

Contract No. C003SPRC15
(Original Contract)





Department of Property & Procurement

Government of the United States Virgin Islands

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

8201 SUB BASE, 3RD FLOOR, ST. THOMAS, U. S. VIRGIN ISLANDS 00802

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[HTTP://DPP.VI.GOV](http://dpp.vi.gov)

NOTICE TO PROCEED



November 21, 2014

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

Re: C003SPRC15 (GEC) Service Contract for the Design and Construction of the Paul E. Joseph Stadium and Sports Complex, St. Croix, VI

Dear Mr. Wessel:

You are hereby notified to commence work on the above referenced contract on Friday, December 5, 2014 and fully complete work within thirty (30) months. Your contract completion date is therefore Monday, June 5, 2017.

The contract provides for an assessment of liquidated damages in the sum of five hundred dollars (\$500.00) for each calendar day after the above established contract completion date that the work remains incomplete.

A pre-construction meeting is being scheduled for Wednesday, November 26, 2014 at 10:00 a.m. in the Conference Room at the Department of Property and Procurement.

Attached, please find the executed contract for your records.

Sincerely,


Lynn A. Millin Maduro
Commissioner

LAMM/lfb/xxj

Enclosure

XC: St. Clair N. Williams, Department of Sports, Parks & Recreation, Commissioner
Darryl A. Smalls, P. E., Department of Public Works, Commissioner
✓ P & P Project File

**SERVICE CONTRACT FOR DESIGN-BUILD OF
PAUL E. JOSEPH STADIUM AND
SPORTS COMPLEX
(GUARANTEED MAXIMUM CONTRACT PRICE)
BETWEEN
GOVERNMENT OF THE VIRGIN ISLANDS
AND
GEC, LLC**

DEPARTMENT OF JUSTICE
CORRUPTION & MISFEASANCE
2019 NOV 12 AM 10:39



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DESIGN-BUILD CONTRACT
(GUARANTEED MAXIMUM CONTRACT PRICE)

THIS SERVICE CONTRACT FOR THE DESIGN AND CONSTRUCTION OF THE PAUL E. JOSEPH STADIUM AND SPORTS COMPLEX is made and entered into as of this 19th day of November, 2014, 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" or the "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 No. 2 Lagoon Street, Estate La Grange, Frederiksted, St. Croix, for the development of the Paul E. Joseph Stadium ("PEJ Stadium"), the Terrence Martin Little League Field (the "Little League Field"), and a festival village (the "Festival Village"), to provide amenities connected with the use of the PEJ Stadium and the Little League Field (said Parcel No. 2 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 Property and Procurement the recommendation that the Virgin Department of Property and Procurement, on behalf of the Virgin Islands Department of Sports, Parks, 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 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.

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." shall mean the American Society for Testing Materials.

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

"Baseline Site Condition" means the surface and subsurface geotechnical condition, Environment Condition Assessment, including Pre-Existing Environmental Conditions, of the Site on the Commencement Date of the Contract that have been expressly disclosed to the Contractor 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" shall mean a written agreement on an approved form signed by the Contractor and the Commissioner, involving Changes or Extra work within the provisions of the Contract Documents

"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" shall mean the Service Contract executed and approved by 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 therefore 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 as the same are more specifically identified to the Service Contract as a result of the performance of the design build process under this Agreement, together with all written amendments, Change Orders, and Government Engineer'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 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" shall mean the sums actually due and payable to Contractor under the Contract Documents, which shall not exceed the Guaranteed Maximum Contract Price.

"Contract Services" shall have the same meaning of "Design/Build Work," as ascribed in this Service Contract.

"Contract Standards" 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; (5) the Performance Guarantees; (6) Good Engineering and Construction Practice; (7) Good Industry Practice; (8) applicable equipment manufacturers specifications; (9) applicable Insurance Requirements; 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" shall mean GEC, LLC, a Virgin Limited Liability Company.

"Contractor's Equipment" shall mean 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.

"Contractor's Fee" shall have the meaning ascribed in the terms and conditions set forth in this Service Contract and be in the amount enumerated in Appendix B.

"Cost of the Design/Build Work" shall have the meaning ascribed in Appendix B (Guaranteed Maximum Contract Price Terms) to the Service Contract.

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

"Department" shall mean the Department of Property and Procurement of the Government of the United States Virgin Islands.

"Design/Build Work" shall have 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" shall mean the Virgin Islands Department of Property and Procurement.

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

"DPW" shall mean the Virgin Islands Department of Public Works.

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

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

"DSPR Commissioner" shall mean 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), shall mean not only full-time and part-time employees (including agency personnel except with respect to any payment provisions wherein agency personnel are separately classified) but also officers, directors and managers of Contractor and Subcontractor.

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

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

"Extra Work" shall mean 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" shall have the meaning set forth in Section 14 below.

"Government" shall mean the Government of the United States Virgin Islands.

"Government Engineer" shall mean the DPW Commissioner designated in writing and expressly approved in writing by the DPP Commissioner, acting directly or through an assistant or representative duly authorized by him, 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 in writing.

"Government Provided Materials and Equipment" shall mean 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 by any person outside of the process 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" shall mean with respect to Contractor, any Subcontractor, or the Project, the Government or any national, state, territorial, provincial, county, department, 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.

"Guaranteed Maximum Contract Price" shall have the meaning ascribed in Appendix B to the Service Contract.

"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, or territorial, or local legislation, statutes, ordinances and other laws, rules and regulations, executive orders, executive proclamations, and by-laws of any legally constituted public authority, and shall include without limitation, all laws, ordinances, executive orders, executive proclamations, promulgated rules and

regulations, and by-laws, of the Government 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) under incurred by the Government any provision of this Service Contract for which, pursuant to Section 26 of this Service Contract, Contractor is obligated to indemnify the Government.

"Materials and Equipment" shall mean 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.

"Payment Bond" shall mean 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" shall mean 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.

"Plans and Specifications" shall mean 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 or paying for 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.

