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# **STANDARD FORM OF PRELIMINARY AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER (Modified)**

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## **Document No. 520**

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Washington, DC



## Design-Build Institute of America - Contract Documents

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- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation

or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

- 8. Acknowledgement.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

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# Standard Form of Preliminary Agreement Between Owner and Design-Builder

*This document has important legal consequences. Consultation with  
an attorney is recommended with respect to its completion or modification.*

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This Interim Agreement (the "**Agreement**") is made as of the Fourteenth day of January in the year of 2015 (the "**Effective Date**"), by and between the following parties, for services in connection with the Project identified below.

**OWNER:**

*(Name and address)*

City of Petersburg  
William E. Johnson, III  
City Manager  
135 N. Union Street  
Petersburg, Virginia 23803

**DESIGN-BUILDER:**

*(Name and address)*

Falconer Construction Company, Inc.  
2496 Old Ivy Road  
P.O. Box 7706  
Charlottesville, Virginia 22906-7706

**PROJECT:**

*(Include Project name and location as it will appear in the Contract Documents)*

PPEA # 13-0041 Rehabilitation of the Poor Creek Pump Station Force Main

## **Recitals**

**WHEREAS**, on or about November 1, 2012, Owner received an unsolicited proposal (the "**Initial Proposal**"), submitted pursuant to Virginia's Public-Private Education Facilities and Infrastructure Act of 2002, set forth within §§ 56-571.1 et seq. VA Code Ann. ("**PPEA**"), and thereafter, as required by the PPEA, Owner, on or about May 15, 2013, publicly advertised its receipt of the Initial Proposal and invited any competing proposals to be submitted to it by July 1, 2013, for consideration ("**Solicitation**"); and

**WHEREAS**, Design-Builder submitted its PPEA Proposal to Owner on or about July 1, 2013 ("**Proposal**"), which Proposal provided for design services, including architectural, engineering and other professional services for the rehabilitation of the Poor Creek Pump Station Force Main (the "**Project**"); and

**WHEREAS**, Owner has determined that Design-Builder is qualified and that the Project is a qualifying project for purposes of the PPEA; and

**WHEREAS**, Owner has determined that there is a public need for and benefit derived from the Project; the Project, in the general locations contemplated, are consistent with Owner's Comprehensive Plan; the estimated cost of the Project is reasonable in relation to similar facilities; and completion of the Project in accordance with Design-Builder's plans will result in the timely development of needed public infrastructure; and

**WHEREAS**, Owner and Design-Builder now desire to enter into this Agreement to initiate the process of designing and implementing plans for the Project, subject to terms, conditions, appendices, exhibits, and attachments to the Agreement;

**NOW, THEREFORE**, in consideration of the Recitals set forth above, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties do hereby set forth their Agreement as follows:

## **Article 1**

### **General**

**1.1 Duty to Cooperate.** Owner and Design-Builder 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 this Agreement.

**1.2 Definitions.** Unless otherwise defined or specified herein, terms, words and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition).

**1.3 Recitals.** All of the Recitals set forth above are materially true and accurate and are incorporated herein by reference.

## **Article 2**

### **Design-Builder's Services and Responsibilities**

**2.1 Services.** Design-Builder shall, consistent with applicable state laws, provide design services, including architectural, engineering and other design professional services required by this Agreement. Such design services shall be provided through licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Design-Builder shall supervise all subcontractors and consultants and warrants that the services provided under this Agreement are of the highest quality, meets the best standard practice in the

industry, will be diligently performed in a workman-like manner, and the Work Product derived therefrom free from material defects. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional. In consideration of the Contract Price, Design-Builder shall provide the following services:

**2.1.1 Design Documents.** Design-Builder shall prepare and complete 75% Design Documents based on Owner's Project Criteria and as may be revised in accordance with Section 2.3.2 hereof; provided, such 75% Design Documents shall be completed no later than provided for in Section 5.1. The 75% Design Documents shall include, but are not limited to, design criteria, drawings, including locations of necessary permanent easements and temporary construction easements, diagrams and specifications setting forth the requirements of the Project. The parties shall meet to discuss the 75% Design Documents and agree upon what revisions, if any, should be made. Design-Builder shall perform such agreed-upon revisions.

**2.1.2 Field Research and Survey.** Design-Builder shall perform necessary data gathering and survey work and administrative and field related work to support the environmental permitting, cultural resources survey, and easement acquisition.

**2.1.3 Easement Acquisition Services.** Design-Builder shall provide preliminary easement acquisition services which shall include: easements, plats, title research, appraisals and appraisal reviews for the parcels shown in Exhibit C. Temporary and permanent easements are anticipated to be required from Virginia Holding Company/Norfolk and Western Railway Co., City of Petersburg, and within the Norfolk-Southern Railroad R/W. A temporary easement is also anticipated to be required from the National Park Service.

**2.1.4 Environmental Services.** Design-Builder's environmental services and permitting shall include: Waters of the U.S. delineation, perennial stream flow determination, environmental site assessment, and federal and state environmental permitting.

**2.1.5 Cultural Resource Survey.** Design-Builder's cultural resource survey shall include archaeological fieldwork, including shovel tests and metal-detecting survey, artifact analysis and reporting required to obtain an Archaeological Resources Protection Act (ARPA) permit to allow for excavations on NPS-owned land.

## **2.2 Representations and Warranties.**

**2.2.1** In executing this Agreement and any related document, Design-Builder represents that it has the necessary financial resources and the full power and authority to execute and fulfill its obligations under this Agreement.

**2.2.2** Design-Builder has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under this Agreement and any related document.

**2.2.3** Each person executing this Agreement and any related document on behalf of Design-Builder has been or will at such time be duly authorized to execute the Agreement on behalf of Design-Builder.

**2.2.4** Neither the execution and delivery by Design-Builder of this Agreement and any related document nor the performance of its obligations hereunder is in conflict with or will result in a default under or a violation of the governing instruments of Design-Builder or any other agreements or instruments to which it is a party or by which it is bound.

**2.2.5** There is no action, suit, proceedings, investigation or litigation pending or threatened which challenges Design-Builder's authority to execute, deliver or perform its obligation under this Agreement, or the validity or enforceability of this Agreement.

**2.2.6** Design-Builder has, and shall ensure that its subcontractors and consultants have, all licenses necessary to perform the services to be provided hereunder.

### **2.3 Owner's Project Criteria.**

**2.3.1** Owner or Owner's officers, employees, contractors, representatives, and agents (collectively, "**Owner's Agent**") shall provide Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project. Owner's "**Project Criteria**" shall include Owner's use, space, price, time, site, performance and expandability requirements. Owner's Project Criteria may include conceptual documents, design specifications, design performance specifications and other technical materials and requirements prepared by or for Owner.

**2.3.2** If Owner's Project Criteria have not been developed prior to the execution of this Agreement, Design-Builder will assist Owner in developing Owner's Project Criteria, with such service deemed to be an Additional Services under Section 2.10 hereof. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria.

**2.4 Proposal.** Based on Owner's Project Criteria, the 75% Design Documents, as each may be revised pursuant to Sections 2.3.2 and 2.1 above, and any other Basis of the 75% Design Documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "**Proposal**"), which shall include the following unless the parties mutually agree otherwise:

**2.4.1** a proposed contract price for the design and construction of the Project, which price shall be a Guaranteed Maximum Price ("**GMP**");

**2.4.2** a schedule and date of Substantial Completion of the Project upon which the proposed contract price for the Project is based;

**2.4.3** all other information necessary for the parties to enter into a comprehensive agreement in the form of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for Guaranteed Maximum Price* (2010 Edition), with the accompanying *Standard Form of General Conditions of Contract*, DBIA Document No. 535, all of which shall be subject to and consistent with Owner's General Conditions of the Contract separately provided to Design-Builder ("**Owner's General Conditions**"); and

**2.4.4** the time limit for acceptance of the Proposal.

**2.5 Review of Proposal.** Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If Design-Builder finds the revisions acceptable, Design-Builder shall, upon receipt of Owner's notice, adjust the Proposal. If Design-Builder does not find the revisions to be acceptable, both Design-Builder and Owner shall, utilizing reasonable and good faith efforts, promptly agree upon a mutually acceptable adjustment to the Proposal.

