related suits, liens, and charges properly released.

29. **PROPRIETARY INFORMATION**

(a) **Confidentiality.** Recognizing the relationship of trust and confidence established between Contractor and Government by this Service Contract, the Parties agree to treat and maintain as confidential property and not to use or disclose to others during or subsequent to the performance of the Design/Build Work (except as is necessary to perform the Design/Build Work and then only on a confidential basis satisfactory to the Parties) any information (including any technical information, experience or data) regarding the plans, programs, plants, processes, products, costs, equipment or operations which may come within the knowledge of, or which may be developed by, Contractor, its Subcontractors or their respective Employees in the performance of or in connection with the Design/Build Work, without in each instance securing the prior written approval of Government. Such information shall include, but not be limited to, information regarding processes to design, build or operate the Project as well as any and all information (including any technical information, experience or data) regarding Government's and/or the Government's technology, products, projects, business, plans, programs, plants, processes, equipment, costs and operations, including any similar information of third parties, including the Government's, that Government has received or may receive ("Information"). The Parties shall not disclose such Information to third parties nor permit any Subcontractors or Vendors to disclose such Information to third parties, nor use or permit Subcontractors or Vendors to use any Information, without in each instance securing the prior written consent of Government. All engineering documents, drawings, tracings, specifications, calculations, data, notes, memoranda, records, tapes, print-outs and other documents (including, but not limited to, all drafts, copies and excerpts thereof) embodying or referring to information or supplied to Contractor by Government ("Documents") shall be the property of Government and shall be subject to this Service Contract. Government, and Contractor with respect to Documents already in its possession, shall use their best efforts to mark as "Confidential" all Documents containing Information; nevertheless, the failure to so mark any Documents shall not prejudice Government's rights hereunder. Documents shall be delivered to Government or destroyed at Government's request. Nothing herein, however, shall prevent Contractor from disclosing to others or using in any manner Government Information which Contractor can show:

- (1) has been published and has become a part of the public domain other than by acts or omissions of Contractor, Subcontractors or Vendors or their respective Employees;
- (2) has been lawfully furnished or made known to Contractor by third parties (other than those acting directly or indirectly for or on behalf of Government, the Government and its political subdivisions) without restriction on Contractor as to its disclosure or use; or

- (3) was in Contractor's possession on the date of this Service Contract and was not acquired by Contractor or its Employees directly or indirectly from Government, the Government, and/or their respective employees.

(b) Ownership of Documents. It is the express intention of Contractor in entering into this Service Contract with Government that all property rights and the copyright in and to all works created pursuant to this Service Contract or any other agreements relating to the Design/Build Work which are subject to copyright or other industrial property protection under U.S. law, the Berne Convention, or any other applicable Laws regarding author's rights, including but not limited to: (i) all architectural and engineering documents, drawings, tracings, specifications, calculations, data, notes, memoranda, records, tapes, print-outs and other documents embodying or referring to Government Information or supplied to the Contractor by Government; (ii) all original computer programs output, paintings, architecture and engineering plans, blue prints and drawings, advertising copy, sculpture, architecture, buildings, artistic drawings, transparencies, audio, visual or audio/visual tapes, photographs, etc.; and (iii) all derivative works described in the following sentence, created specifically for the Design/Build Work, shall be the exclusive property of the Government, immediately upon their creation. Contractor further warrants that all such original work is considered to be, at the time of creation, a WORK MADE FOR HIRE as defined in Section 101 (1) of the 1976 Copyright Act of the United States, for Government, and all rights thereto shall be the property of the Government under United States Virgin Islands Laws. Contractor agrees that all such original work, wherever created, will be assigned to Government without further compensation on a form provided at the time of completion or at any time when so requested by Government so that the latter may register the copyright in its name. If, by operation of law, any of Contractor, the Subcontractors or their respective Employees is deemed to possess any rights in such items, Contractor hereby assigns such rights as it may have to Government. To the extent that such rights are inalienable under applicable Law, Contractor hereby waives such rights. If such waiver is deemed invalid, Contractor hereby grants Government, the Government and its political subdivisions, the exclusive, perpetual, irrevocable, worldwide and royalty-free right to use, market and modify such items without identifying Contractor or seeking its prior consent. Upon Government's request, Contractor will execute any instrument that is appropriate to give full legal effect to the provisions of this paragraph. Contractor shall require its Employees, Subcontractors, Vendors and their Employees to assign and/or waive all such rights, and/or grant all such rights in the aforesaid terms.

(c) Patents. The Contractor shall defend all suits and claims for infringement of patent rights arising out of the Design/Build Work and the Contract Documents and shall indemnify and save Government and its employees harmless against and from all related penalties, costs and expenses, including royalties, license fees and attorneys' fees. Contractor hereby grants to Government a nonexclusive, royalty-free license under patents now or hereafter owned by Contractor covering any machines, apparatus, processes, articles or products employed or produced in the execution of the Contract Documents.

(d) In addition to the obligations of Contractor as set forth in the immediately preceding paragraph, Contractor agrees that if, as a result of any action of the kind mentioned in the preceding paragraph, Government is enjoined from further using any plant or equipment or system relating to the Project, Contractor will, without further cost to Government, supply such changes in such plant or equipment as may be required to remove the use of said plant or equipment from within the scope of the aforesaid injunction.

30. **DEFAULT AND TERMINATION**

(a) Termination by the Contractor:

1. The Contractor may terminate this Service Agreement if the Design/Build Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor, the Contractor's design consultants, subcontractors or Vendors or their agents or employees or any other persons or entities performing portions of the Design/Build Work under direct or indirect contract with the Contractor, for any of the following reasons:
 - .1 issuance of an order of a court or other public authority having jurisdiction which requires all Design/Build Work to be stopped;
 - .2 an act of government, such as a declaration of national emergency which requires all the Design/Build Work to be stopped;
 - .3 the Government has failed to make payment to the Contractor in accordance with the Design-Build Documents; or
 - .4 the Government has failed to furnish to the Contractor within 30 days of the Contractor's request, reasonable evidence of its ability to pay or perform the Terms of this Service Contract.
2. The Contractor may terminate this Service Agreement if, through no act or fault of the Contractor, Subcontractor, Vendor or their agents or employees or any other persons or entities performing portions of the Design/Build Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Design/Build Work by the Government, constitute in the aggregate more than 50 percent of the total number of days scheduled for completion, or 180 days in any 365-day period, whichever is less.
3. If one of such reasons exist, the Contractor may, upon seven (7) days' written notice to the Government, terminate this Service Agreement and recover from the Government payment for Design/Build Work executed and for proven expenses with respect to Contractor's purchase of or contractual obligation to pay for materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit thereon.
4. If the Design/Build Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor, its Subcontractors or Vendors or their agents or employees or any other persons performing portions of the Design/Build Work under a direct or indirect contract with the Contractor because the Government has persistently failed to fulfill the its obligations under the Contract Documents with respect to matters required for Contractor to progress the Design/Build Work, the Contractor, upon seven (7) additional days' written notice to the Government, terminate this Service Agreement and recover from the Owner as provided above.

(b) Termination by the Government

1. Termination for Cause. Should the Contractor at any time fail to prosecute the Design/Build Work with reasonable promptness and diligence, or fail to make prompt payment to Subcontractors or to Vendors for Materials and Equipment or labor, or fail to supply a sufficient number of skilled workers to meet the Project Schedule or obtain

Materials and Equipment of the proper quality, or become insolvent or be unable to pay its debts as they mature, or make a general assignment for the benefit of creditors, or if a receiver should be appointed for the whole or any substantial part of Contractor's property, or if Contractor should become in any way the subject of a bankruptcy petition, or if Contractor defaults in the performance of any material provision of this Service Contract, Government may, in addition to all other rights and remedies provided by law, terminate this Service Contract for "cause" by giving Contractor at least seven (7) days prior written notice thereof, subject to the rights of the surety. In the event the Contractor shall correct the cause giving rise to the notice of termination within seven (7) days of the date of notice, Government will revoke the Termination for Cause, and this Service Contract shall continue in effect.

2. Completion and Payment. Should this Service Contract be terminated for cause, and subject to the rights of the surety, Government may take possession of the premises and all or any part of the Materials and Equipment delivered or in transit to the Site for permanent incorporation in the Design/Build Work and complete the construction of the Design/Build Work by whatever method and means it may deem expedient. In such an event, Contractor shall not be entitled to any further payments until the Design/Build Work is completed, at which time Contractor shall be paid for the Design/Build Work performed prior to termination and all reasonable costs incurred at Government's request after termination, subject to proper requisition and documentation and to Government's approval as provided elsewhere in this Service Contract. Notwithstanding the foregoing, in no event shall the total payments made to Contractor plus the cost and expense incurred by Government in completing the Design/Build Work exceed the Lump Sum Contract Price. If the cost and expense incurred by Government in completing the Design/Build Work exceeds the difference between the total payments made to Contractor and the Lump Sum Contract Price, Contractor shall pay such excess to Government within thirty (30) days of its demand.
3. Correction by Government. In the event that the Contractor shall fail to prosecute the Design/Build Work in accordance with the Contract Documents, or shall otherwise default thereunder, Government may, without terminating the Service Contract and without prejudice to any other remedy the Contractor might have or any rights the surety may have, cure said default at the expense of the Contractor following the expiration of seven (7) days after written notice thereof has been given to Contractor and the Contractor has not commenced to cure said default to the reasonable satisfaction of the Government-Engineer and the Owner's Representative.
4. Transfer of Title. Government shall obtain all right, title and interest in and to any Materials and Equipment for which Government has made payment to Contractor. Government shall obtain all right, title and interest in and to all drawings, Plans and Specifications and other engineering documents (including portions thereof) for which Government has made payment to Contractor.
5. Contractor shall execute and deliver all such papers and take all such steps, including the legal assignment of its contractual rights, as Government may require for the purpose of fully vesting in it the rights and benefits of Contractor under such contracts, obligations or commitments which Contractor has undertaken or incurred in

connection with the Design/Build Work and which Government elects in writing to assume.

6. Government shall be entitled to defer payment to Contractor to the extent of all bona fide claims it or others may have against Contractor arising out of or in connection with this Service Contract or the Design/Build Work until such claims have been settled. Final payment shall not be due until Contractor has submitted evidence satisfactory to Government that all payrolls, Materials and Equipment bills and other indebtedness connected with the Design/Build Work have been paid.
7. Termination for Convenience. Government may terminate this Service Contract for its convenience at any time for reasons other than stated above, or for no reason, without prejudice to any claims which Government may have against the Contractor, by written notice to Contractor at least seven (7) days prior to the stated termination date. In such an event, Government shall take possession of the premises and all or any part of the Materials and Equipment delivered or in transit to the Site for permanent incorporation in the Design/Build Work and Contractor shall be paid for Design/Build Work performed prior to termination, plus all unpaid valid claims for the cost or consequences of Changes, and reasonable costs incurred at Government's request after termination. In no event shall the total payments made to Contractor exceed the Lump Sum Contract Price, and, prior to Final Payment, the Contractor shall comply with requirements for releases of claims and other documentation as appropriate and provided for under the provisions for Final Payment in Section 24 of this Service Contract.
8. Wrongful Termination. If at any time after a Termination under Section 30 herein it is determined through a judicial or administrative procedure that termination was wrongful, such Termination for Cause shall be deemed to have occurred under the provisions of Section 30(b)(7), and shall be considered by the parties to this Service Contract as a Termination for Convenience.

31. **CONDITION PRECEDENT**

This Service Contract is subject to the enactment of the Authorizing Legislation and to the approval of the Governor of the Virgin Islands. Also, except as authorized by law, this Service Contract is, consistent with the provisions of 33 V.I.C. § 3101, subject to the appropriation and availability of funds.

32. **MISCELLANEOUS PROVISIONS**

(a) Notices. All notices, designations, consents, approvals, and other communications required, permitted or otherwise delivered under this Service Contract shall be in writing and may be sent electronically, faxed, with hard copy sent by overnight delivery or delivered by hand or mailed by first class registered or certified mail, return receipt requested, postage prepaid, and in any case shall be addressed to the addresses for the parties set forth in the preamble to the Service Contract. Changes in the respective addresses to which such communications may be directed

may be made from time to time by either party by notice to the other party. Any such communications given by mail in accordance with this Section shall be deemed to have been given five business days after the date of mailing; communications given by any other means shall be deemed to have been given when delivered.

(b) Binding Effect. This Service Contract shall apply to, inure to the benefit of and be binding upon the parties hereto and upon their respective successors and permitted assigns. The parties agree that this Service Contract is not intended by either party to give any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation (other than subdivisions of the Government and the Virgin Islands Public Finance Authority) as a third party beneficiary or otherwise under any theory of law.

(c) Assignment. Contractor may not assign this Service Contract without the prior written consent of Government, which may be withheld in Government's sole discretion. Any attempted assignment of this Service Contract in violation of the foregoing shall be deemed void and of no force or effect on Government. The Parties recognize that an assignment for purposes of this provision shall include any change in the beneficial ownership of more than fifty percent (50%) interest in Contractor, including by merger (whether that party is the surviving or non-surviving entity), consolidation, sale, dissolution, or operation of law.

(d) Additional Rights and Remedies. All rights and remedies of Government specified in the Service Contract are not exclusive but rather are in addition to the rights and remedies afforded to Government at law, equity, custom or otherwise.

(e) Exercise of Rights and Remedies. Except as otherwise provided herein, no delay or omission in the exercise of any right, power or remedy accruing to either Party hereto as a result of any breach or default hereunder by the other shall impair any such right, power or remedy, nor shall it be construed, deemed or interpreted as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later; nor shall any waiver of any single breach or default be construed, deemed or interpreted as a waiver of any other breach or default hereunder occurring before or after that waiver.

(f) Survival of Terms. Those provisions of the Service Contract which by their very nature are incapable of being performed or enforced prior to expiration or termination of the Service Contract or which suggest at least partial performance or enforcement following such expiration or termination, shall survive any such expiration or termination of the Service Contract.

(g) Validity. It is the intent of the parties that all of the provisions of this Service Contract be construed so as to be deemed valid under applicable Laws and enforced to the fullest extent possible. Each of the parties acknowledges that:

- (1) This Service Contract has been freely and fully negotiated and represents an arm's-length agreement between the parties having substantially equal bargaining power;
- (2) the rule that an agreement is to be construed against the party drafting it is expressly disavowed and acknowledged to be inapplicable to this Service Contract; and
- (3) The manner in which this Service Contract allocates risks and benefits has been carefully negotiated by the parties, and any attempt by a court to reallocate such risks or benefits would be contrary to the intent of the parties.

If, however, any provision of this Service Contract is contrary to, prohibited by or deemed invalid, illegal or unenforceable under applicable Laws, that provision shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as to most nearly retain the intent of the parties hereto as expressed herein, and if such a modification is not possible, that provision shall be severed from this Service Contract, and in either case the validity, legality and enforceability of the remaining provisions of this Service Contract shall not in any way be affected or impaired thereby. The invalidity of a provision shall not invalidate the remaining provisions of this Service Contract.

(h) Equal Opportunity. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, or national origin, and Contractor agrees to comply with all applicable Laws and ordinances relating thereto, and all orders, rules and regulations issued pursuant thereto. Should any of the applicable Laws, ordinances, orders, and rules or regulations issued pursuant thereto require any particular provision, representation or agreement to be set forth in this Service Contract, the same is incorporated herein by reference to the same extent as if fully rewritten herein.

(i) Set-Off. Any amount owing at any time from Contractor or its Subcontractors to Government or any governmental department or commission may be set-off against amounts due and payable by Government to the Contractor for Design/Build Work supplied under this Service Contract. Contractor agrees to specify in all Subcontracts entered into by the Contractor in furtherance of the Design/Build Work contemplated by this Service Contract that amounts payable by Contractor thereunder shall be subject to set-off by Contractor in behalf of Government for amounts owing by the Subcontractors to Government or any of its affiliated political subdivisions.

(j) Emergencies. If, in the sole judgment of Government, an emergency exists requiring immediate corrective action that Contractor is unable to perform, Government may, without notice to Contractor, perform such corrective action, or cause it to be performed by others.

(k) Independent Contractor. Contractor shall perform the Design/Build Work hereunder as an independent contractor, and nothing contained in the Service Contract or other Contract Documents or otherwise shall be deemed to create any other relationship, including employment, partnership, agency or joint venture, between Contractor and Government. Contractor acknowledges that Design/Build Work performed is solely within its control, and the provisions of the Contract Documents shall not be construed as authorizing Government to exercise any control or direction over the Employees or agents of Contractor in connection with this Service Contract. Neither party to this Service Contract shall have any authority to employ any person as agent or employee for or on behalf of the other, or to bind, or attempt to bind, the other to any obligation with any third party. Persons furnished by Contractor under this Service Contract shall not be entitled to any benefits that Government provides to its own employees. In the event Government is adjudicated to be a partner, joint venturer, co-principal or co-employer of Contractor, Contractor shall indemnify and hold harmless Government from and against all claims, loss, liability, damages or expense (including all costs, expenses and reasonable attorneys' fees) arising therefrom.

(l) Licensure. The Contractor covenants that it has obtained and will maintain all applicable licenses or permits, temporary or otherwise, as required under Virgin Islands and federal law and

regulations to perform under this Service Contract and that it shall timely renew and pay all fees and taxes associated with such licenses or permits.

(m) Debarment Certification. By execution of this contract, the Contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its Subcontracts hereunder and shall furnish its Subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT." In the event the Contractor or Subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or Subcontractor agrees that it shall not be entitled to payment for any Design/Build Work performed under this Service Contract or Subcontract and that the Contractor or Subcontractor shall promptly reimburse the Government for any progress payments heretofore made. If, during the term of this Service Contract, the Contractor shall become ineligible to receive contract awards using federal funds, this Service Contract shall be terminated forthwith for cause and the Contractor shall not be entitled to payment for any Design/Build Work performed under this Service Contract or Subcontract after the effective date of such ineligibility.

(n) False Claims. Contractor warrants that it shall not, with respect to this Service Contract, make or present any claim upon or against the Government, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

(o) Other Contractual Commitments. Contractor represents, assures, and agrees that it has not entered into, and that it shall not enter into, any other contractual commitment, contract, or relationship that will restrict or impair Contractor's performance of its contractual obligations under this Service Contract.

(p) Covenant against Contingent Fees.

(1) Contractor warrants that no person or agency has been employed or retained to solicit or obtain this Service Contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this Service Contract without liability or, in its discretion, to deduct from the Lump Sum Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.