"Pre-Existing 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 Company 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, disclosed to the Contractor as of the Contract Date.

"Procurement Rules" shall mean any procurement generally accepted and applied in connection with the procurement processes set out in the Code of Federal Regulations and those relevant to the Design/Build Work under Title 31, 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" shall mean all or any part of the overall facility being provided pursuant to this Agreement comprised in first instance of the Paul E. Joseph Stadium, the Terance Martin Little League Field (including associated seating) and the Cruzan Christmas Festival Village and thereafter any additional improvements incorporated into the Project pursuant to this Service Contract.

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

"Punch List" shall mean a small amount of Design/Build Work remaining to be performed 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 punch list to be developed by the Government Engineer, and Contractor and finally approved by Government in writing (which approval shall not be unreasonably withheld) in connection with the achievement of 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. Contractor shall use reasonable efforts to minimize interference with Government's operation of the Project while completing the Punch List.

"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 Values" means the detailed itemized list 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 Appendix B (Guaranteed Maximum Contract Price Terms)

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

"Specified Subsurface Conditions" and "Surface and Subservice Conditions" mean the presence at the Site of surface and subsurface, structures, materials or conditions: (1) which are utilities whose location was not disclosed prior to the Contract Date or at that

time could be determined from publicly available sources, prior to the 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 Contract.

"Standard of Care" and "Good Engineering and Construction Practice" shall mean that degree of skill, care, attention, business administration and judgment normally exercised by recognized design/build firms with a National reputation for performing high quality design, engineering, procurement, Site development and construction, for a project of similar nature and complexity to the Project. As used herein, the "Standard of Care" shall include 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 and programmatic requirements for the Project.

"Subcontractor" shall collectively mean 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) by virtue of an agreement with the Contractor entered into in accordance with the provisions of this Service Contract.

"Substantial Completion" shall mean that the Design/Build Work is sufficiently 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, all Design/Build Work has been completed except for items on the Punch List, 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. The achievement of such responsibilities and details together with the achievement of the above stated criteria shall be evidenced by the issuance by Government of a Certificate of Substantial Completion described below in Section 18.

"Supplemental Agreement" shall mean 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.

"Vendor" shall mean 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 all or any part of the Project, including all drawings, specifications and documents, to be designed, produced and/or constructed by Contractor under the terms of this Contract, and all tasks to be completed and materials to be prepared and delivered by the Contractor in connection with the design and construction 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 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 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 proprietary 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 in its 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 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 AND GUARANTEED MAXIMUM PRICE AND PAYMENT PROCEDURES**

- (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) Guaranteed Maximum Price: 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 not to exceed Twenty Million and 00/100 Dollars (\$20,000,000) (the "Guaranteed Maximum Price"). The terms and conditions governing the computation and payment of this price are further set out in Appendix B (Guaranteed Maximum Price Provisions) which is attached to this Service Contract and made a part hereof.

- (c) Mutual Covenants as to the Conduct of the Parties:

1. The scope of the improvements contemplated in the Owners Program (as that term is utilized for the purposes of design/build projects) for the Project set forth in Appendix A of this Service Agreement which such work shall be effected within the parameters of the outline Milestone Dates set forth in said Appendix A and within an overall preliminary budget for the expenditure of the Guaranteed Maximum Prices consisting of the hard and soft costs and the fee totaling \$20,000,000, the initial allocation of which is set forth in Appendix B (the "Program Budget"). 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, the cost of which are to be developed in accordance with the portion of the budget allocated to each in the Program Budget plus the fee of the Contractor.
2. The Contractor may commence the Design/Build Work by implementing one phase for the whole Project or further subdivide the scopes and budgets into Sub-phases. When the scope and budget for any such phase or Sub-phase has been sufficiently defined and refined such scope and budget shall be presented to the government for review and approval work to be effected in such a phase will be presented to the Government and documented in accordance with the terms of this Service Agreement. The Design Standards to be used in conducting such reviews and approvals, when and if relevant to any such phase, are set out in Paragraph 7 of this Service Agreement (the "Design Standards").
3. The refinement or restatement of the Owner's Program set forth in Appendix A, or Sub-phases thereof, as the case may be, shall be prepared and refined by the Contractor and reviewed and approved by the Government acting through the Government Engineer 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. The initial Milestone Dates for effecting the Design/Build Work are set out in said Appendix

- A, which such Milestone Dates will be refined by the Contractor in accordance herewith. In all events, however, approval by the Government of any such phase shall be rendered within ten (10) working days of presentation of such a phase to the Government for approval. Such approval shall not be unreasonably withheld; for these purposes "unreasonable" shall include, without limitation, imposing conditions which impose costs in excess of the relevant budget.
4. After such approval, the entire phase or Sub-phase shall proceed to permitting, design and construction in accordance with the Design Standards according to the budget amount approved as part of this process, which such amount shall constitute the "Budget Price" for such phase.
 5. A refined Schedule of Values of payment of the portion of the Guaranteed Maximum Price allocated such a phase may be developed for each such phase (the "Schedule of Values") and the sums so allocated, less retainage, shall be paid to the Contractor in accordance with the provisions of Appendix B.
 6. After such approval of any such phase whether explicitly or by the expiration of the time period allocated for Government review, the Contract Documents so approved shall be identified to this Service Contract and their content shall then constitute the complete statement of the scope of Design/Work to be done under this phase under the Service Agreement and the balance of the Design/Work, if any, to be done on any remaining phases of such work.
- (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 (Guaranteed Maximum 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 to be considered as complimentary, 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 although omitted from therefrom, 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. The Contractor shall be responsible for the accuracy of the Plans and Specifications, and in the event he 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 of the carrier of the fire insurance 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 international 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 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 or Government the arbiter in establishing the limits of contract obligations of the Subcontractors, nor relieve the Contractor of any of its obligations under this Service Contract.

(f) In the event of conflicts between the documents, precedence and control shall be taken in the following order:

- (1) General Terms and Conditions of this Service Contract.
- (2) Appendices attached to and made a part of this Service Contract
- (3) All other Contract Documents.