**2.6 Completion of this Agreement.** Design-Builder's services under this Agreement shall be deemed completed upon the performance of the services under Section 2.1 and any Additional Services to be provided under Section 2.10, and meeting with Owner to discuss the Proposal and making those revisions to the Proposal, if any, that the parties deem to be mutually acceptable.

**2.7 Protection of Traffic.** All traffic control shall conform to the requirements of Owner's Traffic Engineer. Design-Builder shall employ such methods in the performance of the Agreement and provide such barriers, guards, temporary bridges, detours, notices, lights, warning and other safe-guards as may be necessary to prevent injury to persons and property. Design-Builder shall define the line of safe passage with suitable lights, wherever the public may have access to the site of the Project, during the hours from one-half hour before sunset to one-half hour after sunrise.

**2.8 Accident Prevention.** Precaution shall be exercised at all times for the protection of persons, including employees, and property. The safety provisions of applicable laws and building construction codes shall be observed, and all services performed under this Agreement shall be in accordance with the provisions of all federal, state and local laws and regulations.

**2.9 Protection of Work and Property.** Design-Builder shall continuously maintain adequate protection of all of its work from damage and shall protect Owner's property from injury or loss arising in connection with this Agreement. Design-Builder shall make good any such damage, injury or loss, except such as may be directly caused by Acts of God, or any other damages, injury or loss caused by others than Design-Builder or those for whom Design-Builder is responsible, provided Design-Builder exercises reasonable and ordinary care to protect the work and property. Design-Builder shall adequately protect adjacent property. Design-Builder shall notify Owner promptly, in writing, when any damage, injury or loss is experienced on the project.

**2.9.1** In an emergency affecting the safety of life or of the work or of adjoining property, Design-Builder, without special instructions or authorization from Owner's Agent or Owner, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury. Any reasonable compensation, claimed by Design-Builder on account of emergency services, shall be determined by Owner's Agent, with concurrence by Owner.

**2.10 Additional Services.** Design-Builder shall perform the "Additional Services" set forth in Exhibit A to this Agreement upon written direction of Owner. The cost for such services shall be as mutually agreed upon by Owner and Design-Builder, with the Contract Price for this Agreement, as set forth in Section 6.1 hereof, being adjusted accordingly.

**2.11 Changes in the Services, and Extras.** Design-Builder shall perform at the request of Owner or Owner's Agent any related services, which may arise while providing the services on the basis of a lump sum negotiated between Design-Builder and Owner's Agent and approved by Owner for said extra services, or compensation for actual labor, materials, and equipment involved in said services plus a percentage. This percentage shall be sufficient to include all insurance costs, all taxes (including payroll taxes), Social Security, Workmen's Compensation, Old Age Benefits, bonuses, all other overhead cost, and reasonable profit for Design-Builder and any subcontractors involved.

**2.11.1** Whenever changes, alterations, additions, omissions, or revisions are called for by Owner or Owner's Agent for which the necessary drawings and details have been completed and submitted, or when changes, alterations, additions or omissions are clearly given in writing to Design-Builder, Design-Builder shall submit the proper extra or credit as the case may be and in addition, an itemized statement of quantities and prices incidental to such revisions, changes, additions and omissions to facilitate the checking of the quantities involved.

**2.12 Indemnity.** Design-Builder shall, during the performance of the Agreement and for a year from the date after the completion of the services, indemnify, reimburse and keep and hold Owner

and Owner's Agent, free and harmless from liability on account of injury or damage to persons, including Design-Builder's contractors, subcontractors, consultants, and agents and employees of each subcontractor, firms and corporations, and property, growing out of or directly or indirectly resulting from the performance of this Agreement or any subcontract and the failure, refusal or neglect to comply with the provisions of this Agreement, and in the event that any suit or proceeding is brought against Owner or Owner's Agent, at law or in equity, either independently or jointly with Design-Builder or Design-Builder's contractors, subcontractors, consultants, and agents on account thereof, Design-Builder shall defend Owner in any such suit or proceeding at the cost of Design-Builder; and in the event of a final judgment or decree being obtained against Owner, either independently or jointly with Design-Builder's contractors, subcontractors, consultants, and agents, Design-Builder shall pay such judgment or comply with such decree with all costs and expense of whatever nature and hold Owner harmless therefrom. Design-Builder shall insure the liability assumed by him under this Agreement and have evidence of such insurance certified to Owner on forms provided by Owner, where such insurance is available. Nothing in the Section shall be deemed to be in conflict with the Code of Virginia (1950), as amended.

**2.13 Laws, Permits, and Regulations.** Design-Builder must comply with all local, state and federal laws, rules, ordinances, and regulations applicable to the Agreement and to the services provided hereunder, and must obtain, at Design-Builder's own expenses, all permits, licenses, or other authorization necessary for the prosecution of the work. If Design-Builder ascertains at any time that any provisions of the Agreement are not in compliance with applicable laws, rules, ordinances or regulations, Design-Builder shall promptly notify Owner in writing. In providing services to Owner, Design-Builder shall be subject to the provisions of the Virginia Code, Title 54.1, Chapter 11, and is required to be licensed as required therein. Design-Builder shall not be entitled to claim any damages for delay occasioned by compliance with such laws. Where such laws are changed during the course of the Agreement, and where such changes create additional costs to the Agreement or affect the time of the Agreement, such changes shall be made effective through Change Order prepared in accordance with Section 2.11 and extension of time for the Agreement in accordance with Section 5.3.

## Article 3

### **Owner's Services and Responsibilities**

**3.1 Timely Performance.** Owner shall throughout the performance of this Agreement reasonably cooperate with Design-Builder. Owner shall perform its responsibilities, obligations and services in accordance with the terms of Article 5, including its reviews and approvals of Design-Builder's submissions, in a mutually agreeable time frame so as not to unreasonably delay or interfere with Design-Builder's performance of its obligations under this Agreement.

**3.2 Owner's Project Criteria.** Owner or Owner's Agent shall provide Design-Builder with Owner's Project Criteria. If Owner desires that Design-Builder assist Owner in developing such criteria as an Additional Service under Section 2.10 hereof, Owner shall provide Design-Builder with its objectives, limitations and other relevant information regarding the Project.

**3.3 Owner Provided Information.** Owner shall provide, at its own cost and expense, for Design-Builder's information and use, the following, all of which Design-Builder is entitled to rely upon in performing its obligations hereunder:

**3.3.1** A legal description of the Site;

**3.3.2** To the extent available, as-built and record drawings of any existing structures and utilities at the Site;

**3.3.3** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including, but not limited to, Hazardous Conditions, in existence at the Site;

**3.3.4** To the extent available and not otherwise confidential or proprietary, provide existing Poor Creek Pump Station Improvements and Flow Equalization Facility information, including: a) written design approach/report from the Timmons/Versar team; (b) copies of the final design calculations; (c) certified pump curves for the new pumps which may include the pump curve provided by the pump manufacturer that matches the pump that was installed in the pump station, usually be found in the original shop drawing submittals or obtainable through the pump manufacturer; (c) record drawings indicating the new piping, volumes, and elevations for the new EQ basin; (d) control logic description for operation of the pumps and EQ basin based on either levels or flow rates, and at what conditions the EQ basin opens; and (e) what improvements were made to the existing pump station.

