

**HILLSMERE SHORELINE RESTORATION**

**REEF BALL INSTALLATION CONTRACT BID PACKAGE**



**ARUNDEL RIVERS FEDERATION  
2444 Solomons Island Road Suite 214,  
Annapolis, MD 21401**

**FEBRUARY 2024**

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## NOTICE OF REQUEST FOR PROPOSALS

You are invited to submit a proposal for the reef ball installation component of the Hillsmere shoreline project located in Annapolis at the Hillsmere Marina (see plan set for exact location). Proposals must be submitted electronically by March 22<sup>nd</sup> at 5 pm. Proposals received after this time and date will not be considered. The work includes procurement and installation of 32 mini bay reef balls set with live spat. Permits for shoreline construction are anticipated to be in hand by 30 September 2024. The reef ball installation must occur after shoreline installation is complete and when seasonally appropriate for spat. This is a lump sum project to construct to design parameters, and the contractor assumes all risk for price and cost control.

### **BID INSTRUCTIONS**

#### Submission:

Proposals should be submitted electronically to [mallory@arundelrivers.org](mailto:mallory@arundelrivers.org). Proposals must be received by 5 pm on 3/22/2024. Please contact [mallory@arundelrivers.org](mailto:mallory@arundelrivers.org) to schedule a site visit if desired. Questions will be answered as they come in.

All proposals must be submitted using the attached Proposal Form, must give the price for each item of the proposed work, and must be signed by the bidder with their name and address. No bidder may withdraw their bid within 30 calendar days after the bid receipt deadline. Each proposal must be accompanied by a listing of subcontractors (if any) to be used for completion of the work.

Unresponsive bids, bids deemed irresponsible, or bids obviously unbalanced may be rejected.

#### Award of Bid:

A contract, if awarded, will be awarded as a lump sum contract based on price, qualifications, experience, and responsiveness. Bidders must be acceptable to Arundel Rivers Federation. Arundel Rivers reserves the right to reject any and all proposals. The quantities given under the various items of the proposal are approximate and subject to increase or decrease as provided in the contract, without changing the lump sum total value of the contract. Funding for this project is anticipated to be provided by the Maryland Department of Natural Resources and the State of Maryland.

If the bidder to whom an award is made fails to execute the contract, the award may be annulled and the contract awarded to an alternate bidder meeting the award criteria, and such bidder shall fulfill every stipulation herein, as if he were the original party to whom the award was made.

#### Addendum:

Bids are subject to change in the form of an addendum. It is the bidder's responsibility to be sure all addenda are acknowledged in their bid.

#### Exceptions:

Any exception to the specifications requested should be marked on the bid form and listed on a separate sheet of paper attached to the bid. An exception to the specifications may not necessarily disqualify the bid. Arundel Rivers will determine if the exception is an essential deviation or a minor item. In the case of a minor deviation, Arundel Rivers reserves the option to award to that bidder if it determines the performance is not adversely affected by that exception.

#### Substitutions:

The bidder shall submit with their proposal a list of proposed substitutions and applicable proposed monetary

changes. Substitutions will not be considered after award except as stated herein. Approved equals to proprietary products are acceptable if Arundel Rivers determines a product does in fact meet or exceed the quality of the specification listed; however, it shall be the responsibility of the contractor to provide documentation to support such a claim.

Qualifications & Requirements:

Bidders must examine the drawings and specifications carefully and must make a personal examination of the location and the nature of the proposed work. In case doubt shall arise as to the meaning or intent of anything shown on the drawings or comprised in the specifications, inquiry should be made before the proposal is submitted. The submission of a proposal shall indicate that the bidder thoroughly understands the drawings and the terms of the specifications.

**The majority of project funding is federally funded. Contractors must have a current SAM.gov registration status to submit a bid. The bidder must be able to adhere to the OMB Uniform Guidelines for subcontractors and suppliers. For any budget line-item valuing over 5% of the total contract, procurement must abide by the [Build America, Buy America Act](#).**

Time for Completion:

The completion date named in the bid and Notice to Proceed is the date that all work under the contract, including cleaning up, shall be completed.

Anticipated Start Date:

The start date will be after shoreline installation is complete and when seasonally appropriate for spat. The shoreline is anticipated to be complete by early 2025.

Licenses and Permits:

The bidder must be in compliance with the laws regarding conducting business in the State of Maryland which includes documentation of a current marine contractor's license. The Contractor shall have all necessary licenses required to do the work and give all notices and obtain and pay all necessary permits required by local laws and regulations. Arundel Rivers and its design consultants will be responsible for all federal and state permits required by the project.

Rights Reserved by Arundel Rivers Federation:

- Arundel Rivers reserves the right to issue any change to the RFP at its discretion. Should this become necessary, all qualified respondents will receive documentation of the change(s).
- Arundel Rivers reserves the right to reasonably extend the bid submission due date with emailed notification to registrants.
- Arundel Rivers reserves the right, at its sole discretion, to award the contract for services based upon best determined value.
- Any response to this Request for Proposal that deviates from the Submission Requirements will be rejected absent prior written approval from Arundel Rivers.
- Arundel Rivers reserves the right to accept or reject proposals, at its sole discretion, to waive minor irregularities, and to communicate with all respondents or other relevant parties in any manner necessary to serve the best interests of Arundel Rivers, its funders, owners, and other stakeholders, respectively.
- Arundel Rivers reserves the right to request additional information from any respondent for means of clarification.

## QUESTIONS

Questions concerning the terms of the contract, issues related to invoicing and billing, project implementation, and other technical matters should be directed to:

Jennifer Carr  
Phone: 717-575-8214  
Email: jennifer@arundelrivers.org

## EXPERIENCE

Please include the following:

1. Portfolio of three to five (3-5) examples of similar work the organization has done while in a similar capacity as a Prime Contractor.
  - a. Experience procuring and placing reef balls in Anne Arundel County is preferred.
2. Key personnel - List of principal personnel managing the project. A CV and a portfolio of the individual(s) selected to manage the contractor's portion of the project as well as a list of any field staff expected to be assigned lead or key roles.
3. Sub-contractors - List of any sub-contractors proposed to be assigned to the project, summarizing in one paragraph, for each sub-contractor, the proposed role within the project team and relevant qualifications.
4. List of current organizational licensures and certifications in good standing that are required or relevant to the project.