(2) Definitions

"Bona fide agency," as used in this Section, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this Section, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government

contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this Section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this Section, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(r) Non-solicitation of Government Employees. From the date of this Service Contract until one year after the expiration or termination of this Service Contract, Contractor shall not, either directly or indirectly, on behalf of itself or any other individual, corporation, partnership or other entity, employ, solicit for employment or otherwise assist in the solicitation or employment, of any employee of the Government.

(s) Kickbacks Prohibited.

(1) Definitions.

"Kickback," as used in this Section, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided by a representative of the Government, directly or indirectly, to Contractor, Contractor's employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with this Contract or in connection with a Subcontract relating to this Contract.

"Person," as used in this Section, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Contractor employee," as used in this Section, means any officer, partner, employee, or agent of the Contractor.

"Subcontract," as used in this Section, means a contract or contractual action entered into by Contractor or a Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind with respect to this Service Contract.

"Subcontractor," as used in this Section, (1) means any person, other than Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under this Service Contract or a Subcontract entered into in connection with this Contract, and (2) includes any person who offers to furnish or furnishes general supplies to Contractor.

"Subcontractor employee," as used in this Section, means any officer, partner, employee, or agent of a Subcontractor.

(2) No person shall:

(i) Provide or attempt to provide or offer to provide any kickback;

- (ii) Solicit, accept, or attempt to accept any kickback; or
- (iii) Include, directly or indirectly, the amount of any kickback in the price charged by Contractor under this Service Contract or in the price charged by a Subcontractor to Contractor under a Subcontract entered into in connection with this Contract.

(3) Contractor shall have in place, and follow, reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this Section in its own operations and direct business relationships. When Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this Section may have occurred, Contractor shall promptly report in writing the possible violation. Such reports shall be made to the DPP Commissioner and to the Attorney General of the Virgin Islands. Contractor shall cooperate fully with any Virgin Islands or Federal agency investigating a possible violation described in paragraph (b) of this Section. The Government may (i) offset the amount of the kickback against any monies owed by the Government under this Contract and/or (ii) direct that Contractor withhold from sums owed a Subcontractor the amount of the kickback. The Government may order that monies withheld from sums owed by Contractor to a Subcontractor be paid over to the Government. In all cases, Contractor shall notify the Government when such monies are withheld. Contractor agrees to incorporate this Section in all Subcontracts under this Contract.

(t) Representation by Counsel. The Government and Contractor acknowledge that they have had the opportunity to consult with legal counsel and did consult with legal counsel with respect to the terms and provisions of this Service Contract prior to execution of this Service Contract. The Government and Contractor further acknowledge that the terms of this Service Contract are the result of negotiations between the Government and Contractor and that the terms of this Service Contract shall not be construed in favor of, or against, either party by reason of the extent to which the Government or Contractor, or their respective counsel, participated in its drafting.

(u) Headings not Controlling. Section headings in this Service Contract are for convenience only and shall have no binding force or effect and shall not be considered in the interpretation of the Service Contract.

(v) Severability. In the event that any provision of this Service Contract shall be held to be invalid, the validity of the remaining provisions of the Agreement shall not in any way be affected thereby.

(w) Execution of Contract in Counterpart: Facsimile and Electronic Copies and Signatures. A facsimile or electronic copy of this Service Contract or a facsimile or electronic copy of a signature to the Service Contract shall have the same legal and binding effect as an original. This Service Contract may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(x) Other Provisions. The Appendices attached to this Service Contract and all schedules and exhibits attached to said Appendices are incorporated into and made a part of this Service Contract. In the event of a conflict between the general provisions of this Service Contract and any other document constituting a part of this Service Contract, the conflict(s) shall be resolved by the

Contractor adhering to the more stringent requirements contained in the conflicting documents as determined by the Government Engineer and Owner's Representative in their reasonable discretion.

(y) Certification of Employment

Contractor certifies that pursuant to 31 V.I.C. 245, Contractor shall employ at least two (2) individuals from the Welfare to Work Program administered by the Labor and Human Services Departments.

APPENDIX A SCOPE OF WORK

The Contractor agrees to perform as part of the Design/Build Work and pursuant to the terms, provisions, and requirements of the Service Contract, the following services as set forth herein and in Attachment 1 to this Appendix A entitled "Owner's Program Description, Project Approach, Milestone Dates and Construction Activities" hereto and any other attachments as may be required with respect to the Project:

1. Design Services

The Contractor shall provide the following Design Services with respect to the Project (Said provisions listed below also referred to as the "Design Requirements"):

- (a) Necessary conferences with Government to obtain information as to requirements, and, if necessary, conduct inspections and the taking of any measurements required to determine existing conditions and service connections.
- (b) Preparation of layout sketches and the investigation of alternate layouts and types of construction.
- (c) Preparation of preliminary plans and preliminary specifications for the Site development Design/Build Work and facilities required for the Project adequate for quantity take-off estimates and consisting of:
 - (1) Civil - Site layout and grading plans sufficient to denote the extent, types and costs of construction of all Site facilities, including fences, roadways, parking lots, drainage systems, sanitary sewers, utility systems and other pertinent and related facilities.
 - (2) Architectural and Structural - floor plans and elevations sufficient to denote the type of construction, typical details and architectural appearance.
 - (3) Electrical - drawings and calculations.
 - (4) Mechanical - size, location, and typical arrangement of major items of mechanical equipment for heating, ventilating, air conditioning, plumbing and fire protection for building services or production process.
 - (5) If required by the Government Engineer, the Contractor shall submit to Government a preliminary estimate of Construction Cost, which shall represent the Contractor's best judgment as a design professional familiar with the construction industry.

- (d) On the basis of the above services as completed, Government will indicate such changes in the layout, type of construction, building areas and other details as may be deemed necessary. The Contractor will then make such revisions in the preliminary plans, preliminary specifications and cost estimates as may be required, which, after written approval by Government, shall be the basis for preparation of detailed construction drawings and construction specifications. In no event shall the Contractor proceed with the preparation of detailed construction drawings and construction specifications without such prior authorization in writing from Government.
- (e) Preparation of detailed construction drawings (including large scale and full-sized details, where required) and construction specifications, based on the detailed Plans and Specifications, and any adjustments authorized by Government in the Project requirements, Contractor shall prepare, for approval by Government, all working drawing, Plans and Specification for the Design/Build Work, setting forth the requirements for construction of the Design/Build Work in detail sufficient to enable trade contractors and suppliers to bid their respective portions of the Design/Build Work and to enable workmen of ordinary skill to construct the Design/Build Work. Government agrees that it will not withhold its approval except for just and reasonable cause with respect to the approval of the final Plans and Specifications, including, but not limited to, the following, where applicable:
- (1) Grading and other civil Site Work.
 - (2) Architectural and structural.
 - (3) Site and building electrical - power, lighting, control, communication raceway, and other electrical systems including, but not limited to, electrical supply lines from utility owned transformer and basic building services and, when applicable, occupancy supply lines including power panels and/or busway to agreed designated terminal points but exclusive of detailed conduit and wiring connections to occupancy equipment. Data and telephone cabling to be designed and installed by Government. The Contractor shall design raceway system and termination locations only and shall coordinate and design the electrical power requirements for data, communications, and telephone systems and equipment.
 - (4) Site and building mechanicals, including heating, ventilating, and air conditioning; plumbing; and fire protection, including sprinklers. This item shall include but shall not necessarily be limited to: piping mains for steam, water, gas and air and the like as required for site and basic building services and, when applicable, process or occupancy piping to agreed designated terminal points, but exclusive of detailed piping connections to the occupancy equipment.

- (5) This phase of the design services to be performed by Contractor under this Service Contract shall include the documentation of all changes in the Plans and Specifications made during the course of the Design/Build Work, and provision of a complete set of record drawings at the conclusion of the Design/Build Work.
- (f) The Contractor will furnish to Government at the cost of printing plus its Fee as defined and computed in Appendix B, such number of preliminary plans, specifications and cost estimates for Government's review as Government shall require, and such detailed construction drawings, and construction specifications as Government shall require for review.
- (g) The Contractor shall provide to Government two bound copies of all catalogs, manufacturer's data and operating and maintenance instructions for site and building mechanical and electrical systems.
- (h) If and when directed by Government in writing, the Contractor shall file any information or documents necessary for the purpose of securing approval from the appropriate federal, state or commonwealth, territorial, municipal or any other authorities, and Government's designated insurance carrier, and the Contractor shall provide to Government whatever assistance is necessary in the effort to secure said approvals, but any fees demanded by said authorities for such filing and/or approvals shall be paid by Government. Contractor shall advise Government of any and all approvals required in connection with the execution of the Design/Build Work.
- (i) The Contractor shall provide Government with submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with the information given and the design concept expressed in the Service Contract. The Contractor's action shall be taken with such reasonable promptness as to cause no delay in the Design/Build Work or in the construction of Government or of Separate Contractors, while allowing sufficient time to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installations or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. Government's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Contractor, of construction means, methods, techniques, sequences or procedures. The approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of Materials and Equipment or systems is required by the Service Contract, the Contractor shall be entitled to rely upon such certification to establish that the Materials and Equipment or systems will meet the performance criteria required by the Service Contract.



- (j) The Contractor shall provide to Government two certified surveys of the building site, giving the grades and lines of streets, pavements, and adjoining properties, the rights, restrictions, easements, boundaries and contours, prior to the execution of the Design/Build Work, and upon completion of the Project.
- (k) The Contractor shall perform soil borings and other tests as may be required for the performance of the Design/Build Work, and shall remain liable to Government for the accuracy of such tests.
- (l) The Contractor shall visit the Site to inspect the existing conditions represented in the information provided by Government. Contractor shall advise Government of any observed discrepancies between the information furnished by Government and the observed existing conditions. It is understood and agreed that Contractor shall be responsible for existing Site conditions.

2. **Construction Services** – In addition to the Construction Activities included in Attachment “1” to this Appendix “A” the Contractor shall perform or provide the following services:

(a) **Construction Plan.**

The Contractor shall develop a construction plan that describes all work activity for the Project construction (Said construction plan hereinafter referred to as the “Construction Plan”). The draft plan shall be submitted to the Government not later than Ten (10) Business Days after the execution of this Service Agreement by the Governor.. The Government will review and provide comments to the Contractor within Ten (10) Business Days of receipt of the Construction Plan. The final plan shall be submitted to the Government not later than ten (10) Business Days of receiving comments from the Government. The Construction Plan shall include a schedule for the construction work activities and critical path activities for each major construction milestone. The Construction Plan shall identify the laydown and storage areas for materials and equipment. The Construction Plan shall include the following technical plans that address the requirements set forth in the following sections:

(1) **Safety Plan**

The Contractor shall develop and implement a construction safety plan in accordance with the Service Contract that complies with the requirement all applicable federal and Virgin Islands Laws and Regulations, including any building and permitting requirements. The safety plan shall include the following items:

- (i) Purpose, including safety goals, standards, and guidelines;
- (ii) Designation of the safety coordinator and their responsibilities;

- (iii) Description of safety programs;
- (iv) Security measures, including access to the Site by staff and visitors;
- (v) Preparation of a Health and Safety Manual and intended distribution;
- (vi) Personal protective equipment provided to staff;
- (vii) Safety inspection program;
- (viii) Hazard communications program, including information on chemical inventories, material safety data sheets, employee training and hazardous material labeling;
- (ix) Training programs; and
- (x) Reporting of accidents.

(2) Environmental Controls Plan

The Contractor shall implement all necessary and required environmental controls in accordance with Law and the Contract Services. The environmental controls measures shall be described in the Contractor's Environmental Controls Plan, which shall be prepared as part of the Construction Plan.

The Environmental Controls Plan shall, at minimum, address the following responsibilities of the Contractor:

- (i) Erosion and sedimentation - The Contractor shall provide all materials and equipment for erosion and sediment control of all excavation work and stockpiling of materials.
- (ii) Dust, Noise and Light Control - The Contractor shall be responsible for furnishing all labor, materials and equipment for dust, noise and light control. Approved methods of dust stabilization consist of water sprays or other similar methods. The use of petroleum products for this purpose is prohibited. Paved streets adjacent to work areas shall be swept daily as necessary to remove mud, dirt or rock originating from the work area. The Contractor shall conduct excavation, construction, transportation and delivery activities in accordance with Law. Noise attenuating equipment shall be implemented on all portable engine-driven equipment.

(3) Public Notification Plan

The Contractor shall prepare a Public Notification Plan to inform the community that may be impacted by the project, particularly the residents and businesses located in the vicinity of the Site, of the status of construction work. The plan shall provide a schedule for issuing public notices and conducting public meetings as well as measures that are planned to notify specific residents and businesses that may be affected by the work. The plan shall identify the Contractor's designated public relations person and their contact information, the person who will be responsible for these notifications and who will respond to inquiries from the public.

(b) Geotechnical Work.

(i) The Contractor shall conduct subsurface investigations as necessary to determine design requirements for construction, including, but not limited to, dewater and foundation requirements. The Contractor shall employ a qualified firm to perform the subsurface investigations. The Contractor shall employ a professional engineer, licensed in the Territory to plan, oversee, and evaluate the results of all additional subsurface investigations and to determine requirements for the design of the Project, including under seismic conditions, of foundations, superstructures, and dewatering systems with regard to existing soil conditions and to provide recommendations for construction requirements as to protecting the proposed work and existing structures and utilities.

(ii) The Contractor shall have the full responsibility, for verifying the presence, and location of subsurface structures at the Site, including abandoned piping and other structures; pipes; process and wastewater drainage; and utilities. The Contractor shall assume full responsibility for the protection of all buildings, structures and utilities, public or private, located on the Site or that may be impacted by the construction work, including poles, signs, services to buildings, utilities in the street, water pipes, hydrants, sewers, drains, and electric and telephone cables. The Contractor shall prepare a plan for the relocation of all underground or overhead utilities, if required. The plan shall identify the utility owner and the appropriate procedures for relocating the utilities. The Contractor shall notify all utility owners in writing at least 72 hours (excluding Saturdays, Sundays and legal holidays) before excavating.

(c) Demolition of the existing Paul E. Joseph Stadium, Terrance Martin Little League Field and Christmas Carnival/Festival Village as needed to perform the Construction Activities required by this Contract.

(d) Site Work

(i) Clearing and Grubbing

The Contractor shall be responsible for all clearing and grubbing necessary for the Design/Build Work in accordance with the Contract Standards, including the removal and disposal of all rocks, stumps, roots, abandoned construction material, subsurface structures and pipes, and unsuitable soil materials from the Site.

(ii) Excavation, Backfilling and Dewatering

The Contractor shall perform all excavation and backfill activities and furnish all supervision, labor, tools, materials and equipment in connection therewith. The Contractor shall maintain a stable excavation; all disturbance to the Site shall be conducted in dry conditions and the Contractor shall prevent the foundation area of existing and new structures from becoming destabilized due to flow water into the excavation. The Contractor shall be responsible for assuring all soils, including fill, are suitable for sustaining design loads, in accordance with the requirements of established codes. The Contractor shall be responsible for all temporary shoring required to support work areas and adjacent areas during construction and shall provide all work and equipment necessary to prevent settlement to surrounding areas in accordance with Law.

The Contractor shall be responsible for obtaining all fill, backfill, and topsoil material as needed to complete the Project construction. All materials shall have been tested for conformance with the design and approved by a licensed professional engineer specializing in soil mechanics. Backfill material shall not be placed against concrete walls until the walls have obtained sufficient strength to safely withstand the pressure of the fill material and water retaining structures have been leak tested as required in this Appendix.

The Contractor shall be responsible for the disposal of any excess excavated material. Excavated contaminated materials shall have been separated from the rest of the excavated material and removed, tested and disposed of by the Contractor in accordance with Law. All material removed from the Site shall become the property of the Contractor and shall be disposed of in accordance with Law.

The Contractor shall be responsible for supplying all work and equipment necessary for dewatering work areas during construction. Water removed from excavations shall be disposed of

in a manner to prevent flooding, erosion, property damage, and in accordance with any permits or approvals.

(iii) Grading

The Contractor shall prepare the Site to be free of non-draining depressions or abrupt elevation changes and to be smooth to allow for topsoil placement. Hollows, depressions, and gullies in the subgrade, unless called for in the Contractor's approved plans, shall be filled with acceptable material free from stones, cinders, rubbish, and other unsuitable material. All surplus material shall be disposed of by the Contractor in accordance with Law. Subgrades shall be established in a manner that does not result in drainage problems or burying curbs, pavement, access holes, and other structures.

(iv) Shoring

The Contractor shall provide all temporary shoring required to support work areas and adjacent areas during construction and shall provide all labor, material and equipment necessary to prevent settlement to surrounding areas. The temporary shoring shall in accordance with Law.

The Contractor shall control parking of the construction vehicles to prevent interference with public traffic or parking, access by emergency vehicles, or Government operations. The Contractor shall monitor parking of construction personnel's private vehicles, maintain free vehicular access to and through parking area and prohibit parking on or adjacent to access roads or in non-designated areas.

(e) Temporary Utilities

The Contractor shall be responsible for providing all temporary and construction facilities required by the Contractor and its subcontractors. All temporary and construction facilities shall meet local codes and requirements for such installations. The Contractor shall be responsible for supplying all temporary utilities, including electricity, potable water and sanitary facilities during the construction. The Contractor shall also bear the cost of paying for all utilities and utility usage required for the construction. Sanitary facilities shall only be those relying on holding tanks and such holding tanks shall be regularly serviced. The Contractor shall not use the permanent utility equipment for construction purposes.

(3) Transportation and Handling of Materials and Equipment

The Contractor shall make all arrangements for transportation, delivery and handling of equipment and materials required for the Design/Build Work. The Contractor shall arrange deliveries of all such equipment and materials in accordance with its construction schedules and shall allow adequate time for inspections prior to installation. The Contractor may arrange for shipments of equipment and materials to the Site, and shall coordinate deliveries so as not to disturb any residents or businesses that may be impacted by vehicular traffic or noise.

(4) Materials and Equipment Storage

The Contractor shall locate all construction laydown, staging, storage and stockpile areas in areas secured by the Contractor and identified in the Construction Plan. The Contractor shall make all arrangements and provisions for the secure storage of materials and equipment and to protect all materials and equipment from damage. The Contractor shall be fully responsible for loss or damage to stored materials and equipment. All materials and equipment shall be located so as not to interfere with Project construction, or with any Government operations. The Contractor's storage yard and warehouse located at 13F and G Estate Bethlehem, St. Croix, are specifically included as acceptable laydown, off site storage and stockpile areas subject to the requirements of this Section (e) (4).

