CITY OF HAMPTON
Procurement Office
Division of Finance
Community, Municipal Services, Education
Hampton, Virginia

Issued: Tuesday, June 14, 2016

PROJECT MANUAL
Project No.: 17-3/CLP
Salt Ponds Beach Breakwater Construction

Pre-Bid Meeting: A MANDATORY Pre-Bid meeting will be held on Tuesday, June 21, 2016 at 11:00 a.m. local time in the Public Works Conference Room, 22 Lincoln Street, 4th Floor, Hampton, VA 23669.

Due Date: Tuesday, July 12, 2016 / Time: 1:30 p.m.
Opening Date: Tuesday, July 12, 2016 / Time: 1:30 p.m.

Receipt Location:
Consolidated Procurement Office
1 Franklin Street, Suite 345, Hampton, VA 23669

INVITATION FOR BID PREPARED BY:
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(Revised: 4-2-2014)

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DIVISION I GENERAL PROVISIONS

SECTION 101—DEFINITIONS OF ABBREVIATIONS, ACRONYMS, AND TERMS

101.01—Abbreviations and Acronyms

In these Specifications and other Contract Documents, the following abbreviations and acronyms shall be interpreted as follows:

AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ABS	Acrylonitrilebutadienestyrene (an elastomer)
AC	Alternating current
ACI	American Concrete Institute
ADT	Annual average daily traffic
AED	Associated Equipment Distributors
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
APA	Engineered Wood Association
API	American Petroleum Institute; American Pipe Institute
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American wire gage
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
BOCA	Building Officials and Code Administrators
C	Celsius, when preceded by “degree(s)”
CABB	Contractor Advertisement Bulletin Board
CBR	California bearing ratio
CRSI	Concrete Reinforcing Steel Institute
DBE	Disadvantaged Business Enterprise
DC	Direct current
DHV	Design hourly volume
EEI	Edison Electric Institute
EEO	Equal employment opportunity
EIA	Electronic Industries Alliance
EPA	Environmental Protection Agency
EPDM	Ethylenepropylenedienemonomer (an elastomer)
ESCCC	Erosion and Sediment Control Contractor Certification
F	Fahrenheit, when preceded by “degree(s)”
F/A	Filler/asphalt ratio
FHWA	Federal Highway Administration
FS	Federal Specifications, General Services Administration

ICEA	Insulated Cable Engineers Association
IMSA	International Municipal Signal Association
ITE	Institute of Transportation Engineers
LCD	Liquid crystal display
LPG	Liquid petroleum gas
MBE	Minority Business Enterprise
MEKP	Methyl ethyl ketone peroxide
MIL	Military specifications
MSDS	Materials Safety Data Sheet
MUTCD	Manual on Uniform Traffic Control Devices for Streets and Highways and the Virginia supplement to same
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NIST	National Institute of Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
NRC	Nuclear Regulatory Commission
PCI	Precast / Prestressed Concrete Institute
PE	Polyethylene
PTL	Plywood Testing Laboratory
PVC	Polyvinylchloride
PVF	Polyvinylfluoride
SAE	Society of Automotive Engineers
SP	Special Provision
SPCN	Special Provision Copied Note
SPIB	Southern Pine Inspection Bureau
SS	Supplemental Specification
SSPC	Society for Protective Coatings
SWPPP	Storm Water Pollution Prevention Plan
TAPPI	Technical Association of the Pulp and Paper Industry
TFE	Polytetrafluoroethylene
TIE	Ticket Information Exchange (Miss Utility)
UL	Underwriters' Laboratories, Inc.
VAC	Volts alternating current
VDC	Volts direct current
VDOT	Virginia Department of Transportation
VEP	Value engineering proposal
VFA	Voids filled with asphalt
VMA	Voids in mineral aggregate
VOSH	Virginia Occupational Safety and Health
VTM	Virginia Test Methods; voids in total mix
VWAPM	Virginia Work Area Protection Manual
WBE	Women Business Enterprise

101.02—Terms

In these Specifications and other Contract Documents, the following terms and pronouns used herein shall be interpreted as follows. Any word importing a singular number may extend and be applied to include several persons or things and a word importing a plural number may extend and be applied to one (1) person or thing. Also, a word importing the masculine gender may extend and apply to include all genders.

-A-

Actual Costs. Direct, Project-specific costs the Contractor incurs in the performance of the Work, consisting of labor, Material, ownership cost or invoiced rental rates of Equipment, and job-site general and administrative overhead.

Adjustment. An increase or decrease in the Contract Amount or in the Contract Time, unless the context dictates otherwise.

Advertisement, Notice of. A public announcement, as required by law, inviting Bids for Work to be performed or Materials to be furnished that indicates among other terms and conditions approximate quantities of Work to be performed, location of Work to be performed, character and quantity of Materials to be furnished, and time and place for opening Bids.

Affiliate. Any Business entity that is closely associated to another Business entity so that one has the power to control the other either directly or indirectly; or, where one Business entity systematically shares resources, officers, and/or other management with another Business entity to the extent that a Business relationship legally exists or is publicly perceived to exist; or, when a third party has the power to control both; or, where one Business entity has been so closely allied with another through an established course of dealings, including but not limited to the lending of financial wherewithal or engaging in joint ventures, so as to cause a public perception that the two Firms are one entity.

Award. The City's decision to accept the Bid of the lowest responsive and responsible Bidder for the Work. The Award of the Contract is subject to the execution and approval of a satisfactory Contract for the Work, and such other approvals and conditions as may be specified or required by law.

Award Date. The date on which the decision is made by the City to accept the Bid of the lowest responsive and responsible Bidder.

-B-

Backfill. Material used to replace or the act of replacing Material removed during construction; may also denote Material placed or the act of placing Material adjacent to Structures.

Balance Point. The approximate point, based on estimated shrinkage or swell, where the quantity of Earthwork Excavation and Borrow, if required, is equal to the quantity of Embankment Material plus any surplus Excavation Material.

Base Course. A layer of Material of specified thickness on which the intermediate or Surface Course is placed.

Base Flood. The flood or tide having a one percent (1%) chance of being exceeded in any given year.

Bid. The offer of a Bidder, submitted by electronic proposal (or on paper if so specified in the Invitation to Bid) to perform the Work and furnish the Materials, Equipment, and labor at the prices set forth therein; valid only when properly signed and guaranteed.

Bidder. Any individual, partnership, Corporation, or Joint Venture that formally submits a Bid for the Work contemplated, or for any portion thereof, acting directly or through a duly authorized representative.

Bids, Invitation for. See **Advertisement, Notice of.**

Board. Commonwealth Transportation Board.

Borrow. Suitable Material not available from designated Regular Excavation or other sources of useable Materials on-site that is used primarily for Embankment.

Brackish Water. Water in which total alkali chlorides calculated as sodium chloride are more than 0.10 percent based on total solids.

Bridge. A Structure, including supports, that is erected over a depression or an obstruction, such as water, a Highway, or a railway, that has a track or passageway for carrying traffic.

Bridge Lift. A layer of fill Material placed in excess of standard depth over an area that does not support the weight of hauling Equipment and for which compaction effort is not required.

Business. Any Corporation, partnership, limited liability company, Joint Venture, Firm, association, individual, or sole proprietorship operated for profit.

-C-

Calendar Day. Any day shown on the calendar, including Saturday and Sunday, beginning at 12:01 a.m. and ending at midnight.

Camber. A vertical curvature induced or fabricated into beams or girders and a deck slab or slab span Formwork; a vertical curvature set in the grade line of a pipe Culvert to accommodate differential settlement.

Change Order. A written order (Form C-10) signed by the Project Manager to incorporate changes, alterations, or other modifications to the Contract. A Change Order may be used to add, modify, or delete Pay Items, Contract Time, Contract Documents, or other terms of the Contract.

Channel. A watercourse or drainage way.

City. The City of Hampton, Virginia.

City Engineer. The Chief Engineer for the City.

City Manager. The Chief Executive Officer for the City.

Claim. The Contractor's written request or demand for an Adjustment to the Contractor's compensation or to the Contract Time, for costs, expenses or other damages, or for any entitlement available under the Contract, made within the time, in the form, and pursuant to the provisions for Claims specified in the Contract Documents.

Commissioner. The Chief Executive Officer of the Virginia Department of Transportation, whose full title is the Commissioner of Highways or as otherwise designated in the Code of Virginia.

Completion Date or Fixed Completion Date. The date specified in the Contract when the Contractor must achieve Final Completion.

Completion, Final. When all of the Work under the Contract has been satisfactorily completed and the Project is in condition for Final Acceptance, the Project Manager will determine Final Completion after inspection of the Work.

Completion, Substantial. When a specified portion of the Work is satisfactorily completed according to the Contract, the Project Manager will determine Substantial Completion after inspection of the Work.

Composite Hydrograph. A graph showing the mean daily discharge versus the Calendar Day, indicating trends in high and low flow for a one-year period.

Construction Area. The area where authorized construction occurs.

Construction Limits (On-Site). The disturbed area required for the construction of a Project including the intersection of side slopes, with the original ground, plus slope rounding and slopes for Drainage Ditches, Bridges, Culverts, Channels, temporary or incidental construction, and identified by the surface planes as shown and/or described within the Contract Documents.

Contract. The entire written agreement executed by and between the City and the Contractor that sets forth the obligations of the parties thereunder, including, but not limited to, the performance of the Work, furnishing of Materials and labor, and the method of measurement and basis of payment of the Work, as identified in the Contract Documents. Oral agreements, representations, or promises will not be considered a part of the Contract.

Contract Amount. The sum stated as the Bid total in the executed Invitation to Bid, as adjusted according to the Contract.

Contract Documents. The documents specified in Section 103.06 that make up the Contract.

Contract Execution Date. The date on which the City Manager signs the Contract.

Contract Item, Bid Item, or Pay Item. A specifically described unit of work for which a price is provided in the Contract's Schedule of Items.

Contract Time. The time allowed in the Contract for Final Completion of the Work, including all authorized time extensions, beginning on the Notice to Proceed date and ending at the Contract Time Limit.

Contract Time Limit. The date, whether set by a number of Calendar Days or fixed calendar date for Final Completion of the Work prescribed in the Contract, including all authorized time extensions.

Contractor. The Business that has a direct Contract with the City, which is in writing and signed by the City Manager, to perform the prescribed Work as an independent Contractor and not as an agent for the City.

Controlling Item of Work. See **Critical Path Work.**

Corporation. A Business entity organized and existing under the laws of the Commonwealth or other jurisdiction, by virtue of articles of incorporation, or amendment or merger thereof.

Critical Activity. Any activity on the Critical Path.

Critical Path. The longest continuous sequence of Work or chain of activities throughout the Project that defines the overall time needed to complete the Project.

Critical Path Method (CPM). A scheme for scheduling a set of Project activities.

Critical Path Work. Any Work on the Critical Path. A delay to any Critical Path Work is expected to delay completion of the Project.

Cul-de-sac. An area at the terminus of a dead-end Street or Road that is constructed for the purpose of allowing vehicles to turn around.

Culvert. A Structure that is not classified as a Bridge which provides an opening under any Roadway.

Cut. When used as a noun with reference to Earthwork, that portion of a Roadway formed by excavating below the existing surface of the earth and limited by design or the direction of the Project Manager.

Cut Slope. See also Fill Slope**.** A surface plane generally designated by design or the direction of the Project Manager which is formed during Excavation below existing ground elevations that intersects with existing ground at its termini.

-D-

Day. A Calendar Day unless specifically stated otherwise.

Deflection. The vertical movement occurring between the supports of a Bridge Superstructure or its components (beams, girders, and slabs) that results from its own weight and from dead and live loads. Although all parts of a Structure are subject to Deflections, usually only those Deflections that occur in the Superstructure are of significance during construction.

Design Flood. The magnitude of flood that a given Structure can convey without exceeding a designated flood level.

Digital Identification (I.D.). An encrypted signature that is the legal equivalent of a written signature thus allowing for the digital signing of the Bid.

Disposable Material. Material generally found to be unsuitable for Roadway construction or Surplus Material that is to be placed in a Disposal Area, unless specified otherwise.

Disposal Areas. Areas generally located outside of the Construction Limits identified in the Contract Documents where unsuitable or Surplus Material is deposited.

Disqualification. The Suspension or revocation of a Bidder's privileges to bid on City Projects.

Drainage Ditch. An artificial depression constructed to carry surface water.

-E-

Earthwork. The Work consisting of constructing Roadway Earthwork in conformity with the specified tolerances for the lines, grades, typical sections, and cross sections shown on the Plans or as established by the Project Manager. Earthwork shall include regular, Borrow, undercut, and minor Structure Excavation; constructing Embankments; disposing of surplus and Unsuitable Material; shaping; grading, compaction; sloping; dressing; and temporary erosion control work.

Easement. A grant of the right to use property for a specific use.

Embankment. A Structure of soil, soil aggregate, soil-like Materials, or broken rock between the existing ground and Subgrade.

Engineer. As designated by the City Engineer, one who acts directly or through their duly authorized representative(s) and who is responsible for Highway design, construction, and maintenance. The Engineer and his representative(s) act within the scope of the particular duties or the authority given to them by the Code of Virginia, the Municipal Code of Hampton, City Manager, these Specifications, and the Contract Documents.

EPA. The United States Environmental Protection Agency.

Equipment. Machinery, tools, and other apparatus, together with the necessary supplies for upkeep and maintenance, that are necessary for acceptable completion of the Work.

Excavation (**Excavate).** The act of creating a man-made cavity in the existing soil for the removal of Material necessary to obtain a specific elevation or to install a Structure, Material, component, or item necessary to complete a specific task or form a final surface or subsurface.

Extra Work. Any Work that was not provided for or included in the Contract as awarded but the Project Manager determines is essential to the satisfactory fulfillment of the Contract within its intended scope and is identified in an authorized Change Order for its execution subject to the limitations, exceptions, and provisions in Sections 104.02 and 104.03 and 109.05. Extra Work does not include additional or increased quantities of any Contract Item or other Work that is provided for or included in the Contract.

-F-

Falsework. A temporary framework used to support Work in the process of constructing permanent structural units.

Federal Agencies or Officers. An agency or officer of the federal government and any agency or officer succeeding in accordance with the law to the powers, duties, jurisdictions, and authority of the agency or officer mentioned.

Fill Slope. See also Cut Slope**.** A surface plane formed during Embankment above existing ground elevations that intersects with existing ground at its termini.

Final Acceptance. Acceptance of the Project after Final Completion of all the Work specified in the Contract, as determined by and contingent on a final inspection by the City.

Firm. A commercial partnership of two or more persons formed for the purpose of transacting business.

Flood Frequency. A statistical average recurrence interval of floods of a given magnitude.

Force Account Work. Extra Work for which the Contractor is compensated as specified in Section 109.05 pursuant to an executed Change Order and an executed Force Account authorization.

Formwork. A Temporary Structure or mold used to retain the plastic or fluid concrete in its designated shape until it hardens. Formwork shall be designed to resist the fluid pressure exerted by plastic concrete and additional fluid pressure generated by vibration and temporary construction loads.

Frontage Street or Road. A local Street or Road auxiliary to and located on the side of a Highway for service to abutting property and adjacent areas and control of access.

-G-

Gage. U.S. Standard Gage.

Grade Separation. Any Structure that provides a Traveled Way over or under another Traveled Way or over a body of water.

-H-

Highway. The entire Right of Way reserved for use in constructing or maintaining the Roadway and its appurtenances.

Historical Flood Level. The highest flood level that is known to have occurred at a given location.

Holidays. The Days specifically set forth in Section 108.02 or in the Contract Documents.

Hydrologic Data Sheet. A tabulation of hydrologic data for facilities conveying a 100-year discharge equal to or greater than 500 cubic feet per second.

-I-

Inspector. The Project Manager's authorized representative who is assigned to make detailed inspections of the quality and quantity of the Work and its conformance to the requirements and provisions of the Contract for the sole benefit of the City.

Invert. The lowest point in the internal cross-section of a pipe or other drainage Structure.

Invitation to Bid. The documents the City designates in the Notice of Advertisement for Bids that contain the Project requirements and other information upon which a Bid is to be based. The Invitation to Bid includes the Plans, Specifications, Special Provisions, Supplemental Specifications, referenced Standards, addenda, revisions, all other documents referred to therein, regardless of whether attached, and the electronic forms on which the City requires Bids to be submitted.

-J-K-

Joint Venture. Two or more Businesses that join together in the nature of a partnership for the purpose of bidding on and constructing a Project, for which they are all jointly and individually liable to the City.

-L-

Laboratory. The testing Laboratory of the City or any other testing Laboratory that may be designated by provisions in the Contract or by the Project Manager.

Liquidated Damages. As used in Section 108.06, the agreed damages the Contractor owes to the City when the Contractor fails to complete the Project within the specified Contract Time Limit. These damages include, but are not limited to, additional costs associated with administration, engineering, supervision and inspection of the Project, and loss of use.

-M-

Major Item. Any Pay Item specifically indicated as such in the Schedule of Items included among the Contract Documents.

Material. Any substance that is used in the Work specified in the Contract.

Median. The portion of a divided Highway that separates the Traveled Ways.

Milestone. An event or a date that marks the start or completion of a specified portion of the Work. If provided for in the Contract, Milestones are used to specify when the Work or a specified portion thereof must be completed in accordance with the Contract Documents. The Contract may provide for one or more of the following Milestones:

1. **Early Completion Milestone.** If provided for in the Contract, a date on or before which the Work or a specified portion thereof must be satisfactorily completed by the Contractor and accepted by the City in order for the Contractor to receive the specified early completion incentive compensation, in accordance with the Contract Documents.

2. **Interim Completion Milestone.** If provided for in the Contract, a date on or before which a specified portion of the Work must be satisfactory completed by the Contractor and accepted by the City, in accordance with the Contract Documents.

3. **Substantial Completion Milestone.** If provided for in the Contract, a date on or before which the Work or a specified portion thereof must be sufficiently complete in accordance with the Contract Documents so that the Project or a portion thereof can be used for the purposes intended. At the point of Substantial Completion, the Project shall be complete such that it can be safely and effectively used by the public without further delays, disruption, or impediments. For conventional Bridge and Highway work, *Substantial Completion* is typically the point at which all Bridge deck, parapet, Pavement Structure, Shoulder, permanent signing and markings, traffic barrier, and safety appurtenance work is complete. The Project Manager will determine Substantial Completion after inspection of the Work.

Minimum Plan Concept Project. A Project of a very limited scope and duration that requires few details to describe the proposed Work.

Minor Item. Any Pay Item that is not specified as being a Major Item in the Schedule of Items included among the Contract Documents.