**HILLSMERE SHORELINE RESTORATION – REEF BALL INSTALLATION PROPOSAL**

133C E Bay View Dr, Annapolis, MD 21403

Bidder Name \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_ Email \_\_\_\_\_

SAM Status \_\_\_\_\_ Expiration \_\_\_\_\_ UEI Number \_\_\_\_\_

Construction Firm License Number \_\_\_\_\_ Date Issued \_\_\_\_\_

We hereby submit our proposal for the following:

Hillsmere Shores Coastal Resiliency Project, Annapolis, Maryland, involving all work necessary to procure and place 32 reef balls set with spat.

Having carefully examined the Drawings for the subject construction project:

Drawings: "Hillsmere Shores Coastal Resiliency Project", consisting of Sheets 1 through 8, prepared by Environmental Systems Analysis, Inc., and dated February 2024.

and having received clarifications on all items of conflict upon which doubt may arise, the undersigned proposes to furnish all labor, materials, and equipment called for by the said documents for the entire work for the stipulated sum of:

\_\_\_\_\_ Dollars \_\_\_\_\_ Cents

(\$ \_\_\_\_\_).

The Bidder agrees that this Proposal shall be good and may not be withdrawn for a period of 30 calendar days after the opening of the Bid Proposals. Arundel Rivers reserves the right to accept or reject any or all bids.

PROJECT SCHEDULE

Schedule should include stake out, mobilization, construction, and planting.

Proposed Start Date: \_\_\_\_\_ Proposed Completion Date: \_\_\_\_\_

Proposed Number of Working Days: \_\_\_\_\_

The Bidder declares that the attached specifications and form of contract and the drawings therein have been carefully examined and are understood; that as careful an examination has been made as is necessary to become informed as to the character and extent of the work required; and that it is agreed if the proposal is accepted to contract with Arundel Rivers in the form of contract hereto attached to do the required work in the manner set forth in the specifications and as shown on the drawings.

The prices on the attached and signed Proposal form are to include the furnishing of all materials and requisite

labor, and the providing of all necessary machinery, tools apparatus and means of performing the work, and the doing of all the above mentioned work, in the manner set forth in the specifications, and the contract drawings within the prescribed time. If this proposal is accepted by Arundel Rivers and the undersigned shall refuse or neglect within 10 days after receiving the contract for execution, to execute the same then Arundel Rivers may at its option, determine that the bidder has abandoned the contract; and thereupon the proposal and the acceptance thereof shall be null and void.

The Contractor shall maintain such insurance as will protect them from claims under workmen’s compensation acts and from any other claims for damage for personal injury, including death, and property damage which may arise from operations under this contract, whether such operations be by the Contractor or by any subcontractor or anyone directly or indirectly employed by either of them. Certificate of such insurance shall be filed with Arundel Rivers and shall be subject to its approval for adequacy of protection. Bodily injury liability insurance shall be in an amount not less than \$1,000,000, including death, to each person and subject to the same limit for each person, in an amount of not less than \$3,000,000 on account of one accident. Property damage insurance shall be in an amount not less than \$100,000 per accident, with an aggregate of not less than \$200,000.

I do solemnly declare and affirm under the penalties of perjury that the declaration and statements contained in this document are true and correct to the best of my knowledge, information and belief.

Made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

By (Printed Name ) \_\_\_\_\_

Signature \_\_\_\_\_

I/We identify by number, date and number of pages the following addenda:

<u>No.</u>	<u>Date</u>	<u>No. of Pages</u>
_____	_____	_____
_____	_____	_____

**SUBCONTRACTOR LISTING**

The following subcontractors will be employed by this contract:

<b>Project Phase</b>	<b>Type of Work</b>	<b>Subcontractor name, address, phone number</b>	<b>Percent of Total Work</b>

*Types of work not listed indicate that the Bidder intends to perform the work with his own resources. If a type of work is to be awarded to a subcontractor but the company has not yet been identified, enter "to be determined" in the column for the subcontractor’s name.*

**SAMPLE CONTRACT**

**ARUNDEL RIVERS FEDERATION, INC. (PROJECT FACILITATOR)  
INSERT CONTRACTOR NAME (CONTRACTOR)**

**CONDITIONS AND AGREEMENT FOR CONSTRUCTION SERVICES  
HILLSMERE SHORELINE RESTORATION – REEF BALL INSTALLATION  
(START DATE)**

**A PROJECT JOINTLY FUNDED BY MARYLAND DEPARTMENT OF NATURAL RESOURCES AND  
STATE OF MARYLAND**



- I. PROJECT DESCRIPTION. Refer to Exhibit A: Grant Narrative for full description of this project located at 133C E Bay View Dr, Edgewater, MD 21403 (see plan set for exact location).
  
- II. TYPE OF WORK, EXTENT OF WORK BID CATEGORIES. Type and extent of work are defined by Exhibit A: Grant Narrative and will include erosion and sediment control, material placement, and contractual labor, planting all suitable to the proposed conditions of the Project. Other types of work may be required and are not excluded.
  
- III. PROJECT SCHEDULE. The project schedule includes deadlines as follows:
  - A. NOTICE TO PROCEED:
  - B. CONSTRUCTION MOBILIZATION:
  - C. SUBSTANTIAL COMPLETION OF WORK:
  - D. COMPLETE DEMOBILIZATION & PLANTING:
  - E. Any changes to the above dates must be agreed upon in writing (including email) between the Project Facilitator and the Contractor.
  