6. THE GOVERNMENT ENGINEER

Unless otherwise expressly stated, altered, or deleted in the execution of the Design Work according to the Mutual Covenants of the Parties contained in Paragraph 4 (c) of this Service Contract, the role of the Government Engineer 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 the Government Engineer under this Service Agreement. The Government Engineer or Government may delegate the functions and authority of the Government Engineer to others, in whole or in part, confirming such action in writing to Contractor. The Government Engineer 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. Unless otherwise expressly stated, any approval, authorization or direction by Government or the Government Engineer under Contract Documents shall be in writing and made with 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, however, will not be required to make exhaustive or continuous inspections to check the quality or quantity of the Design/Build Work. Contractor, not the Government Engineer or Government, will be responsible for the means, methods, techniques, sequences and procedures and for safety precautions and programs.

(b) The Government Engineer shall not act in a manner that inhibits or prevent the conduct of the Design/Build Work of the Contractor. In this context, the Government Engineer 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, all in accordance with the Contract Documents. The Contractor shall only take instructions from the Government Engineer, or from an assistant to whom the appropriate authority has been delegated in writing signed by the Government Engineer 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 or delegated assistant, on any matter related to the Service Contract. These instructions shall be given in writing.

(c) The Government Engineer's exercise of its authority to act under this Service Contract shall not give rise to any duty or responsibility of the Government Engineer or the Government to Contractor or any of the Subcontractors engaged by either Contractor. The Government Engineer will not be responsible for the errors, acts or omissions of Contractor, any of the Subcontractors, or any person, firm or corporation directly or indirectly employed or engaged by either Contractor or any of the Subcontractors.

(d) Contractor shall provide Government Engineer with periodic reports regarding the status of the Design/Build Work. At any time upon the prior reasonable request of Government Engineer, but in no event less than monthly, Contractor's representatives

shall attend meetings with Government Engineer and its 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

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. 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 and all basic and detailed engineering and all drawings, Plans and Specifications, bills of material, schedules and estimates, and coordination with the design and engineering efforts of suppliers regarding interface requirements. Government Engineer reserves the right to review and approve all Plans and Specifications. Contractor shall be responsible for notifying Government of approval needs so as to not jeopardize the requirements 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 for review and comments in accordance with a submittals schedule that permits reasonable time for Government Engineer to review the same in accordance with the time periods required to facilitate the performance of this Service Agreement. The Government Engineer shall notify Contractor in writing of his comments within a Ten (10) working days and in no event or a lesser commercially reasonable time that permits the approval process set out in Paragraph 4 to be met after the receipt thereof or the Government Engineer will be deemed to have had no comments with respect to such increments of design and Contractor may proceed with the Design/Build Work. 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 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 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. At the Government Engineer'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 or Government Engineer'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) Government's Review subject to the Time Constraints Provided Under Paragraph 4 of this Service Agreement:

- (1) The Government Engineer's review and/or approval of any drawings, Plans and Specifications or schedules prepared by Contractor shall not be construed as a complete check but 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 of any sort, for correctness of design, detail or dimensions, or for deviation therein from drawings furnished by Government as Contractor shall be 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 assume all risks associated with assuming any such requests for change will be approved by the Government, including the risk of the Government requiring the Contractor to correct any unapproved changes to the Plans and Specifications or Design Requirements undertaken by Contractor.

(d) Shop Drawings.

- (1) The Contractor shall be responsible for preparation of shop drawings and schedules required for the Design/Build Work of the various trades and shall submit them to Government for approval in sufficient time to prevent delay in performance of the Design/Build Work and completion of the Project (said drawings hereinafter referred to as "Shop Drawings"). All Design/Build Work described therein shall be carefully checked by the Contractor 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, and shall promptly file corrected copies thereof with Government

- (2) The Contractor shall furnish necessary working and detail drawings which shall be approved by the Government Engineer before any Design/Build Work involved in them is started, such approval to be given within Ten (10) working days of receipt by the Engineer. If such documents are not approved within Ten (10) working days or their receipt, the working and detail drawings will be deemed to have been approved by the Government Engineer, but such approval shall not relieve the Contractor of any of his responsibilities under the Contract Documents and of the responsibility for the satisfactory completion of the improvement. Any Materials and Equipment ordered prior to the approval of such Plans and Specifications shall be at the Contractor's risk. No deviation from said approved Plans and Specifications will be allowed without the Government Engineer's written consent.
- (3) Working drawings for steel and concrete structures will consist of such detailed Plans and Specifications as may be required for the successful performance of the Design/Build Work.
- (4) Such Plans and Specifications furnished must conform to the general plans and drawings, to the general stress sheets and to the specifications incorporated in the Plans and Specifications. It is mutually agreed that approved general plans furnished by the Department shall 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 sets of blueprints shall be submitted to the Government Engineer and one set will be returned to the Contractor with desired revisions noted thereon. After correction and approval, five additional sets of prints or copies shall be furnished the Department. 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 the Department. 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, as

payment is made for acceptable Materials and Equipment complete in place, and Materials and Equipment rejected, due to improper fabrication or excess quantity or for other reasons within the control of the Contractor, will not be paid for regardless of the quantity or dimensions shown on the Plans and Specifications. The Government Engineer, 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 such a check out.

(e) 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. Any deviation from the Plans and Specifications and approved working drawings that may be required by the exigencies of construction or otherwise will in all cases be determined by the Government Engineer and authorized by him in writing. If any such deviation constitutes a Change, Section 19 of this Service Contract shall apply.

(f) Record Drawings. Contractor shall be responsible for ensuring that as-built data including actual location of certain installed construction, if different from Plans and Specifications but where such differences have been approved by the Government Engineer, 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 types of Plans and Specifications and data to be provided in as-built status are defined in Appendix A (Scope of Work). Contractor shall be responsible for maintaining this as-built data for all Subcontractors, suppliers or others performing Design/Build Work under its direction at the Site. The Contractor shall furnish Government with one set of Record Drawings. As a requirement for Final Acceptance, these 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 Work. The Contractor shall also furnish Government one electronic copy of the Record Drawings in AutoCad format required by the Government Engineer.