-N-

No Plan Project. Generally, a Project of a very limited scope and duration that requires no Plans to describe the proposed Work.

Notice to Proceed. Witten notice to the Contractor specifying when prosecution of the Work shall begin.

-O-

Ordinary High Water. A water elevation based on analysis of all daily high waters that will be exceeded approximately twenty-five percent (25%) of the time during any twelve-month period.

-P-Q-

Pavement Structure. The combination of select or stabilized Materials, Subbase, base, and Surface Courses, described in the Typical Pavement Section in the Plans that is placed on a Subgrade to support the traffic load and distribute it to the Roadbed.

Pay Item. See Contract **Item**.

Phase Inspection. The inspection of Work at predetermined stages in lieu of continuous inspection.

Plans. The approved Project Plans and profiles, which may include but are not limited to survey data, typical sections, summaries, general notes, details, plan and profile views, cross-sections, special design drawings, computer output listings, supplemental drawings or exact reproductions thereof, and all subsequently approved revisions thereto which show the location, character, dimensions, and details of the Work specified in the Contract.

Procurement Officer. The City's authorized representative of the Consolidated Procurement Division for administering the Notice of Advertisement for Bids, receiving Bids for such, and awarding Contracts for the City.

Professional Engineer. An individual, who has fulfilled education and experience requirements and passed necessary exams that, under State licensure laws, permits the individual to offer engineering services directly to the public.

Profile Grade. The line of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal centerline of the Roadbed.

Project. The designated section of Highway, Roadway, or property including all Work to be performed according to the Contract Documents.

Project Manager. A City employee who plans and organizes the necessary resources to complete the Project.

Project Showing. The scheduled event at which the City's representative meets with prospective Bidders to describe and answer questions regarding the proposed Work.

-R-

Ramp. A connecting Roadway between two Highways or Traveled Ways or between two intersecting Highways at a Grade Separation.

Right of Way. A general term denoting the City's land, property, or interest therein, usually in the form of a strip, that is acquired for or devoted to a Highway or other transportation facilities. As used herein, the term does not denote the legal nature of the City's ownership.

Road. A general term denoting a public way for purposes of vehicular travel including the entire area within the Right of Way; the entire area reserved for use in constructing or maintaining the Roadway and its appurtenances.

Roadbed. The graded portion of a Highway within the top and side slopes that is prepared as a foundation for the Pavement Structure and Shoulders.

Roadbed Material. The Material below the Subgrade in Cuts, Embankments, and Embankment foundations that extends to a depth and width that affects the support of the Pavement Structure.

Roadside. A general term that denotes the area within the Right of Way that adjoins the outer edges of the Roadway; extensive areas between the Roadways of a divided Highway.

Roadside Development. Items that are necessary to complete a Highway that provide for the preservation of landscape Materials and features; rehabilitation and protection against erosion of areas disturbed by construction through placing seed, sod, mulch, and other ground covers; and such suitable plantings and other improvements as may increase the effectiveness and service life and enhance the appearance of the Highway.

Roadway. The portion of a Highway within the limits of construction and all Structures, ditches, Channels, and waterways which are necessary for the correct drainage thereof.

-S-

Schedule Impact Analysis (SIA). A process of analyzing a schedule to determine the impact of a change in the Work or condition, or delay event on the Project schedule for the purposes of quantifying and apportioning the effects to the party responsible for the impact.

Schedule of Record (SOR). The most recently accepted baseline progress schedule. Upon acceptance by the Project Manager, the initial baseline progress schedule or a subsequently revised baseline progress schedule shall be the SOR. The SOR is the agreed, official, and only baseline schedule with which all Work required to complete the

Project will be planned and executed; and on which all subsequent schedule updates shall be based; and against which progress of the Work will be evaluated.

Seawater. Water in which total alkali chlorides calculated as sodium chloride are more than 0.10 percent of total solids.

Select Borrow. Borrow Material that has specified physical characteristics.

Select Material. Material obtained from Roadway Cuts, Borrow areas, or commercial sources that is designated or reserved for use as a foundation for the Subbase, Subbase Material, Shoulder surfacing, or other specified purposes designated in the Contract Documents.

Shoulder. The portion of the Roadway contiguous with the Traveled Way that is for the accommodation of stopped vehicles, emergency use, and lateral support of the Base and Surface Courses.

Sidewalk. The portion of the Roadway constructed primarily for the use of pedestrians.

Skew. The acute angle formed by the intersection of a line normal to the centerline of the Roadway with a line parallel to the face of the abutments or, in the case of Culverts, with the centerline of the Culverts.

Special Provision (SP). See Specifications.

Special Provision Copied Note (SPCN). See Specifications.

Specialty Item. A Contract Item designated as a "Specialty Item" in the Invitation to Bid that requires highly specialized knowledge, abilities, craftsmanship, or Equipment not ordinarily provided by Contractors prequalified to bid on the Contract as a whole. Specialty Items are usually limited to minor components of the overall Contract.

Specifications. A general term that includes all directions, provisions, and requirements, which are necessary for the proper fulfillment of the Contract, that are contained in the following Contract Documents:

> **VDOT's Road and Bridge Specifications.** The Specifications applicable to all Contracts awarded by the Commonwealth Transportation Board or Commissioner.
>
> **Special Provision (SP).** Specifications or requirements for a particular Project that add to or modify the standard Specifications.
>
> **Special Provision Copied Note (SPCN).** Specific Specifications or requirements, usually limited in scope, for a particular Project.
>
> **Supplemental Specifications (SS).** Additions and revisions to the Specifications.

Standard Drawings. Unless otherwise specified, applicable drawings in the VDOT's Road and Bridge Standards and such other Standard Drawings as are referred to on the Plans.

State. Commonwealth of Virginia.

Station. When used as a definition or term of measurement, 100 linear feet.

Storm Sewer System. A drainage system consisting of a series of at least two interconnecting pipes and Structures (minimum of two drop inlets, manholes, junction boxes, and the like) designed to intercept and convey stormwater runoff from a specific storm event without surcharge.

Street. A general term denoting a public way for purposes of vehicular travel including the entire area within the Right of Way; the entire Right of Way reserved for use in constructing or maintaining the Roadway and its appurtenances.

Structures. Bridges, Culverts, catch basins, inlets, retaining walls, cribs, manholes, end walls, buildings, steps, fences, sewers, service pipes, underdrains, foundation drains, and other features that may be encountered in the Work and are not otherwise classified herein.

Subbase. A layer(s) of specified or selected Material of designed thickness that is placed on a Subgrade to support a Base Course.

Subcontract. A contract between the Contractor and any other Business to perform part of the Contract subject to the requirements of the Contract Documents including, but not limited to, Section 105.06.

Subcontractor. Any Business that has a Subcontract, including any Business that provides on-site labor for the Project.

Subgrade. The top Earthwork surface of a Roadbed, prior to application of Select or Stabilized Material courses, shaped to conform to the typical section on which the Pavement Structure and Shoulders are constructed, or the surface that must receive an additional Material layer, such as Topsoil, Stone, or other Select Material.

Subgrade Stabilization. The modification of Roadbed soils by admixing with stabilizing or chemical agents that will increase the load bearing capacity, firmness, and resistance to weathering or displacement.

Substructure. The part of a Structure that is below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, together with the back walls, wingwalls, and wing protection railings.

Superintendent. The Contractor's Project representative who is authorized to receive and fulfill instructions from the Project Manager and who supervises and directs the Work on the Contractor's behalf.

Superstructure. The portion of a Structure that is above the Substructure.

Supplemental Specifications (SS). See Specifications.

Surety. A Business bound with and for the Contractor for full and complete fulfillment of the Contract and for payment of debts pertaining to the Work. When applied to the proposal guaranty, it refers to the Business that engages to be responsible in the execution by the Bidder, within the specified time, of a satisfactory Contract and the furnishing of an acceptable payment and Contract bond.

Surface Course. One or more top layers of a Pavement Structure designed to accommodate the traffic load, which is designed to resist skidding, traffic abrasion, and disintegrating effects of weather. See also **Wearing Course**.

Surplus Material. Material that is present on a Project as a result of unbalanced Earthwork quantities, excessive swell, slides, undercutting, or other conditions beyond the control of the Contractor, or is designated as Surplus Material in the Contract Documents.

Suspension. A written notice issued by the Project Manager to the Contractor that orders the Work on the Project to be stopped wholly or in part as specified. The notice will include the reason for the Suspension.

-T-

Temporary Structure. Any Structure that is required to maintain traffic while permanent Structures or parts of structures specified in the Contract are constructed or reconstructed. The Temporary Structure shall include earth approaches.

Theoretical Maximum Density. The maximum compaction of Materials that can be obtained in accordance with the values established VTM-1.

Ton. A short ton; 2,000 pounds avoirdupois.

Top of Earthwork. The uppermost surface of the regular or Embankment Excavation, not including select Material, that is shaped to conform to the typical section shown in the Plans or directed by the Project Manager.

Topsoil. The uppermost original layer of Material that will support plant life and contains more than five percent (5%) organic Material reasonably free from roots exceeding 1 inch in diameter, brush, stones larger than 3 inches in the largest dimension and toxic contaminants.

Traveled Way. The portion of the Roadway for the movement of vehicles, not including Shoulders.

-U-

Unsuitable Material. Any Material which contains more than five percent (5%) by weight organic matter, or which has unstable bearing capacity, excessive moisture content, plasticity indexes or liquid indexes, or other characteristics defined by the Engineer or the Contract Documents as unsuitable for the use intended.

Utilities. Private, county, city, municipal or public facility, structure or infrastructure, designed, owned and maintained for public use or to provide a public service such as electricity, water, sanitary sewer, storm sewer, drainage Culverts, telecommunications, conduits, gas, oil, fiber optics, cable television, that is not identified as a Pavement Structure, Roadway, Highway, Street or Traveled Way.

-V-

Vouchered. The action of approval by the City; constitutes the date of release to the Business Coordinator for payment.

-W-X-Y-Z-

Wearing Course. See Surface Course. The top and final layer of any pavement.

Work. The furnishing of all Materials, labor, tools, Equipment, and incidentals necessary or convenient for the successful completion and acceptance of the Project and the carrying out of the duties and obligations specified in the Contract.

Work Capacity. The ability to implement all Work activities and tasks competently, including the greatest volume in number and/or size of construction projects a Contractor is able to perform and manage efficiently without increasing overhead costs.

Working Drawings. Stress sheets, shop drawings, erection Plans, Falsework Plans, framework Plans, cofferdam Plans, bending diagrams for reinforcing steel, or any other supplementary Plans or similar data the Contractor is required to submit to the Project Manager for review.

SECTION 102--BIDDING REQUIREMENTS AND CONDITIONS

102.01—Qualifications

Bidder Qualification

To demonstrate its qualifications to perform the Work, each Bidder shall be prepared to submit further written satisfactory evidence that the Bidder has sufficient experience, necessary capital, Materials, machinery, and skilled workers to complete the Work. If financial statements are required, they shall be of such date as the City shall determine and shall be prepared on forms acceptable to the City. The City may make any such investigations as deemed necessary to determine the ability of the Bidder to perform the Work. The City's decision or judgment on these matters shall be final, conclusive, and binding.

Subcontractor Qualification

Within seven (7) consecutive Calendar Days after the day of the Bid opening, the apparent low Bidder shall submit to the City a list of all Subcontractors who will be performing Work on the Project. This list shall be accompanied by an experience statement with pertinent information as to similar Projects and other evidence of experience and qualifications of each such Subcontractor, person, and organization. If the City, after due investigation, has reasonable objection to any proposed Subcontractor, an individual, or an organization, before giving the Notice of Intent to Award or Notice of Award, the City may request the apparent low Bidder to submit an acceptable substitute without an increase in Bid price. If the apparent low Bidder declines to make any such substitution, the Contract shall not be awarded to that Bidder. For any Subcontractors, individuals, or organization so listed and to whom the City does not make written objection prior to giving the Notice of Award, it will be deemed the City has no objection.

102.02—Content of Invitation to Bid

The Invitation to Bid will specify the location of the proposed Work and include a description of the Work. The description will include an estimate of the various quantities and kinds of Work to be performed or Materials to be furnished, and a schedule of items for which unit Bid prices are invited. The Invitation to Bid will specify the Contract Time in which the Work shall be completed, and the date and time by which Bids must be submitted. The Invitation to Bid also will include any Specifications, Plans, attachments, revisions, addenda, and any other documents specified or referenced in the Invitation to Bid. The Invitation to Bid will be considered a part of the Contract.

102.03—Interpretation of Quantities in Invitation to Bid

The quantities of Work to be performed and Materials to be furnished identified in the Invitation to Bid are approximate only, and provided as a basis for cost analysis and comparison. The Contractor will be paid for the quantities of Work accepted and Materials furnished and correctly placed or installed according to the requirements of the Contract. The quantities of Work to be performed and Materials to be furnished may vary, be increased, diminished, or eliminated, as provided within the Contract Documents without invalidating the Contract Amount. A variance, increase, decrease, or elimination of the quantities in the Invitation to Bid will not be sufficient grounds for granting an increase in the Bid price, except as specified for a significant change in Section 104.02. The Contractor will be paid according to Section 109 and other applicable provisions of the Contract Documents.

102.04—Examination of Site of Work and Invitation to Bid

(a) **Evidence of Examination of Site of Work and Invitation to Bid**

The submission of a Bid will be considered conclusive evidence that (1) the Bidder has examined the site of the proposed Work, the Invitation to Bid and other documents referenced therein, and the Plans before submitting a Bid; (2) is satisfied as to the nature, character, qualities, quantities, and conditions to be encountered in performing the Work and the requirements specified in the Invitation to Bid; and (3) has taken all such matters into consideration when submitting the Bid. A reasonable site investigation includes investigating the Project site, Borrow sites, Disposal Areas, hauling routes, and all other locations related to the performance of the Work.

(b) **Subsurface Data**

When available, subsurface data may be included in the Invitation to Bid or may be made available for review by the Bidder as stated elsewhere in the Bid documents. Such data are made available to the Bidder in good faith in order to apprise them of information in possession of the City. Unless stated otherwise in the Invitation to Bid, subsurface data provided or made available by the City shall not be part of the Contract Documents. The City does not warrant the data or any conclusions drawn from the data, either expressly or by implication. Further, the City does not warrant the condition, amount, or nature of the Material that may be encountered or the sufficiency of the data, either expressly or by implication. The Bidder shall make its own interpretation of the subsurface data that may be available and satisfy itself with regard to the nature, condition, and extent of the Material to be excavated, graded, or driven through. The submission of a Bid will be considered conclusive evidence that the Bidder is satisfied with regard to the subsurface conditions to be encountered in the Work and has taken such conditions into consideration when submitting the Bid.

(c) **Notice of Alleged Ambiguities, Conflicts, Errors, or Omissions**

If a Bidder has any questions or doubts about a word, phrase, clause, specification, or any other portion of the Invitation to Bid or alleges an ambiguity, conflict, error, or omission, the Bidder shall submit a question about the ambiguity, conflict, error, or omission by using the Pre-Bid Question Form. Authorized interpretations will be issued by the Procurement Officer to each person who received an Invitation to Bid and will be posted on the Procurement website. The City will not be responsible for any other explanations or interpretations of the alleged ambiguities, conflicts, errors, or omissions.

The Bidder shall not take advantage of ambiguities, conflicts, errors, or omissions in the Invitation to Bid. If the Bidder fails to submit a question and requests an interpretation of an obvious or apparent ambiguity, conflict, error, or omission within the specified time, the Bidder shall waive any right it may have had to its own interpretation of the ambiguity, conflict, error, or omission. Further, if awarded the Contract, the Bidder waives any Claims and shall not be entitled to any additional compensation or time or entitled to sue the City based on such ambiguity, conflict, error, or omission.

It is recognized that the Bidder's review of the Invitation to Bid is made in the Bidder's capacity as a Contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Bidder is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Bidder shall be reported promptly to the Procurement Officer.

(d) **Utilities**

In general, the Invitation to Bid will indicate the various Utilities known to exist, any Utilities to be adjusted, and any Utility improvements proposed by the respective Utilities. The Invitation to Bid will designate any Utilities the Contractor shall adjust. Information contained in the Invitation to Bid regarding Utilities is advisory only and shall not be construed as being complete or accurate. Prior to preparing a Bid, the Bidder shall contact the various Utilities to determine the nature, extent, and exact location of existing, adjusted, or proposed Adjustments or new Utilities within the areas of construction. The City has no control over or any responsibility for Utilities in or around the Construction Limits. The City shall not be responsible for damage to existing Utilities that is the resulting from the Contractor's negligence or mislocation of an existing Utility by the Utilities or its agent.

Unless otherwise noted, the various Utilities or its agents will perform all Utility Adjustments. The Bidder shall contact the various Utilities to determine the Utilities' schedule for the Utility Adjustment operations. The Contractor shall coordinate and cooperate with the Utilities in its Adjustment operations. The Bidder understands and agrees that it has (1) considered in its Bid all present and relocated positions of existing, adjusted, proposed, permanent, and temporary Utilities and any proposed Utility capital improvements; and (2) contacted the Utilities with regard to the Utilities' proposed schedule for its Utility Adjustment operations. The Contractor's schedule shall include the amount of time needed to make Utility Adjustments. Any costs associated with contacting, coordinating, and cooperating with the Utilities shall be included in the Bid price for other items in the Contract if there is no Pay Item for Utilities.

102.05—Preparation of Bid

Response forms shall be submitted if attached. Responses not submitted on the attached forms or not fully completed with all information may be declared nonresponsive. All documents shall be signed in ink. Any corrections to entries made on the forms shall be made in ink and initialed by the person signing the response. Bids containing any conditions, omissions, unexplained alterations or items not called for in the Invitation to Bid, or irregularities of any kind may be rejected by the City as being incomplete or nonresponsive.

General questions, requests for explanations, or interpretations of documents shall be made as directed. No oral explanation in regarding the meaning of drawings and Specifications will be made, and no oral instructions will be given before the Award of the Contract.

During preparation and prior to opening, vendors shall not divulge, discuss, or compare its response with others and shall not collude with any other party to a response. A signed response shall be taken as an indication that the vendor fully understands the Commonwealth of Virginia's Conflict of Interest Act and the Commonwealth of Virginia's Ethics in Public Procurement Act and that its actions in no way violate any of the provisions therein.

Unless this solicitation contains a clear statement that only one certain brand, make, or manufacturer is acceptable and a clear reason is stated why such is so, the name of a certain brand, make, or manufacturer does not restrict vendors to that named. It only conveys the general style, type, character, and quality of that desired. During evaluation of responses, it shall be the sole discretion of the City to determine what is equal, considering quality, workmanship, economy of operation, and suitability for the purpose intended.