- IV. CONDITIONS, SPECIFICATIONS, AND NOTES
  - A. The selected contractor shall warranty the project for 1 year after substantial completion, excluding any volunteer-installed landscaping.
  - B. Exhibit B: General conditions are enclosed with this document and are agreed by all parties to be a binding part of this Contract.
    - a. The liability insurance obtained by the Builder shall include the Project Facilitator as an additional insured as stated in the General Conditions.
  - C. Additional conditions and specifications, if issued in writing and properly executed by all parties, may become a binding part of this contract.
  - D. Other exemptions or variations, to include in-field deviations, must be mutually agreed upon in writing or via electronic mail by the Project Facilitator and Contractor.
  - E. Contractor must use good faith efforts to engage disadvantaged/ minority/ women business enterprises (DBE) for any sub-contracts or supply purchases.
  - F. Contractor must verify by checking at [www.sam.gov](http://www.sam.gov) that any subcontractor or supplier has not been suspended, debarred, excluded, or disqualified by the federal government.
  - G. Contractor must adhere to OMB's Uniform Guidance policies.
  - H. For any budget line-item valuing over 5% of the total contract, procurement must abide by the Build Amerca, Buy America Act.
  - I. The Contractor will photo-document the installation of each structure and include a brief field report as required by the Anne Arundel County As-Built Check List.
  - J. Contractor will send an electronic file of all material tickets to the Project Facilitator upon completion of the project. This is required by Anne Arundel County to close out the permit.
  
- V. REGULATORY REQUIREMENTS
  - A. The Project Facilitator and the Contractor agree that:
    - 1. Best management practices (BMPs), as required by the Anne Arundel Soil Conservation District and the Maryland Department of the Environment, will be installed and maintained per applicable standards.
    - 2. Additional BMPs for soil and vegetation management will be implemented, installed, and maintained as necessary or as changing site conditions dictate.
  - B. The Contractor and/or all its agents and subcontractors will comply with any and all regulatory "Stop Work" orders and notify the Project Facilitator immediately if any such

order is issued.

- C. The Contractor will notify the Project Facilitator of any regulatory violations or written warnings at the end of each business day, or at the end of the day during which a regulatory inspection occurred and such written documents or citations are issued to the Contractor.
- D. The Contractor will comply with all requirements expressed in any citations, violation letters, correction notices, warnings, fines, or other regulatory notice of any kind at its own cost.
- E. The Contractor will comply with any and all applicable workplace safety regulations, standards, and requirements.

VI. COORDINATION (GENERAL)

- A. The Project Facilitator and Contractor will meet onsite once per day that construction activity is taking place.
- B. The Project Facilitator will assume coordination with the landowners.
- C. The Contractor will maintain an extremely clean worksite at the end of each workday.
- D. The Contractor will conduct and assume responsibility for utility coordination, including coordination of existing unmarked irrigation lines and heads.
- E. The Contractor will provide brief, written progress reports once a week. Email is acceptable.
- F. Final project acceptance is based upon de-mobilization to residential standards (including but not exclusively: no rubble, no trash, clean roadway).
- G. The Contractor will post the construction bond.

VII. PAYMENT PROCEDURES

- A. The total value of the contract is \$XXXX as stated in Exhibit C: Budget.
- B. This is a "Not to Exceed" contract. The total value of supplies and labor shall not exceed \$XXXX under this contract. Additional items are considered outside of scope and must be agreed upon in writing by the Project Facilitator and the Contractor.
- C. The Contractor may bill monthly based on percent completion after a \$XXXX mobilization payment is made.
- D. Payment on invoices will be net 30.

VIII. AGREEMENT FORM

- A. RELATED DOCUMENTS. Agreement to this contract serves as agreement between Contractor and the Project Facilitator to follow the guidance provided by documents including, but not limited to:
  - 1. Design plans;
  - 2. Referenced Conditions;
  - 3. Terms of this document;
  - 4. Terms of the General Conditions (Exhibit C);
  - 5. Anne Arundel County Stormwater Management Practices & Procedures Manual Revised 10.1.2017; and
  - 6. Existing standards of practice for Licensed Contractors, not-for-profit corporations, and Maryland licensed businesses in general.

ATTEST:

Arundel Rivers Federation, Inc.

Contractor

**NOTICE OF INTENT TO AWARD**

**Hillsmere Shoreline Restoration – Reef Ball Installation:** Arundel Rivers has considered the proposal submitted by you for the above-described work in response to its Request for Proposals (RFP). [THE CONTRACTOR] IS hereby notified that your Proposal has been conditionally accepted for the amount of:

\_\_\_\_\_ (\$\_\_\_\_\_).

Award is contingent upon Arundel Rivers receiving full funding for construction costs. Arundel Rivers anticipates being notified of awards by July 2024. Arundel Rivers has fifteen (15) days from receipt of agreement with the funder to furnish a contract to the Contractor. From the date the contract is received, the Contractor will have ten (10) days to execute the contract. If there is no response during the 10 day period, Arundel Rivers will be entitled to consider all your rights arising out of Arundel Rivers acceptance of your proposal as abandoned. Arundel Rivers expressly reserves such other rights with respect to the bid proposal and acceptance thereof as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to Arundel Rivers

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20

Arundel Rivers Federation, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE OF INTENT TO AWARD is hereby acknowledged by

\_\_\_\_\_.

This, the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

**NOTICE TO PROCEED**

TO: \_\_\_\_\_

DATE: \_\_\_\_\_

PROJECT: Hillsmere Shoreline Restoration – Reef Ball Installation

You are hereby notified to commence work in accordance with the Agreement dated

\_\_\_\_\_, 20\_\_\_\_, on or before \_\_\_\_\_,  
20\_\_\_\_ and you are to complete the work within [X ] consecutive calendar days thereafter.  
The date of completion of all work is therefore  
\_\_\_\_\_, 20\_\_\_\_.

