I. GENERAL TERMS

A. **Authorization to do Business in Virginia**. Contractor is authorized to do business in Virginia as a domestic or foreign business entity under Title 13.1 or Title 50 of the Virginia Code. Contractor will not allow its existence to lapse or its certificate of authority or registration to do business in Virginia to be revoked or cancelled during the term of this contract.

B. **Relation to City**. Contractor is an independent contractor of the City. This contract does not create an employment relationship between the City and Contractor or any of its employees.

C. **Prime Contractor and Subcontractors**. Contractor has prime responsibility for all services and goods to be provided under this contract, specifically including adequate supervision of work to be performed. This contract is only between Contractor and the City, and Contractor accepts full responsibility for the work performed and goods provided by, and the acts and omissions of, its subcontractors.

   Subcontractor will not subcontract for any part of this contract without the advance written permission of the City Purchasing Agent. Contractor will provide the names, qualifications, and experience of any proposed subcontractors to the City Purchasing Agent.

D. **Modifications**. Only the City Manager or City Purchasing Agent may modify this contract on behalf of the City. Only the original signatory of the contract on behalf of Contractor, or another individual authorized in writing by Contractor to modify the contract, may modify the contract on behalf of Contractor. Modifications to this contract can only be authorized in accordance with Code of Virginia § 2.2-4309. Modifications can only be authorized by the following methods:

   City and Contractor may agree in writing to modify the terms of the contract. Any additional goods or services to be provided must be of a sort that is ancillary to, or within the same broad product or services categories as, those provided for in the original contract.

   The City may issue written change orders for changes such as services to be performed, methods of packing or shipping, and place of delivery or installation. If Contractor determines that the change order will not necessitate a change in compensation or schedule, Contractor will comply with the change order upon receipt. If Contractor determines that the change order will necessitate a change in compensation or schedule, Contractor will notify the City of that determination, and only proceed to comply with the change order upon the City's written approval.

   The contract may be renewed by agreement if provided for in the description of the contract term.

   Contractor shall not require any employee or agent of the City other than the City Manager or Purchasing Agent to execute any additional contract, license, or other agreement pertaining to this contract.

E. **Freedom of Information Act**. All records pertaining to this contract may be open to inspection by the public under the Virginia Freedom of Information Act (Virginia Code § 2.2-

3700 *et. seq*) unless specifically exempted under the Act (including records properly exempted under Code of Virginia § 2.2-4342).

F. **Audit**. Contractor will retain all records related to this contract for 5 years after final payment or until audited by the City, whichever comes first. The City may inspect these records upon reasonable notice to Contractor.

G. **Ethics in Public Contracting**. Contractor certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

H. **Immigration**. Contractor does not, and will not during the performance of this contract, knowingly employ an unauthorized alien as defined in federal Immigration Reform and Control Act of 1986. Contractor will register for and participate in the federal E-Verify Program if required to do so under Code of Virginia § 2.2-4308.2. Contractor will provide the City with a copy of their E-Verify "Maintain Company" page to the City upon request. Failure to comply with E-Verify requirements subjects Contractor to automatic disbarment from City procurement until the requirements are met.

I. **Non-Discrimination**. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. Contractor will post in conspicuous places, available to employees and applicants for employment, notices stating the terms of this section.

   Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that the contractor is an equal opportunity employer.

   Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation are sufficient for the purposes of this section.

   Contractor will include the terms of this section in every subcontract or purchase order of over $10,000, so that the terms will be binding upon each subcontractor and vendor.

   Contractor will conform to the Federal Civil Rights Act of 1964, the Virginia Fair Employment Contracting Act of 1975, the Virginians with Disabilities Act, and § 2.2-4343.1E of the Virginia Public Procurement Act.

J. **Drug-Free Workplace.** Contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violating that prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free

workplace; and (iv) include the terms of this section in every subcontract or purchase order of over $10,000, so that the terms will be binding upon each subcontractor and vendor.

K. **Payments**. Contractor must provide its federal employer identification number and W-9 to the City before requesting payment.

Contractor will submit itemized invoices, with appropriate documentation, to the City, at the payment address shown on the purchase order or contract. All invoices must show the City contract or purchase order number and Contractor's federal employer identification number. No invoice may include any cost other than those listed in the contract or in an individual purchase order referencing the contract.

The City will pay invoices within 30 days of receipt. Any invoice not paid within 30 days will accrue 1% interest per month. When payment is made by mail, the date of the postmark will be considered the date of payment. If offset proceedings have been instituted under the Virginia Debt Collection Act, the date of offset will be considered the date of payment.

Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time an order is placed. In these cases, payments are contingent on the City's determination that all invoiced charges are reasonable. The City will notify Contractor within 30 days of invoice of any charges it determines to be unreasonable. Payment for those charges will be suspended until a settlement is reached. Contractor will not take legal action concerning the charges unless a settlement is not reached within 30 days of notification.