(f) Testing

The Contractor shall demonstrate that all Site field tests and shop tests and have been performed to achieve Final Completion. Each structure, pipe and individual piece of equipment and its related control system shall be tested on-site in accordance with the Design Requirements and good engineering and construction practice to demonstrate that the equipment and its appurtenances function as designed.

- (g) Construction of the Paul E. Joseph Stadium, Terrance Martin Little League Field and Cruzan Christmas Festival/Carnival Village in compliance with the approved plans and specifications.
- (h) The following section sets forth requirements for testing water containing concrete structures for watertightness and leakage.

(1) Watertightness Testing

- (i) All water bearing concrete structures shall be tested for watertightness. Testing shall conform to the requirements of ACI 350.1-01/350.1R-01: Tightness Testing of Reinforced Engineering Concrete Structures and Commentary. Testing shall be performed prior to backfilling. Testing shall not be performed before 14 days after all portions of structure walls have been completed. The test shall consist of filling the structure with water to the maximum operating water surface. The Contractor shall be responsible for proper disposal of all water used for watertightness testing.
- (ii) The structure shall remain filled for an initial 48-hour period to allow for absorption. Following this initial period, add make up water to fill the tank to the maximum level specified above. Following the period recommended by ACI 350.1, measure the drop in liquid level following the next 24-hour period to determine the volume of liquid loss. An allowance for loss due to evaporation over the 24-hour test period, calculated by an approved method, shall be subtracted from the measured liquid loss. The net amount shall not exceed 0.075 (750 gallon/l mg) percent per day of the tank capacity or the volume to which the tank was filled. No visible running leaks or water puddles that show on the exterior surface of the structure will be permitted.
- (iii) A water-bearing concrete structure not passing the leak test shall be drained and repaired from the inside or outside as recommended by the Contractor's structural engineer. Any cracks, voids, honeycombs, or cold joints causing leaks or dampness shall be pressure grouted using a polyurethane material, approved for potable water service, until cracks or voids have been completely sealed. Once repaired, the basin shall be re-tested. The repair and re-test cycle shall continue until the basin passes the watertightness test.
- (iv) A structure shall not be backfilled until it has successfully passed the watertightness test.

(i) Field Office.

The Contractor shall provide and maintain separate field office space, on site, near or within the Contractor field office, for the Government Engineer. The Government Engineer field office space shall have an inside floor area of not less than 100 square feet or other area as approved by Government. The Government field office space shall be completely sealed from the weather, and shall be equipped with adequate lighting, Government proprietary door lock, electricity, heat, hot and cold running water, air conditioning, wastewater disposal facilities, telephone service, and ventilation. Adequate office equipment and furnishings shall also be provided, including facsimile, photocopying, computing, and telephone equipment, desks, chairs, locking filing cabinets, desktop computer with internet access, printer, a refrigerator and water cooler. A parking space for exclusive use of the Government Engineer shall be provided. The field office shall be available for occupancy within 30 days of receipt of the Notice to Proceed. The Contractor shall be responsible for payment of all installation and monthly service charges for electricity, heating fuel, maintenance service, and telephone service, including long distance calls pertaining to the Government Engineer field office. The Field Office shall be a mobile office trailer meeting the requirements listed elsewhere in the Contract Documents..

(j) Government Oversight during Construction

(1) Site Access.

In accordance with the terms and conditions of the Service Contract, the Government and the Government Engineer shall have access to the Site during normal working hours to observe all Design/Build Work and shall arrange with the Construction Manager for access at other times. Government and the Government Engineer shall be permitted to take on-site construction progress photographs. The Government and the Government Engineer shall be permitted to participate in any formal inspections and witness all tests conducted at the Site or at the equipment manufacturer's test facility to verify compliance with the Service Contract. The Contractor shall be responsible for all expenses related to Government and the Government Engineer witnessing of tests that are not conducted in the Territory. Shop tests of equipment shall be verified through certified testing documents submitted to Government and the Government Engineer no later than 15 days after such testing is completed. The Contractor shall provide a working office space for the Government Engineer throughout the Project as set forth in this Appendix.

(2) Construction Progress Meetings.

The Contractor shall schedule progress meetings with the Government on a monthly basis, at a minimum, from the Commencement Date through Final Completion to discuss construction progress. Meetings shall be held at mutually agreed upon times and locations. The progress meetings shall be held at the Site

or at another convenient site acceptable to the Government. The Contractor's Project Manager, and other Contractor representatives familiar with the matters being reviewed, shall attend the progress meetings. The Contractor shall prepare each month, in advance of each progress meeting, an updated project schedule and report and a summary of the status of the ongoing permitting submittals, design submittals, construction submittals, construction progress, Design/Build Work issues and the construction progress of the Design/Build Work. The Contractor shall distribute copies of the meeting agenda, information to be discussed and the documented minutes from each prior progress meeting at least three Business Days before the scheduled meeting.

(k) Submittals

- (i) The Contractor shall submit to the Government all construction-related documents including, but not limited to, construction permits, shop test results, factory test results, shop drawings, samples, and other relevant test results, inspection reports and other data to document conformance with the Design Requirements. The Contractor shall submit four copies of each construction related submittal to the Government in paper and electronic (1 copy) format if available. The Government and the Government Engineer shall provide written comments to the Contractor as to the reason the submittal does not comply with the Design Requirements no later than Ten (10) Working Days after receipt of the construction submittal. If the Contractor disagrees with the results of the Government's and the Government Engineer's review, then, not later than five business days after receipt of the Government's comments, the Contractor shall notify the Government and the Government Engineer of such disagreement and within seven business days thereafter, the Government, the Government Engineer and the Contractor shall meet and/or have a conference call to mutually resolve any disagreement.
- (ii) At the completion of construction, the Contractor shall prepare and submit to the Government one complete set of Record (As-built) Drawings. The Record Drawings shall be submitted in paper and/or electronic format. The Record Drawings shall be required to achieve Final Completion.

ATTACHMENT 1

to

Appendix A of the Service Contract for the Design-Build Contract
for Design of Paul E. Joseph Stadium and Sports Complex

Owner's Program Description, Project Approach, Milestone Dates and Construction Activities

The Scope of the Design/Build Work required under the Service Contract is based upon the following Owner's Program Description, Project Approach, Milestone Dates and Construction activities, all of which are to be refined and fleshed out pursuant to the design build process described in the Service Contract for the design and construction of the Project, which such program is to be effected in accordance with the Milestone Dates and Construction Activities for the Design/Build Work set forth below:

OWNER'S PROGRAM DESCRIPTION

The Paul E. Joseph Stadium and Sports Complex development is the design and construction of a AAA dimensioned baseball field and multi-use stadium, a Little League baseball field, and a permanent St. Croix Festival/Carnival Village all to be located within the boundaries of Parcels 40D La Grange and No. 3 Lagoon Street. In general the development will include a 3,500-seat baseball stadium with multi-use capabilities to include performing concerts; a 750-seat little league field, associated lighting, press box and other amenities as required; an Entry Plaza with ticket booths, restrooms, concession buildings, open pavilion and energy efficient lighting, a locker and maintenance building with locker room; and a permanent St. Croix Christmas Carnival village (formerly the Festival village) with 10 permanent concession/vending booths and 10 permanent slab foundations with power/water/sewer utility hookups for temporary vendor installed vending booths.

The Guaranteed Maximum Price for design and construction under the terms of the Service Contract is \$20,000,000. A comprehensive initial program budget is attached to the Service Contract as Attachment "1 - Project Budget" to Appendix "B" of the Service Contract.

Paul E. Joseph Stadium

The centerpiece of the Paul E. Joseph Stadium and Sports Complex is the multi-use stadium and the AAA dimensioned baseball field. The stadium will have a capacity of 3,500 seats – 2,500 fixed seats, 500 seat capacity grass bermed area (250 of which shall be shared with Terrence Martin Little League Field), 250 seat capacity elevated party deck seating, and a 250 seat capacity concourse plaza. Amenities for the stadium will include an appropriate press box, audio/visual booths, clubhouses, umpires dressing rooms, a 5,000 sf entry plaza, and various

other baseball stadium facilities as described in detail in the Project Budget. The existing grandstands and seating infrastructure will be demolished, however, the existing field layout will remain and the field lighting will be reused for the new stadium. Also incorporated into the new design will be the existing concrete wall that surrounds the playing field.

Foundations will be designed in accordance with a soils report that will be obtained at the expense of the Contractor from a licensed soils engineering firm. Design and construction of the stadium's structural exterior, demising and load bearing walls will be cast in place concrete or structural steel with interior non-load bearing walls of metal stud and drywall construction. The roof will be cast in place concrete or steel roofing as determined during the design phase. Roof, windows, doors and interior finishes will be commercial grade, and will be engineered and certified to meet International Building Code windstorm requirements. The design will incorporate shared elements such as concession areas and bermed area seating that can be jointly used between the little league field and stadium.

Terrence Martin Little League Field

The Terrence Martin Little League Field layout will be adjusted to allow for shared concessions and a sports entry plaza. The Guaranteed Maximum Price includes amount for the demolition of the existing little league seating and associated infrastructure. New structures including player dugouts, stands and concession areas will be constructed according to plans approved by the Government. The new little league seating capacity will be 750 seats comprised of 500 fixed bleacher seats plus the 250 grass bermed seats to be shared with the stadium. The field will be outfitted with new dugouts, bullpens, fencing, batting cages, signage, field equipment and new field lighting. The foundation, structural and finish components will utilize the same construction types as previously described for the stadium.

St. Croix Christmas Carnival Village

The new St. Croix Carnival Village will provide permanent site utilities and infrastructure for the carnival village. Ten (10) permanent 200 square foot vendor booths of concrete construction plus ten (10) 200 square foot concrete slabs with utility hookups for water, power and sewer, in a park like setting are included in the pricing along with associated walkways, site improvements, etc. as detailed in the Project Budget. Electrical service as well as plumbing and other infrastructure to allow for cooking in the permanent and temporary vendor booths will be constructed for ease of use by carnival vendors, and the vendor booths will be spaced and designed to allow expansion and customization by vendors. Permanent public restrooms will be constructed as well.

Site Development

Roads, parking areas, sidewalks, site lighting, playgrounds, fencing, benching, landscapes and

hardscapes will all be incorporated in the design in quantities as shown on the Project Budget. The intent is to create a facility that flows (traffic, walking, running, etc.) and where possible have multiple uses for the various facilities as well as the sharing of facilities. Costs for site development are included in the budgets for the stadium, little league field and carnival village.

General Requirements

Electronic equipment such as the Stadium scoreboard, public address system and lighting controls are included in the Guaranteed Maximum Price. Specifics, quantities and locations will be finalized during the design phase but will, at a minimum, be as shown on the Project Budget.

Sufficient furniture, fixtures and equipment ("FFE") are included as part of the Project Budget to provide a "turnkey" facility, ready for operation by Sports, Parks and Recreation is also included in the Guaranteed Maximum Price. Quantities and locations as well as specifics of FFE will be finalized during the design phase.

PROJECT APPROACH UNDER THE SERVICE CONTRACT

Pre-Construction

During pre-construction personnel of the Contractor will direct the design team and support the Project's pre-construction requirements. The Contractor will coordinate and value engineer the design to meet the Contract price, provide document control, scheduling, and other Design/Build activities. The intent is to eliminate scope gaps through experienced value engineering efforts to assure the best value to the owner.

Design and Permitting – The pre-construction team will oversee the design operation, with timely reviews, appropriate feedback from the Government and the Public, and coordinate the process of permitting and utility approvals.

Subcontractor Selection – GEC will bring previously vetted subcontractors that can perform the work within agreed budgets and the Contract schedule, all to be identified in the initial statement of Attachment D and as may be later added. GEC utilizes Virgin Islands based subcontractors and suppliers to the greatest extent possible based on availability in keeping with company policy exemplified in GEC's motto - "Building the Virgin Islands with Virgin Islanders!!!"

Procurement – Procurement will commence with Government's approval during pre-construction. The goal is to purchase all materials early to secure the best possible pricing and minimize construction delays. GEC has established distributor relationships with hundreds of suppliers, and will use these suppliers and proven GEC procurement processes to purchase materials.

Specific Pre-Construction activities include, but are not limited to, the following:

- Obtain permits and demolish the existing Paul E. Joseph Stadium. Test for hazardous material; if found, present proposal for additional cost and time for abatement based on test results.
- Provide a design/build schedule.
- Create an overall site development plan.
- Meet with all appropriate stakeholders, after consulting with GVI, to gain needed input to create the construction documents.
- Initiate design for the 3,500-seat Paul E. Joseph Baseball Stadium.
- Initiate design of a 750 seat Little League Baseball Facility.
- Verify infrastructure including sewer, potable water, electricity, and communications including fiber-optic, off-site drainage improvements, road and sidewalk has adequate capacity for upgrades or expansion to support the proposed construction.
- Obtain Government approval for final Construction Documents.
- Apply for and obtain permits for construction.
- Liaise with potential facility and sports venue managers.

Design and Demolition – During this phase the Contractor will perform the following or cause the following to be performed:

1.1 Obtain permits for and perform demolition of the existing Paul E. Joseph Stadium and perform Hazardous Material testing. If Hazardous Material is found, present proposal for additional cost and time for abatement based on test results.

1.2 Design a replacement for the Paul E. Joseph baseball stadium according to the Program Budget to contain a minimum of 3,500 seats with the flexibility of seating adjustment from the little league stadium to create seating capacity of 3,500 as described in the Paul E. Joseph Program Budget. The playing field footprint is intended to remain the same as the current Paul E. Joseph baseball stadium. Existing ball field lighting and perimeter concrete will remain and be utilized in the new design. The design shall include, at a minimum, the spaces listed on the Paul E. Joseph Program Budget.

1.3 Design a little league baseball facility with seating capacity of a minimum 750 seats. The design shall include, at a minimum, the spaces listed on the Paul E. Joseph Program Budget. Existing lighting may be relocated and re-used if agreed by all parties during the design phase, if not agreed, it shall be replaced with new lighting as agreed during the design phase.

1.4 Create an overall Site development plan and finalize the schedule of values for the Construction Phase. The Paul E. Joseph Program Budget will be the basis for the schedule of values which will become the basis for payment for the Construction Phase as agreed during the design

1.5 The Parties agree that the current sports venue names as approved by the Legislature shall remain unchanged during and after the development of the new stadium.

MILESTONE DATES

The Parties agree that time is of the essence and that the following milestone dates, listed as days after the effective date of funding for the first Pay Estimate under the Service Contract, are critical to completion of the Project. The notation “(GVI)” after a task refers to a Government milestone and the notation “(GEC)” after a task refers to a Contractor milestone. The term “days” as used in these Milestone Dates refers to calendar days with no exclusion for holidays or weekends.

- 1.5.1** 7 - 10 days – Hold a pre-construction conference with representatives designated by the Department, SPR, the Department of Public Works and the Contractor for the purpose of establishing lines of communication, authority and methods of keeping the general public informed of the progress of the development. Hold a separate meeting with the Department of Planning and Natural Resources for the sole purpose of defining building and planning requirements of the Government. (GVI/GEC)
- 1.5.2** 10 days – Apply for demolition permit for existing Paul E. Joseph Stadium. (GEC)
- 1.5.3** 10 days – Provide Schedule of Values for demolition. (GEC)
- 1.5.4** 15 days – Approve Schedule of Values for demolition. (GVI)
- 1.5.5** 40 days – Issue demolition permits for the existing Paul E. Joseph Stadium. (GVI)
- 1.5.6** 60 days – Submittal of the following Government: (GEC)
 - Master Development Plan for GVI approval
 - Abatement Testing Reports (and Plan if required)
- 1.5.7** 90 days – Submittal of the following reports or results of studies to the Government: (all GEC)
 - Sufficiency of WAPA electrical service to Site
 - Sufficiency of potable water service to Site
 - Sufficiency of communication information system service to Site including, but not limited to, Global Crossing, AT&T or other source of fiber-optic
 - Sufficiency of any other required infrastructure improvements not currently available at the boundary of the properties
 - Soil Testing Report
 - Engineering recommendations based on Soil Testing Report



- Civil Engineering Report

1.5.8 90 days – Coordinate the following:

- Hold an updated meeting with the Department, SPR, the Department of Public Works and any other government agencies that are necessary to receive sign-off of documentation, reports and results from the studies for the sole purpose to discuss proposed outcome from the various reports. (GVI/GEC)
- Issue approval of the Master Development Plan (GVI)
- Issue Design Concept plan for the Stadium, Little League Field and Carnival Village (GEC)

1.5.9 120 days – Complete demolition of the Paul E. Joseph Stadium. (GEC)

1.5.10 120 days – Issue approval of conceptual Design for Stadium, Little League Field and Carnival Village. (GVI)

1.5.11 120 days – Begin full architectural design and construction documents for Construction Phase. (GEC)

1.5.12 120 days – Submit Site and Foundation plans for Construction Phase to DPNR for earth change. (GEC)

1.5.13 150 days – DPNR issues earth change permit for Construction Phase

1.5.14 180 days – Propose final Construction plans and Schedule of Values for Construction Phase. (GEC)

1.5.15 180 days – Provide approval of Schedule of Values for Construction Phase. (GVI)

1.5.16 180 days – DPNR issues earth change permit for Site and Foundation construction. (GVI)

1.5.17 180 days – Earthwork and foundation construction begins.

1.5.18 210 days – Approval of Construction plans and Schedule of Values (GVI)

1.5.19 210 days – Submit Construction plans to DPNR for Building Permit (GEC)

1.5.20 240 days – DPNR issues building permits for Phase I construction. (GVI)

1.5.21 240 days – Construction begins on Phase I. (GEC)

1.5.22 910 days – Complete Construction Phase. (GEC)

1.5.23 970 days – Complete construction demobilization. (GEC)

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CONSTRUCTION ACTIVITIES

Construction of the Project, in accordance with Appendix "A", the approved plans, schedule and Schedule of Values.

At a minimum, the Design/Build Work shall include the following:

Execute appropriate subcontractor construction contracts required to perform all work determined to be constructed under the approved Master Plan and Construction documents.

1.6 Administer Contract requirements as determined while finalizing the design for the Construction.

1.7 Administer modifications to the construction Contract and subcontractor construction contracts as required to perform all work determined to be constructed.

1.8 Administer Applications for Payments to the GVI.

1.9 Conduct Project meetings, as required, to maintain adequate communications among the Government, the Contractor and Subcontractors. Provide minutes of meetings, as required, in association with the Project meetings to create a permanent record of construction.

1.10 Produce all submittals required for Governmental approval prior to construction of or installation of any portion of the Work requiring such approvals.