ARUNDEL RIVERS FEDERATION, INC.:

By: \_\_\_\_\_

Title: \_\_\_\_\_

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is

hereby acknowledged by

Contractor: \_\_\_\_\_

this the \_\_\_\_\_ day, of \_\_\_\_\_, 20

By: \_\_\_\_\_

Title: \_\_\_\_\_

Employer Identification Number: \_\_\_\_\_

## GENERAL CONDITIONS

Please see Exhibit A: Arundel Rivers Federation General Conditions

## PROJECT SCOPE

### DIVISION I: SCOPE OF WORK AND SPECIAL INSTRUCTION

#### 1. SCOPE

- A. This project is located at 133C E Bay View Dr, Edgewater, MD 21403. The project limits are defined by the Limit of Disturbance as defined in the plan set.
- B. The Drawings and Specifications are intended to cover a complete project. Failure to mention any work that would be required to complete this work shall not relieve Contractor of responsibility to perform such work.
- C. The contract covers procurement and placement of 32 oyster reef balls set with spat.

#### 2. CONTRACTOR'S RESPONSIBILITY

- A. The Contractor shall assume all responsibility for the project and construction site until the completed work is accepted by the Agent for the Owner and Anne Arundel County.

#### 3. EXTRA CHARGES

- A. The Contractor shall be prepared to execute a finished project in every particular without any extra charge, unless specifically provided for within the Contract.

#### 4. PROJECT SITE

- A. Site Access: 133C E Bay View Dr, Annapolis, MD 21403. Please refer to plan set for details.

#### 5. CONSTRUCTION

- A. Contractor will be expected to attend up to three field meetings during construction of the shoreline to answer relevant questions.

#### 6. ADDITIONAL REQUIREMENTS

- A. **Field Notes and Documentation:** All field notes, field data forms, photographs, etc. produced as part of this Contract are the property of the Owner. These data will not be used, in whole or part, in any professional, scientific, or non-scientific report, paper, or note, published or unpublished or be part of any technical or non-technical presentation without the written permission of the Owner and the Agent for the Owner.

- B. **Termination:** Please reference section 10 of the General Conditions.
- C. The Contractor will send Arundel Rivers a PDF of all material tickets from the project upon completion. The contractor will also prepare field reports according to Anne Arundel County as-built requirements.
- D. **Maintenance of Work Area:**
  - i. The Contractor shall take all necessary precautions and measures to protect all properties from damage. Prior to the Project being accepted by the Agent for the Owner, the Contractor shall repair all damage caused by construction operations to all public and private property including, but not limited to, tidal and non-tidal wetlands; roads, walks, fences, and curbs; surface and subsurface utilities, fireplugs, etc.; trees, shrubs, and plantings. The Contractor shall leave each property in good condition and/or at least equivalent to the condition found prior to undertaking work.
  - ii. The Contractor shall be responsible for the removal of materials (including, but not limited to, oils, gasoline, diesel fuel, etc.) spilled or subsided in the water or in the staging areas.
  - iii. The work under this Contract includes all necessary temporary items required for good, safe, and sanitary construction practices and administration of the Project. These requirements are subject to the approval of the Agent for the Owner.
  - iv. The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of employees as may be necessary to comply with the requirements and regulations of the State Health Department or other authorities having jurisdiction, and shall commit no public nuisance.
- E. **Field Measurements:**
  - i. Should there be any discrepancies between the Drawings and/or field conditions after Award of Contract and prior to start of construction, the Contractor shall bring such discrepancies to the attention of the Project Inspector.

**9. SEQUENCE OF CONSTRUCTION**

- A. The sequence of construction shall follow the approved plans. Any deviation requires both written approval from Anne Arundel County and Arundel Rivers.

**DIVISION II: MOBILIZATION / DEMOBILIZATION**

**1. DESCRIPTION**

- A. This work shall consist of the construction preparatory operations, including the movement of personnel and equipment to the project site and the establishment of any facilities necessary to begin work. This line item also includes all construction entrances and road maintenance during and after construction activities.

**2. METHOD OF MEASUREMENT AND BASIS OF PAYMENT**

- A. Mobilization will not be measured but will be paid for at the Contract lump sum price. The cost of all required insurance and bonds will be incidental to the Mobilization item. Payment of the Mobilization item will be made in the first invoice after the Contractor has established the

necessary facilities and has begun work. The payment will be full compensation for all material, labor, equipment, tools, and incidentals necessary to complete the work.

- B. Payment of the Mobilization item will not be made more than once, regardless of the fact that the Contractor may have, for any reason, shut the work down on the project, moved their equipment away from the project, and then back again.

**General Conditions of  
Contract Between  
Arundel Rivers Federation, Inc. (Facilitator) and  
(Contractor)**

**HILLSMERE SHORELINE RESTORATION**

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# **Article 1**

## **General**

### **1.1 Mutual Obligations**

**1.1.1** *Project Facilitator and Contractor* commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents (defined below). All parties commit to work from this document in addition to the Agreement and the Basis of Design Documents.

### **1.2 Basic Definitions**

**1.2.1** *Agreement* refers to the executed contract between Project Facilitator and Contractor.

**1.2.2** *Basis of Design Documents* are as follows: The Basis of Design Documents are those documents including the Project Facilitator's Project Criteria, and Contractor's Proposal.

**1.2.3** Construction Documents are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Contractor consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Project Facilitator and Design Contractor, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

**1.2.4** *Contract Documents* include these *General Conditions*, the executed *Agreement*, *Basis of Design Documents*, any exhibits or attachments to these documents, and any addenda or amendments to these documents agreed to in writing by the Parties

**1.2.5** *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

**1.2.6** *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 of the General Conditions of Contract and the submission of all documents set forth in Section 6.7.2 of the General Conditions of Contract.

**1.2.7** *Force Majeure Events* are those events that are beyond the control of both Contractor and Project Facilitator, including the events of war, floods, labor disputes, agency-caused delays, earthquakes, epidemics, permitting delays caused by no fault, error, or omission of Contractor, adverse weather conditions not reasonably anticipated, and other acts of God.

**1.2.8** *General Conditions of Contract* refers to this document.

**1.2.9** *Grantor* is defined as the entity providing financial funding for completion of the Project.

**1.2.10** *Exhibits* means those exhibits attached to Contract Documents between Project Facilitator and Contractor, which will have been agreed upon by Project Facilitator and Contractor prior to the execution of the Agreement.