Prices shall be all inclusive for the scope of the solicitation. Where applicable, the following shall apply. All shipments shall be free on board destination, freight included. Delivery shall be made inside as directed at the address indicated. Required delivery times and terms of payment shall be stated clearly.
Any previous submittals, offers, price given, either orally or written, cannot be accepted as a response to this formal solicitation. To insure fair and equal consideration of your response, if you wish to compete, please reply to this request.

Direct contact with City staff, representatives, and/or agents other than Consolidated Procurement Division staff on the subject of this ITB or any subject related to this ITB is expressly prohibited except with the prior knowledge and permission of the Procurement Officer or designated representative.

102.06—Irregular Bids

Bids will be considered irregular and, therefore, non-responsive and may be rejected for any of the following reasons:

(a) The Bidder fails to comply with the requirements of Sections 102.05 and 102.07;

(b) The Bidder adds any provisions reserving the right to accept or reject an Award or enter into a Contract pursuant to an Award except as otherwise permitted in these Specifications;

(c) The Bidder fails to provide Work Capacity;

(d) The Bid is not properly signed;

(e) The Bidder fails to acknowledge all addenda to the Invitation to Bid documents by inserting the appropriate addendum date(s) as part of its electronic Bid submission;

(f) There are unauthorized additions, conditional or alternate Bids, or irregularities of any kind that may make the Bid incomplete, indefinite, or ambiguous;

(g) The prices in the Bid are obviously mathematically and materially unbalanced, either in excess or below the cost analysis values as determined by the City;

(h) The Bidder fails to submit a statement concerning collusion;

(i) The Bid submitted identifies a project different from the Project for which the Bid is submitted;

(j) The Bid is not totaled or totaled incorrectly;

(k) Erasures or alterations in the Bidder's entries on paper Bids, when allowed, are not initialed by the Bidder; or

(l) Attachments included in the Bid are detached or altered when the Bid is submitted except as otherwise provided for herein.

(m) [Reserved]

(n) [Reserved]

(o) [Reserved]

102.07—Proposal Guaranty (Bid Bond)

A Bid in excess of One Hundred Thousand and 00/100 Dollars ($100,000.00) will be rejected unless accompanied by a proposal guaranty (also known as a Bid bond) made payable to the City of Hampton. The amount of the proposal guaranty shall be five percent (5%) of the total Bid. The proposal guaranty shall be accompanied by a certified copy of the power of attorney for the Surety's attorney-in-fact.

When the principal is a Joint Venture, each member of the Joint Venture shall be named and shall execute the proposal guaranty. Each Surety to the proposal guaranty shall be named and shall execute the proposal guaranty and shall provide a certified copy of the power of attorney for the Surety's attorney-in-fact.

102.08—Disqualification of Bidder

(a) The following reasons for Disqualification are not exclusive, and Disqualification may occur based on other requirements within these Specifications.

1. The Bidder does not have sufficient financial ability to perform the Contract. If a bond is required to ensure performance of a contract, evidence that the Bidder is able to acquire a Surety bond from a corporation included on the United States Treasury list of acceptable Surety corporations in the amount and type required by the City shall be sufficient to establish the financial ability of the Bidder to perform the Contract.

2. The Bidder does not have appropriate experience to perform the Project.

3. The Bidder or any officer, director, or owner thereof has had judgments entered against it within the past ten (10) years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, competitive sealed bidding, design-build, or construction management.

4. The Bidder has been in substantial noncompliance with the terms and conditions of prior construction contracts with the City or any other public body without good cause. If the City has not contracted with a Bidder in any prior construction contracts, the City may disqualify the Bidder if it has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The City may utilize this provision to disqualify where the facts underlying such substantial noncompliance were documented in writing in the prior construction Project file and such information relating thereto given to the Bidder at that time, with the Bidder given an opportunity to respond.

5. The Bidder or any officer, director, owner, Project Manager, procurement manager, or chief financial official thereof has been convicted of, or pled guilty or nolo contendere within the past ten (10) years to a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Ethics in Public Contracting statutes, §§ 2.2-4367, *et seq*. of the Code of Virginia; (ii) the Virginia Governmental Frauds Act, §§ 18.2-498.1, *et seq*. of the Code of Virginia; (iii) Conspiracy to Rig Bids to Government §§ 59.1-68.6, *et seq.* of the Code of Virginia; (iv) any substantially similar law of the United States or another state; or (v) any criminal offense indicating a lack of moral or ethical integrity as may reasonably be perceived to relate to or reflect upon the Bidder's business practices.

6. Pursuant to an established debarment procedure, the Bidder or any officer, director, or owner thereof currently is debarred from bidding or contracting by any public body, agency of another state, or agency of the federal government.

7. The Bidder failed to provide to the City in a timely manner any information the City requests relevant to the preceding subparagraphs 1 through 6.

8. [Reserved]

9. The Bidder or any officer, director, owner, Project Manager, procurement manager, or chief financial official thereof has had a judgment entered against it for violation of the Virginia Fraud Against Taxpayers Act (§§ 8.01-216.1, *et seq*. of the Code of Virginia).

10. More than one Bid for the same Work is submitted by an individual, partnership, Corporation, or Joint Venture under the same or different name. A Bid submitted by an Affiliate of an individual, partnership, Corporation, or any party of a Joint Venture will be considered as more than one Bid submitted for the same Workwork.

11. Evidence of collusion among Bidders.

12. Incompetency or inadequate machinery, plants, or other Equipment as revealed by the Bidder's financial and experience statements required by these Specifications.

13. Unsatisfactory workmanship or unsatisfactory progress toward timely completion of the Work as described within Sections 102.08, 105.05, 108.03, 108.07 or other applicable Specifications as demonstrated by performance records of current or past Work for the City, other public bodies in the State, or agencies or departments of other states in the United States or federal government.

14. Uncompleted Work under contract with the City that in the judgment of the Project Manager might hinder or prevent prompt completion of additional Work if awarded.

15. Failure to promptly pay or settle satisfactorily all bills for Materials, labor, Equipment, supplies, or other items specified in contracts in force at the time the new Work comes before the City for Award.

16. Failure to comply with any rule or regulation of the City.

17. Failure to cooperate properly with representatives of the City inspecting, monitoring, or administering construction or disorderly conduct toward any such representative in contracts.

18. Default under a previous contract with the City.

19. Failure to pay amounts owed to the City, as specified in Section 109.10, on other contracts.

20. Any other activities of a Bidder of a serious or compelling nature that are reasonably perceived to relate to its Work as a Contractor.

21. Making materially false statements in a Bid or certified statement submitted to the City.

(b) [Reserved]

102.09—Submission of Bid

Bids will be received on or before the date and the hour and at the place stipulated in the Invitation to Bid and may be modified by subsequent addenda. Consolidated Procurement Division operating hours are Monday through Friday, 8:00 A.M until 4:30 P.M.

The Bidder is responsible for assuring that its Bid and any Bid modifications are delivered to the place designated for receipt of Bids by the date and hour (deadline) set for receipt of Bids. Therefore, the Contractor must take into account all factors which may impact on its deliverer/courier's ability to deliver the Bid and to implement whatever actions are necessary to have the Bid delivered to the proper Bid receipt location prior to the Bid receipt deadline. No Bids or modifications submitted or offered after the date and hour designated for receipt of Bids will be accepted or considered.

The Procurement Officer is the City's representative designated to receive Bids at the time and place noted in the Invitation to Bid and to open the Bids received at the appointed time.

102.10—Withdrawal of Bid

A Bidder may withdraw a Bid in accordance with the following criteria.

(a.) Withdrawal of a Bid due to error shall be in accordance with § 2.2-4330(B)(1) of the Code of Virginia. The Bidder shall give notice in writing of its claim of right to withdraw its Bid within two (2) business days after conclusion of the Bid opening procedure and shall submit original Work papers with such notice.

(b.) Bids may be withdrawn until Bid closing. A Bidder may withdraw a Bid provided the request for the withdrawal is written and signed by all person(s) qualified to execute the Bid in accordance with the requirements of Section 102.05.

102.11—[Reserved]

102.12—Public Opening of Bids

The official time used for the receipt of responses is determined by reference to the clock designated by the Procurement Officer. The Procurement Officer shall determine when the Bid receipt deadline has arrived and shall announce that the deadline has arrived and that no further Bids or Bid modifications will be accepted.

102.13—[Reserved]

102.14—Registration or Authorization to Transact Business

Every Bidder organized as a stock or non-stock corporation, limited liability company, Business trust, limited partnership, or registered as a registered limited liability partnership must be authorized to transact business in the State as a domestic or foreign Business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, as amended, or as otherwise required by law. If awarded the Contract, the Bidder shall not allow its existence to lapse or its certificate of authority or registration to transact business in the State, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Contract. Doing so shall be deemed a violation of § 2.2-4311.2 of the Code of Virginia, and the Bidder understands and agrees that the City may void the Contract if the Bidder fails to comply with this provision.

SECTION 103—AWARD AND EXECUTION OF CONTRACTS

103.01—Consideration of Bids

After Bids have been opened and read, the City will evaluate Bid submittals to determine whether all requirements of Section 102 and the Invitation to Bid have been met. Bids not submitted in accordance with the requirements of Section 102 and the Invitation to Bid will be rejected.

Bids will be compared on the basis of the summation of the products of the quantities shown in the Bid schedule and the unit Bid prices.

The City may correct mathematical errors in the Bid prior to such comparison, in accordance with Section 102.05. The results of the comparisons will be available to the public after the determination has been made to Award the Contract.

The City reserves the right to reject any or all Bids, waive informalities, advertise for new Bids, or proceed to do the Work otherwise if it deems that the best interest of the City would be promoted thereby.

As part of its deliberations toward Award of a Contract, the City may enter into a Memorandum of Understanding (MOU) with the apparent lowest responsive and responsible Bidder if any of the following is determined to be necessary:

(a) Provide and document further clarification of a Specification or drawing;

(b) Establish an order of priority (ranking) where there are conflicting Specification requirements;

(c) Ensure proper understanding of the intent or meaning of a Specification or drawing;

(d) Document the inclusion of inadvertently excluded pages from the Contract Documents;

(e) Document the correct unit of measurement where a conflict exists within the Bid documents;

(f) Document the elimination of an item(s); or

(g) Limit the City's exposure to Contract overruns or potential unbalancing of a Bid Item; Bids and/or Bid Items are materially unbalanced, as determined in the sole discretion of the City, when it is based on prices significantly less than cost for some Work and prices which are significantly more in relation to cost for other Work. A mathematically unbalanced Bid is a Bid that contains lump sum or unit Bid Items that do not reasonably reflect the Actual Costs (plus reasonable profit, overhead costs, and other indirect costs) to construct the item, as determined in the sole discretion of the City.

This listing shall not to be interpreted as all inclusive, but is provided to give examples of the types of issues that may be addressed in such an agreement. The MOU is not intended to be used to negotiate "as bid" unit prices\quantities or to renegotiate Bid requirements with the apparent lowest responsive and responsible Bidder, but merely to address intent, clarify points of confusion, or limit the possible future effects of such issues on the Project budget. If the terms of the MOU are acceptable to both parties, the City and the apparent lowest responsive and responsible Bidder will document their acceptance of the terms of the MOU by both parties' signatures. The MOU will be added to and become part of the executed Contract.

103.02—Award of Contract

Contract Award will be made to the lowest responsive and responsible Bidder.

The City reserves the right to negotiate with the lowest responsible Bidder in the event that price exceeds available funds. Such negotiation shall be in compliance with § 2-337(e) of the Code of Hampton, Virginia.

The City reserves the right to reject any and all responses, to make Awards in whole or in part, and to waive any informality in submittals.

In the event two or more Bidders are tied in price while otherwise meeting all of the required conditions, Awards will be determined as follows:

- Should there be a Virginia Firm tied with an out-of-state Firm, the Award shall be made automatically to the Virginia Firm.
- Tie Bids involving Virginia produced or manufactured products, when known, and items produced or manufactured outside of Virginia shall be resolved in favor of the Virginia commodity.
- Tie Bids involving Virginia Firms must be resolved in favor of the Virginia Firm located in the same taxing jurisdiction as the City.
- Tie Bids involving Virginia Firms in the same taxing jurisdiction as the City shall be resolved by the flip of a coin (or lot) in the Office of the Procurement Manager witnessed by all interested parties.

Public announcement of the decision to award this Contract shall be issued in written form distributed to all responsive participants via email or facsimile transmission, using the bidder's number or email address provided on the formal response form. Public records shall be available for inspection from the date of the public announcement.

103.03—Cancellation of Award

The City may cancel the Award of any Contract at any time before the execution of the Contract by all parties without liability to the City.

103.04—Forfeiture of Bid Bond or Security

Except in cases of emergency, all Bids or proposals for construction (defined as the building, alteration, improvement, removal, repair, or demolition of any building, Highway, Bridge, Street, Sidewalk, Culvert, sewer, storm drain, reservoir, dam, dock or wharf and draining, dredging, Excavation, grading, or other such Work upon real property) of One Hundred Thousand and 00/100 Dollars ($100,000.00) or more shall be accompanied by a Bid bond or certified check, payable to the City, in such sum as shall be stated in the Bid or Invitation to Bid forms. This amount, in any case, shall not exceed five percent (5%) of the Bid Amount. Such Bid bond shall serve as a guarantee that, if the Contract is offered, the vendor will enter into a properly executed Contract with the City for the Work set forth in the Specifications. Failure or refusal to execute the Contract within the time designated in the Bid or Invitation to Bid forms may mean forfeiture of the Bid security.

103.05—Requirements of Contract Bond

A performance bond and a payment bond, each equal to one hundred percent (100%) of the Contract price, shall be required on all contracts for construction of One Hundred Thousand and 00/100 Dollars ($100,000.00) or more.

All bonds provided for in this section shall be issued by a Surety company legally authorized to do business in the State; however, if approved by the City Attorney, the vendor may furnish a personal bond, property bond, certified check payable to the City, or irrevocable letter of credit in the total amount required for the performance and payment bonds. Approval shall be granted only upon a determination that the alternate form of security proffered affords protection to the City equivalent to a corporate Surety's bond.

103.06—Contract Documents

The Contract may include the following documents unless otherwise specified by Special Provisions or Special Provision Copied Notes:

(a) **Contract:** The Contract shall include the fully executed Invitation to Bid including all addenda or revisions thereto issued prior to the date the Bids are opened, the Schedule of Items showing the prices submitted by the Bidder, these Specifications, Supplemental Specifications, Special Provisions, Special Provision Copied Notes, the Plans and the edition of the *VDOT's Road and Bridge Standard Drawings* cited on the title sheet of the Plans, including all addenda or revisions thereto issued prior to the Bid date, and Change Orders that the Project Manager issues after the Contract Execution Date.

(b) **Contract Performance and Payment Bonds:** Contract bonds shall conform to the requirements of Section 103.05.

(c) **Affidavits and Documents:** Affidavits and documents shall include those required to be made a part of the Contract by any federal, State, or local law in effect on the date of the Notice of Advertisement.

(d) **Progress Schedule:** The Contractor shall submit a progress schedule in accordance with the requirements of Section 108.03 or as specified in the Contract Documents.

(e) **Insurance Coverage and Limits Required:** Contractor agrees to secure and maintain in full force and effect at all times during the term of this Contract, the following policies of insurance:

1. Workers' Compensation Insurance as required under Title 65.2 of the Code of Virginia.

2. Comprehensive General Liability Insurance, including contractual liability and products and completed operations liability coverages, in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) combined single limits (CSL). Such insurance shall name the City of Hampton as an additional insured by policy endorsement.

3. Automobile Liability Insurance including coverage for non-owned and hired vehicles in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) CSL.

4. Umbrella/Excess Liability Insurance at limits not less than Two Million and 00/100 Dollars ($2,000,000.00).

Contractor shall submit to Procurement Officer certificates of insurance with applicable endorsements to the policy attached, prior to beginning Work under this Contract and no later than ten (10) Days after Award of the Contract.

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in the State, and acceptable to the City, and shall carry the provision that the insurance will not be cancelled or materially modified without thirty (30) Days' prior written notice to the City.

IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO NOTIFY THE CITY IMMEDIATELY SHOULD ANY POLICY BE CANCELLED. FAILURE TO NOTIFY THE CITY SHALL CONSTITUTE A MATERIAL BREACH OF THE CONTRACT.

The certificates of insurance shall list the City of Hampton, 22 Lincoln Street, Hampton, Virginia 23669, as the additional insured for the Project as outlined in this Invitation to Bid. The endorsement to the policy would be that which is attached to the Contractor's liability policy that acknowledges the City as an additional insured. This acknowledgement shall be either a direct endorsement that actually names the City

or a blanket endorsement within the insurance policy which states that, under a contractual agreement, the City will be named as an additional insured on the required insurance policy.

The Contractor's insurance naming the City as an additional insured is the only insurance to be used to satisfy a Claim; and the City's primary coverage shall not be used to satisfy or contribute to the satisfaction of any Claim.

103.07—Failure to Furnish Bonds or Certificate of Insurance

The successful Bidder's failure to furnish to the City acceptable bonds, workers' compensation insurance certificates, or the Contractor's Bodily Injury and Property Damage Liability Insurance certificates within ten (10) Days after issuance of the "Notice of Intent to Award" or "Notice of Award" (whichever is sooner) shall be considered just cause for cancellation of the Award and forfeiture of the Bid bond or security. In such event, the Bid bond shall become the property of the City, not as a penalty but in liquidation of damages sustained. The Contract then may be awarded to the next lowest responsive and responsible Bidder, or the Work may be re-advertised or constructed otherwise as determined by the City.

103.08—Contract Audit

The City shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic, or other) relating or pertaining to this Contract (including any and all documents and other Materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Contractor, including, but not limited to, those kept by Contractor, its employees, agents, assigns, successors, and Subcontractors. Contractor shall maintain such books and records, together with such supporting or underlying documents and Materials, for the duration of this Contract and for at least three (3) years following the completion of this Contract, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and Materials shall be made available, upon request, to the City, through its employees, agents, representatives, contractors, or other designees during normal business hours at Contractor's office or place of business in Hampton, Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Hampton, Virginia, which is convenient for the City. This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by State, City, or federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

The Contractor shall permit the City to audit, examine, and copy all documents, computerized records, electronic mail, or other records of the Contractor during the life of the Contract and for a period of not less than three (3) years after the date of final payment, or the date the Contractor is declared in default of the Contract, or the date of termination of the Contract. The documents and records shall include, but not be limited to:

(a) Those that were used to prepare and compute the Bid, prepare all schedules used on the Project, record the progress of Work on the Project, accounting records, purchasing records, personnel payments or records necessary to determine employee credentials, vendor payments, and written policies and procedures used to record, compute, and analyze all costs incurred on the Project, including those used in the preparation or presentation of Claims to the City.