1.11 Provide all necessary temporary facilities and controls required to perform the Work, including all surveys, layout and staking on Site.

1.12 Perform all required earthwork in preparation for the construction of the amenities to be built as shown on the approved Construction drawings.

1.13 Supply and install all required Site utilities within the property boundaries of the development, as approved in the Master Plan review and approval.

1.14 Provide and install all fencing, perimeter walls and gates within the property boundaries of the development, as approved in the Master Plan review and approval.

1.15 Provide and install all paving, driveways, roadways and other means of access, ingress and egress within the property boundaries of the development, as approved in the Master Plan review and approval.

1.16 Provide and install all required cast in place concrete, as required, within the property boundaries of the development, as approved in the Master Plan and Construction Document review and approval.

1.17 Provide and install all required masonry (concrete block), as required, within the property boundaries of the development, as approved in the Master Plan and Construction Document review and approval.

1.18 Provide and install all required structural steel, miscellaneous metals and metal fabrications, as required, within the property boundaries of the development, as approved in the Master Plan and Construction Document review and approval.

1.19 Provide and install all carpentry, architectural woodwork and plastic fabrications, as required, within the property boundaries of the development, as approved in the Master Plan and Construction Document review and approval.

1.20 Provide and install all cistern construction, waterproofing, insulation, roof panels or roof coating, fireproofing, as required, within the property boundaries of the development, as approved in the Master Plan review.

1.21 Provide and install all doors, windows, hardware and glazing, as required, within the property boundaries of the development, as approved in the Master Plan and Construction Document review and approval.

1.22 Provide and install all plaster, gypsum board assemblies including light gauge metal framing, ceramic tile, acoustical tile, paint and color schedules for approval by the Government, as required, within the property boundaries of the development, as approved in the Master Plan and Construction Document review and approval.

1.23 Provide and install all fire extinguishers, toilet and bath accessories, as required, within the property boundaries of the development, as approved in the Master Plan and Construction Document review and approval.

1.24 Provide and install all specialty equipment, as required, within the property boundaries of the development, as approved in the Master Plan and Construction Document review and approval.

1.25 Provide and install all plumbing, air conditioning and mechanical work, as required, within the property boundaries of the development, as approved in the Master Plan and Construction Document review and approval.

1.26 Provide and install all electrical work, as required, within the property boundaries of the development, as approved in the Master Plan and Construction Document as reviewed and approved by the Engineer.

APPENDIX B
GUARANTEED MAXIMUM CONTRACT PRICE TERMS

1.0 APPLICATION

This appendix defines the total Contract Price to be paid to the Contractor, for the proper performance of the Design/Build Work in accordance with the Contract Documents. The Government and the Contractor agree that "Attachment 1 – Program Budget" shall govern and guide the design and construction process as it pertains to maintaining the "Cost of the Design/Build Work" within the Guaranteed Maximum Price.

2.1 DEFINITION

Government agrees to pay and the Contractor agrees to accept as full payment for performance of the Design/Build Work and completion of the Project, an amount equal to the sum of (a) the "Cost of the Design/Build Work," as defined in Paragraph 2.2; and (b) the "Contractor's Fee," as defined in Paragraph 2.3, except that in no event shall the total amount payable to the Contractor exceed TWENTY MILLION DOLLARS (\$20,000,000.00), plus or minus such adjustments as may be expressly provided for in Section 15 of the General Provisions of the Contract, and such total amount payable, including any adjustments, shall be known as the "Guaranteed Maximum Contract Price."

2.2 COST OF WORK

"Cost of the Design/Build Work" shall mean the actual costs necessary and reasonably incurred by the Contractor for proper performance of the Design/Build Work and completion of the Project, and paid directly by Contractor; at labor, equipment and material rates no higher than the standard paid in the locality of the Project as more fully enumerated in the following sections, except with the prior authorization of Government, and further limited to those "Items of Cost" listed in A. below and reduced by appropriate "Credits to Cost of the Design/Build Work" listed in B. below, and specifically excluding items listed in C. below:

- A. Items of Cost included in Cost of the Design/Build Work under the Guaranteed Maximum Contract Price shall consist of the following:
 - (i) Salaries and wages, including statutory taxes, insurance and contributions, paid to or on behalf of the Contractor's Employees at the Site, or at the Contractor's home office when engaged in the Design/Build Work, for time spent in performance of the Design/Build Work, including design services and in accordance with a salary and wage schedule set forth in Attachment 4 to Appendix B to this Service Contract or as previously approved in writing by the Government Engineer prior to their assignment to the Design/Build Work; For purposes of this subparagraph, vacation pay (or allowances) and any other fringe benefit which is paid in

accordance with the established policy of Contractor shall be construed to be a part of wages.

- (ii) Employee benefits paid applicable to the salaries and wages included in Cost of the Design/Build Work, as required by law, union agreement, or established Contractor personnel practices, including social security, State, Territorial and Federal unemployment insurance taxes, contributions to pension and welfare funds, vacation and holiday pay, and sickness and accident insurance premiums;
- (iii) Materials, equipment, machinery, supplies, fuels and utilities delivered to the Site and/or incorporated or consumed in performing the Design/Build Work, including related transportation;
- (iv) Equipment used to install the work, whether owned by the Contractor or rented from others. As indicated above, in the event equipment owned by the Contractor is utilized for any portion of the work, the cost for that equipment shall not exceed the Contractor's standard published time & materials rate, set forth in Attachment 2 to this Appendix B, which costs when expended are included in the Guaranteed Maximum Price. If independent published local equipment rental rates are lower than the Contractor's published time and materials rates from licensed, bonded and insured equipment companies, the Contractor will include the lower published rate as the cost.
- (v) Rental charges for equipment, exclusive of construction equipment and tools costing less than One hundred dollars (\$100.00) each, used in carrying out the Design/Build Work for the time it is in use on the Design/Build Work, with the further understanding that:
 - (a) No rental is to be paid if equipment is not working because it is inoperable or under repair;
 - (b) Rental rates shall include general maintenance, repairs, spare parts, and appropriate insurance;
 - (c) Rental rates shall be exclusive of fuel and lubricating oil costs, such costs to be included in Cost of the Design/Build Work as fuels and supplies;
 - (d) Each rental rate for Contractor owned or furnished equipment is included as "Attachment 2 to Appendix B – Contractor Equipment Rates" or, if not included on Attachment 2, any additional rates must be approved in advance by the Government.
 - (e) If independent published local equipment rental rates from licensed, bonded and insured equipment companies, for

comparable equipment, are lower than the Contractor's published time and materials rates, the Contractor will utilize such lower published rate as the cost at the request of the Engineer.

- (vi) Payments to Subcontractors, including Architect, Design, Engineering and Consulting firms, including attorneys, engaged in producing or providing the services required by the Service Contract, all as required by Subcontracts entered into pursuant to the provisions of the Service Contract less applicable back charges: provided that:
 - (a) If such subcontracted portions of the Design/Build Work are performed on a cost-plus-a-percentage basis, or a unit price basis, the percentage or unit prices for such Subcontracts shall have been approved by the Government Engineer prior to Contractor entering into a Subcontract for the cost-plus-a-percentage basis or unit price Subcontract. The cost-plus-a-percentage basis or unit prices shall be approved by the Engineer in writing within Ten (10) Working Days after submission of cost-plus-a-percentage or unit prices by the Contractor to the Engineer, such approval not to be unreasonably withheld. If the Engineer does not provide written approval or disapproval with Ten (10) Working Days after submission by the Contractor to the Engineer the cost-plus-a-percentage or unit prices shall be deemed to have been approved by the Engineer with the same effect as if the Engineer had approved them in writing.
 - (b) If such subcontracted portions of the Design/Build Work are performed on a lump-sum basis that exceeds Five percent (5%) of the Guaranteed Maximum Price, the lump-sum prices shall be approved by the Government Engineer in writing within Ten (10) Working Days after submission of pricing and scope of work by the Contractor to the Engineer, such approval not to be unreasonably withheld. If the Engineer does not provide written approval or disapproval with Ten (10) Working Days after submission by the Contractor to the Engineer the lump-sum basis shall be deemed to have been approved by the Engineer with the same effect as if the Engineer had approved them in writing.
- (vii) Travel and living expenses of Contractor Employees as may be directly related to the Design/Build Work and which have the prior written approval of the Government Engineer which shall be provided in writing with Ten (10) Working Days after submission by the Contractor to the Engineer of a request for approval of travel and living expenses. If the Engineer does not provide written approval or disapproval with Ten (10) Working Days after submission by the Contractor to the Engineer the lump-sum basis shall be deemed to have been approved by the Engineer with the same effect as if the Engineer had approved them in writing.

- (viii) Sales and use taxes and similar taxes, excluding those taxes levied or measured on net income, fees and permits necessary to the Design/Build Work and for which the Contractor is liable;
- (ix) Premiums for all bonds and insurance policies, including but not limited to Builder's All Risk Insurance and vehicle liability Insurance, which the Contract Documents require the Contractor to maintain or which are otherwise approved in writing in advance by Government;
- (x) Temporary office and storage facilities including their rental, construction and removal, equipment, furnishings and maintenance;
- (xi) The costs of demolition and debris removal;
- (xii) Office expenses incurred at the Site Office in the performance of the Design/Build Work, such as, but not limited to, telegrams, telephone service, expressage, photocopying and similar items; and;
- (xiii) Costs, including transportation and storage, of materials, furniture, fixtures and equipment incorporated or to be incorporated in the completed construction, including costs for materials and equipment stored off site;
- (xiv) Costs of materials, furniture, fixtures, and equipment described in the preceding subparagraph in excess of those actually installed, but required to be provided or to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall become the property of the Contractor upon satisfactory completion of the work;
- (xv) Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by laborers, which are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value;
- (xvi) Rental charges for temporary utilities, fencing, facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the Project site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof;

- (xvii) Costs of removal of debris from the site, including, without limitation, cost of demolition and disposal of existing facility, not just the stadium;
- (xviii) Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office;
- (xix) Costs of all labor for material handling, material storage, temporary housing and charges associated with computer/electronic management systems and document management systems including WEB enabled systems used on the project, cooling, lights, power, water, sanitary systems, first aid facilities, safety protection, safety equipment, weather production, signage, field communications systems, all items ancillary to the foregoing;
- (xx) Any taxes arising out of the Contractor's Work and for which the Contractor is liable, including, without limitation excise, sales, gross receipts, customs charges and duties and any other use or other taxes imposed by any governmental authority, or which the Contractor is legally required to pay or which may become a lien against the property;
- (xxi) Fees and assessments for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay, except only the prime building permit, which will be paid by the Government;
- (xxii) Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work;
- (xxiii) Royalties and license fees arising out of the Contractor's operations under the Contract Documents;
- (xxiv) Deposits lost for causes other than the Contractor's fault or negligence;
- (xxv) Costs for electronic equipment and software directly related to the Work with the Owner's prior reasonable approval;
- (xxvi) Deposits lost for causes other than the Contractor's fault or negligence and deductibles which have to be paid by the Contractor with respect to any policies of insurance being provided pursuant to this Agreement;
- (xxvii) Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner pursuant to fully executed Change Orders and fully executed Request for Change Orders;
- (xxviii) As-built drawings, and, if requested, as-built surveys, both performed in accordance with American Land Title Association ("ALTA") standards;

- (xxix) Materials purchased through Contractor's affiliate Company U&W Industrial Supply, LLC are included in the Guaranteed Maximum Price, at the prices listed in "Attachment 3 – Established Material Pricing" to Appendix B of this agreement, but in no event shall U&W's markup to GEC exceed 20% above U&W's Costs as defined in this section. If independent locally published material prices from licensed, bonded and insured Virgin Islands based suppliers are lower than the prices listed in Attachment 3 to Appendix B, the lower price shall be used as cost. In no event will materials listed in Attachment 3 to Appendix B be included as a cost at prices greater than the prices listed in Attachment 3 to Appendix B;
- (xxx) Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting safety of persons and property related to the Work;
- (xxxi) Other disbursements made or obligations incurred in performance of the Design/Build Work not enumerated above, providing they are specifically approved by Government in advance and in a writing signed by the Government Engineer or the Resident Engineer.
- (xxxii) Traffic control as required on streets adjacent to the Project site if required in conjunction with the Design/Build Work;
- (xxxiii) The cost of Insurance deductibles in the event of an insured loss associated with the Design/Build Work;
- (xxxiv) In the event of a Termination for Convenience by the Government, and only in that event, the Cost of Contractor's unabsorbed home office overheads as determined by the Eichleay formula and based on Contractor's independently audited financial statements shall be allowable as a Cost;
- (xxxv) Site Overhead Costs (OH Costs) of 2% shall be added to the Costs listed in Sections 2.2.A (i-xxxiv). These OH Costs will be listed as a separate line item on the Schedule of Values and be calculated and billed monthly by adding the Costs to date for Sections 2.2 (i-xxxiv), then multiplying times .02 (2%);
- (xxxvi) General and Administrative / home office Costs (G&A Costs) of 8% shall be added to the Costs listed in Sections 2.2.A (i-xxxv). These G&A Costs will be listed as a separate line item on the Schedule of Values and be calculated and billed monthly by adding the Costs to date for Sections 2.2 (i-xxxv), then multiplying times .08 (8%);

(xxxvii) The cost of hazardous material abatement or remediation if approved by the parties according to Section 11 of the Contract.

B. Credits to Cost of the Design/Build Work shall include the following:

- (i) Proceeds of sale (or fair market value in the case of items retained by Government) of all surplus materials, equipment, machinery, supplies, fuels, temporary facilities, and other items which are Government's property by virtue of having been included in the Cost of the Design/Build Work, and the sale prices of such items shall be approved in advance by Government; Surplus shall be defined for the purposes of this Contract clause as those items in excess of reasonably expected amounts due to loss, damage or shrinkage in the construction industry in the U.S. Virgin Islands.
- (ii) Discounts for which the Contractor is eligible through advance or prompt payments, or trade practice; the Contractor agrees to:
 - (a) Obtain all possible time and trade discounts for Materials and Equipment and services furnished and to pay bills within the highest discount periods but only if the Government has paid the Contractor for the associated Materials and Equipment in sufficient time to obtain such discounts;
 - (b) Purchase in the most economical ordering quantities for Government considering Project requirements.
- (iii) Refunds of deposits made and charged to Cost of the Design/Build Work;
- (iv) Rebates or commissions allowed to, or collected by, the Contractor from suppliers of Materials and Equipment together with all other refunds, returns, or credits received for return of Materials and Equipment or on bond premiums, insurance, State, Territorial or Local taxes or otherwise, and it is understood that any insurance dividends or other credits to be received after final payment shall be assigned and paid over to Government; and

C. Costs to the Contractor that are not reimbursable as Cost of the Design/Build Work and for which the parties agree that Contractor is solely liable include, but are not limited to the following:

- (i) Salary of any member of Contractor, if a firm: or salary of any officer of Contractor, if a corporation.
- (ii) Salary of any general administration and services person employed in the main office or in any regularly established warehouse, branch office or

other office of Contractor during the prosecution of the Design/Build Work unless specifically assigned to tasks required to perform the scope of work in this Contract.

- (iii) Overhead, general and administrative costs or expenses of any kind, all of which are deemed to be included in the Contractor's Fee at Paragraph 2.3 of this Appendix "A".
- (iv) Interest on capital employed either in connection with Contractor's equipment or in connection with expenditures on the Design/Build Work.
- (v) Any costs associated with Contractor's rework or repair of Design/Build Work improperly performed.
- (vi) All interest, penalties, levies or other assessments incurred as a result of any failure by Contractor to comply with any Federal, State, Territorial or Local law, including State, Territorial and Local tax Laws.

2.3 CONTRACTOR'S FEE

- (i) The Contractor's Fee includes all of the Contractor's overhead and profit associated with the Project.
- (ii) Unless modified by Change Order, the Contractor's Fee will be billed monthly in an amount equal to the Contractor's Fee percentage of the Cost of Work to date, less the amount of prior Fee payments.
- (iii) The Contractor's Fee shall be Ten percent (10%) and be calculated by multiplying the allowable Costs in Section 2.2 of this Appendix "A" times .1, such amount to be included in each monthly billing

2.4 SAVINGS

If the Cost of the Design/Build Work plus the Contractor's Fee totals less than the Guaranteed Maximum Price, the difference represents "Savings." Any Savings shall be apportioned as follows:

Government's Portion 50%

Contractor's Portion 50%

If the Cost of the Design/Build Work plus the Contractor's Fee total more than the Guaranteed Maximum, all excess costs shall be borne by the Contractor.

