

**Preliminary Agreement
Between Owner and Design-Builder
(INTERIM AGREEMENT)**

THIS INTERIM AGREEMENT (this "Agreement"), dated as of December 19, 2024, (the "Effective Date"), between CITY OF PETERSBURG, a local government of the Commonwealth of Virginia (the "City") and GILBANE BUILDING COMPANY (Gilbane), recites and provides as follows:

OWNER:

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

DESIGN-BUILDER:

Gilbane Building Company
3435-B W. Leigh Street
Richmond, VA 23230

RECITALS

A. On January 26, 2024, the City received an unsolicited proposal, under the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 ("PPEA") and the City's PPEA Guidelines ("Guidelines"), pursuant to an unsolicited proposal for a Consolidated Government Center Complex (the "Project"). After public notice, other proposals were received by the May 30, 2024 deadline.

B. As permitted by the PPEA, the City and Gilbane now desire to enter into this Agreement to facilitate and support the efficient and comprehensive evaluation of the Project, as hereinafter more particularly set forth.

AGREEMENT

In consideration of the premises set forth in the Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Gilbane, (each, a "Party" and together, the "Parties") hereby agree as follows:

1. Interim Agreement: Purpose; Scope.

a. **Interim Agreement.** This Agreement is an "Interim Agreement" (as that term is used under the PPEA and the Guidelines) between the City and Gilbane in regard to the Project.

b. **Purpose and Scope.** The Purpose of this Agreement is to engage GILBANE to produce for the City certain services, reports, plans, and recommendations (collectively, the "Deliverables") regarding the design and construction of the Project. The Parties anticipate that the City will use all, or a portion of, the Deliverables to determine whether to approve the Project and whether to pursue a Comprehensive Agreement with GILBANE pursuant to the PPEA and the Guidelines. The scope of work will include working with the City to finalize the project space program, as well as providing architectural site plans, floor plans, colored elevations, perspective drawings, topographic survey, subsurface utility engineering and base map, geotechnical surveys, confirming the budget, and other deliverables listed in Exhibit E. GILBANE will also meet with City agencies and provide the necessary information for the City's use in required rezoning and Special Use Permit (SUP). Exhibits A through G, listed below shall govern this agreement.

GILBANE/City

- Exhibit A- Major Components/Scope of Project Narrative
- Exhibit B- Key Personnel for City of Petersburg (provided by City)
- Exhibit C- Key Personnel for GILBANE Team (provided by GILBANE)
- Exhibit D- Schedule of Values in the amount of the Interim Agreement broken down into the design stages, deliverables, studies/surveys, etc. (H-G provide)
- Exhibit E- List of Deliverables
- Exhibit F- Agreed upon baseline schedule for the pre-construction work to be performed under the Interim Agreement (tied to the actual execution date of the Interim Agreement)

2. **Term.** The term of this Agreement (the "Term") starts upon execution of the interim agreement and ends upon successful completion of deliverables in accordance with schedule Exhibit F as may be amended throughout the design phase, unless this Agreement expires or is terminated at an earlier date under a provision of this Agreement. The Term may be extended by amendment of this Agreement, and such extensions shall be liberally granted so long as GILBANE and the City are continuing negotiations and the work contemplated by this Agreement is in progress.

3. Deliverables; Schedule; Reports; Meetings.

a. **Deliverables and Schedule.** GILBANE will use its best efforts to provide the City with the Deliverables (Exhibit E-Attached) in a timely fashion.

b. **Reports and Meetings.** GILBANE and its designees as its project managers for the Project ("GILBANE Project Principals"), along with its other principal development team members, consultants and subcontractors (collectively, "GILBANE Project Team"),

as appropriate, will participate in regular meetings with all or portions of the group the City designates as its management team for the Project (the "City's Management Team") and its selected consultants. The City's Project Manager (or the City Administrator's designee), in consultation with the designee of GILBANE's Project Principals, will specify the reasonable dates and times for these meetings.