**1.2.11** *Proposal* means that proposal developed by Contractor in response to Project Facilitator's Project Criteria.

**1.2.12** *Landowner* is defined as the entity that has legal ownership of the property.

**1.2.13** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

**1.2.14** *Parties* means the Project Facilitator and Contractor, and their respective agents, sub-contractors, successors and assignees.

**1.2.15** *Project Facilitator* works to ensure the project progresses according to goals and acts as a liaison between the Grantor, Landowner, and Contractor.

**1.2.16** *Project Facilitator's Project Criteria* are developed by or for Project Facilitator to describe Project Facilitator's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. Project Facilitator's Project Criteria may include conceptual documents, design criteria, performance requirements, prescriptive specifications, and other sustainable design criteria and other Project-specific technical materials and requirements.

**1.2.17** *Site* is the fast land, wetlands, subaqueous land, or other premises on which the Project is located.

**1.2.18** *Subcontractor* is any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

**1.2.19** *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

**1.2.20** *Substantial Completion* or Substantially Complete means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so the Project or a portion thereof can be used for its intended purposes.

**1.2.21** *Work* is comprised of all Contractor's design, services, and labor required and defined by the Contract Documents.

## **Article 2** **Contractor's Services and Responsibilities**

### **2.1 General Services**

**2.1.1** Contractor's Representative shall be reasonably available to Project Facilitator and shall have the necessary expertise and experience required to supervise the Work. Contractor's Representative shall communicate regularly with Project Facilitator and shall be vested with the authority to act on behalf of Contractor. Contractor's Representative may be replaced only by the mutual agreement of Project Facilitator and Contractor.

**2.1.2** Contractor shall provide Project Facilitator with a monthly status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) status of the contingency account to the extent provided for in the Standard Form of Agreement between Project Facilitator and (iv) other items that require resolution so as not to jeopardize Contractor's ability to complete the Work as defined in the Contract.

**2.1.3** Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Contractor shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Project Facilitator's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when

Project Facilitator information and approvals are required to enable Contractor to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Contractor of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Project Facilitator's review of and response to the schedule shall not be construed as relieving Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**2.1.4** The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents if requested in writing by either party.

## **2.2 Legal Requirements**

**2.2.1** Contractor shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

**2.2.2** The Contract Price and/or Contract Time(s) shall be adjusted to compensate Contractor for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, but are not limited to, revisions Contractor is required to make to the Construction Documents because of changes in Legal Requirements.

## **2.3 Government Approvals and Permits**

**2.3.1** Except as may be identified in Project Facilitator's Permit List (MDE Authorization, USACE Authorization, and Anne Arundel County Grading permit have been obtained by the Design Contractor), Contractor shall obtain all necessary permits, approvals, licenses, government charges and inspections required for completion of the Work from any government or quasi-government entity having jurisdiction over the Project.

**2.3.2** Contractor shall provide reasonable assistance to Project Facilitator in obtaining those permits, approvals and licenses that are Project Facilitator's responsibility.

## **2.4 Contractor's Construction Phase Services**

**2.4.1** Unless otherwise provided in the Contract Documents to be the responsibility of Project Facilitator or a separate contractor, Contractor shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Contractor to complete construction of the Project consistent with the Contract Documents.

**2.4.2** Contractor shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents.

**2.4.3** Contractor shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Project Facilitator may reasonably object to Contractor's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Project Facilitator's decision impacts Contractor's cost and/or time of performance.

**2.4.4** Contractor assumes responsibility to Project Facilitator for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Project Facilitator and any Subcontractor or Sub-Subcontractor, including

but not limited to any third-party beneficiary rights.

2.4.5 Contractor shall coordinate the activities of all Subcontractors. If Project Facilitator performs other work on the Project or at the Site with separate contractors under Project Facilitator's control, Contractor agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project is completed in an orderly and coordinated manner without unreasonable disruption.

2.4.6 Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Project Facilitator to occupy the Project or a portion of the Project for its intended use.

## **2.5 Contractor's Responsibility for Project Safety**

2.5.1 Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Contractor shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Contractor's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Contractor's personnel, Subcontractors and others as applicable.

2.5.2 Contractor and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Project Facilitator-specific safety requirements set forth in the Contract Documents, provided that such Project Facilitator-specific requirements do not violate any applicable Legal Requirement. Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Project Facilitator's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.5.3 Contractor's responsibility for safety does not relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

## **2.6 Contractor's Warranty**

2.6.1 Contractor warrants to Project Facilitator that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Contractor's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Project Facilitator with greater warranty rights than set forth herein or the Contract Documents. Contractor will provide Project Facilitator with all manufacturers' warranties upon Substantial Completion.

## **2.7 Correction of Defective Work**

2.7.1 Contractor agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject herein, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.7.2 Contractor shall, within seven (7) days of receipt of written notice from Project Facilitator that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Contractor fails to commence the necessary steps within such seven (7) day period, Project Facilitator, in addition to any other remedies provided under the Contract Documents, may provide Contractor with written notice that Project Facilitator will commence correction of such nonconforming Work with its own forces. If Project Facilitator does perform such corrective Work, Contractor shall be responsible for all reasonable costs incurred by Project Facilitator in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

2.7.3 The one-year period referenced above applies only to Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Project Facilitator may have regarding Contractor's other obligations under the Contract Documents.

## **Article 3** **Project Facilitator's Services and Responsibilities**

### **3.1 Duty to Cooperate**

3.1.1 Project Facilitator shall, throughout the performance of the Work, cooperate with Contractor and perform its responsibilities, obligations and services in a timely manner to facilitate Contractor's timely and efficient performance of the Work and so as not to delay or interfere with Contractor's performance of its obligations under the Contract Documents.

3.1.2 Project Facilitator shall provide timely reviews and approvals of interim design submissions consistent with the turnaround times set forth in Contractor's schedule.