APPENDIX "C"

INSURANCE REQUIREMENTS

1. Insurance Coverage. The Contractor shall obtain, pay for and maintain the insurance coverage listed below with respect to the Project without any reimbursement obligation on the part of the Government:

- (a) workers' compensation insurance required by U.S. Virgin Islands law covering all of the employees of the Contractor;
- (b) employer's liability insurance with limits of \$1,000,000 per accident or employee disease;
- (c) commercial general liability and property damage insurance, with contractual liability and products completed operations coverage per the Certificate of Insurance included as Attachment 1 to Appendix C which shall be deemed sufficient to meet the requirements of this section, with combined single limit of liability of \$1,000,000 for bodily injury and for property damage, \$2,000,000 general aggregate limit, \$2,000,000 products and completed operations aggregate limit, \$1,000,000 personal injury and advertising injury limit.;
- (d) comprehensive automobile liability insurance per the Certificate of Insurance included as Attachment 1 to Appendix C which shall be deemed sufficient to meet the requirements of this section, including owned, non-owned and leased or hired vehicles, with a \$1,000,000 combined single limit for bodily injury and property damage with a deductible to be determined by the Contractor;
- (e) excess liability insurance above the required comprehensive general per the Certificate of Insurance included as Attachment 2 to Appendix C which shall be deemed sufficient to meet the requirements of this section, automobile and employer's liability insurance to result in an overall liability coverage in the amount of \$10,000,000 per occurrence and an annual aggregate limit of \$10,000,000;
- (f) Approved pollution legal liability insurance shall be required in the event hazardous material is encountered at the site, with limits per the Certificate of Insurance included at Attachment 3 to Appendix C which shall be deemed sufficient to meet the requirements of this section. If hazardous material removal or remediation is required the approved Subcontractor shall cause the Government of the Virgin Islands and GEC, LLC to be added as Additional Insureds to the approved prior to beginning work; and

- g) "builder's risk" insurance covering loss, damage or destruction to the PEJ Complex (including machinery coverage for equipment and machinery to be permanently incorporated in the Work) as commercially available per the attached quote included at Attachment 4 to Appendix C – Builder's Risk Coverages" which shall be deemed sufficient to meet the requirements of "builders risk insurance". The foregoing insurance shall cover Materials and Equipment stored at the Site or at another location that was agreed to in writing by Government prior to being incorporated in the Contract Services; allow for partial utilization of the Site by Government; include testing, startup and commissioning; include marine transportation insurance on all Materials and Equipment from the place of manufacture or assembly to the Site against all transit risks of loss or damage, including war, strikes and civil commotion, all such insurance shall be for the full replacement value of the shipment to the Site and of the property in storage. The Contractor's warehouse and storage yard at 14F Estate Bethlehem is approved as a location for stored materials as long as the materials are covered by the Builder's Risk policy.
- (h) Professional liability (errors and omissions) insurance covering the design component of the Design/Build Work will be provided by the approved Architect of Record, Subcontractor to Architect of Record, and other subcontracted engineers approved by the Government Engineer on a case by case basis. The policy included at Attachment 5 to Appendix C "Architect and Engineers Professional Liability Insurance" shall be deemed sufficient to meet the requirements of the Architect of Record and Subcontractor to Architect of Record. The Contractor shall not be required to provide Professional liability (errors and omissions) insurance other than that provided but the Architect of Record, Subcontractor to Architect of Record and other subcontracted engineers approved by the Government Engineer on a case by case basis. The professional liability insurance referenced above shall cover bodily injury, personal injury, and property damage, which shall be maintained in full force and effect for the Term of the Service and similar coverage shall be kept in effect for a period of 3 years after the completion of any and all Contract Services hereunder, and the policy or policies issued to evidence such insurance coverage shall provide (by endorsement or otherwise) that such coverage shall not be terminated nor modified, except for the non-payment of the premium for such insurance, and, in any event, that such coverage may not be terminated for nonpayment of premium without endeavoring to give 30 days' prior written notice to the Government of the intended cancellation. Any 'retroactive date' or 'prior acts' exclusion to which such coverage is subject shall predate both the date upon which any Contract Services hereunder are commenced and the date of this Service Contract. This section of this Appendix is subject to the following conditions and terms;
1. Steven E. Hutchins personally and/or Steven E. Hutchins Architects (SEHA), as approved Architect of Record, will provide Contract drawings and specifications (D&S) to the Government of the Virgin Islands for their ownership per Section 29(b).

2. The following qualifications are acknowledged by all parties as approved and acceptable terms and conditions to providing the Contract D&S to the Government:

- a. The D&S will be provided as electronic files in PDF format only;
- b. no representation is made as to the compatibility of the PDF files with the Government, or any other user's, hardware or software;
- c. any re-use by the Government or others of the D&S is at the user's sole risk and without liability to SEHA;
- d. the Government agrees to make no claim and hereby waive, to the fullest extent permitted by law, any claim or cause of action of any nature against SEHA that may arise out of or in connection with the Government's use of the D&S;
- e. the Government shall, to the fullest extent permitted by law, indemnify and hold SEHA harmless against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising out of or resulting from the Government's use of the PDF electronic files;
- f. the PDF files are not construction documents;
- g. the parties acknowledge that differences may exist between the electronic files and corresponding paper documents, that the Government is responsible for determining if any such differences exist, and that, in the event of such differences, the signed and sealed paper documents shall be deemed to be correct;
- h. SEHA reserves the right to remove all indications of ownership and/or authorship of the D&S prior to providing the electronic PDF files to the Government;
- i. the delivery of the electronic PDF files shall not be deemed a sale by SEHA of the D&S to the Government;
- j. SEHA makes no warranties, either express or implied, of merchantability and/or fitness for any particular purpose as it regards the use of the electronic PDF files;
- k. in no event shall SEHA be liable for indirect or any consequential damages of any kind as a result of the Government or other's re-use of the electronic PDF files.

- (i) Contractor's equipment insurance covering physical damage, theft or other loss to all tools, equipment, office furniture and vehicles owned by Contractor or for which Contractor is responsible which shall be purchased at Contractor's sole discretion.

2. Additional Insureds. The Contractor shall name the Government and its officers, elected officials, agents, volunteers and employees, as additional insureds during the Design/Build Period (the "Additional Insured") on all policies required under this Appendix (other than paragraphs 1(a), 1(b), and 1(h) hereof), as respects liability caused by negligent performance of the Contract Services by Contractor, including liability arising from Government's joint or contributory negligence in the general supervision of Contractor's performance of the Contract Services. Each party to the Service Contract shall waive the subrogation rights of its various insurance carriers in favor of the other party.

3. Insurance Certificates. Insurance, and any renewal thereof, shall be evidenced by certificates of insurance issued or countersigned by a duly authorized representative of the issuer and delivered to the Government for its approval prior to the Design/Build Date or, in the case of a renewal, as reasonably provided by the insurer. The certificates of insurance shall provide for 60 days' written notice to the Government of cancellation or intent not to renew its coverage by the insurance company, except 10 days notice shall be provided for non-payment of premium.

4. Non-Recourse Provision. All insurance policies shall provide that the insurers shall have no recourse against the Additional Insured for payment of any premium or assessment and shall contain a severability of interest provision in regard to mutual coverage liability policies. The coverages provided by mutual coverage liability insurance policies required pursuant to the Service Contract shall be the primary source of any restitution or other recovery for any injuries to or death of persons or loss or damage to property incurred as a result of an action or inaction of the Contractor, of their respective suppliers, employees, agents representatives, or invitees, that fall within these coverages and also within the coverages of any liability insurance or self-insurance program maintained by the Government.

5. Deductibles. All deductibles applicable to the Required Design/Build Construction Period Insurance shall be agreed upon by the Contractor and the Government if different from those shown in paragraph 1 hereof and shall be paid by the Contractor and be a Cost to the work in accordance with Section 2.2 of Appendix A. Anything in Section 1 (c) above relating to self-insurance retention or deductibles to the contrary notwithstanding, Contractor agrees to defend, indemnify, and hold harmless Government from and against any loss, cost, damage, expense (including attorneys' fees and court costs), claim, cause of action or liability that would have been covered by the insurance policy or retention amount or deductible amount replaced by the self-insurance, and provided further that such self-insurance by Contractor shall not affect the non-liability of Government described elsewhere in this Service Contract. Contractor shall deliver to Government if requested in writing by Government, notice in writing of the required coverages which it is self-insuring setting forth the amount, limits, and scope of the self insurance in respect to each type of coverage self insured.

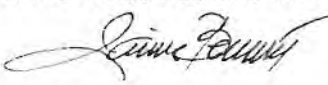
6. Subcontractors. The Contractor shall be responsible for ensuring that all subcontractors of the Contractor providing services pursuant to the Service Contract secure and maintain all insurance coverages (including workers' compensation insurance) in connection with their presence and the performance of their duties pursuant to the Service Contract.
7. Specific Provisions for Commercial General Liability Insurance. Commercial general liability insurance, as required under paragraph 1 (C) above, shall include premises-operations, blanket contractual, products and completed operations, personal injury and advertising injury, explosion, collapse, underground hazards, completed operations, fire damage legal, and independent contractors coverages.
8. Specific Provisions for Property Damage Insurance. Property damage coverage, as required under paragraph 1 (g) above, shall provide that the proceeds shall be payable to the Government and the Contractor jointly, who shall hold such funds as a fiduciary for disbursement to the Contractor as repairs and reconstruction proceed, and shall insure the interests of the Government and the Contractor regardless of any breach or violation of warranties, declarations or conditions contained in any such policies, or any action or inaction of the Contractor, the Government or others.
9. Specific Provisions for Workers' Compensation Coverage. Workers' compensation insurance shall be in accordance with the requirements of U.S. Virgin Islands law, as amended from time to time. The required workers' compensation insurance shall include other states' statutory coverage, voluntary compensation coverage, and federal longshoreman and harbor workers coverage.
10. Specific Provisions for Pollution Legal Liability Insurance. Coverage for pollution legal liability required by paragraph 1 (g) above shall include coverage for bodily injury sustained (including death); property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs and the loss of use of tangible property that has not been physically injured or destroyed; and defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims.
11. Qualifications of Insurers. The Contractor shall obtain the insurance set forth herein with insurance companies that carry a Best's "A" equivalent rating. In addition, insurance may not be obtained or maintained with insurers which are prohibited from conducting business in the U.S. Virgin Islands.
12. The insurance described above sets forth minimum amounts and coverages and is not to be construed in any way as a limitation on Contractor's liability under this Service Contract.
13. The Commercial General Liability insurance specified in above shall name Government, Department, Commissioner and Government Engineer as additional insureds and be primary to any other valid and collectible insurance.

14. Every certificate of insurance evidencing the coverage required herein shall contain the following clause: "No reduction, cancellation, or expiration of this policy shall become effective until thirty (30) days from the date written notice is received by the DPP Commissioner."

15. All policies of insurance providing the coverages required above hereof shall be countersigned by a duly authorized and accredited agent or agents of the carrier residing in the State or Territory where any portion of the Design/Build Work is performed. All such insurance shall be carried with insurance companies authorized to do business in such State or Territory.

16. All insurance policies required shall be issued by companies who hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A VIII according to Best's Insurance Reports. If Contractor's insurance coverages are on "claims made" forms, Contractor agrees to maintain such insurance and to provide Government with evidence thereof for the period of three (3) years following Final Acceptance and the cost for such extended policy period shall be a Cost according to Section 2.2 of Appendix B.

17. Waiver of Subrogation. Contractor shall require all policies of insurance that are in any way related to the Services and that are secured and maintained by the Contractor and its Subcontractors to include clauses providing that every underwriter shall waive all of its rights of recovery under subrogation or otherwise, against Government.

CERTIFICATE OF INSURANCE			
Insured		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
GEC, LLC			
PO BOX 1656, KINGSHILL			
ST. CROIX, U.S. VIRGIN ISLAND 00851			
		COMPANIES AFFORDING COVERAGE	
Certificate Holder		Company Name	
ADDITIONAL INSURED		MAPFRE PRAICO INSURANCE CO.	
GOVERNMENT OF THE U.S. VIRGIN ISLANDS		Producer/Authorized Representative	
3274 ESTATE RICHMOND		6031 FULCRO INSURANCE	
ST. CROIX, VI 00820-4241			
Coverages			
THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES. LIMITS AND/OR AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.			
Policy Number	CGL-6932817	Property Information	Location / Description
Effective Date	12/31/2013		
Expiration Date	01/03/2015		
Property Coverage Information		Causes Of Loss	Amount Of Insurance
☐ Building Coverage ☐ Personal Property ☐ Other Coverage			
Other RE: DESIGN & BUILD PAUL E. JOSEPH STADIUM AND SPORT COMPLEX			
General Liability		Limits Of Liability	
☒ General Aggregate Limit		\$	2,000,000
☒ Personal and Advertising Injury Limit		\$	1,000,000
☒ Each Occurrence Limit		\$	1,000,000
☒ Damage to Premises Rented To You	(Any One Premises)	\$	100,000
☒ Medical Expense Limit		\$	5,000
☒ Products – Comp/OP Agg.	(Any One Person)	\$	2,000,000
Automobile Coverages		Limits Of Liability	
☒ Schedule Autos	Combined Single Limit	\$	1,000,000
☐ Any Auto Liability	Bodily Injury (Per Person)	\$	
☒ Hired Automobile Liability	Bodily Injury (Per Accident)	\$	
☒ Non Owned Auto Liability	Property Damage	\$	
☐ Garage Keepers Legal Liability	Deductible		Limit Of Insurance
☐ Comprehensive Form	\$	\$	
☐ Specified Perils	\$	\$	
☐ Collision Coverage	\$	\$	
Other AUTO POLICY NUMBER: 1225138005713 EFFECTIVE DATE: 12/31/2013 EXPIRATION DATE: 01/07/2015 FILE: 3300248692			
Excess / Umbrella Liability		Limits Of Liability	
☐ Occurrence Excess Policy	Each Occurrence	\$	
	Aggregate	\$	
EMPLOYERS'S LIABILITY "STOP" GAP COVERAGE	\$ 1,000,000		Each Accident
	\$ 1,000,000		Disease-Policy Limit
	\$ 1,000,000		Disease Each Employee
Cancellation			
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL TO THE CERTIFICATE HOLDER WRITTEN NOTICE OF CANCELLATION AT LEAST 10 DAYS BEFORE THE EFFECTIVE DATE IF WE CANCEL FOR NON-PAYMENT OF PREMIUM; OR 30 DAYS BEFORE THE EFFECTIVE DATE OF CANCELLATION IF WE CANCEL FOR ANY OTHER REASON. PROOF OF MAILING WILL BE SUFFICIENT PROOF OF NOTICE.			
MAPFRE PRAICO INSURANCE COMPANY		FILE: 3300247509	DATE: 10/22/2014
 COUNTERSIGNATURE MANAGER		INITIALS: jls	

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGES

Policy Change Number

Policy Number	Policy Changes Effective	Company
1225138005713 CGL-6932817	12/31/2013	MAPFRE PRAICO INSURANCE CO.
Name Insured		AUTHORIZED REPRESENTATIVE 
GEC, LLC		
COVERAGE PARTS AFFECTED		
CHANGES		
HOLD HARMLESS AGREEMENT		
The contractor, for itself, agents, employees, successor and assignees agree to save and hold harmless the owner from and against any and all claims, demands and/or suits whether judicial or extrajudicial for any cause whatsoever arising out or related to the execution of the contract described below, and its insurers shall defend the owner from such claims, demands and/or suits and shall bear all the expense for such defense contemplated within the coverage's and limits provided by this policy, except where such claims, demands and/or suits are due solely to the negligence of		
GOVERNMENT OF THE U.S. VIRGIN ISLANDS		
its officers, agents &/or employees.		
This endorsement does not extend, modify, increase limits of, or otherwise alter the coverage provided by this policy.		
RE: DESIGN & BUILD PAUL E. JOSEPH STADIUM AND SPORT COMPLEX		
All other terms and conditions of this policy remain unchanged.		

PROD:6031 FULCRO INSURANCE
FILE :3300247509 & 3300248692

IL 12 01 11 85

Copyright, Insurance Services Office, Inc., 1983
Copyright, ISO Commercial Risk Services, Inc., 1983

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGES

Policy Change Number

Policy Number	Policy Changes Effective	Company
1225138005713 CGL-6932817	12/31/2013	MAPFRE PRAICO INSURANCE CO.
Name Insured		AUTHORIZED REPRESENTATIVE
GEC, LLC		
COVERAGE PARTS AFFECTED		
CHANGES		
SIXTY (60) DAY CANCELLATION NOTICE		
It is hereby understood and agreed that in the event of cancellation of this policy, sixty (60) days written notice shall be give to:		
GOVERNMENT OF THE U.S. VIRGIN ISLANDS		
RE: DESIGN & BUILD PAUL E. JOSEPH STADIUM AND SPORT COMPLEX		
Prior said cancellation becomes in effect. This will apply only on cancellation requested by the company for other reasons than Non-Payment Premium, additional premiums due or installments due under any premium financing agreement; under above circumstances only ten (10) days notification will be given as per policy conditions.		
All other terms and conditions of this policy remain unchanged.		
All other terms and conditions of this policy remain unchanged.		

PROD :6031 FULCRO INSURANCE
FILE :3300247509 & 3300248692

IL 12 01 11 85

Copyright, Insurance Services Office, Inc., 1983
Copyright, ISO Commercial Risk Services, Inc., 1983



MAPFRE MAPFRE PRAICO INSURANCE COMPANY

PO BOX 70333, SAN JUAN, PR 00936-8333

GENERAL CHANGE ENDORSEMENT

POLICY NO. CGL-006932817-3/008

NAMED INSURED AND MAILING ADDRESS

GEC, LLC
PO BOX 1656 KINGSHILL
CHRISTIANSTED VI 00821-1541

AGENCY AND MAILING ADDRESS

33

MAPFRE INS. AGENCY OF P.R.
PO BOX 70333
SAN JUAN PR 00936-8333

POLICY PERIOD: From 12/31/2013 to 12/31/2014 12:01 A.M. AT THE INSURED'S MAILING ADDRESS

ENDORSEMENT NO. 008

THE FOLLOWING CHANGES HAVE BEEN MADE TO THE ABOVE POLICY. ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

EFFECTIVE 10-22-14 THIS POLICY IS AMENDED AS SHOWN

COMMERCIAL GENERAL LIABILITY

For an additional/return premium, the items below are changed as indicated:

IT IS HEREBY UNDERSTOOD AND AGREED THAT POLICY IS AMENDED.

THE FOLLOWING ENTITY IS INCLUDED AS ADDITIONAL INSURED AS PER FORM CG-2026.

GOVERNMENT OF THE U.S. VIRGIN ISLANDS
3274 ESTATE RICHMOND
ST. CROIX, VI 00820-4241

RE: DESIGN & BUILD PAUL E. JOSEPH STADIUM AND SPORT COMPLEX

ADDITIONAL INSURED(S)

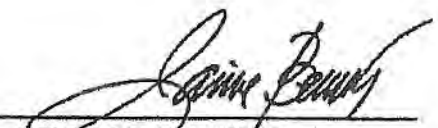
GOVERNMENT OF THE U.S. VIRGIN ISLANDS
3274 ESTATE RICHMOND
ST. CROIX, VI 00820-4241
DESIGN & BUILD PAUL E. JOSEPH STADIUM AND SPORT COMPLEX

PER FORM: CG2026 (07-04)

COUNTERSIGNED AT: SAN JUAN, PR

DATE: 10-22-14

BY:


AUTHORIZED REPRESENTATIVE

FULCRO INSURANCE 0000006031

10-22-14

1356 E2481

Insured's copy

Page 1 of 1

COMMERCIAL GENERAL LIABILITY
CG 20 26 07 04

**ADDITIONAL INSURED – DESIGNATED
PERSON OR ORGANIZATION**

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf.

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented to you.