4. GILBANE Compensation and Reimbursements; Payments; Limitations;

a. **Compensation.** As full and complete compensation for its production and provision of the Deliverables and its performance of any other obligations under this Agreement, the City will pay to GILBANE \$6,219,666. This payment is subject to adjustment by amendment (i.e change order) to this Agreement if changes in the Project Components, schedule, or other details of Project Design are requested by the City.

b. **Payments.** The Contractor shall submit monthly to the Owner a statement for its services rendered in accordance with the compensation and reimbursable expenses described in Article 4a, and percent completion of line items in Schedule of Values Exhibit D. Payment by the Owner to the Contractor of the statement amount shall be made within thirty (30) days after it is submitted, and accepted as approved for payment by the City in conjunction with regular monthly progress meetings.

c. **Limitations.** The City's aggregate total liability to compensate and reimburse GILBANE in connection with the scope of this Agreement (whether as part of a Compensable Cost, or otherwise) will not exceed \$6,219,666, unless this Agreement is amended in accordance with paragraph 4.a above.

5. Project Approval; Possible Comprehensive Agreement.

a. **Approval Status.** The City is still evaluating feasibility of the Project. Accordingly, this Agreement is not, and is not intended to be, evidence of any such approval, or a promise or assurance that the City will approve the Project, or that the City will approve another Interim Agreement or a Comprehensive Agreement with GILBANE. GILBANE has submitted the Proposal, has entered into the engagement evidenced by this Agreement, and will contribute to the evaluation process of the Project at its own risk and cost, except for its rights to compensation expressly set out in this Agreement. GILBANE's requirements for performance are expressly set out in Exhibit E and unless additional services are approved via amendment (change order) to this Agreement, GILBANE will have no requirement to perform services outside of what's set out in Exhibit E.

b. **Possible Comprehensive Agreement.** The City (in its sole discretion) may determine that it is appropriate to attempt to negotiate the form of a Comprehensive Agreement with GILBANE that is acceptable to the City and GILBANE if the City so determines. The City and GILBANE will formulate a negotiating and drafting schedule for this task and will endeavor to produce such a Comprehensive Agreement in accordance with the applicable timetable.

6. Expiration/Termination of Term.

This Agreement will automatically end **upon the earliest** of: (i) execution of a Comprehensive Agreement, or another interim agreement, in respect of the Project; (ii) the 5th business day after the date that either Party receives notice from the other that the Party giving notice does not intend to approve, or proceed with development of, the Project, or that it does not intend to otherwise pursue the Project with the other Party and elects to end this Agreement; or (iii) the completion of services as described in this Interim Agreement. If a Party ends this Agreement under clause (ii), immediately above, or the Term expires, all Deliverables then made or in production, including any work product, plans, projections, design concepts and other items delivered or due to be delivered to the City on or before the date of termination, or expiration, will become the property of the City upon delivery, the date of the termination, or the date of expiration of the Term, **whichever is earlier**; provided that the City has paid to GILBANE all sums which are due and payable to GILBANE as required by the terms of this Agreement.

7. Designated Project Personnel.

- a. **Contractor.** GILBANE's Project Principals, and the members of GILBANE's Project Team are all listed on **Exhibit C**. While this Agreement is in effect, GILBANE will cause each of GILBANE's Project Principals to devote sufficient time and attention to directing and overseeing GILBANE's performance under this Agreement, ensure participation in all meetings and conferences specified in the Schedule or required under this Agreement by appropriate team members, and to interact with members of the City's Project Management Team and the City's consultants and representatives for purposes of this Agreement. GILBANE may change the composition of GILBANE's Project Principals only upon receiving the prior consent of the City, which will not be unreasonably withheld.
 - b. **City.** The City's Project Manager and the members of the City's Project Management Team are all listed on **Exhibit B**. While this Agreement is in effect, the City will cause all the City's Project Management Team to devote sufficient time and attention to directing and overseeing the City's performance under this Agreement, including supplying timely approvals as needed per the Project Schedule as amended, ensure participation in all meetings and conferences specified in the Schedule or required under this Agreement by appropriate team members and to interact with members of GILBANE's Project Principals for purposes of this Agreement.
- 8. Accuracy of Proposal; Representation & Warranties.** GILBANE represents and warrants to the City that (i) to the best of GILBANE's knowledge and belief as of the date of this Agreement all factual statements made in GILBANE's submissions to the City evidencing the Project (including those pertaining to prior experience and expertise) are true, accurate, and not misleading in any material respects, (ii) GILBANE has the expertise and capacities to perform its other obligations under this Agreement, (iii) the data and other information contained within the Deliverables will be accurate and complete and its use for the purposes of this Agreement will not violate any law, or infringe or violate any property right, and (iv) GILBANE has full power and authority to enter into this Agreement, and the person[s] signing this Agreement on behalf of GILBANE has full power and authority to bind GILBANE under this Agreement.