**3.3.5** Owner shall be responsible for entering into any such easements which are reasonably necessary for Design-Builder to perform its services hereunder.

## **Article 4**

### **Ownership of Work Product**

**4.1 Work Product.** Conditioned only upon payment of fees due to Design-Builder for services that have been performed under this Agreement, all drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement ("**Work Product**") are deemed to be instruments of service, in which Design-Builder transfers and assigns to Owner all right, title and interest, including but not limited to all copyrights, and further to obtain similar transfers and assignments to Owner from all of Design-Builder's contractors, subcontractors, consultants or agents who produce such Work Product for the Project. This irrevocable transfer and assignment includes but is not limited to Work Product in paper and electronic forms, and all Work Product for the Project, including, but not limited to, the 75% Design Documents, that have been or will be prepared or created by or on behalf of Design-Builder for the Project, and including all rights in and to the copyright throughout the world and any renewals or extensions thereof, as well as any and all derivations, modifications, changes, translations, revisions, elaborations, adaptations or transformations of the Work Product. This provision shall not relieve Design-Builder from, or modify Design-Builder's sole responsibility for, any and all liability for all of its services provided under the Agreement (including labor and materials). It is understood and agreed that all Work Product prepared by or on behalf of Design-Builder for this Project will be applicable only in respect to the Project. The Work Product is not intended or represented to be suitable for use or reuse by Owner or others for a material extension of the Project or on any other project. Owner has the right, itself or by and through other design professionals to modify the Work Product prepared by Design-Builder for use in connection with the Project or for any other use whatsoever. Design-Builder shall ensure that its consultants agree in writing to the transfer and assignment of all ownership rights in the Work Product produced by the consultants for Design-Builder that Design-Builder has agreed to provide Owner in this Agreement.

**4.2 Retained Rights of Design-Builder.** Owner acknowledges that Design-Builder or its consultants may have developed materials prior to entering into this Agreement, and may own other patent, trade secret and proprietary rights in techniques and concepts related to design elements that were not conceived or first produced by Design-Builder in connection with this Project (collectively "**Design-Builder Intellectual Property**"). Design-Builder Intellectual Property is proprietary to Design-Builder and shall remain Design-Builder's exclusive property. Design-Builder will specifically identify to Owner all Design-Builder Intellectual Property. Design-Builder hereby grants to Owner a perpetual, worldwide, royalty free, paid-up, irrevocable, nonexclusive, transferable, sub-licensable license to Design-Builder's Intellectual Property to the extent it is incorporated in any Work Product

delivered to Owner by Design-Builder hereunder. Submission or distribution of any Work Product to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of Design-Builder and Design-Builder's consultants.

**4.3 Royalties and Patents.** It is mutually understood and agreed that the Contract Price includes all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the services provided herein. Whenever Design-Builder is required or desires to use any design, device, material or process covered by letters, patent or copyright, Design-Builder shall indemnify and save harmless Owner, and Owner's Agent from any and all claims for infringement by reason of the use of any such patented design, tool, material, equipment or process to be performed under the Agreement, and shall indemnify Owner and Owner's Agent for any cost, expenses and damages which Owner and Owner's Agent may be obliged to pay, by reason of any Infringement, at any time during the prosecution or after the completion of the Project.

**4.4 Incorporation into Other Contracts.** Design-Builder shall ensure that the requirements of this Article 4 are incorporated into its contracts and agreements with Design-Builder's employees, agents, consultants (of any tiers), contractors, and subcontractors so that Owner is able to enjoy the full benefits of this Article.

## **Article 5**

### **Contract Time**

**5.1 Commencement and Completion Date.** Design-Builder shall commence performance of the services set forth in this Agreement within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("**Date of Commencement**") unless the parties mutually agree otherwise in writing. Design-Builder shall diligently complete such services, using adequate forces and its best efforts, no later than ninety (90) calendar days after the Date of Commencement. Permits will be submitted to the necessary agencies within this timeframe, however may not be finalized due to agency review times.

**5.2 Time.** Time being of the essence under this Agreement, Design-Builder shall prosecute its services diligently, using such means and methods as will secure the services full completion in accordance with the requirements of the Contract Documents not later than the date specified therefore or on the date to which the time for completion may be extended.

**5.2.1** Unless the date of completion is extended pursuant to the provisions of Section 5.3 hereof, Design-Builder must complete the services covered by this Agreement not later than the date specified in Section 5.1 above.

**5.2.2** Owner's Agent, with concurrence by Owner, shall solely judge whether the services hereunder has been completed within the time stipulated.

**5.2.3** It is mutually agreed between the parties that there will be on the part of Owner substantial monetary damage in the event Design-Builder should fail to complete the services within the time fixed for completion in the Agreement or within the time to which such completion may have been extended, Owner reserving all rights and remedies as may be available hereunder, at law or in equity.

**5.3 Extension of Time.** It is mutually agreed that no extension beyond the date of completion fixed by the terms of the Agreement shall be effective unless granted in writing by Owner. An application by Design-Builder for extension of time must be in writing; must set forth in detail the reasons and causes of delay and must be submitted to Owner or Owner's Agent within thirty (30)

days following the last occurrence of the delay. Owner or Owner's Agent shall respond to Design-Builder's application for an Extension of Time in writing within ten (10) days following the receipt of the application, and such reply must set forth in detail Owner's or Owner's Agent's findings and the reasons therefore.

**5.3.1** If such an application is made, Design-Builder shall be entitled to an extension of time for delay in completion of its services should Design-Builder be obstructed or delayed in the commencement, prosecution or completion of any part of said services by any act or delay of Owner, or by acts or omissions of other persons on this Project, other than Design-Builder or Design-Builder's subcontractors, consultants or others for whom Design-Builder is responsible.

**5.3.2** Design-Builder shall be entitled to an extension of time for such causes as set out in 5.3.1 above only for the number of days of delay which are due solely to such causes and then only upon the approval of Owner following a determination by Owner's Agent that the delays took place due solely to one or more of such causes and that the conditions actually delayed the completion of the services. It is hereby understood that the direction by Owner's Agent of the order and sequence of the services shall not in itself constitute a basis for extension of time.

**5.3.3** No application for extension of time shall be approved unless it can be demonstrated that Design-Builder reasonably endeavored to carry out other phases of the services under Section 2.1 which were not affected by one or more of the conditions as set out herein before and for which an extension application has been filed.

**5.3.4** The determination made by Owner on an application for an extension of time shall be binding.

**5.3.5** Design-Builder agrees to make no claim for consequential damages for delay in the performance of this Agreement occasioned by any act or omission to act of Owner or Owner's Agent or because of any injunction which may be brought against Owner or Owner's Agent. Owner agrees that Design-Builder shall be fully compensated for direct expenses incurred, including job site overhead expenses, insurance and taxes related to expenses, and profit applied to the total reimbursable expenses, provided, however, that this section shall not apply to changes in the services as set forth in Sections 2.11 and 2.11.1 of this Agreement. Otherwise, Design-Builder agrees to make no claim for damages, direct or consequential, for delay in the performance of this Agreement occasioned by any other reason whatsoever and further agrees that any such claim shall be fully compensated for by an extension of time and waives every right to bring an action for any latter damages.