3.1.3 Project Facilitator shall give Contractor timely notice of any Work that Project Facilitator notices to be defective or not in compliance with the Contract Documents.

### **3.2 Furnishing of Services and Information**

3.2.1 Project Facilitator is responsible for securing and executing all necessary agreements with property owners whose property lies within or adjacent to the Site, or whose agreement is otherwise necessary to enable Contractor to perform the Work. The Contractor is responsible for determining property ownership. Project Facilitator is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

### **3.3 Financial Information**

**3.3.1** At Contractor's request, Project Facilitator shall promptly furnish reasonable evidence satisfactory to Contractor that Project Facilitator has adequate funds available and committed to fulfill all of Project Facilitator's contractual obligations under the Contract Documents. If Project Facilitator fails to furnish such financial information in a timely manner, Contractor may stop Work under Section 8.3 hereof or exercise any other right permitted under the Contract Documents.

**3.3.2** Contractor shall cooperate with the reasonable requirements of Project Facilitator's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Contractor shall have no obligation to execute for Project Facilitator or Project Facilitator's lenders or other financial sources any documents or agreements that require Contractor to assume obligations or responsibilities greater than those existing obligations Contractor has under the Contract Documents.

### **3.4 Project Facilitator's Representative**

**3.4.1** Project Facilitator's Representative shall be responsible for providing Project Facilitator-supplied information and approvals in a timely manner to permit Contractor to fulfill its obligations under the Contract Documents. Project Facilitator's Representative shall also provide Contractor with prompt notice if it observes any failure on the part of Contractor to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Project Facilitator's Representative shall communicate regularly with Contractor and shall be vested with the authority to act on behalf of Project Facilitator.

## **Article 4** **Payment**

### **4.1 Schedule of Values**

**4.1.1** Unless required by the Project Facilitator upon execution of this Agreement, within ten (10) days of execution of the Agreement, Contractor shall submit for Project Facilitator's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Contractor throughout the Work.

**4.1.2** The Project Facilitator will timely review and approve the schedule of values so as not to delay the submission of the Contractor's first application for payment. The Project Facilitator and Contractor shall timely resolve any differences so as not to delay the Contractor's submission of its first application for payment.

### **4.2 Progress Payments**

**4.2.1** On or before the date established in the Agreement, Contractor shall submit for Project Facilitator's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required herein.

**4.2.2** All discounts offered by Subcontractors, Sub-Subcontractors and suppliers to Contractor for early payment shall accrue one hundred percent to Contractor to the extent Contractor advances payment. Unless Project Facilitator advances payment to Contractor specifically to receive the discount, Contractor may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

**4.2.3** The Application for Payment shall constitute Contractor's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Project Facilitator free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Contractor's receipt of payment, whichever occurs earlier.

### **4.3 Withholding of Payments**

**4.3.1** On or before the date established in the Agreement, Project Facilitator shall pay Contractor all amounts properly due. If Project Facilitator determines that Contractor is not entitled to all or part of an Application for Payment as a result of Contractor's failure to meet its obligations hereunder, it will notify Contractor in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Project Facilitator intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Contractor must take to rectify Project Facilitator's concerns. Contractor and Project Facilitator will attempt to resolve Project Facilitator's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Contractor may pursue its rights under the Contract Documents, including those herein.

**4.3.2** Notwithstanding anything to the contrary in the Contract Documents, Project Facilitator shall pay Contractor all undisputed amounts in an Application for Payment within the times required by the Agreement.

### **4.4 Right to Stop Work and Interest**

**4.4.1** If Project Facilitator fails to timely pay Contractor any amount that becomes due, Contractor, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to the General Conditions. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

### **4.5 Contractor's Payment Obligations**

**4.5.1** Contractor will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Contractor has received from Project Facilitator for their work. Contractor will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Contractor will indemnify and defend Project Facilitator against any claims for payment or mechanic's liens.

### **4.6 Substantial Completion**

**4.6.1** Contractor shall notify Project Facilitator when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Project Facilitator's receipt of Contractor's notice, Project Facilitator and Contractor will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Project Facilitator shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Project Facilitator's and Contractor's responsibility for the Project's security, maintenance, utilities and insurance pending final payment and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

**4.6.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Project Facilitator shall release to Contractor all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all

remaining or incomplete items of Work as noted in the Certificate of Substantial Completion, or 10% of total value.

4.6.3 Project Facilitator, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in herein, (ii) Contractor and Project Facilitator have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Project Facilitator and Contractor agree that Project Facilitator's use or occupancy will not interfere with Contractor's completion of the remaining Work.

#### **4.7 Final Payment**

**4.7.1** After receipt of a Final Application for Payment from Contractor, Project Facilitator shall make final payment by the time required in the Agreement, provided that Contractor has achieved Final Completion.

**4.7.2** At the time of submission of its Final Application for Payment, Contractor shall provide the following information:

.1 an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Project Facilitator's interests;

.2 a general release executed by Contractor waiving, upon receipt of final payment by Contractor, all claims, except those claims previously made in writing to Project Facilitator and remaining unsettled at the time of final payment;

.3 consent of Contractor's surety, if any, to final payment;

.4 all operating manuals, warranties and other deliverables required by the Contract Documents.

**4.7.3** Upon making final payment, Project Facilitator waives all claims against Contractor except claims relating to (i) Contractor's failure to satisfy its payment obligations, if such failure affects Project Facilitator's interests, (ii) Contractor's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

## **Article 5** **Time**

#### **5.1 Obligation to Achieve the Contract Times**

**5.1.1** Contractor agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article IV of the Agreement.

#### **5.2 Delays to the Work**

**5.2.1** If Contractor is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Contractor is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order, as defined in Article 6 herein. By way of example, events that will entitle Contractor to an extension of the Contract Time(s) include acts or omissions of Project



Facilitator or anyone under Project Facilitator's control (including separate contractors), and Force Majeure Events.