9. No Liability of Officials, Employees or Agents. No director, officer, official, employee, agent or representative of the City is, or will be, personally liable to GILBANE or any of GILBANE's Project Team, or any successor in interest of any of them, as a consequence of any default or breach by the City for any sum that may become due to GILBANE, any of the GILBANE Project Team, or any successor in interest of any of them, or on any obligation incurred under this Agreement. No officer, official, employee, agent or representative of GILBANE or GILBANE's Project Team will be personally liable to the City, or any successor in interest, as a consequence of any default or breach by GILBANE or GILBANE's Project Team for any amount which may become due to the City or any successor in interest, or on any obligation incurred under this Agreement.

10. Insurance.

a. **Coverages.** GILBANE at its expense and not as a Compensable Cost, must carry the following insurance coverages: Workers' compensation insurance; commercial general liability insurance (on an occurrence basis); automobile liability insurance for any automobile owned, hired, or non-owned; professional liability/errors and omissions insurance; and umbrella/excess liability insurance. The commercial general liability policy must be for a combined single limit for personal injury and property damage of not less than \$1,000,000.00, and must provide coverage, at a minimum, for (i) broad form contractual liability specifically covering this Agreement, (ii) products liability and completed operations, and (iii) broad form property damage coverage. The automobile liability policy must a combined single limit policy for bodily injury and property damage of not less than \$1,000,000.00. The professional liability/errors and omissions policy must cover liability due to errors or omissions in the performance of services and production of the Deliverables under this Agreement, including the job functions of each GILBANE employee or contractor performing Services under this agreement, with limits of not less than \$2,000,000.00 per claim. If the professional liability/errors and omissions insurance policy is written on a "claims made" basis, GILBANE shall maintain such coverage or exercise an extended reporting period for at least three years after completion of the Deliverables pursuant to this Agreement. The umbrella/excess liability policy must be for a maximum single limit of \$25,000,000.00 for supplementing the commercial general liability policy, workers compensation and automobile liability policy. Workers' compensation coverage must conform to statutory requirements.

b. **Minimum Requirements.** The required insurance coverages specified in this provision are minimum insurance coverages and coverage amounts, and those specifications are only for the purposes of this Agreement. The City has not assessed the risk to which GILBANE may be exposed, or the liability GILBANE may incur, in connection with this Agreement, nor has the City represented in any fashion that such coverages or coverage amounts are prudent or otherwise sufficient to protect GILBANE's interests.

11. Default; Remedies; Limitations.

1. **Default.** If a Party fails to perform any of its obligations under this Agreement (a "Default"), the other Party is entitled to give notice to the defaulting Party, which must specify the Default and demand of performance. The defaulting Party must cure the specified Default within ten (10) calendar days after it receives the

notice of Default.

2. **Remedies.** If the defaulting Party does not cure the Default within that 10-day period, the non-defaulting Party will be entitled to (i) terminate this Agreement immediately by giving notice of termination to the defaulting Party and (ii) pursue all other available remedies at law, or in equity, subject to the pre-conditions and limitations specified in this Agreement.
3. **Limitations.** Notwithstanding anything in this Agreement, neither the City nor H-G Inc. will be liable to the other Party for any punitive, indirect, or consequential damages arising in connection with this Agreement (including lost profits, opportunity costs, or any other damages).

12. Notices. To be effective, each notice, consent, approval, waiver, or similar communication or action required or permitted to be given under this Agreement (a "Notice") must be in writing and must be delivered either by private messenger service (including a nationally recognized overnight courier), or by USPS mail, addressed as provided in this provision or delivered via email with delivery confirmation.. Each Notice will be considered given on the date it is provided to the applicable messenger, or to the USPS, or on the delivery confirmation notification as the case may be, and will be considered received on the date actually received, unless delivery is evaded, in which case the date delivery is attempted will be considered the date the Notice is received. Each address set forth in this provision will continue in effect for all purposes under this Agreement unless a Party replaces its address information by appropriate new information by a Notice to the other Parties in compliance with this provision:

To the City:

John "March" Altman
City Manager
City of Petersburg
135 N. Union St.
Petersburg, VA 23803
Email: maltman@petersburg-va.org
Phone: 804-733-2301