**5.4 Progress Schedule.** To enable the services to be prosecuted in an orderly and expeditious manner, Design-Builder, within fourteen (14) days after the Notice to Proceed, unless otherwise directed by Owner or Owner's Agent, shall submit to Owner a proposed progress schedule, showing the anticipated time of commencement and completion of each of the various operations to be performed under this Agreement, together with all necessary and appropriate information regarding sequence and correlation of services and estimated time required for delivery of all materials and equipment required for the services under Section 2.1, including a schedule of submission of shop drawings and samples. The proposed progress schedule shall be revised as directed by Owner or Owner's Agent until finally approved by Owner, and, after such approval, shall be strictly adhered to by Design-Builder, unless, upon written permission of Owner or Owner's Agent, it is changed, provided such change is agreed to by Owner.

**5.4.1** If Design-Builder shall fail to adhere to the approved progress schedule or to the schedule as revised (collectively, the "**Progress Schedule**"), Design-Builder must promptly adopt such other or additional means and methods as will make up for the time lost and will assure completion in accordance with such Progress Schedule.

**5.4.2** The Progress Schedule shall be a Critical Path Method (“CPM”) schedule that shows activities grouped by area of work or subcontract. The Progress Schedule shall be time-scaled on a weekly basis and prepared at a level of detail and logic to schedule all salient features of the services to be performed hereunder. Design-Builder will provide updates to Owner on a bi-weekly basis of Design-Builder’s progress in completing the items on the Progress Schedule. Failure to include any element required for full and complete performance under this Agreement shall not excuse Design-Builder from its responsibilities under this Agreement, including but not limited to its obligation to complete the services on or before the date provided in Section 5.1. The Progress Schedule shall identify and describe each activity, state the duration of each activity, the calendar dates for early and late start and finish of each activity, and highlight all activities on the critical path. Float time shall be indicated for all activities and must be allocated to the best interest of completing the services. The Progress Schedule shall also show what part of the Contract Price is attributable to each activity on the schedule. If requested by Owner, the Progress Schedule shall also show the planned workforce for the Project. The Owner’s acceptance of the Progress Schedule shall not indicate the Owner’s agreement with or responsibility for the proposed or actual duration of any activity shown thereon.

**5.4.3** Primavera P6 shall be used to produce and update the Progress Schedule in accordance with the CPM method.

**5.4.4** If Design-Builder’s progress is more than ten percent (10%) behind the Progress Schedule as determined at the time of each bi-weekly update, partial payments may be withheld until such time as the services is at least within ninety percent (90%) of the projected Progress Schedule and is so maintained for thirty (30) days thereafter.

## **Article 6**

### **Contract Price**

**6.1 Contract Price.** The “Contract Price” for this Agreement is as set forth below:

One Hundred Seventy Four Thousand Five Hundred Thirty and 00/100 U.S. Dollars (\$174,530.00)

**6.2 Scope of Contract Price.** The Contract Price shall be the full compensation due Design-Builder for the performance of all services set forth in this Agreement, as more specifically provided under Section 2.1 and Exhibit B, other than Additional Services, and shall be deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements. The Contract Price shall be adjusted to reflect any Additional Services agreed upon by the parties after execution of this Agreement.

## **Article 7**

### **Procedure for Payment**

**7.1 Payment.** Owner agrees to pay Design-Builder for the strict performance of its services set forth herein, and as set forth in the Schedule of Values in Exhibit B and specifically incorporated herein by reference. Invoices should be submitted in a format acceptable to Owner. Design-Builder and Owner agree upon the following terms for partial and final payments to Design-Builder for the services hereunder:

**7.2 Monthly Partial Payments.** Except as otherwise provided in Owner’s General Conditions, Owner will make monthly partial payments to Design-Builder for the services performed during the preceding month as determined and approved by Owner’s Agent.

**7.3 Retainage.** In making partial payments, there shall be retained five percent (5%) on the estimated amount of each partial payment until completion and acceptance of all services covered by the Agreement.

**7.4 Effect of Partial Payments.** All materials and Work Product covered by partial payments made shall thereupon become the sole property of Owner, but this provision shall not be constructed as relieving Design-Builder from the sole responsibility for the safety and protection of all materials and Work Product upon which payments have been made or the restoration or replacement of any damaged or stolen Work Product, or as a waiver of the right of Owner to require the fulfillment of all the terms of the Contract Documents.

**7.5 Final Payment.** Neither the final payment nor any part of the retained percentage shall become due until Design-Builder delivers to Owner the final Work Product and an affidavit of payment of claims that all subcontractors and suppliers of either labor or materials have been paid any sums due them for services performed or materials furnished in connection with this Agreement or evidence that satisfactory arrangements have been made by Design-Builder with such subcontractors and suppliers with respect to the payment of such sums as may be due them by Design-Builder.

**7.6 Design-Builder's Acceptance of Final Payment.** The acceptance by Design-Builder of the final payment shall be and operate as a release to Owner of all claims of and all liability to Design-Builder for all things done or furnished in connection with the services hereunder. No certificate for payment issued by Owner or Owner's Agent and no payment, final or otherwise, or partial or entire use of the Work Product by Owner, shall be an acceptance of any Work Product not in accordance with the Project Criteria or this Agreement.

**7.7 Assignments.** Neither party to the Agreement shall assign the whole or any parts of the Agreement without the written consent of the other, nor shall Design-Builder assign any monies due or to become due to Design-Builder hereunder, without the previous written consent of Owner.

**7.8 Liens.** Neither the final payment nor any part of the retained percentage shall become due until Design-Builder shall deliver to Owner a complete release of all liens arising out of this Agreement, or receipts in full, in lieu thereof and, if required in either case, a notarized Lien Affidavit that, so far as Design-Builder has knowledge or information, the releases and receipts include all the labor and material for which a lien could be filed. Design-Builder may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to Owner's Agent, for delivery to Owner, to indemnify Owner against any lien and subject to the approval of Owner. If any lien remains unsatisfied after all payments are made, Design-Builder shall refund to Owner all monies that Owner may be compelled to pay in discharging such a lien, including all costs and reasonable attorneys' fees.

**7.9 Record Retention and Audit Rights.** Design-Builder shall retain, during the performance of this Agreement, and for a period of three years from the completion of this Agreement, all records pertaining to the services provided hereunder and any contract awarded pursuant to this Agreement. Such records shall include, but not be limited to, all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including Design-Builder's copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to Owner on demand and without advance notice during Design-Builder's normal working hours. Owner and Owner's Agent shall have the right to perform in-progress and post-audits of Design-Builder records, and shall be provided adequate and appropriate work space, in order to conduct audits of Design-Builder's records.

## **Article 8**

### **Remedies**

**8.1 Termination of Contract by Owner.** If Design-Builder is adjudged bankrupt; or if Design-Builder makes a general assignment of the benefit of Design-Builder's creditors; or if a receiver is appointed on account of its insolvency; or if Design-Builder refuses or fails to supply enough properly skilled workmen; or if Design-Builder fails to make prompt payment to subcontractors for labor or material; or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or otherwise is guilty of a substantial violation of any provision of the Contract Documents; then Owner may, without prejudice to any right or remedy and after giving Design-Builder a seven day written notice, terminate the employment of Design-Builder and take possession of all Work Product, and may finish the work by whatever method Owner deems expedient. In such case, Design-Builder shall not be entitled to receive any further payment until the work is completed. If the unpaid balance of the Contract Price exceeds the costs of finishing the work, including compensation for additional services and any and all expenses incurred by Owner, such excess shall be paid to Design-Builder. If such costs exceed such unpaid balance, Design-Builder shall pay the difference to Owner. The costs incurred by Owner as therein provided shall be certified by Owner's Architect or Engineer.

**8.2 Termination of Contract by Design-Builder.** If the services are stopped for a period of sixty (60) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency through no act or fault of Design-Builder or Design-Builder's agent performing any of the services under this Agreement, or if the services should be stopped for a period of sixty (60) days by Design-Builder for Owner's failure to make payment without cause thereon, then the rights of the parties shall be governed by this Agreement and the general laws of the Commonwealth of Virginia.