**5.2.2** In addition to Contractor's right to a time extension for those events set forth in Section 5.2.1 above, Contractor shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

## **Article 6**

### **Changes to the Contract Price and Time**

#### **6.1 Change Orders**

**6.1.1** A Change Order is a written instrument issued after execution of the Agreement signed by Project Facilitator and Contractor, stating their agreement upon all of the following:

- .1 The scope of the change in the Work;
- .2 The amount of the adjustment to the Contract Price; and
- .3 The extent of the adjustment to the Contract Time(s).

**6.1.2** All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Project Facilitator and Contractor shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

**6.1.3** If Project Facilitator requests a proposal for a change in the Work from Contractor and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Contractor for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

#### **6.2 Work Change Directives**

**6.2.1** A Work Change Directive is a written order prepared and signed by Project Facilitator, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

**6.2.2** Project Facilitator and Contractor shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

#### **6.3 Minor Changes in the Work**

**6.3.1** Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Contractor may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Contractor shall promptly inform Project Facilitator, in writing, of any such changes and record such changes on the documents maintained by Contractor.

## **6.4 Contract Price Adjustments**

**6.4.1** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

- .1** Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
- .2** A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Project Facilitator;
- .3** Costs, fees and any other markups set forth in the Agreement; and
- .4** If an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Project Facilitator issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including reasonable overhead and profit, as may be set forth in the Agreement.

**6.4.2** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Project Facilitator or Contractor because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted as determined by Project Facilitator in its discretion.

**6.4.3** If Project Facilitator and Contractor disagree upon whether Contractor is entitled to be paid for any services required by Project Facilitator, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Project Facilitator and Contractor shall resolve the disagreement pursuant to this document. As part of the negotiation process, Contractor shall furnish Project Facilitator with a good faith estimate of the costs to perform the disputed services in accordance with Project Facilitator's interpretations. If the parties are unable to agree and Project Facilitator expects Contractor to perform the services in accordance with Project Facilitator's interpretations, Contractor shall proceed to perform the disputed services, conditioned upon Project Facilitator issuing a written order to Contractor (i) directing Contractor to proceed and (ii) specifying Project Facilitator's interpretation of the services to be performed. If this occurs, Contractor shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Project Facilitator agrees to pay such amounts, with the express understanding that (i) such payment by Project Facilitator does not prejudice Project Facilitator's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Contractor does not prejudice Contractor's right to seek full payment of the disputed services if Project Facilitator's order is deemed to be a change to the Work.

## **Article 7** **Contract Adjustments and Disputes**

### **7.1 Requests for Contract Adjustments and Relief**

**7.1.1** If either Contractor or Project Facilitator believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed

twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

## **7.2 Dispute Avoidance and Resolution**

**7.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Contractor and Project Facilitator each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

**7.2.2** Contractor and Project Facilitator will first attempt to resolve disputes or disagreements at the field level through discussions between Contractor's Representative and Project Facilitator's Representative which shall conclude within fourteen (14) days of the written notice unless the Project Facilitator and Contractor mutually agree otherwise.

**7.2.3** If a dispute or disagreement cannot be resolved through Contractor's Representative and Project Facilitator's Representative, Contractor's Senior Representative and Project Facilitator's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

**7.2.4** If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Project Facilitator and Contractor and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation.

## **7.3 Arbitration**

**7.3.1** Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth above shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

**7.3.2** The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

**7.3.3** Contractor and Project Facilitator expressly agree that any arbitration pursuant to this document may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Contractor and Project Facilitator will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

**7.3.4** The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

#### **7.4 Duty to Continue Performance**

**7.4.1** Unless provided to the contrary in the Contract Documents, Contractor shall continue to perform the Work and Project Facilitator shall continue to satisfy its payment obligations to Contractor, pending the final resolution of any dispute or disagreement between Contractor and Project Facilitator.

#### **7.5 CONSEQUENTIAL DAMAGES**

**7.5.1** Notwithstanding anything herein to the contrary (except as set forth below), neither Contractor nor Project Facilitator shall be liable to the other for any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing.

**7.5.2** The consequential damages limitation set forth herein is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Project Facilitator or reward Contractor for some damages that might otherwise be deemed to be consequential.

## **Article 8** **Stop Work and Termination for Cause**

#### **8.1 Project Facilitator's Right to Stop Work**

**8.1.1** Project Facilitator may, without cause and for its convenience, order Contractor in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

**8.1.2** Contractor is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Project Facilitator.

#### **8.2 Project Facilitator's Right to Perform and Terminate for Cause**

**8.2.1** If Contractor persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Project Facilitator, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in herein.

**8.2.2** Upon the occurrence of an event set forth above, Project Facilitator may provide written notice to Contractor that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Contractor's receipt of such notice. If Contractor fails to cure, or reasonably commence to cure, such problem, then Project Facilitator may give a second written notice to Contractor of its intent to terminate within an additional seven (7) day period. If Contractor, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Project Facilitator may declare the Agreement terminated

for default by providing written notice to Contractor of such declaration.

**8.2.3** Upon declaring the Agreement terminated pursuant to this section, Project Facilitator may take possession of any completed and paid for work, for the purpose of completing the work defined in the Contract.

**8.2.4** If Project Facilitator improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article VIII of the Agreement.

### **8.3 Contractor's Right to Stop Work**

**8.3.1** Contractor may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

- .1 Project Facilitator's failure to provide financial assurances as required herein or
- .2 Project Facilitator's failure to pay amounts properly due under Contractor's Application for Payment.

**8.3.2** Should any of the events set forth above occur, Contractor has the right to provide Project Facilitator with written notice that Contractor will stop the Work unless said event is cured within seven (7) days from Project Facilitator's receipt of Contractor's notice. If Project Facilitator does not cure the problem within such seven (7) day period, Contractor may stop the Work. In such case, Contractor shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

### **8.4 Contractor's Right to Terminate for Cause**

**8.4.1** Contractor, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

- .1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Project Facilitator provided that such stoppages are not due to the acts or omissions of Contractor or anyone for whose acts Contractor may be responsible.
- .2 Project Facilitator's failure to provide Contractor with any information, permits or approvals that are Project Facilitator's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Project Facilitator has not ordered Contractor in writing to stop and suspend the Work pursuant herein.
- .3 Project Facilitator's failure to cure the problems set forth above after Contractor has stopped the Work.