To GILBANE

Brett Thompson
Project Executive
Gilbane Building Company
3435-B W Leigh Street
Richmond, VA 23230
Email: bthompson@gilbaneco.com
Phone: 804.347.0571

11. Various Contract Matters.

a. **Governing Law; Binding Contract; Waiver.** This Agreement is governed by the laws of the Commonwealth of Virginia without giving effect to its choice of law principles. This Agreement is binding upon, and inures to, the benefit of each of the Parties and their respective permitted legal successors and permitted assigns. The failure of a Party to demand strict performance of any provision, or to exercise any right conferred, under this Agreement is not, and is not to be construed as, a waiver or relinquishment of that Party's right to assert or rely on that provision or right in the future. Either Party, however, may elect to waive any right or benefit to which it is entitled under this Agreement.

b. **No Third-Party Beneficiary or Other Similar Rights.** There are no third-party beneficiaries to this Agreement. Accordingly, no third-party is entitled to make any claim under this Agreement for failure to perform or other breach under this Agreement. Only the Parties (and their respective permitted successors and permitted assigns) are entitled to rely upon the provisions of this Agreement.

c. **Compliance with Laws.** GILBANE must comply, and must cause the GILBANE Project Team, and GILBANE's agents and subcontractors to comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of its obligations under this Agreement.

d. **Prior Agreements and Discussions.** Any agreements (whether in writing or oral) between the City and GILBANE existing before or contemporaneously with this Agreement relating to the Project (or any prior versions of the Project) are superseded by this Agreement. All prior discussions and negotiations as to the Project (or any prior versions of this project) are merged into this Agreement. The submission of any unexecuted copy of this Agreement does not constitute an offer to be legally bound by the provisions of the document submitted; and no Party will be bound by this Agreement until it is approved, executed and delivered on behalf of by both of the Parties.

e. **Assignment.** GILBANE is not entitled to assign its rights, nor delegate its duties, under this Agreement without the prior consent of the City, which consent the City may withhold in its sole discretion.

f. **Entire Agreement; Amendment; Counterparts.** This Agreement constitutes the entire agreement of the Parties as to the Project. This Agreement may only be amended or modified by a writing signed on behalf of each of the Parties. This Agreement may be signed in any number of counterparts, and, so long as each Party signs at least one counterpart, each signed counterpart evidences an original Agreement, but all signed counterparts together constitute but one Agreement.

g. **Rules of Usage and Interpretation.** The captions in this Agreement are for convenience only and are not to be used in its interpretation. This Agreement shall not be construed against one Party, or the other Party, on the basis that its counsel drafted it or participated in its drafting. The words "include," "including," or words to similar purport are not to be construed to be words of limitation. References to a Party means and includes that Party and its permitted successors and permitted assigns.

h. **Venue.** Any legal action, equitable cause, or other judicial proceeding with respect to this Agreement must be brought in the courts of of the City of Petersburg, Virginia, and in no other courts. By signing this Agreement, each Party accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of this court.

i. **Design Responsibility.** While the City is engaging Gilbane as Design-Builder, when applicable law requires that services be performed by licensed design professionals, the Design-Builder shall provide those services through its Gilbane Project team members and their qualified, licensed design professionals, who are ultimately responsible for the design professional services furnished pursuant to this Agreement.

[Signatures on next page.]

WITNESS the following signatures and seals.

CITY OF PETERSBURG

By: John M. Altman
Name: John H. Altman, Jr.
Title: City Manager
Date: 12.20.2024

APPROVED TO FORM:


Digitally signed by Anthony C. Williams
DN: C=US, OU=City Attorney, O=City of Petersburg,
Virginia, CN=Anthony C. Williams,
E=awilliams@petersburgva.org
Reason: I am the author of this document
Location: Petersburg, Virginia
Date: 2024.12.20 10:19:25
Email Protection: PDF Version: 10.0.1

City Attorney

GILBANE BUILDING COMPANY

By: Maggie Reed
Name: Maggie Reed
Title: Vice President
Date: 12/19/24

Digitally signed by Maggie Reed
DN: C=US, E=mreed@gilbaneco.com,
O=Gilbane, OU=Richmond, CN=Maggie
Reed
Date: 2024.12.19 14:25:33-05'00'