**8.3 Payments Withheld.** Owner or Owner's Agent may decline to approve or, because of subsequent discovered evidence, nullify the whole or part of any payment to Design-Builder to such extent as may be necessary to protect Owner from loss on account of:

- 8.3.1** Defective work not remedied;
- 8.3.2** Claims filed or reasonable evidence indicating probable filing of claims against Design-Builder;
- 8.3.3** Failure of Design-Builder to make payments properly to subcontractors for materials or labor;
- 8.3.4** A reasonable doubt that the Agreement can be completed for the balance then unpaid;
- 8.3.5** Damage to another contractor;
- 8.3.6** Failure to provide Owner the Work Product within thirty calendar (30) days upon written request by Owner or Owner's Agent; and
- 8.3.7** Failure to otherwise fulfill Design-Builder's obligations under this Agreement.

When the above grounds are removed to the satisfaction of Owner or Owner's Agent, payment shall be made for amount withheld because of them.

**8.4 Continuing Performance.** In the event of any dispute, claim, or other matter in question arising, Design-Builder shall continue its performance diligently during the dispute's pendency as if no dispute, claim or other matter in question had arisen. During the pendency of any dispute, Design-Builder shall be entitled to receive payments for undisputed items.

## **Article 9**

### **Electronic Data**

**9.1 Electronic Data.** The parties recognize that Contract Documents, including drawings and specifications and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "**Electronic Data**").

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

**9.2.1** Electronic Data transmitted shall be limited to a PDF format and/or a form readable by the Microsoft Office suite of software. Any CAD information transmitted by Design-Builder shall be in a form readable by Owner. 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 this Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

**9.2.3** By transmitting the Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

#### **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, 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 in Section 9.2.1 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 completion of the services hereunder.

**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**

### **Insurance**

#### **10.1 Insurance Generally.**

**10.1.1** Design-Builder shall purchase and maintain in force, at Design-Builder's own expense, such insurance as will protect Design-Builder and Owner from claims which may arise out of or result from Design-Builder's activities, whether such be by Design-Builder, Design-Builder's contractors, subcontractors or consultants, or by anyone for whose acts any of them may be liable. All insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. Design-Builder shall furnish as a minimum the hereinafter coverages and limits, and on forms and of companies which are acceptable to the City Attorney and/or Owner's Risk Management and shall require and show evidence of insurance coverages on behalf of any contractors, subcontractors or consultants (if applicable), before entering into any agreement related to the services to be provided under this Agreement.

**10.1.2** Design-Builder shall be responsible for the filing and settling of claims and liaison with insurance adjusters.

**10.1.3** Design-Builder shall send proofs of coverage to Owner, which shall be deemed to have approved of such policies unless, within thirty (30) days after receipt thereof, Owner shall by notice in writing, advise Design-Builder to the contrary.

**10.1.4** Owner and Design-Builder intend that the policies of insurance purchased in accordance with this Agreement will protect Owner, Owner's Agent, Design-Builder, and those for whom Design-Builder is responsible and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby.

**10.1.5** Owner reserves the right, but not the obligation, to review and revise any insurance requirement, including but not limited to limits, sub-limits, deductibles, self-insured retentions, coverages and endorsements based upon any material adverse change in insurance market conditions after the date of this Agreement affecting the availability or affordability of coverage, or changes in the scope of work affecting the applicability of coverage, and the costs of any such change shall be an adjustment to the compensation payable to Design-Builder. Additionally, Owner reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein and to reject any insurer providing coverage due to its poor financial condition or failure to operate legally.

**10.1.6** In addition to providing Owner with copies of any and all certificates of insurance as described herein, Design-Builder also shall provide copies of all applicable additional insured endorsements and copies of the policies of insurance. Failure to provide these materials promptly as required or requested shall be a basis for Owner to proceed with a termination of this Agreement for cause.

#### **10.2 Minimum Insurance Coverages and Limits Required.**

**10.2.1 Workers' Compensation - Statutory requirements and benefits.** Design-Builder shall maintain workers' compensation coverage in compliance with the laws of the Commonwealth of Virginia. Coverage is compulsory for employers of three or more employees such as Design-Builder. If Design-Builder fails to notify Owner of increases in the number of employees that change

its workers' compensation requirements under the *Code of Virginia of 1950*, as amended, during the course of the Agreement, Design-Builder shall be in noncompliance with this Agreement. The coverage must have statutory limits and be with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A.M. Best rating of A- or better. Alternatively, it is acceptable for Design-Builder to be insured by a group self-insurance association that is licensed by the Virginia Bureau of Insurance.

**10.2.2 Employer's Liability.** Design-Builder will also carry employers liability insurance with a limit of at least \$100,000.00 bodily injury by accident/\$500,000.00 bodily injury by disease policy limit/\$100,000.00 bodily injury by disease each employee. The insurer must be licensed to conduct business in the Commonwealth of Virginia and have an A.M. Best rating of A- or better.

**10.2.3 Commercial General Liability.** Design-Builder will maintain a Commercial General Liability Policy that will pay at minimum \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate. The Commercial General Liability shall include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage, and pesticide/herbicide applicator coverage. Owner must be named as an additional insured and so endorsed on the policy. The insurer must be licensed to conduct business in the Commonwealth of Virginia and have an A.M. Best rating of A- or better. The endorsement must be issued by the insurance company. A notation on the certificate of insurance is not sufficient.

**10.2.4 Automobile Liability.** Design-Builder will maintain an Automobile Liability Policy that will pay at minimum \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate. The insurer must be licensed to conduct business in the Commonwealth of Virginia and have an A.M. Best rating of A- or better.

**10.2.5 Errors and Omissions Liability.** Design-Builder will maintain professional liability insurance with a limit of at least \$1,000,000.00. Such coverage shall be issued on an occurrence basis. Coverage is to be with an insurer licensed to conduct business in the Commonwealth of Virginia and have an A.M. Best rating of A- or better.

**10.3 Certificate of Insurance.** With all policies listed above, the insurer or agent of the insurer must issue a certificate of insurance to show evidence of coverage and provide copies of applicable policies along with applicable endorsements, including but not limited to additional insured endorsements. All wording limiting the insurer responsibility to notify Owner of any cancellation or nonrenewal of the coverage must be removed. In addition, the certificate shall contain the following: "Such certificate shall provide that in the event of the cancellation of the policy or policies listed on such certificate, not less than 30 days' notice in writing shall be given to Owner." All insurance certificates issued for policies under this Article 10 must state that the policy shall name the "City of Petersburg" as an additional insured. Furthermore, all policies must comply with the following requirements:

**10.3.1** The Certificate Holder shall be listed as:

The City of Petersburg  
c/o Purchasing Office  
103 West Tabb Street  
Petersburg VA 23803  
Contract No. **13-0041- Rehabilitation of the Poor Creek Pump Station Force  
Main (Interim Agreement)**

**10.3.2** Certificate of Insurance must be signed.

## **Article 11**

### **Miscellaneous**

**11.1 Confidentiality.** “Confidential Information” is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies it as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; (iii) the document is not otherwise available in or considered to be in the public domain; and (iv) items in compliance with Section 2.2-4342 F of the Code of Virginia of 1950, as amended. The receiving party agrees to maintain the confidentiality of the Confidential Information to the extent that such confidentiality does not conflict with the party’s legal obligations under the Virginia Freedom of Information Act, Code of Virginia of 1950, as amended, Section 2.2-3700 *et seq.* Furthermore, Design-Builder acknowledge and agrees that ownership of all data, materials, exhibits, and documentation originated and prepared for Owner under this Agreement belong exclusively to Owner and are subject to public inspection in accordance with the Virginia Freedom of Information Act. However, “Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of Section 2.2-4317 shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror, or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.” Design-Builder hereby designates any unaudited and audited financial statements it is required to provide under this Agreement to Owner as confidential proprietary information exempt from release under the Virginia Freedom of Information Act. Submittals not otherwise in compliance with Section 2.2-4342 F will be subject to disclosure.