**8.4.2** Upon the occurrence of an event set forth above, Contractor may provide written notice to Project Facilitator that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Project Facilitator's receipt of such notice. If Project Facilitator fails to cure, or reasonably commence to cure, such problem, then Contractor may give a second written notice to Project Facilitator of its intent to terminate within an additional seven (7) day period. If Project Facilitator, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Contractor may declare the Agreement terminated for default by providing written notice to Project Facilitator of such declaration. In such case, Contractor shall be entitled to recover in the same manner as if Project Facilitator had terminated the Agreement for its convenience under Article 7 of the Agreement.

## **8.5 Bankruptcy of Project Facilitator or Contractor**

**8.5.1** If either Project Facilitator or Contractor institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the “Bankrupt Party”), such event may impair or frustrate the Bankrupt Party’s ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

.1 The Bankrupt Party, its trustee or other successor, shall notify the non-Bankrupt Party and provide adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days of initiation of bankruptcy proceedings; and

.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 8.

**8.5.2** The rights and remedies above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Contractor to stop Work under any applicable provision of these General Conditions of Contract.

## **Article 9** **Electronic Data**

**9.1 Electronic Data.** The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Project Facilitator, Contractor and others in electronic media as an alternative to paper hard copies (collectively “Electronic Data”).

### **9.2 Transmission of Electronic Data**

**9.2.1** Project Facilitator and Contractor shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

**9.2.2** Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, Project Management of the Electronic Data does not include Project Management of the software or computer program with which it is associated, transmitted, generated or interpreted.

### **9.3 Electronic Data Protocol**

**9.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, by, including but

not limited to, compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 9.3.

**9.3.2** Electronic Data will be transmitted in the format agreed upon above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

**9.3.3** The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information if such information changes prior to Final Completion the Project data or other information contained in the electronic media.

**9.3.4** The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

## **Article 10**

### **Differing Site Conditions**

#### **10.1 Differing Site Conditions**

10.1.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Contractor encounters a Differing Site Condition, Contractor will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Contractor's cost and/or time of performance are adversely impacted by the Differing Site Condition.

10.1.2 Upon encountering a Differing Site Condition, Contractor shall provide prompt written notice to Project Facilitator of such condition, which notice shall not be later than ten (10) days after such condition is encountered. Contractor shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

## **Article 11**

### **Insurance and Bonds**

#### **11.1 Contractor's Insurance Requirements**

11.1.1 Contractor is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth below. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

.2 Insurance limits must meet the following minimum standards:

- Commercial General Liability: \$1,000,000 for each occurrence, \$2,000,000 general aggregate.

- Automobile Liability: \$1,000,000 combined single limit.
- Umbrella Liability: \$7,000,000 each occurrence and \$7,000,000 aggregate.
- Workers Compensation & Employers' Liability: \$1,000,000 for each accident, disease - each employee, and disease – policy limit.

11.1.2 Contractor's liability insurance set forth in the Agreement above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

11.1.3 Any professional liability shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services hereunder.

11.1.4 Prior to commencing any construction services hereunder, Contractor shall provide Project Facilitator with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Project Facilitator. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Contractor with reasonable promptness according to the Contractor's information and belief.

11.1.5 Facilitator must be listed as additional insured on the Certificate of Insurance.

## **11.2 Contractor's Liability Insurance**

11.2.1 Contractor shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Contractor from claims which may arise from the performance or non-performance of Contractor's obligations under the Contract Documents or Contractor's conduct during the course of the Project. The liability insurance obtained by the Contractor shall include the Project Facilitator as an additional insured.

## **11.3 Contractor's Property Insurance**

11.3.1 Unless otherwise provided in the Contract Documents, Contractor shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Contractor shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Project Facilitator, Contractor, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Contractor's Application for Payment and approved by Project Facilitator. The Contractor is responsible for the payment of any deductibles under the insurance required herein.

11.3.2 Prior to Contractor commencing any Work, Contractor shall provide Project Facilitator with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Contractor has completed all of the Work and has received final payment from Project Facilitator and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to all parties. Contractor's insurance shall not lapse or be canceled. Project



Facilitator shall provide Contractor with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

11.3.3 All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

11.3.4 Project Facilitator and Contractor waive against each other and Project Facilitator's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Contractor and Project Facilitator shall, where appropriate, require similar waivers of subrogation from Project Facilitator's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

#### **11.4 Bonds and Other Performance Security**

11.4.1 If Project Facilitator requires Contractor to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

11.4.2 All bonds furnished by Contractor shall be in a form satisfactory to Project Facilitator. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

## **Article 12** **Miscellaneous**

#### **12.1 Confidential Information**

**12.1.1** Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (a) the transmitting party identifies as either confidential or proprietary; and (b) the transmitting party takes steps to maintain the confidential or proprietary nature of the information. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

#### **12.2 Assignment**

**12.2.1** Neither Contractor nor Project Facilitator shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

#### **12.3 Successorship**

**12.3.1** Contractor and Project Facilitator intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

#### **12.4 Governing Law**

**12.4.1** The Agreement and all Contract Documents shall be governed by the laws of the State of

Maryland, without giving effect to its conflict of law principles.

**12.5 Severability**

**12.5.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable legal requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**12.6 No Waiver**

**12.6.1** The failure of either Contractor or Project Facilitator to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

**12.7 Headings**

**12.7.1** The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**12.8 Notice**

**12.8.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement or (iii) if transmitted by facsimile or email, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

**12.9 Amendments**

**12.9.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

CONTRACTOR SIGNATURE

\_\_\_\_\_ Date \_\_\_\_\_

PROJECT FACILITATOR SIGNATURE

\_\_\_\_\_ Date \_\_\_\_\_