(b) Records pertaining to the Project as the City may deem necessary in order to permit adequate evaluation and verification of Contractor's compliance with Contract requirements, compliance with the City's business policies, and compliance with provisions for pricing Change Orders or Claims submitted by the Contractor or the Contractor's Subcontractors, insurance agents, Surety bond agents, and Material suppliers shall be made available to the auditor(s) at the City's request. The Contractor shall make its personnel available for interviews when requested by the City.

(c) Upon request, the Contractor shall provide the City with data files on data disks or other suitable alternative computer data exchange format. Data furnished by the Contractor that cannot be verified will be subject to a complete audit by the City.

The Contractor shall ensure that the requirements of this provision are made applicable to its Subcontractors, insurance agents, Surety bond agents, and Material suppliers. The Contractor shall cooperate and shall cause all related parties to furnish or make available in an expeditious manner all such information, Materials, and data.

The Contractor shall provide immediate access to records for the audit and provide immediate acceptable facilities for the audit. The Contractor's failure to afford the City immediate access or proper facilities for the audit will be considered failure to cooperate and will result in Disqualification as a Bidder in accordance with Section 102.08.

Upon completion of the Contract audit, any Adjustments or payments the Contractor owes to the City as a result of the audit shall be made to the City within sixty (60) Days from presentation of the City's findings to the Contractor. The Contractor's failure to make such payment may result in Disqualification as a Bidder in accordance with Section 102.08.

If the Contractor disagrees with the findings of the City's audit, the Contractor may dispute the findings in accordance with provisions of Section 105.19 or the Code of Virginia, as amended, and as applicable, except that, if the time provided for the Contractor to submit a Claim within sixty (60) Days after final payment has expired, the Contractor shall instead submit a written Claim to dispute the findings to the Project Manager within sixty (60) Days from the date the Contractor received the findings. The Contractor's failure to submit a Claim disputing the City's findings within such 60-Day period shall constitute a waiver and release of any Claim disputing the City's findings.

103.09—Execution of Contract

(a) The Bid as submitted, including the Contract Documents specified in Section 103.06, shall constitute the Contract upon submittal of the Contract bond, Contractor's bodily injury and property damage liability insurance certificates, and workers' compensation insurance certificate as well as the City's final execution of the Contract. After the City has recommended the Bid for Award, the apparent low Bidder shall be required to sign and return a paper copy of the Contract Documents to the Procurement Officer. Failure to sign and return the Contract Documents within ten (10) Days may result in cancellation of the Award and forfeiture of the proposal guaranty. If the Contract is not awarded within ninety (90) Days of the Bid opening, the Bidder may withdraw its Bid without penalty or prejudice unless the time limit is extended by mutual consent. The City will execute the Contract upon receipt of the Contractor's signed Contract Documents. The Contract shall be considered binding and effective only when it has been fully executed by all parties.

(b) **Notice of Contract Execution.** The Procurement Officer will notify the Contractor of the date that the City has executed the Contract. The Procurement Officer or his designee will confirm the Contract Execution Date in such notice. The notice will identify the Project Manager's authorized representative responsible for written directives and changes to the Contract, who will contact the Contractor to arrange a pre-construction and scheduling conference.

(c) **Unbonded Contracts**

In the event the successful Bidder on an unbonded contract is unwilling or unable to fulfill the Contract and fails to notify the City prior to the City's execution of the Contract, the Bidder will be declared in default in accordance with the requirements of Section 108.07.

In the event the Bidder, on an unbonded contract, notifies the City prior to the City's execution of the Contract of such unwillingness or inability to fulfill the Contract, the Bidder will be enjoined from bidding on unbonded contracts for a period of no less than ninety (90) Days from the date of notice by the City.

A Bidder who has never been enjoined or defaulted on an unbonded contract and who notifies the City prior to the City's execution of the Contract of such unwillingness or inability to fulfill the Contract will not be enjoined for the first occurrence; however, said Bidder will not be permitted to rebid or perform Work on that specific Contract.

103.10—Assignments, Transfers, or Assumptions of the Contract

The Contractor shall not assign, transfer, convey, or allow any person or Business to assume or take over, in whole or in part, the Contract, the Contractor's duties, obligations, interests, or rights arising under, from, or relating to the Contract, or to legally or equitably assign money due and to become due under the Contract, or on any Claim arising from or relating to performance or nonperformance of the Contract, except for subcontracting as provided in Section 105.06, without the Project Manager's specific written authorization. Any unauthorized assignment, transfer, conveyance, assumption, or takeover agreement shall be void and shall constitute a material breach of the Contract. No assignment, transfer, conveyance, assumption, or takeover agreement shall relieve the Contractor from its duties and obligations under the Contract, or release the Contractor of any liability under the Contract bonds.

SECTION 104—SCOPE OF WORK

104.01—Intent of Contract

The intent of the Contract is to provide for completion of the Work specified therein in accordance with the Contract Documents for the Contract Amount and within the Contract Time Limit. Further, it is understood that the Contractor shall perform the Work under the Contract as an independent contractor and not as an agent of the City.

104.02—Changes in Quantities or Alterations in the Work

(a) **General**

The Project Manager reserves the right to make, in writing, at any time during the Work, such changes in quantities of Contract Items and such alterations of Contract Items as it deems necessary to complete the Project satisfactorily. Such changes and alterations in Contract Items shall not invalidate the Contract or release the Surety, and the Contractor shall perform the Work as changed or altered. No change, alteration, or other modification in or deviations from the Contract or the Contract Documents, or the City's grant of any extension of time for the performance of the Contract, or the City's forbearance shall release or exonerate in whole or in part either the Contractor or any Surety on the obligations of any bond given in connection with the Contract. Neither the City nor the Contractor shall be under any obligation to notify the Surety or Sureties of any alteration, change, extension, forbearance, or notice thereof being expressly waived. Any increase in the Contract Amount shall result automatically in a corresponding increase in the penal amount of the bonds without notice to or consent from the Surety, such notice and consent being hereby waived. Decreases in the Contract Amount, however, shall not reduce the penal amount of the bonds unless specifically provided in any Change Order as authorized in accordance with the provisions of Section 109.05 decreasing the scope of the Work.

The Contract may be modified as provided in the Contract Documents, but the Contract Amount may not be increased by more than twenty-five percent (25%) of the original Contract Amount or Thirty Thousand and 00/100 Dollars ($30,000.00), whichever is greater, without the advance written approval of City Council. In no event may the Contract Amount, without adequate consideration, be increased for any purpose, including, but not limited to, relieving a Bidder from the consequences of an error in its Bid.

(b) **Significant Changes in the Character of Work**

If the City's changes or alterations result in a significant change in the character of the Work under the Contract, an Adjustment will be made according to Section 109.05. The basis for the Adjustment shall be agreed upon prior to the performance of the affected Work. If a basis cannot be agreed upon, an Adjustment will be made either for or against the Contractor in such amount as the Project Manager may determine to be fair and reasonable.

At the City's option, Project Manager may direct the Contractor to accomplish the change or alteration on a force account basis when the circumstances meet the requirements for Force Account Work under Section 109.05.

If the City's changes or alterations do not result in a significant change in the character of the Work, the changed or altered Work will be paid for at the Contract price for the actual quantities of Work performed.

The term "significant change" shall be construed to apply only to the following circumstances:

1. When the character of the Work as changed or altered differs materially in kind or nature from that involved or included in the original proposed construction.

2. When the actual quantity of a Major Item of Work increases or decreases more than twenty-five percent (25%) of the original Contract quantity. Any Adjustment for an increase or decrease in cost due to an increase in quantity of more than twenty-five percent (25%) shall be calculated only on that quantity in excess of one hundred twenty-five percent (125%) of the original Pay Item quantity. Any Adjustment for an increase or decrease in cost due to a decrease in quantity to less than seventy-five percent (75%) of the original Pay Item quantity shall apply to the actual amount of Work performed.

3. When the actual quantity of piling increases or decreases more than twenty-five percent (25%) of the original Pay Item quantity, regardless of whether such item has been designated as a Major Item. Compensation for such increases or decreases shall be the same as for a Major Item of Work.

4. When the actual quantity of a Minor Item of Work increases more than one hundred percent (100%) of the original Pay Item quantity and the amount paid for, such item can be demonstrated as not representative of the true cost of the Work when considering the applicable unit price.

(c) **Value Engineering Proposals**

The Contractor may submit to the Project Manager written Value Engineering Proposals (VEP) for modifying the Plans, Specifications, or other requirements of the Contract for the purpose of reducing the total cost and/or Contract Time without reducing the design capacity or quality of the finished product. If the City accepts the VEP, the City and the Contractor will divide equally the net savings or Contract Time, or both. When an accepted VEP includes Contract Time savings, one-half of such time savings shall be used to reduce the Contract Time, and the remaining one-half of such time savings shall be used exclusively by the Contractor as contractor float. The Contractor shall identify in the SOR a VEP contractor float activity for each accepted VEP that includes Contract Time savings. The VEP contractor float may be used by the Contractor to mitigate its delays on the Project.

Each VEP shall result in a net savings over the Contract cost or Contract Time, or both, without impairing essential functions and characteristics of the item(s) or of any other part of the Project, including, but not limited to, service life, reliability, economy of operation, ease of maintenance, aesthetics, and safety. At least the following information shall be submitted with each VEP:

- Statement that the proposal is submitted as a VEP;

- Statement concerning the basis for the VEP benefits to the City and an itemization of the Pay Items and requirements affected by the VEP;

- Detailed estimate of the cost or Contract Time, or both, under the existing Contract and under the VEP;

- Proposed Specifications and recommendations as to the manner in which the VEP changes are to be accomplished; and

- Statement as to the time by which a Contract Change Order adopting the VEP must be issued so as to obtain the maximum cost-effectiveness.

The City will process the VEP in the same manner as prescribed for any other proposal that would necessitate issuance of a Change Order. The City may accept a VEP in whole or part by issuing a Change Order that will identify the VEP on which it is based. The City will not be liable to the Contractor for failure to accept or act on any VEP submitted pursuant to these requirements or for delays in the Work attributable to any VEP. Until a VEP is put into effect by a Change Order, the Contractor shall remain obligated to the terms and conditions of the existing Contract. If an executed Change Order has not been

issued by the date on which the Contractor's proposal specifies that a decision should be made or such other date as the Contractor may subsequently have specified in writing, the VEP shall be deemed rejected.

The Change Order effecting the necessary modification of the Contract will establish the net savings agreed on, and provide for Adjustment of the Contract prices or Contract Time, or both. The Contractor shall absorb all costs incurred in preparing a VEP. Costs for reviewing and administering a VEP will be borne by the City. The City may include in the agreement any conditions it deems appropriate for consideration, approval, and implementation of the VEP. The Contractor's fifty percent (50%) share of the net savings or Contract Time, or both, shall constitute full compensation to them for effecting all changes pursuant to the VEP Change Order.

Unless specifically provided for in the Change Order authorizing the VEP, acceptance of the VEP and performance of the Work thereunder will not change the Contract Time Limit.

The City may adopt a VEP for general use in contracts the City administers if it determines that the VEP is suitable for application to other contracts. VEPs identical with or similar to previously submitted VEPs will be eligible for consideration and compensation under these provisions if the City has not previously adopted the VEPs for general application to other contracts the City administers. When a VEP is adopted for general use, compensation pursuant to these requirements will be applied only to those awarded contracts for which the VEP was submitted prior to the date of adoption of the VEP.

Proposed changes in the basic design of a Bridge or pavement type or those changes that require different right-of-way limits normally will not be considered an acceptable VEP. If a VEP is based on or is similar to a change in the Plans, Specifications, or Special Provisions the City has adopted prior to submission of the VEP, the Project Manager will not accept the VEP.

The Project Manager will be the sole judge of the acceptability of a VEP. The requirements herein apply to each VEP initiated, developed, and identified as such by the Contractor at the time of its submission to the Project Manager. However, nothing herein shall be construed as requiring the Project Manager to approve a VEP.

Subject to the provisions herein, the City or any other public agency shall have the right to use all or part of an accepted VEP without obligation or compensation of any kind to the Contractor.

If the City accepts a VEP, pursuant to Section 104.02(a) herein, which pertain to the Adjustment of Contract unit prices attributable to alterations of Contract quantities, the VEP will not apply to the items adjusted or deleted as a result of putting the VEP into effect by a Change Order.

104.03—Differing Site Conditions

Type I: During the progress of the Work, if subsurface or latent physical conditions differing materially from those indicated in the Contract are encountered at the site, the Contractor shall notify the Project Manager promptly in writing of the specific differing conditions before the site is disturbed further and before the affected Work is performed.

Type II: During the progress of the Work, if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract, are encountered at the site, the Contractor shall notify the Project Manager promptly in writing of the specific differing conditions before the site is disturbed further and before the affected Work is performed.

Upon receipt of the Contractor's written notification, the Project Manager will acknowledge receipt and investigate the conditions. The Project Manager will notify the Contractor regardless of whether an Adjustment of the Contract is warranted. Adjustments will be made according to Sections 108.04 and 109.05, as applicable.

No Adjustment that results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

No Adjustment will be allowed under this Section for any effects caused on unchanged Work.

SECTION 105—CONTROL OF WORK

105.01—Notice to Proceed

The written Notice to Proceed is a separate document issued by the Project Manager after all other Contract Documents have been issued and all pre-construction matters have been agreed upon between the City and the Contractor. The Notice to Proceed requires the Contractor to begin Work on the site within ten (10) Calendar Days of the date of its issuance.

Unless otherwise indicated in the Contract, the Notice to Proceed date will be the date selected by the City in consultation with the Contractor as to the date the Work shall begin. That date shall be no earlier than fifteen (15) nor later than thirty (30) Calendar Days after the date of Contract execution. The Procurement Officer will contact the Contractor in a timely manner after Contract execution to inform it that the Contract has been executed. Within ten (10) Calendar Days after the notification of Contract execution, the Contractor shall submit to the Project Manager written notice of the date it has selected as its Notice to Proceed date. If the Contractor fails to provide written notice of its selected Notice to Proceed Date within ten (10) Calendar Days of Contract execution, the selected Notice to Proceed Date will become the date fifteen (15) Calendar Days after the date of Contract execution. The Contractor shall begin Work no later than ten (10) Calendar Days after the date it has selected as its Notice to Proceed date, unless the Notice to Proceed date is otherwise indicated in the Contract, in which case the Contractor shall begin Work within ten (10) Calendar Days after the specific Notice to Proceed date indicated in the Contract.

Contract Time will commence on the date of the Notice to Proceed. The Project Manager will contact the Contractor after Notice of Award to arrange a pre-construction conference.

In the event the Contractor, for matters of its convenience, wishes to begin Work earlier than fifteen (15) Calendar Days or later than thirty (30) Calendar Days after the date of Contract execution, the Contractor shall make such a request in writing to the Project Manager within ten (10) Calendar Days of the Date of Contract execution or once a Notice to Proceed Date has been established. If the Contractor wishes to begin Work more than ten (10) Calendar Days after its selected Notice to Proceed date or the Notice to Proceed Date indicated in the Contract, the Contractor shall make such a request to the Project Manager in writing no later than five (5) Calendar Days after the Notice to Proceed date. If this requested start date is acceptable to the City, the Contractor will be notified in writing; however, the Contract Fixed Completion Date will not be adjusted and shall remain binding. The Contractor's request to adjust the start date for the Work on the Contract will not be considered as a basis for a Claim that the time resulting from the Contractor's adjusted start date, if accepted by the Project Manager, is insufficient to accomplish the Work nor shall it relieve the Contractor of its responsibility to perform the Work in accordance with the scope of Work and requirements of the Contract. In no case shall the Work begin before the City executes the Contract or prior to the Notice to Proceed date unless otherwise permitted by the Contract or authorized by the Project Manager. The Contractor shall notify the Project Manager at least twenty-four (24) hours prior to the date on which it will begin the Work.

105.02—Pre-Construction Conference

Prior to beginning the Work, the Contractor shall attend a pre-construction conference scheduled by the Project Manager to discuss the Contractor's planned operations for prosecuting and completing the Work in accordance with the Contract. At the pre-construction conference, the Project Manager and the Contractor will identify in writing the authorities and responsibilities of Project personnel for each party. The Contractor also shall come prepared to discuss key issues and Project-specific requirements necessary for preparation and submittal of the baseline progress schedule, unless a separate scheduling conference otherwise is scheduled as mutually agreed to by the Project Manager and the Contractor, in accordance with the requirements of Section 108.03 and other applicable provisions of the Contract.

The Project Manager will be responsible for setting the conference agenda, conducting discussions, and ensuring that minutes of the conference are taken and later timely distributed to all attendees. The pre-construction conference will be the time to review the Contract Plans and documents. To that end, the conference agenda may include but not be limited to discussions on the general sequence of Work, including the expected primary Work tasks as defined by the Contractor, and proposed means and methods for the entire scope of Work, potential problems or impacts, constructability issues, special considerations such as limitations and access issues, agreements with local agencies or governments, Utility impacts, or relocations including railroads, coordination with schedules of the Utilities and Subcontractors and associated Work, sources and delivery of critical Materials, submittals required by Contract Documents, including shop drawings, location of field office, labs, and the like, environmental concerns including permits and erosion and siltation efforts, maintenance of traffic issues, and minority- and women-owned subcontracting efforts.

The Contractor shall provide the Project Manager with a list of all Equipment available for use in the prosecution of the Work on the Contract at the pre-construction conference or no later than one (1) week prior to the first monthly progress estimate. The make, model, size, capacity, and year of manufacture shall be listed for each piece of Equipment. Where possible, the Contractor shall provide this list in an electronic format. This list may take the form of the Contractor's fleet list of Equipment. The Contractor shall provide the Project Manager an updated list of Equipment as changes occur.

105.03—Authorities of Project Personnel, Communication, and Decision Making

(a) **Authority of Project Manager**

During prosecution of the Work, the Project Manager will answer all questions that may arise as to the quantity, quality, and acceptability of Materials furnished and Work performed; rate of progress of the Work; interpretation of the Plans and Specifications; the Contractor's acceptable fulfillment of the Contract; disputes and mutual rights between contractors; and the Contractor's compensation.