**11.2 Assignment.** Neither Design-Builder nor Owner shall without the written consent of the other party assign, transfer, or sublet any portion or part of its obligations under this Agreement.

**11.3 Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Virginia, without giving effect to its conflict of law principles. Any litigation with respect thereto shall be brought in the courts of the City of Petersburg. Design-Builder shall comply with applicable federal, state, and local laws, and regulations.

**11.4 Severability.** If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part was deleted.

**11.5 Amendments.** This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties and in accordance with Sections 2.11 and 2.11.1.

**11.6 Entire Agreement.** This Agreement and the Exhibits incorporated herein by reference form the entire agreement between Owner and Design-Builder. No oral representations or other agreements have been made by the parties except as specifically stated in this Agreement.

**11.7 Comprehensive or Final Agreement Process and Schedule.** Design-Builder will provide a proposed final or comprehensive Standard Form of Agreement Between Owner and Design-Builder with accompanying Terms and General Conditions in sufficient time to avoid delay to the Project no later than sixty (60) calendar days after the Date of Commencement. . Design-Builder and Owner will negotiate in good faith to finalize the terms of the Agreement within one hundred

twenty (120) days after Owner receives proposed Standard Form of Agreement Between Owner and Design-Builder with accompanying Terms and General Conditions.

**11.8 Notices.** All notices and demands by any party to any other shall be given in writing and sent by a nationally recognized overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Owner: City Manager  
City of Petersburg  
135 N. Union Street  
Petersburg, VA 23803

With copies to: Purchasing Agent  
City of Petersburg  
103 W. Tabb Street  
Petersburg, VA 23803

City Attorney  
City of Petersburg  
135 N. Union Street  
Petersburg, VA 23803

And: Hunton & Williams LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, VA 23219  
Attn: Daniel M. Campbell, Esq.

To Design-Builder: Faulconer Construction Company, Inc.  
2496 Old Ivy Road  
P.O. Box 7706  
Charlottesville, Virginia 22906-7706  
Attn: David H. Galloway

Any party may, upon prior notice to the other, specify a different address for the giving of notice. Notices shall be effective one (1) day after sending if sent by overnight courier or three (3) days after sending if sent by certified mail, return receipt requested.

**11.9 Successors and Assigns.** Except as expressly otherwise provided, all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**11.10 Independent Contractor.** It is expressly understood and agreed by the parties hereto that Design-Builder, in performing its obligations under the Agreement, shall be deemed an independent contractor and not an agent, employee or partner of Owner.

**11.11 No Waiver.** The failure of Owner or Design-Builder to insist upon the strict performance of any provisions of the Agreement, to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by Owner of any act by Design-Builder requiring Owner's consent or approval shall not be construed to waive or render unnecessary the requirement for Owner's consent or approval of any subsequent similar act by Design-Builder. No provision of the Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged. Further, any approvals required by Owner shall likewise be in writing.

**11.12 Cooperation.** The parties agree to cooperate to achieve the objectives of the Agreement and to use reasonable and good faith efforts to resolve all disputes and disagreements that may arise hereunder. Each party agrees to designate representatives with the authority to make decisions binding upon such party (subject in the case of Owner to those matters requiring an appropriate vote of its governing body) so as to not unduly delay the Progress Schedule.

**11.13 Counterparts.** This Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which shall constitute one and the same Agreement. This Agreement may be executed via facsimile or electronic mail counterpart and an electronic signature page shall be deemed an original for purposes of this Agreement. Owner and Design-Builder hereby agree to have original signature pages executed and delivered as soon as possible after the execution of this Agreement.

**11.14 Annual Appropriation.** The financial obligations of Owner contained in this Agreement are subject to annual appropriation. Within thirty (30) days after the date of this Agreement, Owner shall submit a copy of the Agreement to the Auditor of Public Accounts, to the extent required by Section 56-575.9(F) or Section 56-575.18 of the Code of Virginia.

**11.15 Financial Statements.** Design-Builder agrees to provide Owner with copies of complete and current financial statements for Design-Builder on an annual basis or when requested by Owner. The financial statements provided need not be audited, but if Design-Builder does have the financial statements audited, they shall supplement their initial submission of unaudited financial statements for the year concerned with copies of audited statements within thirty (30) days after they become available. Consistent with Section 11.1, Design-Builder hereby designates such financial statements as confidential proprietary information exempt from release under the Virginia Freedom of Information Act.

**11.16 Anti-Discrimination.** During the performance of this Agreement, Design-Builder agrees as follows:

**11.16.1** Design-Builder will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Design-Builder. Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

**11.16.2** Design-Builder, in all solicitations or advertisements for employees placed by or on behalf of Design-Builder, will state that Design-Builder is an equal opportunity employer.

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

**11.16.4** Design-Builder will include the provisions of this Section in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**11.17 Immigration Reform and Control Act of 1986.** Design-Builder certifies that it does not and will not during the performance of this Agreement employ illegal alien workers or otherwise violate the provisions of the federal immigration law.

**[Remainder of Page Intentionally Left Blank.  
Signatures to Follow.]**

IN WITNESS WHEREOF, Owner and Design-Builder have executed this Interim Agreement as of the Effective Date.

**OWNER:**

City of Petersburg  
(Name of Owner)  
William Johnson III 2/2/15  
(Signature)

William E. Johnson, III  
(Printed Name)

City Manager  
(Title)

**DESIGN-BUILDER:**

Falconer Construction Company, Inc.  
(Name of Design-Builder)  
David H. Galloway 1/14/15  
(Signature)

David H. Galloway  
(Printed Name)

Vice President  
(Title)

APPROVED AS TO FORM:

Brian K. Telfair 1/30/15  
Brian K. Telfair  
City Attorney

**Supplemental Information to Article 2.10 – Additional Services**

Collect data at the existing Poor Creek Pump Station to determine the existing hydraulic capabilities and sequence of operation. The overall objective of this exercise is to provide Petersburg with information to make an informed decision whether or not to replace and upgrade the section of 20-inch force main to 24-inch in order to achieve the desired capacity. It is not our objective to evaluate or make any improvements to the existing Poor Creek Pump Station.

The scope of services include:

- Perform a site visit to obtain the model information on the pumps and control valve.
- Contact the local manufacturers representative to obtain information on the pump curve for that model pump.
- Work with the City operational staff to pull up the pump operational set points from the local PLC using the HMI interface.
- Re-create the hydraulic calculations based on our proposed upgrade conditions.

The Additional Services Price for this work is \$2,000.00.

**APPLICATION AND CERTIFICATE FOR PAYMENT**

**TO OWNER:**  
 City of Petersburg  
 103 West Tabb Street  
 Petersburg, VA 22906  
**FROM CONTRACTOR:**  
 Falconer Construction Company, Inc.  
 2496 Old Ivy Rd  
 Charlottesville, VA 22903

**PROJECT:**  
 PPEA # 13-0041  
 Rehabilitation of the Poor Creek Pump Station  
 Force Main  
**VIA Engineer:**  
 N/A

**APPLICATION #:**  
**PERIOD TO:**  
**PROJECT NOS:**  
  
**CONTRACT DATE:**

**Distribution to:**  
 Owner  
 Const. Mgr  
 Architect  
 Contractor

**CONTRACT FOR:**

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract.  
 Continuation Sheet is attached.