PM 6:27 PM PST NOV 17 1974

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YY)

10/22/14

PRODUCER

FULCRO INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

INSURERS AFFORDING COVERAGE

GEC, LLC

PO BOX 1656 KINGSHILL

ST. CROIX, US VIRGIN ISLANDS 00851

ACE INSURANCE COMPANY

P O BOX 191249

SAN JUAN, PR 00919-1249

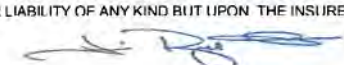
COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY [] COMMERCIAL GENERAL LIABILITY CLAIMS MADE [] OCCUR [] [] _____ [] _____ GEN'L AGGREGATE LIMIT APPLIES PER POLICY [] PROJECT [] LOC []				EACH OCCURRENCE FIRE DAMAGE (Any one fire) MED EXP (Any one person) PERSONAL ADV INJURY GENERAL AGGREGATE PRODUCTS-COMP/OP AGG
	AUTOMOBILE LIABILITY [] ANY AUTO [] ALL OWNED AUTOS [] SCHEDULED AUTOS [] HIRED AUTOS [] NON-OWNED AUTOS [] _____				COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	GARAGE LIABILITY [] ANY AUTO [] _____				AUTO ONLY - EA ACCIDENT OTHER THAN EA ACC AUTO ONLY : AGG
X	EXCESS LIABILITY CLAIMS MADE [] OCCUR [X] [X] UMBRELLA FORM [] DEDUCTIBLE [X] RETENTION	47US701103	4/30/2014	4/1/2015	EACH OCCURRENCE \$ 10,000,000.00 AGGREGATE \$ 10,000,000.00 RETENTION \$ 10,000.00
	WORKERS COMPENSATION				
	EMPLOYERS LIABILITY [] STOP GAP				E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT
	OTHER				LIMIT AGGREGATE DEDUCTIBLE

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLE/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Design & Build Paul E. Joseph Stadium and Sport Complex

CERTIFICATE HOLDER [X] ADDITIONAL INSURED [X] INSURER LETTER []	CANCELLATION
GOVERNMENT OF THE U.S. VIRGIN ISLANDS 3274 ESTATE RICHMOND ST. CROIX, VI 00820-4241	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 60 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND BUT UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.  ACE INSURANCE COMPANY

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(es) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement (s). If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement (s).

DISCLAIMER

This certificate of Insurance does not constitute a contract between the issuing insurer (s), authorized representative or producer, and the certificate holder nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

HOLD HARMLESS AGREEMENT

ISSUED TO: GOVERNMENT OF THE U.S. VIRGIN ISLANDS

THE CONTRACTOR, FOR ITSELF, AGENT'S EMPLOYEES, SUCCESSION AND ASSIGNED, AGREE TO SAVE AND HOLD HARMLESS THE OWNER FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS AND/OR SUITS WHETHER JUDICIAL OR EXTRA JUDICIAL FOR ANY COST WHATEVER ARISING OUT OR RELATED TO THE EXECUTION OF THE CONTRACT DESCRIBED BELOW, AND ITS INSURERS, SHALL DEFEND THE OWNER FROM SUCH CLAIMS, DEMANDS AND/OR SUITS AND SHALL BEAR ALL THE EXPENSES FOR SUCH DEFENSE CONTEMPLATED WITHIN THE COVERAGE AND LIMITS PROVIDED BY THIS POLICY EXCEPT WHERE SUCH CLAIMS, DEMANDS AND/OR SUITS ARE DUE SOLELY TO THE NEGLIGENCE OF:

GOVERNMENT OF THE U.S. VIRGIN ISLANDS (OWNER)

ITS OFFICERS, AGENTS AND/OR EMPLOYEES. THIS ENDORSEMENT DOES NOT EXTEND, MODIFY, INCREASE LIMITS OF OR OTHERWISE ALTER THE COVERAGE PROVIDED BY THIS POLICY.

ADDITIONAL INSURED

IT IS UNDERSTOOD AND AGREED THAT:

GOVERNMENT OF THE U.S. VIRGIN ISLANDS

IS INCLUDED IN THIS POLICY AS AN ADDITIONAL INSURED.

SIXTY (60) DAYS CANCELLATION NOTICE

IT IS HEREBY UNDERSTOOD AND AGREED THAT IN THE EVENT OF CANCELLATION OF THE POLICY SIXTY (60) DAYS WRITTEN NOTICE SHALL BE GIVEN TO:

GOVERNMENT OF THE U.S. VIRGIN ISLANDS

PRIOR SAID CANCELLATION BECOMES IN EFFECT. THIS WILL APPLY ONLY ON CANCELLATION REQUESTED BY THE COMPANY FOR OTHER REASONS THAN NON-PAYMENT OF PREMIUM. ADDITIONAL PREMIUM DUE OR INSTALLMENTS DUE UNDER ANY PREMIUM FINANCING AGREEMENT. UNDER ABOVE CIRCUMSTANCES ONLY TEN (10) DAYS WILL BE GIVEN FOR MODIFICATIONS AS PER POLICY CONDITIONS.

NAMED INSURED: GEC, LLC
POLICY NUMBER: 47US701103

ACE INSURANCE COMPANY





ace insurance

RENEWAL CERTIFICATE

BODILY INJURY (AUTO)	
BOILER & MACHINERY	
COLLISION	
COMMERCIAL EXCESS	
COMMERCIAL UMBRELLA	X
COMPREHENSIVE	
CRIME	
GENERAL LIABILITY (BI&PD)	
INLAND MARINE	
MEDICAL PAYMENTS	
OCEAN CARGO	
PROPERTY	
PROPERTY DAMAGE (AUTO)	
WORKMENS COMPENSATION	
TOTAL PREMIUM	\$90,710.00

ENDORSEMENT NUMBER **4**

POLICY NUMBER **47US701103**

CLASS OF BUSINESS **CONCRETE WORK**

AMOUNT OF INSURANCE OR LIMITS OF LIABILITY **\$ 10,000,000**

SIR **\$ 10,000**

\$ _____ AGG/OCC XS OF\$ _____ AGG/OCC WRITTEN BY

IN CONSIDERATION OF THE RENEWAL PREMIUM ABOVE STATED, THIS POLICY

ISSUED TO: **GEC, LLC,**

WHOSE ADDRESS IS **PO BOX 1656**
KINGSHILL, VI 00851-1656

IS RENEWED FOR THE TERM OF **1 YEAR**, FROM **04/30/14** TO **04/01/15**.

SUBJECT TO THE TERMS AND CONDITIONS THEREOF, EXCEPT AS FOLLOWS:

☒ UNDERLYING OF INSURANCE

☒ OTHER **ACE OFAC 01, ACE OFAC 02, OCS38160**

NOT VALID UNLESS COUNTERSIGNED BY A DULY AUTHORIZED AGENT.

Marisol Toledo, Secretary

Glorimar Rivero, CEO and President

COUNTERSIGNED AT SAN JUAN, PR; THIS 11 DAY OF **JULY, 2014**

ACE INSURANCE COMPANY

AGENT

SCHEDULE OF UNDERLYING INSURANCE

COMMERCIAL UMBRELLA LIABILITY POLICY

Company: _____

Policy Number: _____

Policy Period: From _____ To _____

		Applicable Limits
General Aggregate	\$	_____
Each Occurrence	\$	_____

COMMERCIAL GENERAL LIABILITY POLICY

Company: **MAPFRE**

Policy Number: CGL6932817

Policy Period: From 12/31/2013 To 12/31/2014

		Applicable Limits
General Aggregate	\$	<u>2,000,000</u>
Products Completed Operations Aggregate	\$	<u>2,000,000</u>
Personal and Advertising Injury Limit	\$	<u>1,000,000</u>
Each Occurrence	\$	<u>1,000,000</u>
Medical Expense	\$	<u>2,000,000</u>
Fire Damage Limit	\$	<u>100,000</u>

STOP-GAP EMPLOYER'S LIABILITY POLICY

Company: **MAPFRE**

Policy Number: CGL6932817

Policy Period: From 12/31/2013 To 12/31/2014

		Applicable Limits
Each Accident	\$	<u>1,000,000</u>
Disease		
Each Policy	\$	<u>1,000,000</u>
Each Employee	\$	<u>1,000,000</u>

AUTOMOBILE LIABILITY POLICY **X**
HIRED & NON-OWN AUTO LIABILITY **___**

Company: MAPFRE

Policy Number: 12251387005713

Policy Period: From 12/31/2013 To 12/31/2014

	Applicable Limits
Bodily injury and property damage \$	<u>1,000,000</u>

GARAGE LIABILITY POLICY

Company: _____

Policy Number: _____

Policy Period: From _____ To _____

	Applicable Limits
General Aggregate	\$ _____
Per Occurrence	\$ _____

ACORDTM CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YYYY)
10/28/2014**PRODUCER**Executive Insurance Services, Inc.
Plot #113 Estate Barron Spot
The Village Mall - Suite #101
Kingshill St. Croix VI 00850

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSUREDAdcon Environmental, LLC.
P.O. Box 3262
Frederiksted
St. Croix VI 00841-3262**INSURERS AFFORDING COVERAGE****NAIC #**

INSURER A: ROCKHILL INSURANCE COMPANY

INSURER B: UNDERWRITERS' AT LLOYD'S, LONDON

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	Y	GENERAL LIABILITY	R PKG E 004983-00	02/04/2014	02/04/2015	EACH OCCURRENCE \$ 1,000,000
		☒ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
		☒ CLAIMS MADE ☒ OCCUR				MED EXP (Any one person) \$ 5,000
		☒ DEDUCTIBLE : 2,500				PERSONAL & ADV INJURY \$ 1,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE \$ 1,000,000
		☒ POLICY ☐ PRO-JECT ☐ LOC				PRODUCTS - COMP/OP AGG \$ 1,000,000
B	Y	AUTOMOBILE LIABILITY	CA13-62	09/01/2013	09/01/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 50,000.
		☐ ANY AUTO				BODILY INJURY (Per person) \$ -0-
		☐ ALL OWNED AUTOS				BODILY INJURY (Per accident) \$ -0-
		☒ SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$ -0-
		☐ HIRED AUTOS				
		☐ NON-OWNED AUTOS				
		☒ SEE ACORD FORM 127				
		☒ ATTACHED				
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
		☐ ANY AUTO				OTHER THAN EA ACC \$
						AUTO ONLY: AGG \$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$
		☐ OCCUR ☐ CLAIMS MADE				AGGREGATE \$
						\$
		☐ DEDUCTIBLE				\$
		☐ RETENTION \$				\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS OTH-ER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT \$
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$
A		OTHER	R PKG E 004983-00	02/04/2014	02/04/2015	GENERAL AGG. DEDUCTIBLE
		02/04/2014		02/04/2015	\$1,000,000 \$ 2,500	
		CONTRACTOR POLLUTION LIAB				\$1,000,000 \$ 2,500
		PROFESSIONAL LIAB				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDERADDITIONAL INSURED:
GOVERNMENT OF THE U.S. VIRGIN ISLANDS
3274 ESTATE RICHMOND
ST. CROIX, VI 00820-4241**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 15 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



<NO>

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/28/2014

PRODUCER Executive Insurance Services, Inc. Plot #113 Estate Barron Spot The Village Mall - Suite #101 Kingshill St. Croix VI 00850		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Adcon Environmental, LLC. P.O. Box 3262 Frederiksted St. Croix VI 00841-3262		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A: ROCKHILL INSURANCE COMPANY	
		INSURER B: UNDERWRITERS' AT LLOYD'S, LONDON	
		INSURER C:	
		INSURER D:	
		INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	Y	GENERAL LIABILITY	R PKG E 004983-00	02/04/2014	02/04/2015	EACH OCCURRENCE	\$ 1,000,000
		☒ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50,000
		☒ CLAIMS MADE ☒ OCCUR				MED EXP (Any one person)	\$ 5,000
		☒ DEDUCTIBLE : 2,500				PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 1,000,000
		GENT. AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	\$ 1,000,000
		☒ POLICY ☐ PRO-JECT ☐ LOC					
B	Y	AUTOMOBILE LIABILITY	CA13-62	09/01/2013	09/01/2014	COMBINED SINGLE LIMIT (Ea accident)	\$ 50,000.
		☐ ANY AUTO				BODILY INJURY (Per person)	\$ -0-
		☐ ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$ -0-
		☒ SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$ -0-
		☐ HIRED AUTOS					
☐ NON-OWNED AUTOS							
☒ SEE ACORD FORM 127							
☒ ATTACHED							
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
		☐ ANY AUTO				OTHER THAN EA ACC AGG	\$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	\$
		☐ OCCUR ☐ CLAIMS MADE				AGGREGATE	\$
		☐ DEDUCTIBLE					\$
		☐ RETENTION \$					\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS	OTH-ER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.I. EACH ACCIDENT	\$
		If yes, describe under SPECIAL PROVISIONS below				E.I. DISEASE - EA EMPLOYEE	\$
		OTHER				E.I. DISEASE - POLICY LIMIT	\$
A		CONTRACTOR POLLUTION LIAB	R PKG E 004983-00	02/04/2014	02/04/2015	GENERAL AGG.	DEDUCTIBLE
		02/04/2014		02/04/2015	\$1,000,000	\$ 2,500	
		PROFESSIONAL LIAB				\$1,000,000	\$ 2,500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

CANCELLATION

ADDITIONAL INSURED:
GEC, LLC
PO BOX 1656 VITEX BUILDING EAST AIRPORT ROAD
KINGSHILL, VI 00851-1656

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 15 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

[Signature]

<NO>

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Commercial Insurance Proposal

GEC, LLC
Paul E. Joseph Stadium

Presented by: Ernesto Marrero & Ruben Jordan Garcia

47 Perimeter Center East, #100
Atlanta GA 30346

October 30, 2014

THIS DOCUMENT SUMMARIZES THE PROPOSAL FOR YOUR INSURANCE. THIS IS NOT A CONTRACT. THE TERMS OF THE POLICY FORMS WILL CONTROL THE INSURANCE CONTRACT WITHOUT REGARD TO ANY STATEMENT MADE IN THIS PROPOSAL.



Introduction to the Agency

Fulcro is an all lines insurance broker organized in San Juan, Puerto Rico on July 21, 1981 as First Insurance Group, Inc. Fulcro, the Spanish word for Fulcrum, means the support or point of rest, the center of support, one that supplies capabilities for action. This is the essence of what we do in all of our Risk Practices, to support and provide capabilities to structure the best insurance, bonding, and employee benefits program for our clients.

Throughout our history, the insurance industry and the business community has recognized Fulcro's capabilities and distinguished it as one of the leading, most technically skilled, and professionally focused insurance intermediaries. Fulcro's consultative and diagnostic capabilities, transactional infrastructure, and risk management focus, as well as its remarkable record handling complex insurance placements, claims and insurance disputes, has earned the Company this recognition.

Fulcro currently conducts operations in Puerto Rico, the Dominican Republic, and Atlanta, Georgia, where the Company was domiciled to launch its expansion into the United States.



A handwritten signature in blue ink, appearing to be a stylized "F" or similar monogram, is located in the bottom left corner of the page.

INSURER: Ironshore (Munich Re)

INSURED: GEC, LLC (Main Contractor) and/or Sub-Contractors and/or Suppliers/Manufacturers/Architects and Consulting Engineers and other interested parties connected with the Contract for their respective rights and interests and for their onsite activities only

EFFECTIVE DATE: The Project Period – 30 months

From To be advised
To To be advised

Phase 1: 6 months - Demolition of existing stadium and ancillary works

From To be advised
To To be advised

Phase 2: 24 months – Earthwork and foundation construction, construction of new stadium, little league field and carnival village and construction demobilization. Cover provided once outstanding project information received and considered satisfactory by lead insurer.

From To be agreed
To To be agreed

Both Days Inclusive – Local Standard Time, at the address of the insured location(s)

COVERAGE: Construction "All Risks" Insurance

MAILING ADDRESS: PO Box 1656
Kingshill, VI 00851-1656

PROJECT DESCRIPTION:

In respect of the performance of the Insured's contract for the demolition of an existing stadium followed by design and construction of a baseball stadium, little league field and Christmas village in St. Croix, US Virgin Islands including all associated and ancillary works connected therewith.

PREMIUM: \$238,700

*Taxes and Fees, if applicable, are not included in this proposal



INTEREST: Section 1 - Material Damage

All Contract Works, whether permanent or temporary, materials incorporated or for incorporation therein, Temporary Buildings and their contents, and all other property or equipment of whatsoever nature (other than Constructional Plant and Equipment) the property of the Insured or for which they are responsible, whilst at the contract site(s) or elsewhere in the territorial limits, including whilst in transit subject to being part of the declared values.

LIMIT OF LIABILITY: Section 1 – Material Damage

USD 20,000,000 Estimated Contract Value

USD 5,000,000 Contractor's Extra Expenses

USD 25,000,000 Total Sum Insured

DEDUCTIBLES: Section 1

5% Value at Risk at each and every loss in respect of Storm, Flood, Time of Loss (VARTOL) Tempest, Water Damage, Subsidence, Collapse
Minimum USD 75,000 and Earthquake

USD 25,000 each and every other loss

SUBJECTIVITIES:

Full underwriting information and being satisfactory to underwriters prior to the start of Phase 2, including but not limited to:

- Geotechnical Report and Recommendations
- Level II Bar Chart
- Construction Method, Plans and Plots etc
- MR 008 – Structures in EQ Zones
- MR 221 Safety Measures with Respect to Inundation



EXPRESS WARRANTIES: None other than those contained in the Contractors All Risks wording and endorsements

CHOICE OF LAW AND JURISDICTION: This Insurance shall be governed by the laws of US Virgin Islands and subject to the exclusive jurisdiction of the courts of US Virgin Islands.

TERRITORIAL LIMITS: Anywhere in the US Virgin Islands in connection with the Contract including all inland transits and storage therein.

Current listing of Mortgagees, Additional Loss Payees, and Additional Interests is required prior to binding.

TERRORISM: The Terrorism Risk Insurance Act is set to expire on December 31, 2014. If the Terrorism Risk Insurance Act is not continued by Congress past December 31, 2014, or if the level or terms of federal participation change, an adjustment to the premium for coverage afforded by the Act may be necessary for the period between December 31, 2014 and the end of the policy period. If the Act is not continued past December 31, 2014, then coverage provided by the Act will expire at December 31, 2014 and a refund of excess premium may be due.



APPENDIX D
KEY PERSONNEL AND APPROVED SUBCONTRACTORS

1. **PURPOSE**

The purpose of this Appendix is to identify (1) the key management and supervisory personnel proposed to be used by the Contractor in performing the Work and (2) those Subcontractors that the Government has approved for use by the Contractor in performing the Contract Services.

2. **KEY MANAGEMENT AND SUPERVISORY PERSONNEL**

As referenced in the Service Contract, certain key management and supervisory personnel were proposed and shall be used by the Contractor in connection with the performance of the Contract Services and the Design/Build Work. Such personnel are identified in Attachment 1 to this Appendix ("D"). Any change in the key management and supervisory personnel shall be subject to review and approval of the Government in accordance with Article 10 of the Service Contract. The Contractor shall annually provide the Government with an updated organization chart and contact list.