The Project Manager has the authority to suspend the Work wholly or in part if the Contractor has created conditions that are unsafe or fails to correct conditions that are unsafe for workers or the general public or fails to carry out the provisions of the Contract. The Project Manager also may suspend the Work for such periods as he may deem necessary because of catastrophic or extraordinary weather as defined in Section 108.04, conditions considered unsuitable for prosecution of the Work, or any other condition or reason deemed to be in the public interest.

The Project Manager may issue written clarifications or directives that either enhance or alter the Contract Documents. The Project Manager may issue written orders for such Work as may be necessary to complete the Contract satisfactorily.

(b) **Authority of Inspector**

Inspectors are authorized to inspect all Work performed and Materials furnished. Inspections may extend to all or any part of the Work and to the preparation, fabrication, and manufacture of the Materials to be used. Inspectors are not authorized to alter or waive the provisions of these Specifications or make changes to the Plans.

Inspectors are not authorized to make Final Acceptance of the Project, approve any operation or item, or act as foremen for the Contractor. However, Inspectors will have the authority to reject defective Work and Material and suspend Work that is being improperly performed, subject to the concurrence of the Project Manager. Such inspections shall not relieve the Contractor of any obligation to furnish acceptable Materials or provide completed construction that is in accordance with the requirements of the Contracts.

Inspectors will exercise only such additional authority as the Project Manager may delegate. The Project Manager will advise the Contractor in writing of delegations of authority that will affect its operations.

(c) **The Contractor**

The Contractor shall not construe reviews, approvals, or inspections by the City, the Project Manager, or the City's Inspectors, agents, and employees as a waiver, release, warranty, or assumption of liability on the part of the City. The Contractor understands and agrees that reviews, approvals, and inspections are for the City's sole use and benefit. Any such reviews, approvals, and inspections shall not relieve the Contractor of its contractual duties and obligations or be conclusive as to the acceptability of the Contractor's performance.

(d) **Communication and Decision Making**

1. **Description**

The intent of this provision is to establish procedures, processes, and guidelines for making decisions and managing communications regarding the Work. The information contained herein is not meant to be all inclusive but to serve as a minimal general framework for promoting efficient and effective communication and decision making at both the Project and, if needed, executive administrative level. It also is not meant to override the decision-making processes or timeframes of specific Contract requirements.

2. **Definitions**

For the purposes of this provision, the following terms and definitions will apply:

Submittals. Documents required by the Contract that the Contractor must submit for the City's review, acceptance, or approval. Submittals may include shop drawings, Working Drawings, Material test reports, Material certifications, Project progress schedules, and schedule updates. The Contractor shall provide submittals as early as practicable so as not to delay review or acceptance or approval of the Work.

Confirmation of Verbal Instructions (COVI) - Contractor-requested written confirmation of the City's instructions concerning the Work. When time and/or costs are or will be impacted, the Contractor must comply with the requirements applicable to requests for Adjustments of the Contract Amount or Contract Time.

Requests for Information (RFI). Requests where either the Contractor or the City asks that the other party supply information to provide better understanding of or to clarify a certain aspect of the Work.

Requests for City (Owner) Action (ROA). Contractor requests for the City to take certain action that the Contractor feels is required for proper completion of all or a portion of the Work.

Contractor Change Requests (CCR). Contractor requests for the City to make an Adjustment to the Contract because of excusable and/or compensable events, instructions that have or have not been given, or other Work requiring time and/or cost beyond that specified or envisioned within the Contract.

Requests for Contractor Action (RCA). City requests for the Contractor to take certain action that is in the best interests of the Project and/or is required for proper completion of all or a portion of the Work.

Responsible Person. The individual in the normal or escalated resolution process, for either the Contractor or the City, having the direct authority, responsibility, and accountability to formulate and respond to each category of information request.

3. **Process for Decision Making**

a. Project teams composed of the Contractor's and the City's representatives, who are directly responsible for the administration, prosecution, and inspection of the Work shall define and agree upon the field decision-making process during the pre-construction conference. This written process should be distributed to all affected parties once it is established. Where there are responsibilities, authority, or personnel changes associated with this process, such changes shall be distributed to all affected parties as quickly as practicable after they are effective so as not to delay or impede this process.

The process for making field decisions with respect to the Work detailed in the Contract requires the following basic steps:

(1) The Contractor and the Project Manager agree on the decision-making process, the identity, authority and accountability of the individuals involved, and on the cycle times for responses required for each category of decision.

(2) The requesting party requiring a decision generates the appropriate request documents and calls for a decision from the individual who is accountable for the particular facet of the Work under consideration within the agreed period.

(3) The responding party has an internal decision-making process that supports the individual who is accountable and provides the information required within the agreed period for each category of decision.

(4) The party receiving the decision has an internal process for accepting the decision or for rejecting the decision and initiating further action according to the decision-making process within an agreed period of time.

b. The process also requires that clear and well-understood mechanisms be in place to log and track requests and document the age and status of outstanding requests and actions to be taken on requests that have not been answered within the agreed period.

c. Both the City and the Contractor shall agree on the following:

(1) The documentation and perhaps format to be developed for each category of information requested;

(2) The name (as opposed to organizational position) of all individuals with the responsibility, authority, and accountability to formulate and respond to each category of information requested. The Director of Public Works (DPW) or Chief Executive Officer (CEO) of the Contractor may delegate the responsibility and authority for formulating and responding to requests; however, the accountability for meeting the established response time(s) remains with the DPW and CEO;

(3) The cycle times for each stage in the decision-making process;

(4) The performance measures to be used to manage the process; and

(5) The action to be taken if cycle times are not achieved and information is not provided in a timely manner.

d. The general guideline and timeframe matrix in Tables I-1A and I-1B will apply. These guidelines, however, are general in scope and may not apply to specific Contract timeframes for responses identified within the requirements of the Contract Documents. In such cases, specific Contract timeframes shall apply.

TABLE I-1A

PROCESS GUIDELINES FOR REQUESTS GENERATED BY THE CONTRACTOR

Process	Situation	Normal resolution process		Escalated process		Process if no resolution
		By	Within (Calendar Days)	By	Within	
Submittal	Contractor requests the City's review, acceptance or approval of shop drawings, materials data, test reports, Project progress schedules, or other submittals required by Specifications or other Contract Documents.	City's Designated Project Manager	• Acknowledge: 3 Days[1] • Accept or Return: 14 Days • Final Determination\ Approve: 30 Days or as outlined in Contract Documents.	DPW or their designee*	7 Days	Submit ROA or CCR
Confirmation of Verbal Instruction (COVI)	Routine field issues, within the framework of the Contract, Contractor resolves through negotiation with the City's field personnel.	City's Appropriate field personnel	• Confirmation: 1 Day [2]	DPW or their designee	7 Days	Submit Request for ROA
Request for Information (RFI)	Contractor needs the City to supply information to provide better understanding of or to clarify a certain aspect of the Work.	City's Designated Project Manager	• Action:14 Days (or appropriate Action Plan)	DPW or their designee*	7 Days	Submit ROA or CCR
Request for City/Owner Action (ROA)	Contractor needs the City to take certain action Contractor feels is required for proper completion of a portion of the Work or the Project.	City's Designated Project Manager	• Acknowledge: 3 Days [1] • Action:14 Days (or appropriate Action Plan)	DPW or their designee*	7 Days	Submit CCR
Contract Change Request (CCR)	Contractor needs the City to make an Adjustment to the Contract because of excusable and/or compensable events, instructions that have or have not been given or other Work that will require time and/or cost beyond that specified or envisioned within the original Contract.	City's Designated Project Manager	• Acknowledge: 3 Days [1] • Action: 30 Days (45 Days if federal oversight Project)	DPW or their designee*	7 Days	Claims process

[1] Process initiated on the last business day of a week shall be acknowledged before 5 pm on the next VDOT business day.

[2] The absence of a written confirmation from the City to a Contractor's written request for confirmation of a verbal instruction within the time required shall constitute confirmation of the verbal instruction.

TABLE I-1B

PROCESS GUIDELINES FOR REQUESTS GENERATED BY THE OWNER

Process	Situation	Normal resolution process		Escalated process		Process if no resolution
		By	Within (Calendar Days)	By	Within	
RFI	City requests the Contractor to supply information to provide better understanding of or to clarify a certain aspect of the Work. (RFI)	Contractor's Project Superintendent	• Action: 14 Days (or appropriate written Action Plan)	Contractor's Project Manager	7 Days	Submit RCA or Issue Unilateral Change Order
RCA	City requests the Contractor to take certain action(s) that is/are in the best interests of the Project and/or is/are required for proper completion of a portion of the Work or the Project. (RCA)	Contractor's Project Superintendent	• Response or Action to safety and environmental issues: 1 Day • Otherwise acknowledge: 3 Days [1] • Action: 14 Days (or appropriate Action Plan)	Contractor's Project Manager	7 Days	Issue Unilateral Change Order
Unilateral Change order	City orders the Contractor to perform Work beyond that specified or envisioned in the original Contract and undertakes action(s) to make an Adjustment to the Contract.	Contractor's Project Superintendent	• Acknowledge: 3 Days [1] • Action: 30 Days	CEO or their designee**	7 Days	Claims or termination process

[1] Process initiated on the last business day of a week shall be acknowledged before 5 p m on next Project business day.

105.04—Gratuities

The Contractor and its Subcontractors and suppliers shall not offer, give, or confer upon any of the City's employee or personnel any gifts, gratuities, payments, loans, subscriptions, advances, deposits of money, services, favors, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

The Contractor shall not employ any personnel of the City for any services without the Project Manager's prior written consent.

If the Project Manager determines after investigation that the Contractor or the Contractor's employees, representatives, or agents of any person acting in its behalf have violated this Section, at his discretion, the Project Manager may disqualify the Contractor from bidding on future contracts with the City for a period of six (6) months from the date of the Project Manager's determination of such violation. Any implicated employees, agents, or representatives of the Contractor may be prohibited from working on any contract the City awards for the period of the Contractor's Disqualification.

105.05—Character of Workers, Work Methods, and Equipment

(a) **Workers**

Workers shall have sufficient skill and experience to perform properly the Work assigned to them. Workers engaged in special or skilled Work shall have sufficient experience in such Work and in the operation of Equipment required to perform it properly and satisfactorily. The term "workers" means the Contractor's employees, its Subcontractors at any tier, or any of its' respective employees.

The Contractor immediately shall remove from the Project any workers who, in the Project Manager's opinion, do not perform its Work in a proper, skillful, and satisfactory manner or are intemperate or disorderly. The Project Manager shall direct the Contractor to do so in writing, and such workers shall not be employed again on any portion of the Work without the Project Manager's written approval. If the Contractor fails immediately to remove the workers, or furnish suitable and sufficient workers for satisfactory prosecution of the Work, the Project Manager may withhold all monies that are or may become due the Contractor and may suspend the Work until the Contractor has complied with the Project Manager's directive.

(b) **Equipment**

Equipment shall be of sufficient size and quantity and in such good mechanical condition as to comply with the requirements of the Contract and to produce a satisfactory quality of Work. Equipment shall be such that no damage to the Roadway, adjacent property, other Highways, or no danger to the public, will result from its use. The Project Manager may order the removal and require replacement of unsatisfactory Equipment.

(c) **Work Methods**

When methods and Equipment to be used by the Contractor are not prescribed in the Contract, the Contractor is free to use whatever methods or Equipment it feels will accomplish the Work in conformity with the requirements of the Contract.

When the Contract specifies that construction be performed by the use of particular methods and Equipment, those methods and Equipment shall be used unless others are authorized by the Project Manager. If the Contractor desires to use a different method or type of Equipment, it may request

permission from the Project Manager to do so. The request shall be in writing and shall include a full description of the methods and Equipment it proposes to use and an explanation of the reasons for desiring to make the change. If permission is not given, the Contractor shall use the specified methods and Equipment. If permission is given, it will be on the condition that the Contractor shall be fully responsible for producing construction Work in conformity with Contract requirements. If, after trial use of the substituted methods or Equipment, the Project Manager determines that the Work produced does not strictly conform to the requirements of the Contract, the Contractor shall discontinue the use of the substitute method or Equipment and shall complete the remaining construction with the specified methods and Equipment. The Contractor shall remove any deficient Work and replace it with Work of the specified quality or take such other corrective action as the Project Manager may direct. No change will be made in the basis of payment for the construction items involved or the Contract Time Limit as the result of authorizing or denying a change in methods or Equipment under these provisions.

105.06—Subcontracting

Within ten (10) Calendar Days after the day of the Bid opening, the apparent low Bidder shall submit to the City a list of all Subcontractors who will be performing Work on the Project. This list shall be accompanied by an experience statement with pertinent information as to similar projects and other evidence of experience and qualifications of each such Subcontractor, person, and organization. If the City, after due investigation, has reasonable objection to any proposed Subcontractor, other person, and organization, before giving the Notice of Award, the City may request the apparent low Bidder to submit an acceptable substitute without an increase in Bid price. If the apparent low Bidder declines to make any such substitution, the Contract shall not be awarded to such Bidder. For any Subcontractors, other persons, or organization so listed and to whom the City does not make written objection prior to giving the Notice of Award, it will be deemed the City has no objection.

(a) Consent to Subcontract or otherwise dispose of any portion of the Work shall not relieve the Contractor of any responsibility for the satisfactory fulfillment of the entire Contract. All Subcontracts shall be evidenced by written binding agreements that shall be produced upon request to the City.

(b) The Contractor immediately shall remove from the Project any Subcontractors at any tier who, in the Project Manager's opinion, do not perform its Work in a proper, skillful, and satisfactory manner or are intemperate or disorderly. The Project Manager shall direct the Contractor to do so in writing, and such Subcontractors shall not be employed again on any portion of the Work without the Project Manager's written approval.

105.07—Cooperation of Contractor

The Contractor shall give the Work the constant attention necessary to facilitate quality and progress and shall cooperate fully with the Project Manager, Inspector, and other Contractors involved in the prosecution of the Work. If any portion of the Project is located within the limits of a municipality, military installation, or other federally owned property, the Contractor shall cooperate with the appropriate officials and its' agents in the prosecution of the Work to the same extent as with the City.

The Contractor shall have on the Project at all times during prosecution of the Work a competent Superintendent who is capable of reading and understanding the Plans and Specifications, experienced in the type of Work being performed, and who shall receive instructions from the Project Manager or his authorized representatives. The Superintendent shall have full authority to execute the orders and directions of the Project Manager without delay and promptly supply such Materials, Equipment, tools, labor, and incidentals as may be required.

105.08—Cooperation With Regard to Utilities

The Adjustment of Utilities consists of the relocation, removal, replacement, rearrangement, reconstruction, improvement, disconnection, connection, shifting, or altering of an existing Utility in any manner.

Existing Utilities within the City's knowledge at the design stage of the Project will be indicated on the Plans. Where possible, the City will make arrangements for adjusting these Utilities prior to Project construction. The Utilities will adjust existing private and public Utilities that require Adjustment, unless the Contract requires the Contractor to perform such Adjustment as a Pay Item. The new location of such Utilities normally will not be shown on the Plans. Some Utilities may remain or be adjusted within the Construction Limits simultaneously with Project construction operations.

The Contractor shall coordinate Project construction with planned Utility Adjustments and take all necessary precautions to prevent disturbance of the Utilities. The Contractor shall report to the Project Manager any failure of the Utilities to cooperate or proceed with the planned Utility Adjustments.

The Contractor shall perform Contract Utility Work in a manner that will cause the least inconvenience to the Utilities and those being served by the Utilities.

The Contractor shall protect existing, adjusted, or new Utilities that are to remain within the Right of Way so as to prevent disturbance or damage resulting from construction operations. If during prosecution of the Work the Contractor encounters an existing Utility that requires Adjustment, it shall not interfere with the Utility but shall take the proper precautions to protect the Utility and promptly shall notify the Project Manager of the need for Adjustment.

If the Contractor desires the temporary or permanent Adjustment of Utilities for its own benefit, it shall conduct all negotiations with the Utilities and pay all costs in connection with the Adjustment.

If the Contractor determines that delays due to Utility Adjustments impact the Contract Amount or Contract Time, or both, the Contractor shall provide written notice according to Sections 108.04 or 109.05, or both.

105.09—Cooperation among Contractors

At any time the City may contract or approve concurrent contracts for performance of other Work on, near, or within the same geographical area of the Work specified in an existing contract. Contractors shall not impede or limit access to such Work by others.

When separate contracts are awarded within the limits of one Project, Contractors shall not hinder the Work being performed by other Contractors. Contractors working on the same Project shall cooperate with each other. In case of dispute, the Project Manager will mediate, and his decision will be final and binding on all parties.

When contracts are awarded to separate Contractors for known concurrent construction in a common area, the Contractors, in conference with the Project Manager, shall establish a written joint schedule of operations. The schedule shall be based on the limitations of the individual contracts and the joining of the Work of one contract with the others. The schedule shall set forth the approximate dates and sequences for the several items of Work to be performed and shall ensure completion within the Contract Time Limit. The schedule shall be submitted to the Project Manager for review and approval no later than thirty (30) Days after the Award Date of the later contract and prior to the first monthly progress estimate. The schedule shall be agreeable to, signed by, and binding on each Contractor. The Project Manager may allow modifications of the schedule when benefit to the Contractors and the City will result.

Any modification of the schedule shall be in writing, mutually agreed to and signed by the Contractors, and shall be binding on the Contractors in the same manner as the original agreement.

If the Contractors fail to agree on a joint schedule of operations, they shall submit their individual schedules to the Project Manager, who will prepare a schedule that will be binding on each Contractor.

The joint schedule and any modification thereof shall become a part of each contract involved. The failure of any Contractor to abide by the terms of the joint schedule will be justification for declaring the Contractor in default of its Contract.

Each Contractor shall assume all liability, financial or otherwise, in connection with its Contract and shall protect and save harmless the City from any and all damages and Claims that may arise because of any inconvenience, delay, or loss it experiences as a result of the presence and operations of other Contractors working in or near the Work covered by its Contract. Each Contractor also shall assume all responsibility for any of its work not completed because of the presence or operation of other Contractors working in or near the Work covered by its Contract. If the presence and operations of other Contractors prevents the Contractor from gaining access to a Critical Activity within the time scheduled for its performance, the Contractor will be entitled to an excusable, non-compensable time extension, provided that such failure to gain access is not due to any fault or negligence of the Contractor or due to the Contractor's failure to cooperate according to this Section.

The City will not assume any responsibility for acts, failures, or omissions of one Contractor that delays the Work of another except as provided herein.

105.10—Plans and Working Drawings

(a) **General**

The Contractor will be supplied with one (1) copy of the executed Contract. *VDOT's Road and Bridge Specifications* and *VDOT's Road State and Bridge Standards* are available on VDOT's website.