(g) 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..

(h) 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 material Subcontracts and purchase orders 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 wages for all work performed by Contractor's Employees. Subcontract Costs for wage rates and overtime rates shall be approved, when and as needed, according to Appendix B;

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 for his 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 Contract and the approval of Design and Specifications as provided in Paragraph 4 above.
- (2) Performance data and other information on Materials and Equipment;
- (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's prior approval shall be at the risk of subsequent rejection for non-conformity, in which event Contractor shall replace same at its sole cost and expense as may be directed by Government.

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 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 material 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 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 such property adjacent thereto as may be required for plant site, stockpiles and hauling roads. When sources of local Materials and Equipment are thus 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 he 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. The Payment and Performance Bonds required by the Government and provided by the Contractor for all Government approved Advances to Vendors. 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 Department 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 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 insure 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 insure the delivery of acceptable satisfactory material on the Project. Scales, measures and weighing equipment may be checked at any time by the Department.

(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 and the Government's operations. Should any question arise as to the acceptability of a particular product the Government Engineer will make the determination.

- (1) The Contractor shall submit Manufacturer's standard samples of Materials and Equipment and the samples specified in the Appendix A (Scope of Work), all at the Contractor's cost, and additional samples instructed by the Government Engineer 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 acknowledges 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 pursuant to this Service Contract, including surface conditions, 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 Guaranteed Maximum 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..

(c) **"As-Is" Condition of Site.** Based on its review of the design drawings, plans and specifications pertaining to the Site and Existing Plant, its inspections of the Site and other inquiries and investigations made by the Contractor prior to the Commencement Date, 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 design and construction of the Project which is ascertainable without testing or subsurface investigation during the course of its being given access to the site of the

Project as provided above. Subject to the foregoing the Parties agree that any latent or patent 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 Company's Assumption of "As-Is" Risk; Uncontrollable Circumstances. It shall be specifically understood that the Company'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 Pre-Existing Environmental Conditions and Specified 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 his proposal, he took cognizance of the difficulty of accurately classifying all materials encountered in making investigations, the possible erosion of stream channels and banks after survey data has been 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 surface and 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,, 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 a 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 and (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 Contractor 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, include such cost and expense as an allowable cost in Appendix B; (2) to designate another area within the Site for the construction of the Project, in which case the Guaranteed Maximum Price, and the Final Acceptance Date shall be adjusted to the extent necessary to place the Contractor in the same position following the site redesignation 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 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 law and any other environment studies that are required to establish the environmental condition of the Site. (Said environmental forms, reports, and studies hereinafter referred to as the "Environmental Impact Studies") (Said determination and assessment of the environmental condition of the Site hereinafter referred to as the "Environment Condition Assessment") Contractor shall provide the Contractor 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**

(a) Preparation for Design/Build Work. In preparation for 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 meeting between the Government and Contractor, to prepare for the design and construct of the Project.

(b) Plans Related to the Site. Contractor shall prepare and submit to the appropriate Governmental Body, as needed to support any permit applications or meet permit conditions, all plans related to the Site.

(c) 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 Law to obtain and maintain all Required Commencement Date Governmental Approvals required for the performance of the Design/Build Work.

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

(e) Survey. Contractor shall prepare or have prepared by a surveyor licensed in the Territory a property line survey showing: (a) the exact dimensions and locations thereof; (b) the exact location of all means of access thereto and all easements relating thereto; (c) 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); (d) existing elevations; (e) 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; (f) that the PEJ Sports Complex will comply with the

zoning classification applicable thereto, if any; and (g) that the Site is not located in any special flood hazard zone.

(f) 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, a zoning ordinance, or a variance or special exception thereto, shall then be effective which permits the construction of the Project, and Contractor shall furnish confirming evidence thereof satisfactory to the Government.

(g) 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.

(h) 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 Project.

(j) Schedule of Values. Contractor shall prepare and submit to the Government the preliminary and final versions of the Schedule of Values in a form acceptable to the Government in accordance with the requirements of 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.

(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 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 and 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 refined in accordance with this Service Agreement in order to reflect changes that may be required as a result of the evolution of the progress of the Project and, 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, said terms are hereinafter defined. The activities to be shown on such schedules should include, as a minimum, for 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 sitework,
- material take-off cycles,
- sitework procurement cycle,
- receipt of Materials and Equipment at Site,
- Site fabrication and erection (by key skill areas),
- construction and installation,
- checkout,
- testing.

Such schedules shall be in a detailed precedence-style critical path method 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 of revisions or changes to the Project Schedule as envisioned above by the Government Engineer revisions to the Project Schedule shall be deemed part of the Contract Documents, and attached hereto as Appendix A (Scope of Work). If not reasonably accepted by the Government Engineer, such revisions to the Project Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Government Engineer 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 monthly progress reports, 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. In no event shall any progress report constitute an adjustment in the Guaranteed Substantial Completion Date, any Milestone Date or the Guaranteed Maximum Contract Price 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 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 Notice to Proceed with the Design/Build Work, Contractor shall commence the Design/Build Work under this Service Contract (the "Commencement Date"). Upon the Commencement Date, Contractor shall diligently prosecute the Design/Build Work and shall complete the Design/Build Work in accordance with the Project Schedule 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 the entire Project within the periods set forth below:

- (1) Substantial Completion of the Project within nine hundred (900) following the 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 (960) days following the Commencement Date (the Final Acceptance of the Project within said period hereinafter referred to as "Final Acceptance")

(c) **Liquidated Damages For Delay.**

(1) Time is an essential element of the Contract Documents and it is important that the Design/Build Work be pressed vigorously to completion. 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 Commissioner based on the provisions of V.I. R. & Regs. Tit. 31 § 242-86, the parties agree that such delay would cause substantial damage to Government in such amount and to such extent as cannot be calculated presently with reasonable certainty, and, therefore, there shall be deducted from any monies due, or that may become due the Contractor, the sum shall be \$500.00 (five hundred dollars and no cents) for each and every calendar day the Design/Build Work remains un-completed. This sum shall be considered and treated not as a penalty, but as fixed and agreed liquidated damages due Government from the Contractor by reason of 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 his failure to complete the Design/Build Work within the time specified in the Contract Documents. Accordingly, in the event of the occurrence of delays compensable under this formula, the Government shall be entitled to assess liquidated damages in accordance with generally accepted procurement principles of making such an assessment and it shall not be entitled to access or collect any other kind or category of direct or consequential damages for such a delay.