<b>1. ORIGINAL CONTRACT SUM</b> -----	\$	<input type="text" value="174,530.00"/>
<b>2. Net change by Change Orders</b> -----	\$	<input type="text"/>
<b>3. CONTRACT SUM TO DATE (Line 1 +/- 2)</b>	\$	<input type="text" value="174,530.00"/>
<b>4. TOTAL COMPLETED &amp; STORED TO DATE</b> -\$		<input type="text"/>
(Column G on Continuation Sheet)		
<b>5. RETAINAGE:</b>		
a. 5.0% of Completed Work	\$	<input type="text"/>
(Columns D+E on Continuation Sheet)		
b. 5.0% of Stored Material	\$	<input type="text"/>
(Column F on Continuation Sheet)		
Total Retainage (Line 5a + 5b or		
Total in Column 1 of Continuation Sheet)-----	\$	<input type="text"/>
<b>6. TOTAL EARNED LESS RETAINAGE</b> -----	\$	<input type="text"/>
(Line 4 less Line 5 Total)		
<b>7. LESS PREVIOUS CERTIFICATES FOR PAYMENT</b>		
(Line 6 from prior Certificate)-----	\$	<input type="text"/>
<b>8. CURRENT PAYMENT DUE</b> -----	\$	<input type="text"/>
<b>9. BALANCE TO FINISH, INCLUDING RETAINAGE</b>		
(Line 3 less Line 6)	\$	<input type="text" value="174,530.00"/>

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
<b>TOTALS</b>		
<b>NET CHANGES by Change Order</b>		

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

**CONTRACTOR:**

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

State of: \_\_\_\_\_

County of: \_\_\_\_\_

Subscribed and sworn to before  
 me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**CERTIFICATE FOR PAYMENT**

In accordance with Contract Documents, based on on-site observations and the data comprising application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

**AMOUNT CERTIFIED** ----- \$ \_\_\_\_\_

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

**ARCHITECT:**

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

**CONTINUATION SHEET**

ATTACHMENT TO PAY APPLICATION

APPLICATION NUMBER:

PROJECT:

APPLICATION DATE:

PPEA # 13-0041

PERIOD TO:

Rehabilitation of the Poor Creek Pump Station

ARCHITECT'S PROJECT NO:

Force Main

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not In D or E)	G		H Balance To Finish (C - G)	I Retainage
			From Previous Application (D + E)	This Period		Total Completed And Stored To Date (D + E + F)	% (G/C)		
1	<b>Design Services</b>	\$ 96,580				\$ -		\$ 96,580	\$ -
2	<b>Field Research/Survey</b>	\$ 15,860				\$ -		\$ 15,860	\$ -
3	<b>Environmental Services</b>	\$ 21,900				\$ -		\$ 21,900	\$ -
4	<b>Cultural Resource Survey</b>	\$ 4,000				\$ -		\$ 4,000	\$ -
5	<b>Easement Acquisition Services</b>	\$ 36,190				\$ -		\$ 36,190	\$ -
6						\$ -		\$ -	\$ -
7						\$ -		\$ -	\$ -
8						\$ -		\$ -	\$ -
9						\$ -		\$ -	\$ -
10						\$ -		\$ -	\$ -
11						\$ -		\$ -	\$ -
12						\$ -		\$ -	\$ -
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22						\$ -		\$ -	\$ -
23						\$ -		\$ -	\$ -
24						\$ -		\$ -	\$ -
25						\$ -		\$ -	\$ -
		\$ 174,530	\$ -	\$ -	\$ -	\$ -		\$ 174,530	\$ -

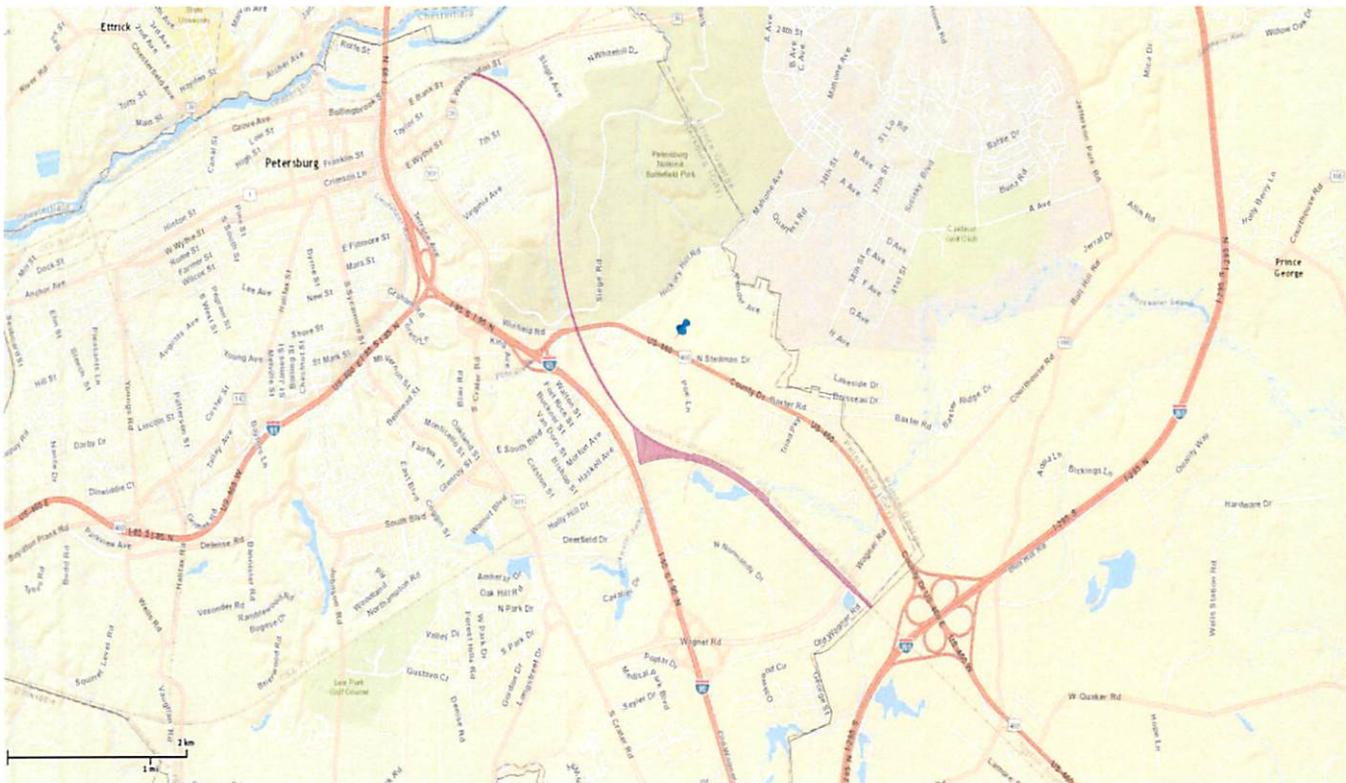
# City of Petersburg, VA Property Record Card

June 20, 2014



Commissioner of Revenue  
135 N. Union St.  
Petersburg, VA 23803

Phone: (804) 733-2315  
Email: [phairston@petersburg-va.org](mailto:phairston@petersburg-va.org)



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Phone: (804) 733-2315  
Email: phairston@petersburg-va.org

## Parcel Information

<b>Parcel ID:</b>	013-290001	<b>Total Acres:</b>	29.72
<b>Zoning:</b>	M-1	<b>Use Code:</b>	450
<b>Legal Description:</b>	29.72 ACRES		