(b) **Plans**

Plans will be furnished to the Contractor without charge as follows:

Original Contract Amount in Dollars		**Number of Plan Sets**	
From	**To**	**Full Size**	**Half Size**
0	1,999,999	1	3
2,000,000	4,999,999	3	4
5,000,000	9,999,999	4	5
10,000,000 or more		5	5

Plan revisions issued while the Project is under construction will be furnished to the Contractor in the same sizes and numbers.

The Contractor shall keep one (1) complete set of Plans, Standard Drawings, Contract assemblies, and Specifications available on the Project at all times. For maintenance Projects, certain sign Projects, and other Projects having no field office or on which the Contractor has no office, the Contractor shall keep one (1) complete set of Plans, Contract assemblies, and Specifications with it while prosecuting the Work. In the event items of Work are required as per the Standard Drawings, the Contractor also shall keep the appropriate Standard Drawings on the Project during the performance of that Work.

Plans consisting of general drawings and showing such details as are necessary to give a comprehensive understanding of the Work specified will be furnished by the City. Except as otherwise shown on the Plans, dimensions shown on the Plans are measured in the respective horizontal or vertical planes. The Contractor shall adjust necessary dimensions that are affected by gradients or vertical curvatures to accommodate actual field conditions and shall be denoted specifically as "field adjusted" on the Working

Drawings. The Contractor's failure to so denote field Adjustments on the Working Drawings shall not relieve the Contractor of the responsibility to accommodate and incorporate such existing conditions into the finished Work.

(c) **Working Drawings**

The Contractor shall furnish three (3) sets of detailed Working Drawings to the extent and with the details required by the Contract Documents unless otherwise indicated in the Contract Documents. Working Drawings and submittals shall be identified by the complete Project and job designation number, as well as the federal Project number if applicable. Items or component Materials shall be identified by the specific Contract Item number and Specification reference in the Contract. Any changes from the requirements of the Contract specifically shall be denoted, together with justification, and submitted to the Project Manager for review. Working Drawings shall be submitted in sufficient time to allow for review, discussion, and correction prior to the beginning of the Work referenced to avoid causing any delay to the Work. Work shall not be performed or Materials ordered prior to the completion of the City's review of the Working Drawings.

Reviewed Working Drawings will be returned to the Contractor within thirty (30) Days from the date of receipt by the City. If a railroad, governmental agency, or other entity as specified in the Contract or on the Plans is required to review the Working Drawings, the reviewed Working Drawings will be returned within forty-five (45) Days from the date of receipt by the City. If the Working Drawings are not returned by the time specified, no additional compensation will be allowed except that an extension of time in accordance with the requirements of Section 108.04 will be considered if the Work element detailed by the Working Drawings is on the Project Critical Path or involves a Controlling Item of Work. One (1) set of Working Drawings marked with any suggested modifications or comments will be returned to the Contractor. The other sets will be retained by the City.

The City's review of the Contractor's Working Drawings will be limited to evaluation for conformance with the requirements of the Contract. The City's review will not relieve the Contractor from responsibility for errors in the Working Drawings or from complying with the requirements of the Contract for a fully functional finished Work item as specified or designed.

Deviations from the Contract requirements initiated by the Contractor shall be requested in writing and clearly identified on the Working Drawings. Explicit supporting justification shall be furnished specifically describing the reason for the requested deviations, as well as any impact such deviations shall have on the schedule of Work. Failure to address time or other impacts associated with the Contractor's request will be cause for rejection of the Contractor's request. Deviations from the Contract requirements shall not be made unless authorized by the Project Manager. Such authorization shall not relieve the Contractor from the responsibility for complying with the requirements of the Contract for a fully functional finished Work item as specified or designed.

If Working Drawings detailing change(s) initiated by the Contractor require more than two (2) resubmissions or revisions, the cost of additional reviews by the City or its designated representative(s) will be assessed to the Contractor.

The Contractor shall submit as-built Working Drawings upon completion of the Work.

The cost of Working Drawings furnished by the Contractor shall be included in the cost of appropriate Contract Items.

The Contractor may authorize the fabricator in writing to act for it in matters relating to Working Drawings. Such authorization shall have the force and effect of any other representative of the Contractor's organization.

Working Drawings must be provided according to the following guidelines:

1. **Steel Structures**

   Working Drawings for steel Structures, including metal handrails, shall consist of shop detail, erection, and other Working Drawings showing details, dimensions, sizes of units, and other information necessary for the fabrication and erection of metal work.

2. **Falsework**

   Working Drawings for Falsework supporting a Bridge Superstructure shall be signed and sealed by a Professional Engineer.

3. **Concrete Structures and Prestressed Concrete Members**

   Working Drawings for concrete Structures and prestressed concrete members shall provide such details as required for the successful prosecution of the Work and which are not included in the Plans furnished by the City. Drawings shall include Plans for items such as prestressing strand details and elongation calculations, location of lift points, Falsework, bracing, centering, form work, masonry, layout diagrams, and bending diagrams for reinforcing steel when necessary or when requested. Such drawings shall be signed and sealed by a Professional Engineer.

4. **Lighting, Signal and Pedestal Poles, Overhead and Bridge-Mounted Sign Structures, Breakaway Support Systems, Anchor Bolts, Framing Units, Panels, and Foundations**

   Prior to fabrication or construction, the Contractor shall submit for review one (1) original and three (3) copies of each Working Drawing and design calculation for lighting, signal and pedestal poles, overhead and Bridge-mounted sign Structures, breakaway support systems, anchor bolts, framing units, panels, and foundations. All sheets of these submittals shall include the Professional Engineer's signature and seal. Certification for foundations will be required only when the designs are furnished by the Contractor as determined from a review that has been signed and sealed by a Professional Engineer. The designs shall be in accordance with the specific editions of the AASHTO Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals as required in Section 700 of *VDOT's Road and Bridge Specification*. Such designs shall be signed and sealed by a Professional Engineer.

5. **Reinforced Concrete Pipe**

   When specified, and prior to manufacture of reinforced concrete pipe, the Contractor shall furnish to the City a certification of the acceptability of the design of such pipe, as determined from a review that has been signed and sealed by a Professional Engineer. Such certification shall cover all design data, supporting calculations, and Materials. Pipe designs previously certified or approved by the City will not require recertification.

105.11—Conformity with Plans and Specifications

All Materials to be used in the Work shall conform to the qualities, technical requirements, values, or range of values specified in the Contract. Less than complete conformity may be tolerated if obtaining exact or complete conformity would not be feasible and if authorized in writing by the Project Manager.

Permissible tolerances for the elevation of Subgrade and finished grade and for the thickness of the various courses of Pavement Structure are specified in the Contract Documents. If permissive tolerances are exceeded, or if consistent deviations from the Plans or abrupt changes in grade occur, even though within the tolerances, the

affected areas shall be reconstructed to conform to the specified tolerance and provide a smooth riding surface. When it is not feasible to reconstruct the areas, payment will be made in accordance with the requirements of the applicable specification for each Material placed or adjusted in accordance with the provisions of Section 105.18.

When the Plans require the finished surface to tie into any structural item whose elevation is fixed, the elevation of the finished surface must coincide with the elevation of the structural item.

105.12—Coordination of Plans, Standard Drawings, Specifications, Supplemental Specifications, Special Provisions, and Special Provision Copied Notes

The Plans, Standard Drawings, Specifications, Supplemental Specifications, Special Provisions, Special Provision Copied Notes, and other Contract Documents defined in Section 103.06 are parts of the Contract. A requirement occurring in one (1) Contract Document shall be as binding as though occurring in all. The Contract Documents are intended to be complementary, and to include, describe, and provide all items necessary for the Contractor's proper and complete performance of the Work.

In case of a discrepancy, the following order of priority will apply, with the highest governing item appearing first and the least governing item appearing last:

(a) Special Provision Copied Notes. The Contract Items, units, and unit prices listed in the Contract's Schedule of Items have the same status as Special Provision Copied Notes;

(b) Special Provisions;

(c) Plans;

(d) Supplemental Specifications;

(e) Specifications;

(f) Revised Standard Drawings; and

(g) Standard Drawings.

Calculated dimensions, unless obviously incorrect, will govern over scaled dimensions.

Drawings (with the exception of Standard Drawings and revised Standard Drawings), sketches, general notes, and other written information that are not included in Special Provisions or Special Provision Copied Notes will have the same status as Plans.

This order of priority shall not apply when Work is required by one part of the Contract but omitted from another part or parts of the Contract.

If the foregoing order of priority does not resolve a discrepancy, the Contractor shall provide the better quality or greater quantity of the Work, or comply with the more stringent requirement, or both, in accordance with the Project Manager's interpretation.

The Contractor shall not take advantage of any obvious or apparent ambiguity, conflict, error, or omission in the Plans or the Contract Documents. If after beginning Work the Contractor discovers an ambiguity, conflict, error, or omission in the Contract Documents, it shall notify the Project Manager immediately before proceeding further with the affected Work. The Project Manager then will make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Contract.

105.13—City Force Construction Surveying

(a) **General Description:**

This Work shall consist of the City performing all surveying and providing surveying and stakeout sketches and information as detailed herein for the successful prosecution of Work as indicated on the Plans and as directed by the Project Manager. Stakeout work will be in accordance with the details and requirements of the City and the provisions herein. Survey services will be provided to the extent detailed herein for Construction, Minimum Plan, and No Plan Projects.

(b) **Request for Survey Services:**

Once the Contractor requests survey services, the City will begin the requested Work within fifteen (15) Calendar Days. The Contractor shall not expect the City survey party to work in the field during adverse weather conditions that could be detrimental to the survey Equipment or paperwork; therefore, the Contractor shall plan the need for such services accordingly.

It shall be the Contractor's responsibility to preserve all City-furnished centerline or baseline controls, references, and location benchmarks.

(c) **Contractor Responsibility for Examination of Data:**

For Construction or Minimum Plan Projects, the Contractor shall be responsible for examining all surveying work that the City provides for accuracy. Should a disagreement involving the accuracy of stakeout or survey work arise during construction, within twenty-four (24) hours, the Contractor shall provide written notice to the Project Manager precisely describing and documenting the discrepancy. The Contractor's failure to furnish written notice of such discrepancy within the timeframe specified will bar any Claim for time impact or costs. The Project Manager will determine the validity of the Contractor's assertion in the notice, respond to the Contractor within three (3) working days of receipt of the Contractor's notice, and provide direction on how to proceed. When the Contractor provides the written notice within the timeframe specified, the Project Manager will consider a time extension according to Section 108.04, or additional compensation according to 109.05.

For No Plan Projects, the Examination of Data specified above is not required.

(d) **Survey Services Furnished:**

Right of Way will be staked by the City prior to the start of the Project. Right of Way stakes will be placed at a minimum of 100-foot intervals on each side of the Roadway or as directed by the Project Manager, and the stakes will be marked with both the Station and offset back to centerline. All final boundary stakeout will be performed by the City's survey party.

Additional surveying work and supplemental layout work shall be performed by the Contractor as needed to successfully complete the Work. The Contractor shall provide and protect temporary construction benchmarks within the Construction Limits. Temporary construction benchmarks shall be located not farther than 500 feet apart for the total length of the Project or as indicated on the Plans. Temporary construction benchmarks that are disturbed during construction operations shall be reestablished by the Contractor at no additional cost to the City. All drawings, field notes, and computations from such survey work performed by the Contractor shall be submitted to the Project Manager.

105.14—Maintenance During Construction

(a) **Traffic Control**

1. The Contractor shall have at least one (1) person on the Project site during all Work operations who currently is certified as a Traffic Control Supervisor (TCS) either by VDOT in Intermediate Work Zone Traffic Control, or by the American Traffic Safety Services Association (ATSSA). This person must have his certification card with him while on the Project site. This person shall be responsible for the oversight of work zone traffic control within the Project limits in compliance with the Contract requirements, the VWAPM, and the MUTCD. This person's duties shall include supervision of the installation, Adjustment (if necessary), inspection, maintenance, and removal when no longer required, of all work zone traffic control devices on the Project.

   If none of the Contractor's on-site personnel responsible for the supervision of such Work have the required certification with them or if they have an outdated certification card showing they are not currently certified as a Traffic Control Supervisor (TCS) either by VDOT in Intermediate Work Zone Traffic Control, or by the ATSSA, the Project Manager will suspend all Work on the Project until the Work is supervised appropriately in accordance with the requirements herein.

2. The Contractor shall have at least one (1) person on site who, at a minimum, is certified in Basic Work Zone Traffic Control by VDOT for each construction and/or maintenance operation that involves installing, maintaining, or removing work zone traffic control devices. This person shall be responsible for the placement, maintenance, and removal of work zone traffic control devices.

   In the event none of the Contractor's on-site personnel for any construction and/or maintenance operation, at a minimum, have the required certification in Basic Work Zone Traffic Control, the Project Manager will suspend that construction/maintenance operation until that operation is staffed appropriately in accordance with the requirements herein.

3. **Flagging Traffic:** Certified flaggers shall be provided in sufficient number and locations as necessary for control and protection of vehicular and pedestrian traffic in accordance with the requirements of the VWAPM. Flaggers shall be able to communicate to the traveling public in English while performing the job duty as a flagger at the flagger station. Flaggers shall use sign paddles to regulate traffic in accordance with the requirements of the VWAPM.

(b) **Maintenance of Traffic**

1. The Contractor shall prosecute the Work so as to avoid obstructions to traffic to the greatest extent practicable. The Contractor shall provide for the safety and convenience of the general public and residents along the Roadway and for the protection of persons and property.

   Highways closed to traffic shall be protected by barricades and other warning devices as required by the Contract Documents, the VWAPM, and the MUTCD. Barricades and warning devices shall be illuminated where required during periods of darkness and low visibility. The Contractor shall erect warning devices in advance of a location on the Project where operations or obstructions may interfere with the use of the Road by traffic and at all intermediate points where the new Work crosses or coincides with an existing Roadway. The Contractor shall maintain sign faces and reflective surfaces of warning devices in a clean and visible condition. The Contractor shall cover or remove signs when the messages thereon are not applicable. Barricades, warning signs, lights, temporary signals, and other protective devices shall conform to the requirements of Section 512 of *VDOT's Road and Bridge Specifications*.

2. The Road shall be kept open to all traffic while undergoing improvements unless otherwise permitted in the Contract. The Contractor shall keep the portion of the Project being used by public, pedestrian, and vehicular traffic in such condition that all such traffic will be accommodated safely and

adequately. However, removal of snow and control of ice on Roads open to public travel will be performed by the City.

The Contractor shall keep the portions of the Road being used by the public free from irregularities and obstructions that could present a hazard to traffic. When directed by the Project Manager, allaying of dust shall be performed and paid for in accordance with the requirements of Section 511 of *VDOT's Road and Bridge Specifications*. Holes in hard surface pavements shall be filled with approved asphalt patching Material. Where such Work is not specified in the Contract and determined to be required by the Project Manager, and not the result of any failure or fault of the Contractor and due to causes beyond the Contractor's control, the cost to remedy such hazards will be handled according to the provisions of Section 109.05.

If any damage is sustained by an accepted unit or portion of the Project attributable to causes beyond the control of the Contractor, the Project Manager may authorize the Contractor to make the necessary repairs. These repairs will be paid for at the Contract price for the items requiring repair. In the absence of Contract prices covering the items of repair, the repair work will be paid for in accordance with the requirements of Section 109.05.

3. **Detours:** Detours may be indicated on the Plans or in the Special Provisions or may be used with the Project Manager's approval. Unless otherwise designated in the Contract, the Contractor shall furnish, install, and maintain all directional markings for through-traffic on off-project detours authorized or requested by the Project Manager with the exception of municipalities. Directional markings for detours shall include signs. Responsibility for installation and maintenance of the signs shall be in accordance with Section 512.03(a) of *VDOT's Road and Bridge Specifications*. If any Project is located wholly or in part within a municipality's corporate limits and through traffic is to be detoured at the municipality's request, the municipality will provide and maintain the detours within the corporate limits and will furnish, install, and maintain all directional markings. The provision of detours and marking of alternate routes will not relieve the Contractor of the responsibility for ensuring the safety of the public or from complying with any requirements of the Contract Documents affecting the rights of the public within its Contract area of operations, including those concerning lights and barricades. Maintenance of all other detours shall be the Contractor's responsibility.

   The City will furnish the Right of Way for temporary Highways, vehicular watercourse crossings, diversion Channels, sediment and erosion control features, or Bridges required by the Contract Documents.

4. **Maintenance of Traffic During Suspension of Work:** During any Suspension of Work, the Contractor temporarily shall open to traffic such portions of the Project and temporary Roadways as may be agreed upon by the Contractor and Project Manager.

5. **Minimizing Traffic Delays:** Two-way traffic shall be maintained at all times unless the Contract Documents or the Project Manager permits one-way traffic. The Contractor shall not stop traffic without the Project Manager's permission.

   If one-way traffic is permitted, the Contractor shall provide certified flaggers to direct the traffic. When specified in the Contract as a Pay Item, pilot vehicles shall be furnished in accordance with the requirements of Section 512 of *VDOT's Road and Bridge Specification*. Upon the Contractor's request and where deemed appropriate by the City, the City will install traffic signals that may be used for the control of one-way traffic. The Contractor shall pay the costs of installation, electrical service, maintenance, or repair work and a predetermined rental charge per Day for the signals and removal when no longer needed.

6. **Connections and Entrances:** Connections with other Roads and public and private entrances shall be kept in a reasonably smooth condition at all times.

Stabilization or surfacing Material shall be applied to connections and entrances. When specified in the Contract, such Material will be paid for at the Contract unit price for the specific Material. Where such Material is not specified in the Contract and determined to be required by the Project Manager, the cost for stabilization or surfacing Material will be handled in accordance with the provisions of Section 109.05.

The Contractor shall schedule construction operations so that approved continuous access is provided for all property adjacent to the construction when the property is shown on the Plans to require access. Frontage Roads shown on the Plans shall be constructed prior to the closing of any access routes unless other approved access is provided and is acceptable to the property owner.

The Contractor shall not disturb connections or entrances until necessary. Once disturbed, the Contractor shall maintain and complete connections or entrances as follows:

a. **Connections:** Connections that had an original paved surface shall be brought to a grade that smoothly and safely will accommodate vehicular traffic through the intersection, using temporary pavement as soon as practicable after connections are disturbed. Connections that had an original unpaved surface shall be brought to a grade that smoothly and safely will accommodate vehicular traffic through the intersection, using either the required Material or a temporary aggregate stabilization course, that shall be placed as soon as practicable after connections are disturbed.