(2) The parties agree that 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, Contractor hereby warrants and agrees to pay to Government a sum equal to this 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 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 work covered under the same have been completely performed on the part of Contractor, all parts of said work approved by the Government Engineer

14. **EXECUTION OF DESIGN/BUILD WORK**

(a) **Overtime; Right to Accelerate Schedule.**

- (1) The Design/Build Work will be completed on schedule without overtime, unless otherwise agreed by the Government, in which event, the Contractor shall schedule overtime required for the completion of the



existing Scope of Work within a reasonable time frame. Overtime required for additional work under this Service Contract being completed on a time-and-material basis shall be mutually agreed upon between the Government and the Contractor.

- (2) In the event Government determines that the performance of the Design/Build Work has not progressed or reached the level of completion required for Substantial Completion to be achieved on or before Substantial Completion scheduled on the Project Schedule due to the fault of Contractor, or in the event that Government desires to accelerate the Project Schedule for its own convenience, Government shall have the right to order the Contractor to take measures necessary to expedite the progress of engineering and construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities and (3) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Design/Build Work complies with the stage of completion required by the Project Schedule or until the progress of the Design/Build Work complies with Government's desired acceleration of the Project Schedule.
- (3) Government may exercise the rights furnished Government under or pursuant to this Paragraph as frequently as Government deems necessary to ensure that the Contractor's performance of the Design/Build Work will comply with the Substantial Completion Date set forth in the Project Schedule, including any acceleration thereof for Government's convenience. Any Extraordinary Measures ordered by Government under this Paragraph shall not be grounds for an extension of the Substantial Completion Date, and/or an equitable adjustment in the Contract Price, unless such Extraordinary Measures are required for the convenience of Government, and not as a result of Contractor's failure to comply with the Project Schedule.
- (4) The Government, however, shall be liable to the Contractor for an equitable adjustment of the Guaranteed Maximum Price and or the Contract Schedule if it is determined that undertaking such an acceleration or such measure was not reasonably warranted under this Service Agreement.

(b) 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 affecting operation of the premises during hours when the premises are not in

operation. Any postponement, rescheduling or performance of the Design/Build Work permitted to 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.

(c) Stop Work Order.

- (1) Government may, 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 such an 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 aforementioned 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 order or any extension thereof expires, Contractor shall resume the Design/Build Work 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 work or the time required for the performance of the Design/Build Work.

(d) Step-In Rights.

- (1) If, in the reasonable opinion of the Government Engineer, 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 defect ("Step-In Work"). Any dispute regarding the existence of a defect 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 as necessary to perform the Step-In Work and generally will cooperate with Government in connection with completion of the Step-In Work.

(e) Delays. If the Contractor's Design/Build Work is delayed by additions, deletions, or alterations in the scope of the Design/Build Work ordered in writing by Government, or by events or circumstances constituting an Event of Force Majeure or Uncontrollable Circumstance as defined in Section 15 below, or delays caused by the actions or inactions of the Government, 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 plan adequate to recover from the delays outlined under the provisions of this paragraph 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 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 whoever 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.

(g) Construction stakes.

- (1) The Government Engineer 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 insure complete and satisfactory construction in accordance with the Contract Documents. The Contractor shall furnish advance notice of his operations to the Government Engineer so that all the Design/Build Work may be staked out well ahead of his requirements. 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 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 shall be held 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 against him and shall be deducted from the payment of the 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 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 may give him authorization to stake and mark, with the Contractor's own personnel and at his expense, lines and elevations for the construction of the Design/Build Work. The Government Engineer at any time may check the Contractor's stakes and marks as to conformance with the requirements of the Plans and Specifications.

(h) 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 or other construction or operations on the Site. The Contractor shall participate with Separate Contractors and Government in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor and Separate Contractors until subsequently revised.

(i) Inspection.

- (1) The Government and the Government Engineer, 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 as it proceeds 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'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 timely notice of its readiness for inspection and, if the inspection is by an authority other than the Government Engineer, of the date fixed for such inspection; and Contractor shall secure all required certificates of inspection.

- (2) Contractor shall grant the Government Engineer and Government's duly designated representatives free access, at all reasonable times, to and shall provide upon request, copies 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, which are necessary to review and inspect the Design/Build Work according to current internationally accepted engineering practice. The Contractor shall furnish the Government Engineer 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. 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 inspector such information and assistance as may be required to make complete and detailed inspections. If the Government Engineer requires it, the Contractor, at any time before 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, 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 replacing of the covering and making good the parts removed 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) other than at Government's expense and Contractor shall then resubmit the replaced, modified or repaired Design/Build Work for re-inspection. Contractor and its suppliers 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 other than Government's expense.

- (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 in accordance with the terms of this Service Agreement will be fully empowered to represent the Government Engineer 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. He 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 neither the Government Engineer nor 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 actions are competently and timely effected. In the event they are not competent, the time of performance and the price payable under the Guaranteed Maximum Price shall be equitably adjusted.

(j) Removal of Defective and Unauthorized Work.



Any element of the Design/Build Work, where the variation from allowable specified limits exceeds the applicable limitation or where the Plans and Specifications are not complied with in every respect, shall be corrected 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 Engineer, 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 made under the provisions of this paragraph, the Government Engineer 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.

(k) 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. (Said individual hereinafter referred to as the "Contractor Project Manager"). The Contractor Project Manager shall be on the Site at all times when Design/Build Work is being 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.
- (l) 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 him or his 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.