## Valuation

Land Value	Building Value	Total Value
\$36,400.00	\$0.00	\$36,400.00

## Ownership

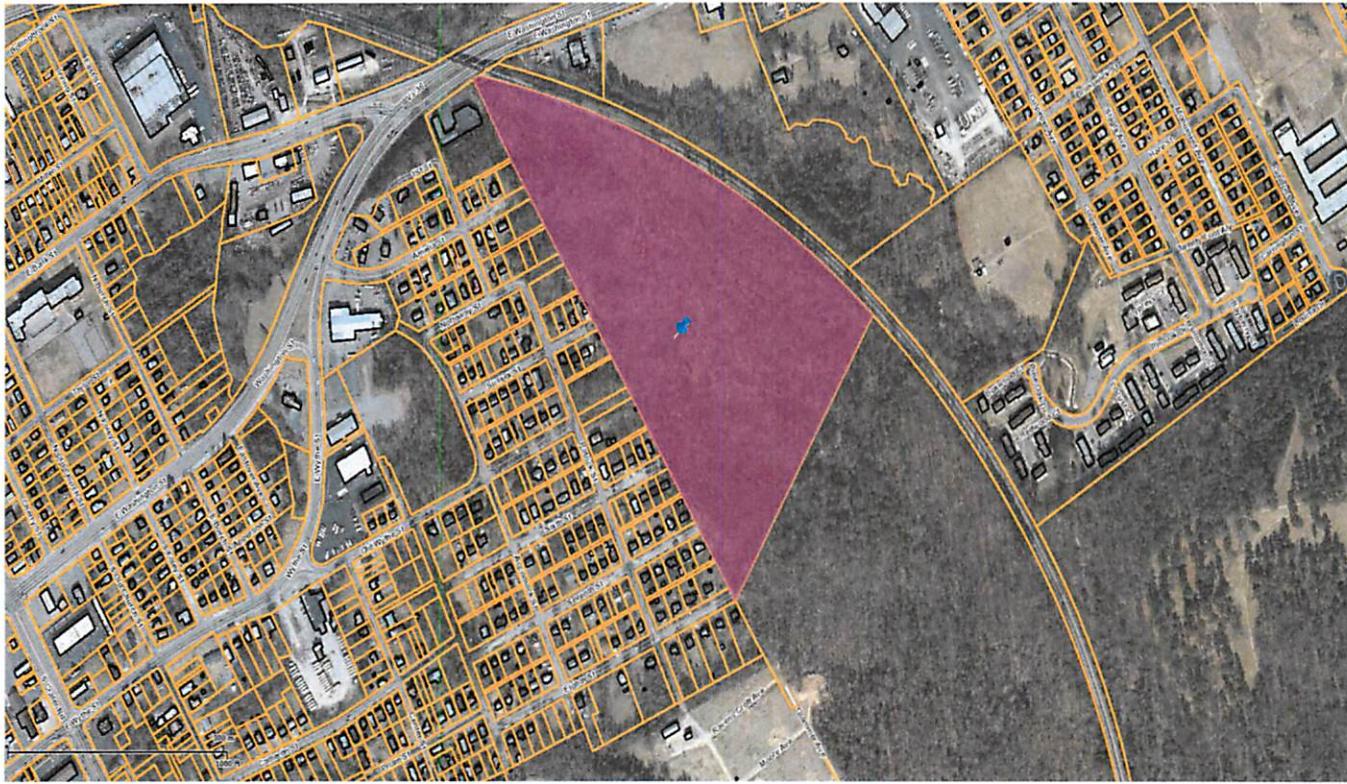
Current Owner			
<b>Name:</b>	NORFOLK & WESTERN RAILWAY CO	<b>Purchase Date:</b>	
<b>Address:</b>		<b>Purchase Price:</b>	0.00000000

## Building

<b>Street Address:</b>	WASHINGTON ST E	<b>Year Built:</b>	NO_DATA
<b>Number of Rooms:</b>	0	<b>Number of Bedrooms:</b>	0
<b>Full Bathrooms:</b>	0	<b>Half Bathrooms:</b>	0
<b>Unfinished Basement SQ FT:</b>	0.0	<b>Finished Basement SQ FT:</b>	0.0
<b>Garage Type:</b>	NONE	<b>Exterior Wall Type:</b>	NO_DATA
<b>Roof Material:</b>	NO_DATA		

# City of Petersburg, VA Property Record Card

June 20, 2014



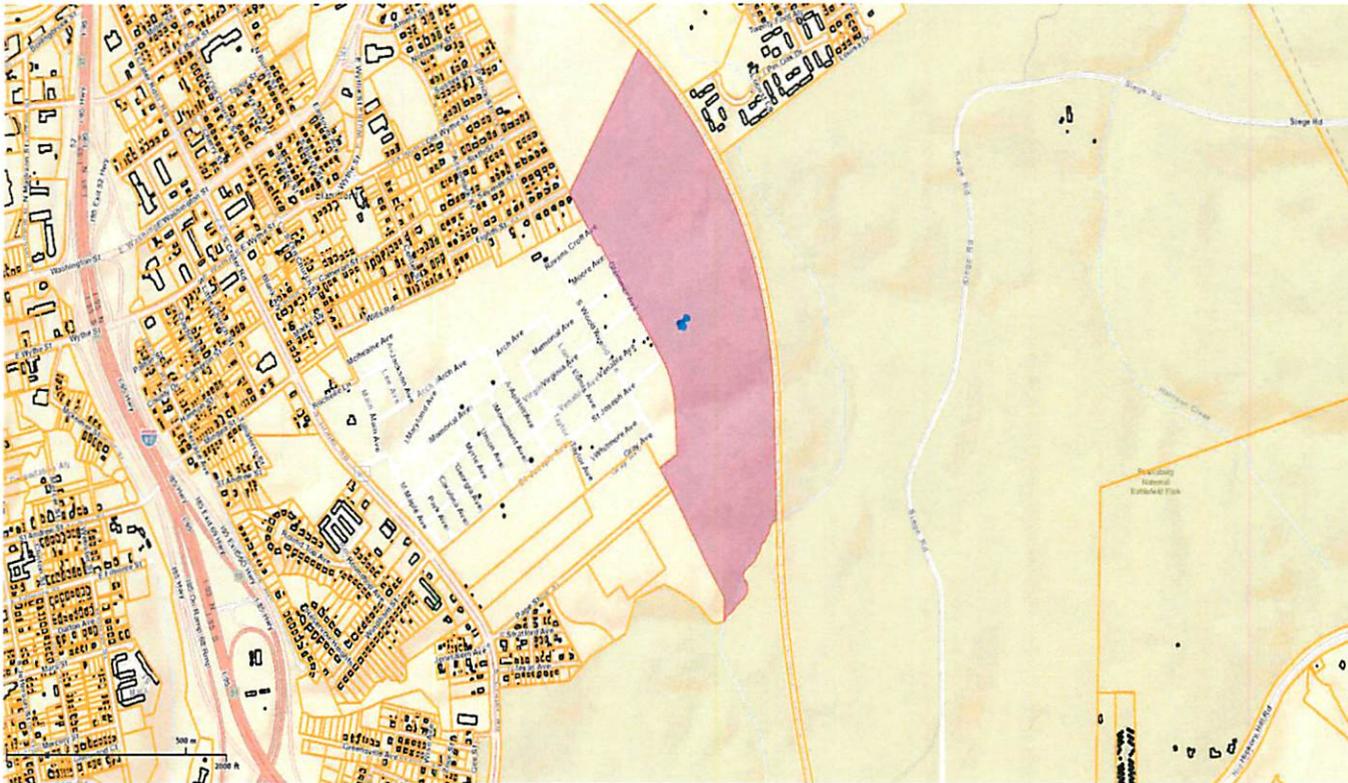
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