3. **APPROVED SUBCONTRACTORS**

The following list of Subcontractors has been approved by the Government as of the Contract Date and the Contractor is permitted to engage such persons or firms for the Contract Services for the purposes and at the rates listed below for services provided in association with this Service Contract:

Steven E. Hutchins Architects as Architect of Record (fee 7% of GMP or final Contract price, whichever is lower)

Populous Architects as Subcontractor to Steven E. Hutchins Architects

Jaca & Sierra or VI Test Engineers as soils and/or geotechnical engineers (fixed fee not to exceed \$35,000.00)

W.F. McComb, PE, as consultant Engineer/Project Manager for CDR Maguire, Inc. – Hourly fee of \$ 215.00 per hour

CDR Maguire, Inc. as consultant engineers – Hourly fee of \$215.00 for licensed professional Engineers

Antillean Engineers as consultant engineers – Hourly fee of \$ 215.00 for licensed professional Engineers

St. Croix Survey Services as licensed Surveyor – At prices to be approved by Government Engineer

John W. Amerling as consultant attorney at fee of \$ 300.00 per hour

Adcon Environment Services at prices to be approved by Government Engineer

Additional Subcontractors may also be subsequently identified and used to perform the Contract Services as provided below.

At any time during the Design/Build Work, as applicable, the Contractor may request the Government to update the list of approved Subcontractors. The Government shall review any suggested changes to such list in accordance with the provisions of Article 16 of the Service Contract.

4. **HIRING PREFERENCE**

The Contractor shall be required to comply with 31 VIC Chapter 24, Subchapter 11 which provides for a hiring preference for qualified Virgin Islands residents on Public Works Projects.



<u>#</u>	<u>Name</u>	<u>Classification</u>
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Subject to the final design requirements, skills and availability of the individual workers this list of provides the classifications of current and former GEC employees that may be used in the Work for the Paul E. Joseph Stadium Design/Build Contract

1	Hilary Henrillien	Carpenter
2	Arthur Connor	Carpenter
3	Leroy St. Hill	Carpenter
4	Luke Lubrin	Carpenter
5	Raymond Mathurin	Carpenter
6	Ernesto Rodriguez	Carpenter
7	Merkey Auguste	Carpenter
8	Goodfrey Cruickshank	Carpenter
9	Maria Alicea	Carpenter
10	Rita Moquete	Carpenter
11	Eva James	Carpenter
12	Kanjah Sweeny	Carpenter
13	Howard Jones	Carpenter
14	Rene Charles	Carpenter
15	Clemente Montero	Carpenter
16	Edgar Rosario	Carpenter
17	William Brooks	Carpenter
18	George Shepard	Carpenter
19	George Martin	Carpenter
20	Gerard Gabriel	Carpenter
21	Lamarre Maignan	Carpenter
22	Kendy Fernandez	Carpenter
23	Vicente Peguero Marrero	Carpenter
24	Polito Constanzo	Carpenter
25	Juan Gil	Carpenter
26	Carmelo Hernandez Polanco	Carpenter
27	Mejia Villa Francisco	Carpenter
28	Dionis Cuello Rivera	Carpenter
29	Kelly V. Stos	Carpenter
30	Miguel F. Pena Trinidad	Carpenter
31	Steffen B. Detrick	Carpenter
32	Urbano C. Elena	Carpenter
33	Brian L. Wallace	Carpenter
34	Narciso D. Castro	Carpenter
35	Logan A. Pujol Samboy	Carpenter
36	William D. Brooks	Carpenter
37	George V. Shepard	Carpenter
38	George T. Martin	Carpenter
39	Bertram Inniss	Electrician
40	Ashfield Skepple	Electrician
41	Vernon Smith	Electrician

<u>#</u>	<u>Name</u>	<u>Classification</u>
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Subject to the final design requirements, skills and availability of the individual workers this list of provides the classifications of current and former GEC employees that may be used in the Work for the Paul E. Joseph Stadium Design/Build Contract

42	Reynard Menders	Electrician
43	William Ayers	Electrician
44	Aldrin Cherry	Electrician
45	Oscar Browne	Electrician
46	Shawn A. Walters	Electrician
47	Tariq Shabazz	Equipment Operator
48	Carlos Navarro	Equipment Operator
49	Daniel Montes	Equipment Operator
50	Renso Ramos	Equipment Operator
51	Patrick Mason	Equipment Operator
52	Thomas Figueroa	Equipment Operator
53	James Wattley	Equipment Operator
54	Miguel Negron	Equipment Operator
55	Christopher Taylor	Equipment Operator
56	Jose Figueroa	Equipment Operator
57	Edwardo Montes	Equipment Operator
58	Thomas Sonnichsen	Equipment Operator
59	Alain Gifford	Equipment Operator
60	Luis Liaraza	Equipment Operator
61	Ernesto Ayala, Jr.	Equipment Operator
62	Felipe S. Figueroa	Equipment Operator
63	Darrin Corcoran	Foreman
64	Patrick Byrd	Foreman
65	Donavon Fearon	Foreman
66	Daren Durand	Foreman
67	Thomas Lake	Foreman
68	O'neal Brooks	Foreman
69	Sills Lewis	Foreman
70	Pedro Freeland	Foreman
71	Isaac M. President	Foreman
72	Thomas Hyk	Foreman
73	Julio A. Lopez	Foreman
74	Kiven Fyfield	Helper
75	Salome Soriano	Helper
76	Hector Quinones	Helper
77	Arnold Warren	Helper
78	Clem John	Helper
79	Nile James	Helper
80	Sigfredo Marquez	Helper
81	Davidson Bachelor	Helper
82	Terrance B. Williams	Helper

<u>#</u>	<u>Name</u>	<u>Classification</u>
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Subject to the final design requirements, skills and availability of the individual workers this list of provides the classifications of current and former GEC employees that may be used in the Work for the Paul E. Joseph Stadium Design/Build Contract

83	Osner Jean Baptiste	Helper
84	Yessenia Maria Alicea	Helper
85	Chanel Eva James	Helper
86	Benjamin Mejia Leonardo	Helper
87	Andry Abreu Peralta	Helper
88	Edgar X. Quinones	Helper
89	Edgar C. Rosario	Helper
90	Jose Torres	Laborer
91	Zoraida Rodriguez	Laborer
92	Shawn Hendricks	Laborer
93	Joannes Francois	Laborer
94	Callistus Roberts	Laborer
95	Catherine Donelly	Laborer
96	Kareen Inniss	Laborer
97	Rivera Morales	Laborer
98	Andres Sanes Jr.	Laborer
99	Jose Luis De Oleo	Laborer
100	Joseph Caraballo	Laborer
101	Chris Andre	Laborer
102	Emanuel Frazier	Laborer
103	Gerald Stubbs	Laborer
104	Joseph Herbert	Laborer
105	Joel Francis	Laborer
106	Hollis Charles	Laborer
107	Ivel Sainval	Laborer
108	Dockson Chery	Laborer
109	Noverlio Premier	Laborer
110	Joseph Smith Dorcelian	Laborer
111	Valery Peirre	Laborer
112	Blaise Harmonique	Laborer
113	Emmanuel Claxton	Laborer
114	Gabriel Resy	Laborer
115	Keano James	Laborer
116	Kasheem James	Laborer
117	Nurys Ventura	Laborer
118	Alford Matthew	Laborer
119	Jose Pena	Laborer
120	Gusler Malbranche	Laborer
121	Rueban Prince	Laborer
122	David Francis	Laborer
123	Emilia Emile	Laborer

<u>#</u>	<u>Name</u>	<u>Classification</u>
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Subject to the final design requirements, skills and availability of the individual workers this list of provides the classifications of current and former GEC employees that may be used in the Work for the Paul E. Joseph Stadium Design/Build Contract

124	Marco Rijo	Laborer
125	By Vilner	Laborer
126	Dicky J. Weeks	Laborer
127	Nelson J. Leonardo	Laborer
128	Daniel Harvey Canelo	Laborer
129	Monica P. Vining	Laborer
130	Keith C. Berkel	Laborer
131	Arnaldo Rivera Morales	Laborer
132	Nurys A. Ventura Marte	Laborer
133	Darren F. Kelsick	Laborer
134	Domingo A. De La Cruz	Laborer
135	Jose B. Martinez	Laborer
136	Jahreem Greenidge	Laborer
137	Manuel Peguero	Laborer
138	Benacio E. Bernardo	Laborer
139	Miguel A. Cruz	Laborer
140	Confesor F. Almonte	Laborer
141	Joseph A. Caraballo	Laborer
142	Joel J. King	Laborer
143	Keith F. Telesford	Laborer
144	Abreu Ramon Sanchez	Laborer
145	Charles Emanuel Frazier, Jr	Laborer
146	Joseph A Herbert, Jr	Laborer
147	Joel R. Francis	Laborer
148	Solin Valde	Leadman
149	Jose Bermudez	Leadman
150	Juan P. Santana	Leadman
151	Peterson Seamon	Mason
152	Fedet Frederic	Mason
153	Lemony Saint Pierre	Mason
154	Mikey Luke	Mason
155	Mejia Leonardo	Mason
156	Abreu Peralta	Mason
157	Clecencio Martinez	Mason
158	Rolando Cedeno Chalas	Mason
159	Xavier J. Jeffers	Mason
160	Pierre Cetoute	Mason
161	Michael Antony Navarro	Mason
162	Wingrove O. Parris	Mason
163	Stephen Froelich	Mechanic, Equipment
164	Zacharie Thomas	Mechanic, Master Eqpt.

#	Name	Classification
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Subject to the final design requirements, skills and availability of the individual workers this list of provides the classifications of current and former GEC employees that may be used in the Work for the Paul E. Joseph Stadium Design/Build Contract

165	Victor Martinez	Painter
166	Nelson Navarro	Painter
167	Andres Sanes	Painter
168	Miguel Trinidad	Painter
169	Aloysius Henrillien	Painter
170	Angel Sanes	Painter
171	Alvin Williams	Painter
172	Gloria Sanes	Painter
173	Alan Forsythe	Painter
174	Enrique Baires	Painter
175	Querman Peralta	Painter
176	Angel L. Sanes	Painter
177	Andres Sanes, Jr.	Painter
178	Angel L. Molina Montes	Painter
179	Edgar Gonzalez	Painter
180	George King	Painter
181	Junior C. Rantan	Painter
182	Arthur A. Roach	Painter
183	Craig Martin	Plumber
184	Larry Richards	Professional Engineer
185	Keith F. Batts	Project Manager
186	Carlos Tesitor	Project Manager
187	Joe Lee, Sr.	Site Project Manager
188	Joe Lee, Jr.	Site Project Manager
189	John Vining	Supervisor
190	Michael Betterton	Supervisor
191	John Detrick	Supervisor
192	Lonnie Hartman	Supervisor
193	Jon Adams	Supervisor
194	Cynthia Pitts	Supervisor
195	Savannah N. Gardner	Supervisor
196	Laurie Lee	Supervisor, Field
197	Khalifa Emanuel	Supervisor, Field
198	Michael Thompson	Surveyor
199	David Simeon	Welder, Uncertified
200	Almelindo Cuevas Gerardo	Welder, Uncertified

GEC, LLC

P.O. Box 1656, Kingshill, St. Croix, U.S. Virgin Islands 00851 Phone: (340) 778-0200
Fax: (340) 778-2545

JOB NO. P.O. NO. CODE NO.

CONFIRMING ORDER BY

MAIL ☐ PHONE ☐ FAX ☐

SHIP VIA:

FREIGHT TERMS:

PURCHASE ORDER SUBCONTRACT AGREEMENT

DATE: _____

To: Subcontractor Name

Perform Work at
or Ship to:

Paul E. Joseph Stadium

Subject to Requirements for:

- ☐ Retainage of %
☐ Guaranty of Workmanship and Materials
☐ Performance and Payment Bond %

IMPORTANT: Invoices must be
rendered in Triplicate and must refer
to the P.O. Number in the upper right
hand corner.

Description of Work and Materials

Scope of work and cost

Conditions printed on the reverse side are part of this Purchase Order/Subcontract Agreement

GEC, LLC

General Contract Applicable:

Project:

Owner:

Contract Date:

TERMS AND CONDITIONS ACCEPTED:

By _____
Authorized Signature

Date: _____

Approved: _____
(Contractor)

Purchasing: _____

Requesting By: _____

PLEASE SIGN AND RETURN ACCEPTED COPY
AGREEMENTS NOT SIGNED BY JOHN R. WESSEL ARE NOT VALID

White Copy: CUSTOMER

Blue Copy: ACCEPTANCE

Pink Copy: ACCOUNTING

Green Copy: PURCHASE

Yellow Copy: FIELD



SUPPLIER AND/OR SUBCONTRACTOR OBLIGATIONS

By signing and returning the attached acceptance copy of this Agreement or by partial or complete performance under this Agreement, you, as Supplier and/or Subcontractor agree with Contractor as follows.

1. The terms and obligations of this Agreement are a complete and exclusive statement of our agreement and supersede any other document or understanding pertaining to this transaction unless this provision is expressly waived in a writing signed by Contractor. Acceptance of this Agreement is limited to its terms.

2. Subcontractor and/or Supplier agrees to be bound to the Contractor by the terms of the Contract between Contractor and the Owner referred to on the front of this Agreement and Contract Documents thereof, and to assume towards Contractor all the obligations and responsibility that Contractor by said documents assumes toward the Owner provided that where any provision of the Contract Documents between the Owner and Contractor is inconsistent with any provision of this Agreement, this Agreement shall govern.

3. Subcontractor and/or Supplier shall maintain insurance with coverage, including Contract liability in amounts specified by Contractor, and shall furnish certificate(s) of insurance naming contractor as an additional insured(in a form acceptable to Contractor)to Contractor before work begun. Such certificate(s) shall provide that insurance policy(s) may not be changed or cancelled until thirty(30) days after written notice thereof is received by Contractor.

a. Subcontractor and/or Supplier shall hold harmless, indemnify and defend Contractor, its directors, officers, employees and agents from and against any and all claims, damages, liabilities, losses and expenses, including reasonable attorney's fees attributable to bodily injury, sickness, disease or death of any person whomsoever, including Contractor's and Subcontractor's employees, property damage, loss or liability to any persons or organizations whatsoever, arising out of or occasioned by, or in any way connected with Subcontractor's and/or Supplier's performance of or non-performance under this Agreement and performance or non-performance or allegations thereof of Subcontractor's and/or Supplier's Agreement with third parties. Nothing in the forgoing is intended as an agreement to hold harmless Indemnify or defend Contractor, its directors, officers, employees and agents from such person's own negligence.

b. Unless otherwise stipulated in the Contract Documents or in this Agreement insurance coverage and its limits shall be as follows for Subcontractor and/or Supplier (1) Workmen's Compensation-statutory; (2) Employer's Liability-U.S. \$1,000,000; (3) Comprehensive General Liability(including contract liability against the liability against the liability assumed in any indemnity provisions included in the Contract Documents) and Automobile liability(including coverages for all owned, non-owned and hired vehicles used by or at the discretion of Subcontractor in connection with the performance of the Subcontractor's work, U.S. \$1,000,000 per person, U.S. \$1,000,000 per occurrence, U.S. \$1,000,000 aggregate for bodily injury Property Damage (not subject to XCU exclusions and coverage and coverage including property in the care, custody or control of the Subcontractor and/or Supplier) U.S. \$1,000,000 per occurrence and U.S. \$1,000,000 aggregate; (4) Umbrella Liability, excess of primary coverage for Workmen's Compensation, Employer's Liability, Comprehensive General Liability and Automobile Liability U.S. \$5,000,000 Combined Single Limit for bodily injury and property damage.

c. Contractor and Subcontractor and/or Supplier waive all rights they may have against one another for damages caused by fire or other perils covered by the property insurance described above except such rights they may have under the Contract Document. Contractor shall pay Subcontractor a just share of any insurance moneys received by the Contractor under the Contract Documents and Subcontractor shall make similar payments to his subcontractors.

4. Subcontractors and/or Supplier will send one original of its pay estimate to Contractor on or before the last day each month for Work accomplished during the preceding month. Subcontractor, prior to or at the time the first monthly statement is submitted, shall furnish a detailed schedule of values and detailed estimate of the percentage of the contract price that is likely to be due each month as the Work progresses. This schedule of values and estimate is to be subject to the Contractor's approval and is to be used solely for checking the Subcontractor's monthly pay estimates. Each pay estimate must be accompanied by a conditional waiver and release of lien in the amount of the current pay estimate and an unconditional waiver and release of lien and other documents or any portion thereof, with respect to any payment or payments, shall not constitute a waiver of the Contractor's right to require the same with respect to any succeeding payments. Requested revisions to Subcontractor's and/or Supplier's contract price are not to be included in its billings until Subcontractor receives Contractor's signed Change Order. Authorized changes must be shown, but not billed separately, and are to be added to or deducted from the Contract Price, including revisions. Subcontractor's pay estimates shall be made in the format approved by contractor.

5. All "Costs plus" billings or pay estimates from Subcontractor and/or Supplier to Contractor must be completely detailed as to labor, equipment, material and subcontract charges and must be supported by copies of material and subcontractor's invoices and by tickets for labor and equipment charges signed by Contractor's representative at the location the work is or was performed.

6. Upon written approval by Contractor and the Owner after having been valued in such amount by the Architect, Engineer and Quality Surveyor, if any, Subcontractor's pay estimate shall be paid in the net amount of its requests. If Contractor does not obtain reimbursement for such payment notwithstanding such approvals, Contractor shall have no further obligations to make payments to Subcontractor until such reimbursements is received. Retention shall be paid to the Subcontractor and/or Supplier after approval and acceptance of the entire project by the Owner and submission of the Subcontractor's and/or Supplier's maintenance guarantee or warranty, if any.

7. Subcontractor and/or Supplier hereby guarantees the good quality of the workmanship and materials being supplied by it under this Agreement, and if any defect therein appears within one (1) year after issuance of the Certificate of Substantial Completion, or longer if required by the contract between Contractor and Owner, because of faulty workmanship or materials supplied under this Agreement. Subcontractor and/or Supplier will replace or repair such faulty workmanship or materials without additional charge to Contractor. If required, Subcontractor and/or Supplier shall furnish with his final billing a bank guaranty (or surety or warranty bond in lieu thereof if acceptable to Contractor and Owner) in form and substance satisfactory to Contractor in the percentage of the Adjusted Contract Price set forth on the front of this Agreement.

8. Subcontractor and/or Supplier shall keep the construction site and surrounding premises clean at all times of debris arising out of its operations.