(m) Detours on highway construction.

- (1) Any existing traveled road within the limits of the Site shall be kept continuously open for such public traffic as used the road before construction began. 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 his own expense. The location, character of construction and maintenance of all detours shall be approved by the Government Engineer. All expense of construction and maintenance of acceptable trafficways 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 Department, 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 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 in regard to the estimated damages.

(n) 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. Any material so removed which the Government Engineer 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 old structure may be used temporarily by the Contractor in erection of the new structure with the approval of the Resident Engineer. Unnecessary damage to such material shall be avoided.

(o) Materials found on job.

The Contractor, with the approval of the Government Engineer, may use in the construction any suitable stone, gravel, sand or other acceptable material found in the earthwork operations and will pay only the corresponding Service Contract unit price therefore, but, if required, he shall provide at his own expense sufficient suitable material of similar nature to complete the portion of the Design/Build Work which was originally contemplated to be completed with such used material. No charge for materials so used will be made against the Contractor except that he shall replace it as provided above. The Contractor shall not excavate or remove any material from within the right-of-way or property which is not within the excavation as indicated by the Plans and Specifications and established in the field, without prior written authorization by the Government Engineer.

(p) 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. They shall be so stored as to insure preservation of their quality and fitness for the Design/Build Work and may be rejected for failure to meet requirements of the Plans and Specifications at the time of placing in stockpiles or storage as well as at the time of delivery, and all Materials and Equipment shall be inspected and accepted prior to use in the Design/Build Work. Stockpile sites shall be restored as nearly as possible to their natural condition immediately after removal of the stored material.

(q) 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.
- (r) Contractor is responsible for all layout 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.
- (s) 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. 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 obliterated. 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. 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 therefore.

(t) Compliance with Laws and Rules and Regulations.

The Contractor shall comply with the Procurement Rules and all requirements of all applicable Federal, State, Territorial Laws, and all 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, his Subcontractors and each of their Employees.

(u) 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 workmen 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 he shall designate a responsible member of his organization on the Design/Build Work 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.

(v) Advertising Signs.

Contractor may display no more than two advertising signs on the Site, and the size, design and wording thereof shall first have the reasonable approval of Government

Engineer. Such signs shall be furnished, erected and removed upon completion of the Design/Build Work, 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, 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 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 this 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 the 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 Firms approved at Appendix C, no more than 49% of the combined construction services required to execute the construction services provided within the Design/Build Work, shall be subcontracted and that Contractor shall at minimum perform 51% of the such 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 demonstrated responsibility of the proposed 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 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 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 shall be 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 Territory'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 or the Management

Services. The Contractor shall keep the Government apprised of the course 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 so-called 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 his own forces as his qualifications and experience shall permit, and shall otherwise subcontract out the Design/Build Work as he 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 percentage adders for field overhead and fee for 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 subject to such subcontracts.

17. **CONTRACTOR PROJECT MANAGER AND GOVERNMENT
CONTRACT ENGINEER 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 Contract and shall have the skills and knowledge 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 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 cannot bind the Government with respect to any Contract amendment or to incurring costs in excess of the amounts provided in the Contract, except in accordance with the provisions of this Service



Agreement. Within such limitations, the Contractor shall be entitled to rely on the written directions of the Government Engineer.

(c) Cooperation. The Government and Contractor agree that the Government Engineer and the Contractor Project Manager shall cooperate to effectuate the intent and purposes of this Contract. Among other duties, the Government Engineer 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, as identified and approved by Government. Thereafter, Contractor shall not reassign or transfer the Contractor 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 schedule(s) on account of such Key Personnel and/or related training and/or background briefing(s). The Key Personnel included at Appendix D are hereby deemed 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 portion of the Project to be taken or used which, in Contractor's judgment, are fully completed or which 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.

(b) Notice of Substantial Completion. Contractor shall provide written notice to Government and Government Engineer when Contractor has satisfied all of the

conditions for Substantial Completion. Upon receipt of such notice by Government and Government Engineer, Government, Government Engineer 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 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 in writing that it has satisfied the requirements for Substantial Completion. Government and Government Engineer 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 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 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 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 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 Service Contract (Guaranteed Maximum 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) Delivery to Government, electronically or by 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; and
- (6) Delivery to Government of all final Subcontractor and Vendor manuals, Record Drawings, "as built" drawings, 3-D models, specifications and design sheets indicating the "as installed" condition of the Project.

Should the Government Engineer in good faith reasonably dispute any portion of the completeness and accuracy of such documents, and advise Contractor in writing of the disputed portion and the contractual basis for the dispute prior to the expiration of the thirty (30) day period following receipt of such documents. 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 shall constitute "Final Acceptance" of all Design/Build Work performed or provided by Contractor under this Service Contract. Government Engineer 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 Periodical Estimate clearly identified as the final requisition, covering the balance due under this Service Contract; Within forty-five (45) days of the Date of Final Acceptance and receipt of final Periodical Estimate, Government shall pay the Contractor the remaining balance of monies due him, including the retainage, provided said payment does not exceed the Guaranteed Maximum Contract Price as adjusted by additions and deletions. 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 Contract Documents to make any change, modification, addition or deletion to, in or from the Design/Build Work (hereinafter called "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 treat any order or action committed by the Government to constitute grounds for a Change in the Design/Build Work and an equitable adjustment to the costs or the time of the Design/Build Work, provided that it shall have given written notice to the Government within twenty (20) days of the occurrence of such an event that it considers that event to constitute such a Change including a projection of the possible cost and/time consequences of such a Change.