   If there are delays in prosecution of Work for connections, connections that originally were paved shall have at least two (2) lanes maintained with a temporary paved surface. Those that originally were not paved shall be maintained with a temporary aggregate stabilization course.

b. **Entrances:** Entrances shall be graded concurrently with the Roadway with which they intersect. Once an entrance has been disturbed, it shall be completed as soon as practicable, including placing the required base and Surface Course or stabilization. If the entrance must be constructed in stages, such as when there is a substantial change in the elevation of the Roadway with which it intersects, the surface shall be covered with a temporary aggregate stabilization course or other suitable salvaged Material until the entrance can be completed and the required base and surface or stabilization course can be placed.

7. **Obstruction Crossing Roadways:** Where the Contractor places obstructions such as suction or discharge pipes, pump hoses, steel plates, or any other obstruction that must be crossed by vehicular traffic, it shall be bridged as directed by the Project Manager at the Contractor's expense. Traffic shall be protected by the display of warning devices both day and night. If operations or obstructions placed by the Contractor damage an existing traveled Roadway, the Contractor shall cease operations and repair damages to the Roadway at no additional cost to the City.

8. **Patching Operations:** Where existing hydraulic cement concrete pavement is to be patched, the operation of breaking and excavating old pavement shall extend for a distance of not more than two (2) miles. Patching shall be coordinated with excavating so that an area of not more than one-half mile in which excavated patches are located shall be left at the end of any day's work. Necessary precautions shall be taken to protect traffic during patching operations.

9. **Temporary Structures:** The Contractor shall construct, maintain, and remove Temporary Structures and approaches necessary for use by traffic. Unless otherwise specified in the Contract, the cost of these operations shall be included in Pay Items for the new Structure. After new Structures have been opened to traffic, Temporary Structures and approaches shall be removed. The Materials contained therein shall remain the property of the Contractor.

The proposed design of Temporary Structures shall be submitted to the Project Manager prior to the beginning of construction in accordance with the requirements of Section 105.10.

10. **Haul Route:** The Contractor shall select haul routes between the Project and Material source(s) that will minimize disturbance to the community. The Contractor shall furnish to the Project Manager, for review, its plan for the haul route and for minimizing the adverse effects of hauling operations on persons who reside adjacent to the haul route or persons who otherwise use a portion of the haul route for ingress or egress to its residential or work area. The City may select alternate haul routes, divide the hauling traffic over several routes, and impose other restrictions deemed necessary to minimize the impact of the hauling operation on local residents.

11. **Opening Sections of Projects to Traffic:** Certain sections of the Work may be opened to traffic when specified in the Contract or when directed by the Project Manager. Such opening shall not constitute acceptance of the Work or any part thereof or a waiver of any provision of the Contract.

    On any section of the Work opened by order of the Project Manager where the Contract does not provide for traffic to be carried through the Work, the Contractor will not be required to assume any expense entailed in maintaining the Road for traffic. The City will pay such expense or will compensate the Contractor in accordance with the requirements of Section 109.05. Repair of slides and repair of damage attributable to traffic will be compensated for in accordance with the requirements of Section 109.05. Slides shall be removed by the Contractor in accordance with the requirements of Section 303 of *VDOT's Road and Bridge Specifications*.

    On any section of the Work opened by order of the Project Manager where the Contract does not provide for traffic to be carried through the Work, any additional cost incurred to complete other items of Work solely because of the changed working conditions will be compensated according to the requirements of Section 109.05.

    If the Contractor is not prosecuting the Work to the Project Manager's satisfaction, the Contractor shall not be relieved of the responsibility for maintenance of the completed Work continuously during the period that the section of the Work is opened to traffic prior to Final Acceptance. The Contractor shall be responsible for any expense resulting from the opening of such portions of the Work under these circumstances, except for slides. The Contractor shall conduct the remainder of the construction operations so as to cause the least obstruction to traffic.

(c) **Maintenance of Work**

1. The Contractor shall maintain the Work, the Project site, Construction Area, and Roadway from the beginning of construction operations until Final Acceptance with adequate Equipment and forces to keep the Roadway and Structures in a safe and satisfactory condition at all times and to ensure the continuous and effective day-by-day prosecution of the Work. The City shall perform maintenance of items outside of the scope of Work of the Contract. As determined by the Engineer, where maintenance is necessary within the Project limits but does not affect Contract Work, and not the result of any failure or fault of the Contractor and due to causes beyond the Contractor's control, the cost to perform such maintenance will be handled according to the provisions of Section 109.05.

   If any damage is sustained by an accepted unit or portion of the Project attributable to causes beyond the Contractor's control, the Project Manager may authorize the Contractor to make the necessary repairs. These repairs will be paid for at the Contract price for the items requiring repair. In the absence of Contract prices covering the items of repair, the repair work will be paid for in accordance with the requirements of Section 109.05.

2. Where the Contract specifies placing a course on another course or Subgrade of Embankment, base, Subgrade, concrete, asphalt pavement, or other courses previously constructed, the Contractor shall

maintain the courses or Subgrades previously constructed in accordance with the Contract requirements when placing such course. This maintenance includes, but is not limited to draining, re-compacting, re-grading, or if unacceptable or destroyed, the removal of Work the City previously accepted.

3. **Grading Operations:** When the Contractor elects to complete the rough grading operations for the entire Project or exceed the length of one full day's surfacing operations, the rough grade shall be machined to a uniform slope from the top edge of the existing pavement to the ditch line.

   When the surface is to be widened on both sides of the existing pavement, construction operations involving grading or paving shall not be conducted simultaneously on sections directly opposite each other.

   The surface of pavement shall be kept free from soil and other Materials that might be hazardous to traffic. Prior to opening of new pavement to traffic, Shoulders shall be roughly dressed for a distance of 3 feet from the edge of the paved surface.

(d) **Maintenance Cost**

The Contractor shall bear all costs of performing maintenance work before Final Acceptance, and of constructing and maintaining necessary approaches, crossings, intersections, and other features without direct compensation except as provided for herein. When the Contractor confines its operation to the surface of the Roadway and reasonable width of the Shoulder and the surface is disturbed or damaged by its operations or Equipment, the Contractor shall be responsible for the restoration and maintenance of the surface that is disturbed or damaged.

(e) **Failure To Maintain Roadway or Structures:** If the Contractor fails to remedy unsatisfactory maintenance immediately after receipt of a notice by the Project Manager, the Project Manager may proceed with adequate forces, Equipment, and Material to maintain the Project. The cost of the maintenance, plus twenty-five percent (25%) for supervisory and administrative personnel, will be deducted from monies due the Contractor for the Project.

105.15—Removing and Disposing of Structures and Obstructions

The Contractor shall remove and dispose of or store, as directed by the Project Manager, fences, buildings, Structures, or encumbrances within the Construction Limits unless separate Pay Items for this Work are included in the Contract. Payment for these operations will be in accordance with the requirements of Section 301.03 of *VDOT's Road and Bridge Specifications*. Materials so removed, including existing drains or pipe Culverts, shall become the property of the Contractor, with the exception of those Materials to be stored or delivered to the City or others as designated in the Contract.

(a) **Signs:** The Contractor shall relocate all signs within the Construction Limits that conflict with construction Work as approved by the Project Manager. Signs that are not needed for the safe and orderly control of traffic during construction as determined by the Project Manager shall be removed and stored at a designated location within the Project limits. The removed signs shall be stored above ground in a manner that will preclude damage and shall be reinstalled in their permanent locations prior to Final Acceptance. If any of the removed signs are not to be reinstalled, the Contractor shall notify the Project Manager at the time the signs have been properly stored. Such signs will be removed from the storage area by the City. Any sign that is damaged or lost because of the fault of the Contractor shall be repaired or replaced at the Contractor's expense. Costs for removing, storing, protecting, and reinstalling such signs shall be included in the price bid for other items in the Contract, and no additional compensation will be made.

(b) **Mailboxes and Newspaper Boxes:** When removal of existing mailboxes and newspaper boxes is made necessary by construction operations, the Contractor shall place them in temporary locations so that access to them will not be impaired. Prior to Final Acceptance, boxes shall be placed in its permanent locations as designated by the Project Manager and left in the same condition as when found. Boxes or box supports that are damaged due to the Contractor's negligence shall be replaced at its expense. The cost of removing and resetting existing boxes shall be included in other Contract Pay Items. New mailboxes designated in the Plans shall be paid for in accordance with the provisions of Section 521 of *VDOT's Road and Bridge Specifications*.

105.16—Cleanup

Removal from the Project of rubbish, scrap Material, and debris caused by the Contractor's personnel or construction operations shall be a continuing process throughout the course of the Work. The work site shall be kept in a neat, safe, and orderly condition at all times.

Before Final Acceptance, the Highway, Borrow pits, quarries, Disposal Areas, storage areas, and all ground occupied by the Contractor in connection with the Work shall be cleaned of rubbish, Surplus Materials, and Temporary Structures, except where the Contractor owns or controls the property. All parts of the Work shall be left in a neat, safe, and orderly condition.

Within thirty (30) Days after Final Acceptance, the Contractor shall remove its Equipment, Materials, and debris from the Right of Way and from property adjacent to the Project that it does not own or control.

105.17—Inspection of Work

Inspection will be performed at critical stages. However, all stages, Materials, and details of the Work are subject to inspection. The Contractor shall provide the Project Manager and Inspectors full and safe access to all parts of the Work. The Contractor shall furnish the Project Manager and Inspectors such information and assistance as required to make complete, timely, and detailed inspections. The Project Manager, Inspectors, and their appointed representatives shall have ready access to machines, plants, and plant Equipment used in processing or placing Materials.

Prior to the beginning of operations, the Project Manager will meet with the Contractor to establish an understanding of the critical stages of Work that shall be performed in the presence of the Inspector. In order for the City to schedule inspection of the critical stages of Work, the Contractor shall keep the Project Manager informed of planned operations in accordance with the requirements of Section 108.03. The Contractor shall advise the Project Manager at least twenty-four (24) hours in advance of any changes in the Contractor's planned operations or critical stage Work requiring City inspection.

If the Project Manager requests it, the Contractor shall remove or uncover such portions of the finished Work as may be directed at any time before Final Acceptance. The Contractor shall restore such portions of the finished Work to comply with the appropriate Contract specification requirements. If the Work exposed is acceptable, the uncovering or removing and replacing the covering or making good the parts removed will be paid for as Extra Work in accordance with the requirements of Section 104.02. If the Work is unacceptable, the cost of uncovering or removing and replacing the covering or making good the parts removed shall be borne by the Contractor.

When any unit of government, political subdivision, or public or private Corporation is to pay a portion of the cost of the Work specified in the Contract, its representatives shall have the right to inspect such Work. The exercise of this right shall not be construed as making them a party or parties to the Contract or conferring on them the right to issue instructions or orders to the Contractor.

If Materials are used or Work is performed without inspection by an authorized representative of the City, the Contractor may be ordered to remove and replace such Work or Material at its own expense unless the City's representative failed to inspect the Work or Material after having been given reasonable notice in writing that the Material was to be used or the Work was to be performed.

If an inspection reveals that Work has not been properly performed, or Materials used are unacceptable, the Contractor will be so advised; and it shall immediately inform the City of its schedule for correcting such Work and Materials and the time within which a reinspection may be made.

Any inspections, examinations, or testing performed pursuant to this Section are for the sole benefit of the City and not for the benefit of the Contractor. The Contractor may not rely upon any statement, act, failure to act, or failure to properly perform inspections or other such duties on the part of the Project Manager, the Inspectors, their representatives, or the City's other Inspectors and/or testing entities. A statement, act, or failure to act, or failure to properly perform inspections or other duties on the part of the Project Manager, the Inspectors, their representatives, or the City's other Inspectors and/or testing entities shall not in any way excuse, or constitute, or imply acceptance of unacceptable Work or improper performance of the Contract by the Contractor, or relieve the Contractor from its sole responsibility for performing the Work in accordance with the requirements of the Contract and shall not be the basis for a Claim, cause of action, or right to sue the City.

105.18—Removal of Unacceptable and Unauthorized Work

Work that does not conform to the requirements of the Contract, whether the result of unacceptable workmanship, use of unacceptable Materials, damage through carelessness, or any other cause within the Contractor's control, will be considered unacceptable Work.

Unacceptable Work shall be remedied or removed as determined by the Project Manager and replaced in an acceptable manner at the Contractor's expense. The Project Manager may accept the unacceptable Work at a reduced price when acceptance is considered to be in the best interest of the public.

Work that is done contrary to the instructions of the Project Manager, contrary to the requirements of the Contract, beyond the lines shown on the Plans or as designated by the Project Manager, except as specified herein or without authority, will be considered unauthorized and will not be paid for. The Project Manager may order the Contractor to remove or replace unauthorized Work at the Contractor's expense.

The Contractor shall not perform destructive sampling or testing of the Work without written authorization of the Project Manager. Unauthorized destructive sampling or testing will cause the Work to be considered unacceptable.

In the event the Contractor is granted authorization to perform destructive sampling or testing, the Contractor shall obtain the approval of the Project Manager for the method and location of each test prior to beginning such sampling or testing. In addition, destructive sampling and testing shall be performed in the presence of the Project Manager.

If the Contractor fails to comply immediately with any order of the Project Manager made under the provisions of this Section, the Project Manager will have the authority to cause unacceptable or unauthorized Work to be removed and replaced and to deduct the cost of such removal and replacement, plus twenty-five percent (25%) for supervisory and administrative personnel, from any monies due or to become due the Contractor.

105.19—Submission and Disposition of Claims

(a) **Notice of Intent to File a Claim**

Early or prior knowledge by the City of an existing or impending Claim for damages could alter the Plans, scheduling, or other City action or result in mitigation or elimination of the basis for the Claim. Therefore,

the Contractor shall submit a written statement describing the act of omission or commission by the City or its agents that allegedly caused damage to the Contractor and the nature of the claimed damage to the Project Manager at the time of each and every occurrence that the Contractor believes to be the basis of a Claim or prior to the beginning of the Work upon which a Claim and any subsequent action will be based. "Occurrence" includes but is not limited to the Project Manager's denial of the Contractor's timely request for time extension, additional compensation, Change Order, Adjustment, or other request under the Contract, or any other decision, instruction, directive, or order that the Contractor believes will result in a Claim. The written statement shall inform the City clearly that it is a "notice of intent to file a Claim." If such damage is deemed certain, in the opinion of the Contractor, to result from its acting on an order from the Project Manager, it immediately shall take written exception to the order. Submission of a notice of intent to file a Claim as specified shall be mandatory and shall be signed by a person duly authorized. Failure to submit such notice of intent shall be a conclusive waiver to such Claim for damages by the Contractor. An oral notice or statement will not be sufficient nor will a notice or statement after the event. Oral statements recorded in meeting minutes also will not be sufficient.

In addition, at the time of each and every occurrence that the Contractor believes to be the basis of a Claim or prior to beginning the Work upon which a Claim and any subsequent action will be based, the Contractor shall furnish the Project Manager an itemized list of Materials, Equipment, and labor for which additional compensation will be claimed. Only Actual Cost for Materials, labor, and Equipment will be considered. The Contractor shall afford the Project Manager every facility for keeping an Actual Cost record of the Work. The Contractor and the Project Manager shall compare records and bring them into agreement at the end of each day. The Contractor's failure to afford the Project Manager proper facilities for keeping a record of Actual Costs will constitute a waiver of a Claim for such extra compensation except to the extent that it is substantiated by the City's records. The filing of such notice of intent by the Contractor and the keeping of cost records by the Project Manager shall in no way establish the validity of a Claim.

(b) **Time for Submittal of Claim**

Upon completion or termination of the Contract, the Contractor may, within sixty (60) Days after the final estimate date established by the City, deliver to the City Engineer a certified written Claim, which must be a signed original Claim document, along with three (3) legible copies of the Claim document, for the amount they deem they are entitled to under the Contract. For the purpose of this Section, the final estimate date shall be that date set forth in a letter from the City to the Contractor sent by certified mail and shall be considered as the date of notification of the City's final estimate. Regardless of the manner of delivery of the Claim, the City Engineer must receive and have physical possession of the Contractor's written Claim within the sixty (60) Day period that commences with the final estimate date. Submittals received by the City Engineer either before the final estimate date or after the sixty (60) Day period shall not have standing as a Claim.

(c) **Content of Claim**

The Contractor's certified written Claim shall set forth in detail the facts upon which the Claim is based, including but not limited to the following:

1. A detailed statement of the facts upon which the Claim is based providing items of Work affected and included in each Claim, and the date(s) on which actions or events resulting in the Claim occurred or conditions resulting in the Claim became evident;

2. All pertinent data, documents, and correspondence that may substantiate the Claim. The City shall have the right, at its expense, to review and copy all of the Contractor's non-privileged Project files and documents, both electronic and paper, for use in analyzing the Claim;

3. Identification of the provisions of the Contract that the City allegedly breached, and the acts or omissions constituting such breach;

4. A detailed statement of the amount of the Actual Cost for Materials, labor and Equipment sought in the Claim; and

5. A copy of the notice(s) of intent to file a Claim that the Contractor submitted to the City for the Claim(s).

(d) **Certification of Claim.**

The Contractor shall submit with the Claim a written certification of the Claim in the following form:

(a) Pursuant to the Code of Virginia, I hereby certify that this Contract Claim submission for City of Hampton Project No. _____ in Hampton, Virginia, is a true and accurate representation of additional costs, expenses, damages, and/or delays incurred by _____ (Contractor) or its Subcontractors in the performance of the required Contract Work. Any statements, representations, writings, or documents, made or used and known to be false shall be considered a violation of the Virginia Governmental Frauds Act, punishable as allowed by the Code of Virginia for a Class 6 Felony and shall be considered a violation of the Virginia Fraud Against Taxpayers Act, subject to the civil penalties allowed by the Code of Virginia.

_____ (Contractor)

By: _____
As officer or duly appointed agent of _____ (Contractor)

Title: _____

Date: _____

State Of: _____

City/County of _____, To-Wit:

I, the undersigned, a Notary Public in and for the City/County and State aforesaid, do hereby certify that _____, whose name is signed to the foregoing instrument, bearing date of the_____ day of _____, 20__, has this day acknowledged the same before me in my City/County and State aforesaid.

Given under my hand this _____ day of _____, 20__.

Notary Public: _____
Notary Registration No.: _____
My commission expires: _____

Claims submitted by the Contractor for itself or its Subcontractors during the statutory period for submitting Contract Claims that are submitted without the Contractor's certification described above shall not have standing as a Claim and shall not be considered by the City.