9. Subcontractor and/or Supplier shall comply with all applicable safety requirements and with all safety regulations established by 29 CFR. Subcontractor shall report immediately in writing to Contractor any injuries suffered by its employees or any injuries to other persons or property damage arising out of its operations. The Contractor shall be furnished two copies of an accident report within three (3) days of the injury or damage.

10. Subcontractor and/or Supplier shall make all changes from the original plans and specifications when ordered to do so by Contractor without nullifying this agreement, and shall promptly submit to Contractor his Change Order proposal if required by the changes in the plans and specifications.



11. It required, the Subcontractor and/or Supplier shall furnish a performance and payment bond in form and with sureties acceptable to Contractor.

12. It is agreed that if Contractor's contract for the project or the project concerning which this order is written is terminated or the progress of the Work delayed due to conditions which the Contractor cannot control, Contractor may terminate this order without any liability to Subcontractor and/or Supplier, and the Subcontractor and/or Supplier will be entitled to payment for his work in the amount approved by the Owner as Subcontractor's and/or Supplier's sole and exclusive remedy. With the exception of those costs approved for and paid by the Owner to Contractor, the Subcontractor and/or Supplier expressly agrees not to make, and hereby waives any claim for damages on account of any delay, obstruction, or hindrance for any cause whatsoever, including but not limited to the aforesaid causes, and agrees that its sole right and remedy in the case of any delay, obstruction or hindrance shall be an extension of the time fixed for completion of the Work. If the Subcontractor and/or Supplier shall delay the Work and as result thereof the Contractor shall become liable for damages or shall incur additional costs and expenses the Subcontractor and/or Supplier shall indemnify and hold harmless the Contractor and the Owner on account of any such damages and additional costs and expenses.

13. Subcontractor and/or Supplier shall pay all sales, use, occupational, exercise, payroll, unemployment taxes, custom duties, demurrage charges, container rentals, costs associated with temporary power, costs associated with temporary sanitary facilities, costs associated with potable water for Subcontractor's and/or Supplier's work force employed in the performance of the work under this agreement as well as any other tax or levy applicable to this Agreement.

14. Subcontractor and/or Supplier shall complete his work in accordance with this Agreement and the Contract Documents and in a manner satisfactory to the Contractor and Owner and shall keep the Contractor, Owner and the property supplied or upon which Work is performed free of any claim or charge from others because of his actions. If at any time, there shall be evidence of any claim, lien, chattel mortgage, conditional bill of sale or security interest for which, if established, the Owner and/or Contractor might become liable and which in any way relates to or arises out of the Work, or is claimed in any ways to relate to or arise out of the Work, the Subcontractor and/or Supplier shall indemnify and hold harmless the Contractor and Owner (including payment of reasonable attorney's fees) against same and the Contractor shall have the right to retain out of any payments then due or thereafter to become due, an amount sufficient to completely indemnify and protect the Contractor or Owner against such lien, claim, chattel mortgage, conditional bill of sale, or security interest, as aforesaid. If any amount retained by the Contractor, or any payment of payments due to the Subcontractor and/or Supplier and unpaid shall not be sufficient to remove or discharge any such lien, claim, chattel mortgage, conditions bill of sale or security interest and/or to reimburse the Contractor its costs and expenses in connection therewith, or if the Subcontractor and/or Supplier shall have been fully paid, the Subcontractor and/or Supplier shall pay to Contractor on demand the amount required to satisfy such lien, claim, chattel mortgage, conditional bill of safe, or security interest, and the Contractor's costs and expenses in connection therewith including reasonable attorney's fees

15. Subcontractor and/or Supplier shall assume all risks and liability for damage for loss to all materials, tools, or equipment not incorporated in the Work which belong to him or are under his control.

16. Subcontractor and/or Supplier shall cooperate with Contractor and other Subcontractor's in the scheduling and performance of its Work. It shall commence its work upon notification from Contractor and will proceed towards completion in accordance with the schedule established by Contractor. If Subcontractor fails to pursue or complete his work in accordance with the schedule established by Contractor it hereby agrees to indemnify and hold harmless Contractor for any loss or damage caused by such delay.

17. All claims for additional costs, extensions of time, damages for delays or otherwise shall be submitted to the Contractor within seven (7) days of the basis for the claim becoming apparent so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor to the Owner. In no event shall Contractor be liable to Subcontractor and/or Supplier for additional costs, extensions of time, damages for delays or other costs of any nature whatsoever unless such costs shall be approved by Owner and paid by Owner to Contractor.

18. Subcontractor and/or Supplier shall take all field measurements, furnish all the required samples and drawings, give authorities timely and proper notices where required, secure and pay for all necessary permits, licenses, inspections, tests and bonds required for the work covered by this Agreement.

19. Subcontractor and/or Supplier agrees that all work shall be accomplished subject to the final approval of the Contractor, Architect, Engineer, and the Owner, as applicable.

20. Subcontractor and/or Supplier agree that if this Agreement requires payment for work or material based on unit prices and there be a variation between the unit prices as extended and the total price, the unit prices as valued by the Quantity Surveyor shall control and shall be final and binding upon the parties.

21. Subcontractor and/or Supplier shall have and exercise full responsibility for compliance hereof by its agent, employees, material men and subcontractors generally, and in particular with respect to its portion of the work on this project and agrees that the requirements, standards and regulations of the contract between the contractor and the owner, and of the country in which the project is located and its political subdivisions apply, and shall be directly responsible for Subcontractors and Suppliers agents, employees, material men and contractors, and shall directly receive respond to, defend against and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of failure on the part of its agents, employees, material men or subcontractors with respect thereto, and indemnify and hold harmless Contractor from its failure to perform same.

22. Subcontractor and/or Supplier agree with Contractor that the English system of measurements shall apply and shall be controlling in case of variance between the English system of measurement specified in the Contract between the Contractor and Owner shall be controlling.

23. In addition to all other rights or remedies which the Contractor may have at law or in equity, the Contractor reserves the right to terminate this Agreement in whole or in part after giving (3) days written notice to the Subcontractor and/or Supplier without cost or expense to the Contractor. In the event of the happening of any of the following which shall be deemed occasions of default by the Subcontractor and/or Supplier, failure to perform the Work in accordance with the completion date or dates specified in the Agreement; failure in any respect to prosecute the work with promptness and diligence, breach of any of the warranties contained herein, failure to pay promptly for labor materials, machinery, equipment, tools, plants, facilities, work services or any of its other obligations, interference with the work of others or causing stoppages or delays, insolvency, the execution of an assignment for the benefit of credits, the filing of proceedings in bankruptcy or for corporate reorganization or arrangement by or against the Subcontractor and/or Supplier of failure to strictly comply with the terms and Conditions of this Agreement. In the event of such termination by the Contractor. Contractor may provide through itself or through others any labor, materials, equipment, machinery tools, plants, facilities, work and services for the performance of the Work and completion of the Agreement, and deduct the cost and expense thereof from any money due or thereafter to become due to the Subcontractor and/or Supplier. Should the Contractor terminate this Agreement, the Subcontractor and/or Supplier shall not be entitled to receive any further payment under this Agreement until the Work shall be wholly finished at which time, if the unpaid balance of the

amount due the Subcontractor and/or Supplier shall exceed the cost and expense incurred by the Contractor in completing this Agreement, such excess shall be paid by the Contractor to the Subcontractor and/or Supplier; but if such costs and expenses shall exceed such unpaid balance, the Subcontractor and/or Supplier shall pay the difference to the Contractor. The cost and expense incurred by the Contractor shall include all costs of completing the Work, all payments for labor, materials, equipment, machinery, tools, plant facilities, services, all other obligations of the Subcontractor and/or Supplier incurred by the Subcontractor and/or Supplier and paid directly by the Contractor any damages incurred through the default of the Subcontractor and/or Supplier, and also any other costs or expenses incurred by the Contractor, including reasonable attorney's fees.

24. At the Contractor's request, the Subcontractor and/or Supplier shall furnish details or design drawings for the work for the Contractor's approval. Approval of any design drawing or manufacturers drawings by the Contractor shall not relieve the Subcontractor and/or Supplier of any responsibility for execution of the Work in accordance with the terms, provisions and conditions of this Agreement and the Contract between the Contractor and the Owner.

25. All documents furnished by the Contractor or by Subcontractor and/or Supplier at Contractor's request, including, but not limited to, drawings, plans, blueprints, specifications, patterns, technical designs, instructions, calculations, etc. and all copies or reproductions thereof, shall remain the Contractor's property and the Subcontractor and/or Supplier agree not to sell or give such documents to any person firm or corporation or use them on other projects without the Contractor's prior written consent.

26. The Subcontractor and/or Supplier shall treat as confidential all data and information furnished by the Contractor which may be of a secret or confidential nature, and the Subcontractor and/or Supplier shall not knowingly divulge the same to third parties without the Contractor's prior written consent until such data and information has become public knowledge.

27. The Subcontractor and/or Supplier hereby warrants that it, its employees, agents and sub-subcontractors have the necessary expertise to perform the work under the Contractor's Contract with the Owner and in compliance with all applicable laws, rules, and regulations of the United States and the United States Virgin Islands regarding workplace safety including, without limitations, Title 29, Chapter 15, of the United States Code (Occupational Safety and Health) and all rules and regulations promulgated thereunder, Supplier/Subcontractor further acknowledges that in entering into this agreement contractor is relying on such expertise, knowledge and compliance by the Supplier/Subcontractor in the performance of the work or furnishing of the materials and agrees to defend and hold harmless contractor from or on account of any debts, claims, demands, suits and/or liabilities arising from or in connection with any violation by Supplier/Subcontractor of such laws, rules, and/or regulations.



The Subcontractor agrees to furnish all labor, materials, tools, equipment, testing, submittals, shop drawings, inspection, scaffolding, safety appliances, hoists, lights, required licenses, and any other miscellaneous items necessary to perform all of the work described in the section of the Subcontract Agreement entitled "Scope of Work" as well as any work not shown or specified but which may reasonably be implied to be within the scope of the Subcontractor's work for the Project being carried out by the Contractor for the Owner, all in a good workmanlike manner and in strict accordance with the General Contract.

Except as modified by this Subcontract, Subcontractor agrees to adhere to and be bound to the Contractor by all of the provisions of the General Contract between the Contractor (or its affiliate) and the Owner and to the contract documents therein affecting subcontractor's work hereunder, and, insofar as its work is concerned, the Subcontractor assumes towards the Contractor, or its affiliate, all of the duties, obligations and liabilities that the Contractor assumes toward the Owner. With regard to any requirements of the General Contract for submission of written notices within specified time periods, it is agreed that Subcontractor will submit such notices to the Contractor promptly enough to enable the Contractor to submit them to the Owner or Architect within such specified time periods.

Subcontractor acknowledges receipt of: Plans dated _____, Project Manual dated _____

Scope of Work:

BY MY (OUR) SIGNATURE BELOW ON BEHALF OF SUBCONTRACTOR, I/WE UNRESERVEDLY PERSONALLY GUARANTEE COMPLETION OF ALL REQUIREMENTS OF THIS AGREEMENT.

The subcontractor must review all construction documents and is responsible for all work associated with their trade in the contract documents. Do not base scope of work only on a review of the sheets typically associated with the subcontractors' scope of work.

SUBCONTRACTOR hereby warrants that it and its agents and sub-contractors have the necessary expertise to perform the work under the contract plans and specifications and all applicable laws, rules and regulations of the United States and the United States Virgin Islands concerning the work/materials furnished hereby, and is fully knowledgeable about and capable of full compliance with the contract plans and specifications and all laws, rules, and regulations of the United States and the United States Virgin Islands regarding workplace safety, including, without limitation Title 29, Chapter 15, of the United States Code (Occupational Safety and Health) and all rules and regulations promulgated there under. Supplier/Subcontractor further acknowledges that in entering into this agreement GEC is relying on such expertise, knowledge and compliance by the Supplier/Subcontractor in the performance of the work or furnishing of the materials and agrees to defend and hold harmless GEC from or on account of any debts, claims, demands, suit and/or liabilities arising from or in connection with any violation by Supplier of such laws, rules or regulations.

SUBCONTRACTOR further agrees that SUBCONTRACTOR shall cause GEC, LLC and the Owner and its designees to be named as "Additional Insured's" as part of the Insurance requirements outlined in paragraph 3 of the Supplier and/or Subcontractor Obligations on the reverse of this agreement, and that the word Contractor in said paragraph 3 shall mean Contractor and/or Owner.

The Subcontractor and/or Supplier shall execute a warranty form in a form as required by Contractor and Owner and if applicable, shall execute Extended Warranty forms as required by Contractor and Owner.

ARBITRATION. If any disputes arise between the Contractor and the Subcontractor and/or Supplier arising out of or related to this Agreement, the Subcontractor and/or Supplier agrees that the Contractor, at its sole option and in its sole discretion, may elect to submit such disputes to arbitration in which such event all claims between the parties hereunder shall be subject to arbitration. Such election shall be evidenced by the filing of a demand for arbitration in accordance with the Construction Industry Rules of the American Arbitration Association and such arbitration shall then be conducted in accordance with such rules. If the General Contract of the Contractor with the Owner contains an arbitration clause, the Subcontractor and/or Supplier agrees, at the election and upon the demand of the Contractor, to participate, as a party, with the Owner and the Contractor, in any arbitration initiated by the Owner with respect to any of the goods and services covered hereby, and the Subcontractor and/or Supplier's rights and liabilities hereunder shall be determined in such arbitration. The procedures and venue provided in the Owner's contract with the Contractor shall govern the conduct of such arbitration and the election of arbitrator(s). In the absence of such procedures, the matter shall be decided in accordance with the Construction Industry Rules of the American Arbitration Association. These agreements to arbitrate shall be specifically enforceable under the prevailing law. The award rendered shall be final and judgment may be entered upon by any court having jurisdiction thereof. In any suit, action or arbitration arising out of or relating to this Purchase Order, the losing party shall pay to the prevailing party its attorneys fees and all other costs incurred by it in any such action or proceeding.

For Contracts wherein Contractor receives Affordable Housing Act tax benefits the Subcontractor/Supplier will receive a tax exemption certificate which will allow Subcontractor/Supplier to pay no excise tax on imported materials, 1% import duty on allowable foreign materials and no gross receipts tax. In the event such a certificate is not provided Subcontractor/Supplier will be reimbursed for the actual incurred and verifiable costs for excise tax on imported materials, duty on allowable foreign materials and gross receipts tax to the extent such costs are incurred as a result of the work included in this Agreement.

(PROJECT NAME)
(OWNER)
(GENERAL CONTRACT DATE)

SUBCONTRACTOR

DEPARTMENT OF JUSTICE
SECURITY GENERAL

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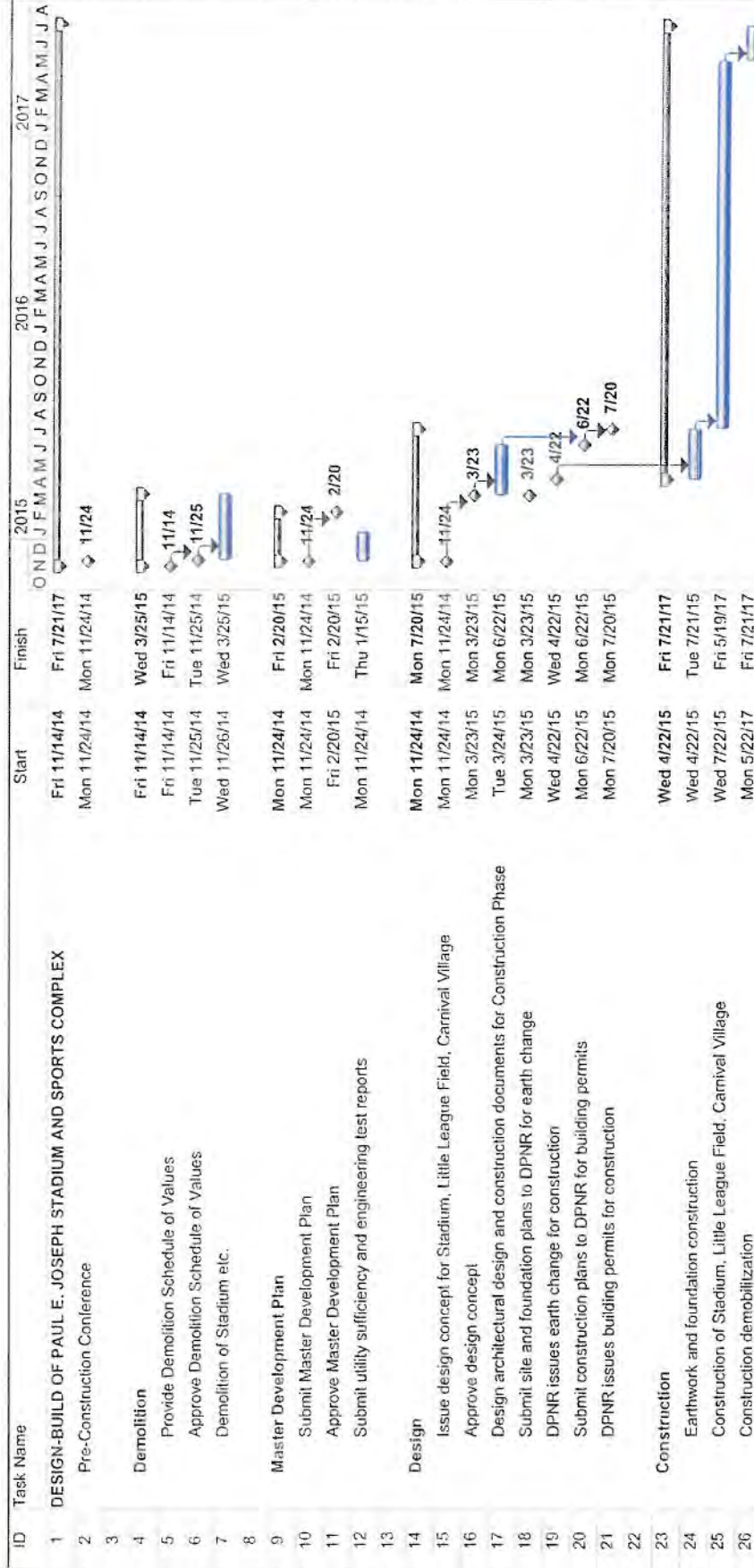
Official Zoning Map of Project Site



APPENDIX A



Design-Build of Paul E. Joseph Stadium and Sports Complex Project Schedule



Project: Paul E. Joseph Design Build S Date: Wed 10/22/14	Task	Milestone	External Tasks
	Split	Summary	External Milestone
	Progress	Project Summary	Deadline