(b) No Change made necessary due to any default of the Contractor in the performance of its obligations under the Contract Documents shall be deemed to be a Change and such change shall not result in any adjustment of the Guaranteed Maximum Contract Price or the Project Schedule. In addition, under no circumstances shall any adjustment to Guaranteed Maximum 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 therefore 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 Guaranteed Maximum 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 Guaranteed Maximum 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 (Guaranteed Maximum Contract Price Terms) to the Service Contract. If, in the above-referenced Appendix B (Guaranteed Maximum Contract Price Terms), the unit rates are unavailable, the parties hereto shall agree 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 Guaranteed Maximum 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 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 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 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 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 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 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. 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) It is agreed by the Parties that the timing, length of time constraints and documentation requirements set out above with respect to each Party shall ultimately be

adjusted, governed and evaluated in the context of the then prevailing circumstances of the Parties and the status of Project.

20. **ENTIRE AGREEMENT**

This documents that comprise this Service Agreement constitute the entire agreement and supersedes 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 and generally accepted procurement provisions adopted under the Code of Federal Regulations adopted by the United States of America 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 IMMEDIATELY BELOW, BY EXECUTION OF THIS AGREEMENT, 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 AGREEMENT 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) The parties agree that in the event any conflict or disagreement arises under this 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 Contractor Project Manager for review and resolution. The Government Engineer 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 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 the Contractor Project Manager have not resolved the dispute between the parties within seven 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 Contractor Project Manager are deemed to have not resolved an issue between the parties if the Government Contract Administrator 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 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 90 days has passed, whichever comes first. Each party shall bear the cost of the mediator and all other cost of mediation, including the cost associated with the mediator subject to approval by both parties, shall be shared equally by the parties.

(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 Agreement 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 mediators. 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.

(d) Pending any and all dispute resolution during the 90 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 Contract and the Government shall, pursuant to the payment and compensation provisions of this Contract, pursuant to the provisions of Sections 23 and 24 of this Contract, continue to compensate Contractor for such work.

(e) The provisions of this Dispute Resolution Section shall not apply the Conflicts of Interest, Termination for Default, Termination for Convenience, Indemnification, and Limitation of Government Liability provisions of this 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 Contract Price as defined in, and in accordance with, Appendix "B" (Guaranteed Maximum Contract Price) of this Service Contract Guaranteed Maximum Contract Price. Contractor guarantees that the Contract Price shall not exceed TWENTY MILLION DOLLARS (\$20,000,000.00) (the "Guaranteed Maximum Contract Price"). All payments shall be made in accordance with the provisions of Section 24 of the General Terms and Conditions.

24. **PAYMENT**

Except to the extent that the terms and conditions for payment of the Contractor may be altered or changed 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 statement covering the Cost of the Design/Build Work for the preceding calendar month. (Such periodic statements submitted by Contractor to Government to cover the Cost of the Design Build Work under this Contract hereinafter referred to as "Periodical Estimates"). The Periodical Estimate shall be prepared using standard format required by the Government Engineer, and shall be as detailed as may be required by Government to adequately review the amount of Design/Build Work performed to date. The submission of a Periodical Estimate shall constitute a certification by the Contractor that all previous payments have been received and applied to the Service Contract.

(b) Along with each such Periodical Estimate, the Contractor shall submit supporting details as may be requested by Government, such as:

- (1) Copies of the Contractor's current period daily labor report(s) in a form acceptable to Government;
- (2) Copies of applicable Subcontractors' requisitions, including any requisitions due and payable;
- (3) Copies of Vendor invoices supporting Cost of the Work for Materials and Equipment; and
- (4) Details of backcharges including labor, overhead, material, and payment.



- (5) Copies of documentation for any other Costs as defined/allowable in Appendix B.

For each Periodical Estimate, Contractor shall submit a sworn statement and a conditional waiver of liens for all Design/Build Work completed and Materials and Equipment provided for which payment is requested, as of the date of such invoice (in accordance with the waiver form required by Government Engineer), and 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.

(c) Upon approval of the Periodical Estimate, and determination by the Government Engineer that the Design/Build Work corresponding to the Periodical Estimate has been properly performed, but not later than THIRTY (30) days thereafter, Government shall pay the Contractor in current funds the amount requested, less any deductions for 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 ten percent (10%) retainage up until the time fifty (50) percent of the Design/Build Work shall have been performed after which no retainage shall be withheld. Periodical Estimate may not include requests for payment for portions of the Design/Build Work for which the Contractor does not intend to pay to 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 Government evidence of the payments that Contractor has made, or has represented it has made, to such Subcontractor or Vendor.

(d) Payment of Subcontractors. The Contractor shall promptly pay each Subcontractor, 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 is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Design/Build Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor 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 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 of any tier jointly payable to the Contractor and such Subcontractor. The Contractor and such Subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In addition,

(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) 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, in his 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 therefore. 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.

(g) 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.

(h) 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 said Periodical 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.

(i) 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 his sole cost and expense for a period of at least three (3) years following final payments by Government under this Service Contract.

(j) 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 agrees to indemnify, defend, 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 services to be performed by Contractor under this 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 for which Contractor is to provide indemnification under this Section 25. 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 its own choosing. The parties hereto shall cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony and attend at 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 Government (not to be unreasonably withheld).

26. LIMITATIONS ON LIABILITY

(a) Contractor and Government agree that, 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 exculpation of Contractor's liability for Government's consequential, indirect, exemplary or punitive loss, damage or expenses, for claims: a) arising out of a breach of Contractor's confidentiality obligations under the Contract Documents; b) arising out of Contractor's indemnification obligations under the Contract Documents; c) made by third