L. **Subcontractor Payments.** Within 7 days after receipt of payment by the City for work performed by a subcontractor, Contractor shall a) pay the subcontractor for the proportionate share of the total payment received from the City attributable to the subcontractor's work, or b) notify the City and the subcontractor, in writing, of Contractor's intention to withhold payment and the reason for withholding the payment.

Contractor will pay interest of 1% per month to subcontractors on all amounts owed to the subcontractors which has not been paid or withheld under the terms of the preceding paragraph.

Contractor must require individual subcontractors to provide their social security numbers, and proprietorship, partnership, and corporate subcontractors to provide their federal employee identification numbers. Contractor will provide this information to the City upon request.

Contractor must require subcontractors to include the terms of this section in all contracts with other subcontractors.

M. **Non-appropriation.** All funds for payments after June 30 of the current fiscal year are subject to appropriation by the City Council. If Council does not appropriate the required funds, the City will terminate this contract on June 30 of the then-current fiscal year.

N. **Indemnification**. Contractor will save, defend, hold harmless, and indemnify the City, and all of its elected and appointed officials, officers, employees, agents, departments, agencies,

boards, and commissions from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with Contractor's negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Contractor in performance or nonperformance of its work under the contract. This indemnification survives the termination of the contract.

O. **Insurance**. Contractor and any subcontractors will maintain the following insurance coverage, provided by insurance companies authorized by the Virginia SCC to offer insurance in Virginia, during the entire term of the contract. Contractor will provide copies of its Certificates of Insurance to the City.

   a. Workers' Compensation—as required by law.

   b. Employer's Liability--$100,000.

   c. Commercial General Liability--$1,000,000 per occurrence and $2,000,000 in the aggregate. The City must be named as an additional insured on this policy.

   d. Automobile Liability -- $1,000,000 combined single limit, if any motor vehicle not owned by the City is to be used in performance of the contract.

   e. Professional Liability (i.e. Errors and Omissions)--$2,000,000 per wrongful act, $3,000,000 annual policy claims aggregate, if the contract is for accounting, architecture, asbestos contracting, healthcare, insurance/risk management, legal services, engineering, or surveying.

P. **Licensing**. Contractor will maintain all licenses and certifications required by applicable federal, state, and local governmental entities for provision of the goods and services to be provided under this contract.

Q. **Assignment**. Contractor will not assign or otherwise transfer any of its rights, obligations, or interests in this contract without the written permission of the City.

R. **Choice of Law, Venue**. This contract is governed by Virginia law. The Circuit Court of Fredericksburg, Virginia is the exclusive venue for any litigation regarding this contract.

S. **Claims**. Contractor must notify the City in writing of its intention to file a claim at the time of the occurrence or beginning of the work upon which the claim is based. All claims must be submitted less than 60 days after the final contract payment.

T. **Dispute Resolution.** The parties will first endeavor to resolve any disputes, claims, or other matters in question between them through direct negotiations, and if direct negotiations fail, by non-binding mediation, with the exclusive venue of the mediation being the City of Fredericksburg. Should the dispute remain unresolved either (i) following negotiation and mediation, or (ii) more than 90 days after a party has requested mediation, either party may institute a lawsuit or chancery action, as appropriate, in Fredericksburg Circuit Court, and may pursue all available appeals in Virginia state courts, to the extent they have jurisdiction. Any

agreement reached in mediation must be reduced to writing and executed by the parties; upon execution, the agreement will be enforceable as a settlement agreement.

U. **Default**. The City is in default 1) if it fails to pay any amount due to Contractor; or 2) upon any other material failure to comply with the terms of the contract. Contractor is in default upon any material failure to comply with the terms of the contract.

A party alleging that the other party is in default must provide the allegedly defaulting party with written notice specifying the alleged default and allow 30 days for the default to be cured.

V. **Remedies**. If the City does not cure a default after receiving notice, Contractor may a) terminate this contract, and b) exercise all remedies available at law. If Contractor does not cure a default after receiving notice, the City may a) terminate the contract, b) exercise all remedies available at law, and c) collect liquidated damages if available under Special Contract Terms. If the default is a failure to provide required goods or services, the City may, upon written notice to Contractor, procure those goods or services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs.

W. **Termination**. The City may terminate this contract for any reason upon 30 days notice to Contractor. The City will promptly pay all amounts already earned by Contractor and reasonable expenses incurred in reliance upon the contract, up to the effective date of the termination. Receipt of the notice does not affect Contractor's obligations under the contract, including fulfillment of outstanding orders, up to the effective date of termination.

The parties can agree to terminate this contract at any time.

X. **Notices**. Any notices pertaining to this contract must be sent by first-class mail to:

To the City:
Fredericksburg City Manager
P.O. Box 7447
Fredericksburg, Virginia 22404-7447

To the Contractor:
The address listed on Contractor's Proposal or Bid. Contractor may change its address for notices by notifying the City in writing of the change.

Y. **Severability**. If a court declares any part of this contract to be invalid, void, or unenforceable, the rest of the contract remains in effect.

Z. **Strict Performance**. The failure of a party to insist upon the other party's strict performance of the terms of the contract is not a waiver of the right to insist upon strict performance of those terms at a later time.