parties for bodily injury, death, or damage to real or personal property; d) included with any liquidated damages for delay indicated in the Contract Documents; or e) 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 provision in this Service Contract to the contrary, The Government's contract liability under or relating to this Contract shall be limited to actual 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 Contract Documents and payment of obligations arising there under, 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 revision 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 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, 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, 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 therefore by Government regardless of whether then delivered to the Site, other site of 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 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 payments with respect thereto, 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) 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 Standard of Care 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 Standard of Care, 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 Vendors and from Subcontractors shall run in favor of Government and be enforced by Contractor at his sole cost and expense. Contractor hereby assigns to Government and 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 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 his work or workmen, or the Design/Build Work or workmen of his 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 he intends to take to protect Government. Government shall have the right to retain so much of the monies due under the Service Contract as he deems necessary for his 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 to disclose such Information to third parties, nor use or permit Subcontractors to use any Information, without in each instance securing the prior written consent. 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 or its 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 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, 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 based on the Contractor-owned 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 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 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, the 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, the Government or any assignee of either is enjoined from further using the any plant or equipment or system relating to the Project, Contractor will, without further cost to Government or the Government or any assignee, 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 30 consecutive days through no act or fault of the Contractor, the designers or a subcontractor 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 making of a 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 or a contractor, subcontractor 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 25 percent of the total number of days scheduled for completion, or 50 days in any 365-day period, whichever is less.
3. If one of such reasons exist, the Contractor may, upon seven days' written notice to the Government, terminate this Service Agreement and recover from the Government payment for Design/Build Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.
 4. If the Design/Build Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, its subcontractors or consultants 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 its obligations under the Contract Documents with respect to matters important to the progress of the Design/Build Work, the Contractor, upon seven 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 for Materials and Equipment or labor, or fail to refuse to supply a sufficient number of skilled workmen to meet the Project Schedule or 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. 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, 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 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 exceeds the 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 Contract Price, Contractor shall pay such excess to Government within thirty 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 he might have, cure said default at the expense of the Contractor following the lapse of seven (7) days after written notice thereof has been given to Contractor and the Contractor has not commenced to cure said default.
 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 is assuming.
 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, 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 Guaranteed Maximum 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 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 subsection (g) of this Section 22, 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) 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.



(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 Law and enforced to the fullest extent possible. In this connection, 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 he agrees to comply with all applicable local, State, Territorial, and Federal 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 the Government or any of its affiliated departments or commissions 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 it in furtherance of the Design/Build Work contemplated hereby that amounts payable by it thereunder shall be subject to set-off by it in behalf of Government for amounts owing by the Subcontractors to Government, the 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 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 all applicable licenses or permits, temporary or otherwise, as required under Virgin Islands and federal law and regulations to perform under this 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 sub-contracts 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 sub-contractor misrepresents its eligibility to receive contract awards using federal funds, the contractor or sub-contractor agrees that it shall not be entitled to payment for any Design/Build Work performed under this contract or sub-contract and that the contractor or sub-contractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made. If, during the term of this contract, the contractor shall become ineligible to receive contract awards using federal funds, this contract shall be terminated forthwith for cause and the contractor shall not be entitled to payment for any Design/Build Work performed under this contract or sub-contract after the effective date of such ineligibility.

(n) False Claims. Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, 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) Notice of Federal Funding. Contractor acknowledges that this Contract may be funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offense.

(p) 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 Contract.

(q) Covenant against Contingent Fees.

(1) Contractor warrants that no person or agency has been employed or retained to solicit or obtain this 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 contract without liability or, in its discretion, to deduct from the 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 Contract until one year after the expiration or termination of this Contract, Contractor shall, 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, directly or indirectly, to Contractor, Contractor 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 a prime Contractor.

“Subcontract,” as used in this Section, means a contract or contractual action entered into by a Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind with respect to this 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 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 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 under this Contract 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 Contract prior to execution of this Contract. The Government and Contractor further acknowledge that the terms of this Contract are the result of negotiations between the Government and Contractor and that the terms of this 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 Contract are for convenience only and shall have no binding force or effect and shall not enter into the interpretation of the Contract.

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

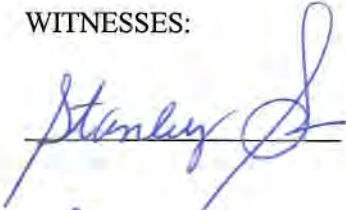
(w) Execution of Contract in Counterpart; Facsimile and Electronic Copies and Signatures. A facsimile or electronic copy of this Contract or a facsimile or electronic copy of a signature to the Contract shall have the same legal and binding effect as an original. This Contract may be executed in any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

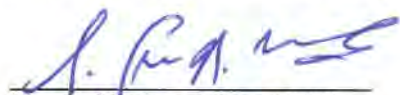
(x) Other Provisions. The Appendices attached to this Service Agreement and all schedules and exhibits attached to said Appendices are incorporated into and made a part of this Contract. In the event of a conflict between the general provisions of this Service Agreement and any other document constituting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

IN WITNESS WHEREOF, the parties, by their authorized representatives, have hereunto on the dates stated below have set their hands and executed this Service Contract.

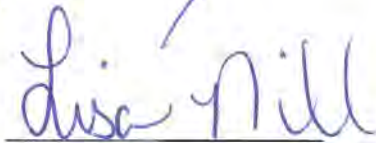
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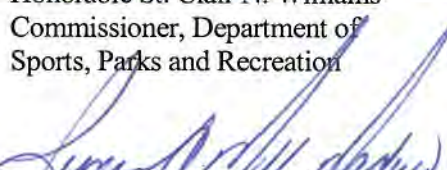
GOVERNMENT OF THE VIRGIN ISLANDS



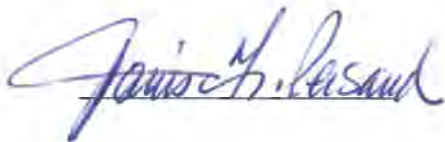

Honorable St. Clair N. Williams
Commissioner, Department of
Sports, Parks and Recreation


11/6/14
Date




Honorable Lynn Millin Maduro, Esq.
Commissioner, Department of Property & Procurement

11/6/14
Date

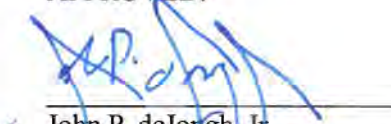



John R. Wessel, Managing Member
Contractor, GEC, LLC

11-5-14
Date

ATTEST: _____

APPROVED:


John P. deJongh, Jr.
Governor, U.S. Virgin Islands

11/19/14
Date

APPROVED TO LEGAL SUFFICIENCY DEPARTMENT OF JUSTICE

By: 

11/19/14
Date