(e) **Non-Recoverable Items**

The City will be liable only for the Actual Cost for Materials, labor and Equipment as provided by the Contract. The *Rental Rate Blue Book* and any other like manuals may not be used to estimate Actual Costs associated with Contractor-owned Equipment. The City will not be liable for lost profits or for consequential damages including but not limited to loss of bonding capacity, loss of income, loss of business or bidding opportunities, loss of credit standing, cost of financing, interest paid, loss of other

work, or insolvency. The City will not be liable for attorneys' fees, Claim consultant fees, Claim preparation expenses, costs of litigation, or pre-judgment or post-judgment interest.

(f) **Review of Claim**

The City Council for the City has not established an administrative procedure meeting the standards of Virginia Code § 2.2-4365; and, accordingly, the City's review of Claims is subject to and shall comply with the relevant provisions of Virginia Code §§ 2.2-4363(A) and (B); which provisions are hereby incorporated by reference as if set forth herein in full.

105.20—City's Recovery Rights After Final Payment

After making final payment, if the City discovers an error in any partial payment, in the final payment, or in the measurement of any quantities of Work, it can recover such sums sufficient to correct the error from the Contractor, its Surety, or both. After final payment, if the City discovers that the Contractor performed unacceptable or unauthorized Work, used unacceptable or unauthorized Materials, or the Work is in any way defective due to the Contractor's fault, breach of Contract, or neglect, the City may demand that the Contractor, its Surety, or both, remove and replace the unacceptable, unauthorized, or defective Work or Materials. If the Contractor or its Surety refuses to remove and replace the unacceptable, unauthorized, or defective Work or Materials, the City may perform the Work, or have the Work performed; and the Contractor and its Surety shall be liable to the City for all costs and damages or every nature relating in any way or degree to the removal and replacement of the unacceptable, unauthorized, or defective Work or Materials, including reasonable attorneys' fees, expert or consultant fees, and any and all litigation costs.

SECTION 106—CONTROL OF MATERIAL

106.01—Source of Supply and Quality Requirements

The Materials used throughout the Work shall conform to the requirements of the Contract. The Contractor shall regulate its supplies so that there will be a sufficient quantity of tested Material on hand at all times to prevent any delay of Work. Except as otherwise specified, Materials, Equipment, and components that are to be incorporated into the finished Work shall be new and fit for its intended purpose. Within thirty (30) Days after notification of Award of the Contract, but not later than seven (7) Days prior to the beginning of construction operations under the Contract, the Contractor shall submit a statement of the known origin, composition, and manufacture of all Materials to be used in the Work, including optional or alternate items. Material requirements not previously reported shall be submitted at least sixty (60) Days prior to its use on the Project, but not less than two (2) weeks prior to delivery. The Contractor's statement shall be submitted electronically by use of Form C-25 and shall be identified by the complete Project number, and all items or component Materials shall be identified by the specific Contract Item number and the Specification reference shown in the Contract.

At the option of the Project Manager, Materials may be approved at the source of supply. If it is found during the life of the Contract that previously approved sources of supply do not supply Materials or Equipment conforming to the requirements of the Contract, do not furnish the valid test data required to document the quality of the Material or Equipment, or do not furnish documentation to validate quantities to document payment, the Contractor shall change the source of supply and furnish Material or Equipment from other approved sources. The Contractor shall notify the City of this change and provide the same identifying information noted in this Section, at least sixty (60) Days prior to its use on the Project, but not less than two (2) weeks prior to delivery.

Materials shall not contain toxic, hazardous, or regulated solid wastes or be furnished from a source containing toxic, hazardous, or regulated solid wastes.

When optional Materials are included in the Contract, the Contractor shall advise the Project Manager in writing of the specific Materials selected. Thereafter, the Contractor shall use the selected Materials throughout the Project unless a change is authorized in writing by the Project Manager. However, when the Contractor has an option as to the type of pipe that may be used, it may use any of the approved types for each size of pipe; but it shall use the same type for a particular line. The Project Manager may authorize other types and sources in an emergency that will not unreasonably delay delivery of the selected Material.

Equipment and Material guaranties or warranties that are normally given by a manufacturer or supplier, or are otherwise required in the Contract, shall be obtained by the Contractor and assigned to the State in writing. The Contractor also shall provide an in-service operation guaranty on all mechanical and electrical Equipment and related components for a period of at least six (6) months, beginning on the date of partial acceptance of that specific item(s) or Final Acceptance of the Project.

106.02—Material Delivery

The Contractor shall advise the Project Manager at least two (2) weeks prior to the delivery of any Material from a commercial source. Upon delivery of any such Material to the Project, the Contractor shall provide the Project Manager with one (1) copy of all invoices (prices are not required). The following Materials also shall comply with the requirements of Section 109.01: asphalt concrete; dense graded aggregate, to include aggregate base, Subbase, and select Material; fine aggregate; open graded coarse aggregate; crusher run aggregate; and Road stabilization aggregate. The printed weights of each load of these Materials, as specified in Section 109.01, shall accompany the delivery, and such information shall be furnished to the Inspector at the Project.

106.03—[Reserved]

106.04—Disposal Areas

The Contractor shall handle and dispose of the Materials specified in this Section in accordance with the following requirements.

(a) **Approved Disposal Areas**

For the purpose of this Section, an approved Disposal Area is defined as that which is owned privately, not operated under a local or State permit. The Contractor shall dispose of Materials not used on the Project off the Right of Way.

If an approved Disposal Area is not designated in the Contract Documents, the Contractor shall obtain the necessary rights to property to be used as an approved Disposal Area. If the Contractor, having shown reasonable effort, is unsuccessful in obtaining the necessary rights to property to be used as an approved Disposal Area, the City will obtain rights for a Disposal Area unless otherwise provided for in the Contract. If not shown in the Contract, compensation will be in accordance with the requirements of Sections 104.02 and 109.05.

Prior to the City approving the Contractor's proposed Disposal Area, the Contractor shall submit a site plan indicating:

1. The location and approximate boundaries of the Disposal Area;

2. Procedures to minimize erosion and siltation;

3. Provision of environmentally compatible screening;

4. Restoration;

5. Cover vegetation;

6. Other use of the disposal site;

7. The drainage pattern on and away from the area of land affected, including the directional flow of water and a certification with appropriate calculations that verify all receiving Channels are in compliance with Minimum Standard 19 of the Virginia Erosion and Sediment Control Regulations;

8. Location of haul Roads and stabilized construction entrances if construction Equipment will enter a paved Roadway;

9. Constructed or natural waterways used for discharge;

10. A sequence and schedule to achieve the approved plan; and

11. The total drainage area for temporary sediment traps and basins shall be shown. Sediment traps are required if the runoff from a watershed area of less than three (3) acres flows across a disturbed area. Sediment basins are required if the runoff from a watershed area of three (3) acres or more flows across a disturbed area. The Contractor shall certify that the sediment trap or basin design is in compliance with *VDOT Standards and Specifications*, all local, State, and federal laws. Once a sediment trap or basin is constructed, the dam and all outfall areas shall be stabilized immediately.

Disposal Areas shall be cleared but need not be grubbed. The clearing Work shall not damage grass, shrubs, or vegetation outside the limits of the approved area and haul Roads thereto. After the Material has been deposited, the area shall be shaped to minimize erosion and siltation of nearby streams and landscaped in accordance with the approved Plan for such Work or shall be used as approved by the Project Manager. The Contractor's design and restoration shall conform to the requirements of the Contract and federal, State, and local laws and regulations.

If the Contractor fails to provide and maintain necessary controls to prevent erosion and siltation, if such efforts are not made in accordance with the approved sequence, or if the efforts are found to be inadequate, the City (i) will withdraw approval for the use of the site, (ii) may cause the Contractor to cease all contributing operations and direct its efforts toward corrective action, or (iii) may perform the Work with City forces or other means as determined by the Project Manager and deduct the cost of performing the Work, plus twenty-five percent (25%) for supervisory and administrative personnel, from monies due or to become due the Contractor.

The Contractor shall furnish the Project Manager a statement signed by the property owner in which the owner agrees to the use of his property for the deposit of Material from the Project. Upon completion of the use of the property as an approved Disposal Area, the Contractor shall furnish the Project Manager a release signed by the property owner indicating that the property has been restored satisfactorily. This requirement will not apply to commercial sources, sources owned by the Contractor, and sources furnished by the City.

(b) **Materials Encountered by the Contractor.** Materials encountered by the Contractor shall be handled and disposed of as follows:

1. Unsuitable Material for the purpose of this Specification is defined as Material having poor bearing capacity, excessive moisture content, extreme plasticity, or other characteristics as defined by the Project Manager that makes it unacceptable for use in the Work and shall be disposed of at an approved Disposal Area, landfill licensed to receive such Material, or as the Project Manager directs in writing.

2. Surplus Material as shown on the Plans shall be disposed of by flattening slopes, used to fill in Ramp gores and Medians, or if not needed, disposed of at an approved Disposal Area, a landfill licensed to receive such Material, or as the Project Manager directs in writing.

   Surplus Material stockpile areas on the Right of Way shall be cleared but need not be grubbed. The clearing Work shall not damage grass, shrubs, or vegetation outside the limits of the approved area and the haul Roads thereto. Placement of fill Material shall not adversely affect existing drainage Structures. If necessary, modified existing drainage Structures, as approved by the Project Manager, shall be paid in accordance with Section 109.05. Within seven (7) Days after the Material has been deposited, the area shall be shaped and stabilized to minimize erosion and siltation.

3. Organic Materials such as, but not limited to, tree stumps and limbs (not considered merchantable timber), roots, rootmat, leaves, grass cuttings, or other similar Materials shall be chipped or shredded and used on the Project as mulch, given away, sold as firewood or mulch, burned at the Contractor's option if permitted by local ordinance, or disposed of at a facility licensed to receive such Materials. Organic Material shall not be buried in State rights-of-way or in an approved Disposal Area.

4. Rootmat for the purpose of this Specification is defined as any Material that, by volume, contains approximately sixty percent (60%) or more roots and shall be disposed of in accordance with subsection (c) herein.

5. Inorganic Materials such as brick, cinder block, broken concrete without exposed reinforcing steel, or other such Material may be used in accordance with Section 303.04 of *VDOT's Road and Bridge*

Specifications or shall be disposed of at an approved Disposal Area or landfill licensed to receive such Materials. If disposed of in an approved Disposal Area, the Material shall have enough cover to promote soil stabilization in accordance with the requirements of Section 303 of *VDOT's Road and Bridge Specifications* and shall be restored in accordance with other provisions of this Section.

Concrete without exposed reinforcing steel, may be crushed and used as rock in accordance with Section 303 of *VDOT's Road and Bridge Specifications*. If approved by the Project Manager, these Materials may be blended with soils that meet AASHTO M57 requirements and deposited in fill areas within the Right of Way in accordance with the requirements of Section 303 of *VDOT's Road and Bridge Specifications* as applicable.

6. Excavated rock in excess of that used within the Project site in accordance with the requirements of Section 303 of *VDOT's Road and Bridge Specifications* shall be treated as Surplus Material.

7. Other Materials such as, but not limited to, antifreeze, asphalt (liquid), building forms, concrete with reinforcing steel exposed, curing compound, fuel, hazardous Materials, lubricants, metal, metal pipe, oil, paint, wood or metal from building demolition, or similar Materials shall not be disposed of at an approved Disposal Area but shall be disposed of at a landfill licensed to receive such Material.

8. Coal or other valuable Materials uncovered during prosecution of the Work that are not addressed specifically by the Contract shall be disposed of as the Project Manager directs in writing.

106.05—Rights For and Use of Materials Found on Project

With the approval of the Project Manager, the Contractor may use in the Project any Materials found in the Excavation that comply with the requirements of the Specifications. Unless otherwise specified, the Contractor will be paid for both the Excavation of such Materials at the Contract unit price and for the Contract Item for which the excavated Material is used. However, the Contractor shall replace at its own expense with other acceptable Material the Excavation Material removed and used that is needed for use in Embankments, Backfills, approaches, or otherwise. The Contractor shall not excavate or remove any Material from within the Construction Limits that is not within the grading limits, indicated by the typical section, slope and grade lines shown in the Plans without written authorization by the Project Manager. The Contractor shall not own and shall not have the right to sell, trade, or exchange any coal or other valuable Materials found on the Project without the Project Manager's specific written authorization.

106.06—Samples, Tests, and Cited Specifications

The Project Manager shall inspect and test Materials before or during its incorporation in the Work. However, the inspection and testing of such Material shall not relieve the Contractor of the responsibility for furnishing Material that conforms to the requirements of the Specifications. The City may retest all Materials that have been accepted at the source of supply after delivery and will reject those that do not conform to the requirements of the Specifications. Stored Material may be re-inspected prior to use. Work in which untested Materials are used without the written permission of the Project Manager may be considered unacceptable.

Unless reference is made to a specific dated Specification, references in these Specifications to AASHTO, ASTM, VTM, and other standard test methods and Materials requirements shall refer to either the test Specifications that have been formally adopted or the latest interim or tentative Specifications that have been published by the appropriate committee of such organizations as of the date of the Notice of Advertisement. Unless otherwise indicated, tests for compliance with Specification requirements will be made by and at the City's expense except that the cost of retests, exclusive of the first retest, shall be borne by the Contractor. The Contractor shall furnish samples at its expense, and those that the Contractor does not test will be tested by a representative of the City.

The inspection cost of structural steel items fabricated in a country other than the continental United States shall be borne by the Contractor. Inspection of structural fabrication shall be performed in accordance with the requirements of the appropriate VTM by a commercial Laboratory approved by VDOT. Additional cleaning or repair necessary because of environmental conditions in transit shall be at the Contractor's expense.

In lieu of testing, the Project Manager may approve the use of Materials based on the receipt of the manufacturer's certification furnished by the Contractor. However, furnishing the certificate shall not relieve the Contractor of the responsibility for furnishing Materials that conform to the requirements of the Specifications or the Contract requirements.

Materials requiring an MSDS will not be accepted at the Project site for sampling or at VDOT's laboratories for testing without the document.

106.07—Plant Inspection

If the Project Manager inspects Materials at the source, the following conditions shall be met:

(a) The Project Manager shall have the cooperation and assistance of the Contractor and producer of the Materials.

(b) The Project Manager shall have full access to parts of the plant that concern the manufacture or production of the Materials being furnished.

(c) For Materials accepted under a quality assurance plan, the Contractor or producer shall furnish Equipment and maintain a plant Laboratory at locations approved for plant processing of Materials. The Contractor or producer shall use the Laboratory and Equipment to perform quality control testing.

The Laboratory shall be of weatherproof construction, tightly floored and roofed, and shall have adequate lighting, heating, running water, ventilation, and electrical service. The ambient temperature shall be maintained between 68°F and 86°F and thermostatically controlled. The Laboratory shall be equipped with a telephone, intercom, or other electronic communication system connecting the Laboratory and scale house if the facilities are not in close proximity to one another. The Laboratory shall be constructed in accordance with the requirements of local building codes.

The Contractor or producer shall furnish, install, maintain, and replace, as conditions necessitate, testing Equipment specified by the appropriate ASTM, AASHTO method, or VTM being used and provide necessary office Equipment and supplies to facilitate keeping records and generating test reports. The Contractor's or producer's technician shall maintain current copies of test procedures performed in the Laboratory. The Contractor shall calibrate or verify all balances, scales, and weights associated with testing performed as specified in AASHTO R18. The Contractor or producer also shall provide and maintain an approved test stand for accessing truck beds for the purpose of sampling and inspection.

For crushed glass, the plant Equipment requirements are waived in lieu of an independent third-party evaluation and certification of crushed glass properties by an AASHTO Materials Reference Laboratory (AMRL)-accredited commercial soil testing Laboratory demonstrating that the supplied Material conforms to the specified requirements of Section 203 of *VDOT's Road and Bridge Specifications*. Random triplicate samples will be evaluated and analyzed for every 1,000 Tons of Material supplied to the Project. The averaged results will be used for evaluation purposes. Suppliers of crushed glass shall maintain third-party certification records for a period of three (3) years.

106.08—Storing Materials

Materials shall be stored in a manner so as to ensure the preservation of its quality and fitness for the Work. When considered necessary by the Project Manager, Materials shall be stored in weatherproof buildings on wooden platforms or other hard, clean surfaces that will keep the Material off the ground. Materials shall be covered when directed by the Project Manager. Stored Material shall be located so as to facilitate its prompt inspection. Approved portions of the Right of Way may be used for storage of Material and Equipment and for plant operations. However, Equipment and Materials shall not be stored within the clear zone of the travel lanes open to traffic.

The Contractor shall provide additional required storage space at its expense. Private property shall not be used for storage purposes without the written permission of the owner or lessee if authorized by the owner. The Contractor shall furnish copies of the owner's or lessee's written permission to the Project Manager. Upon completion of the use of the property, the Contractor shall furnish the Project Manager a release signed by the property owner or lessee indicating that the property has been restored satisfactorily.

Chemicals, fuels, lubricants, bitumens, paints, raw sewage, and other harmful Materials as the Project Manager determines shall not be stored within any floodplain unless no other location is available and only then shall the Material be stored in a secondary containment Structure with an impervious liner. Also, any storage of these Materials in proximity to natural or man-made drainage conveyances or otherwise where the Materials potentially could reach a waterway if released under adverse weather conditions must be stored in a bermed or diked area or inside a container capable of preventing a release. Double-walled storage tanks shall meet the berm/dike containment requirement except for storage within flood plains. Any spills, leaks, or releases of such Materials shall be addressed in accordance with Section 107.16(b). Accumulated rain water also may be pumped out of the impoundment area into approved dewatering devices.

106.09—Handling Materials

Materials shall be handled in a manner that will preserve its quality, integrity, and fitness for the Work. Aggregates shall be transported in vehicles constructed to prevent loss or segregation of Materials.

106.10—Unacceptable Materials

Materials that do not conform to the requirements of the Contract Documents shall be considered unacceptable. Such Materials, regardless of whether in place, will be rejected and shall be removed from the site of the Work and replaced at no cost to the City. If it is not practical for the Contractor to remove rejected Material immediately, the Project Manager will mark the rejected Material for identification. Rejected Material whose defects have been corrected shall not be used until the Project Manager gives written approval for its use. Upon the Contractor's failure to comply promptly with any order of the Project Manager made under this Section, in addition to other rights and remedies, the Project Manager may have the unacceptable Material removed and replaced, and deduct the cost of such removal and replacement, plus twenty-five percent (25%) for supervisory and administrative personnel, from monies due or to become due the Contractor.

106.11—Material Furnished by the City

The Contractor shall furnish all Materials required to complete the Work except those specified to be furnished by the City.

Material furnished by the City will be delivered or made available to the Contractor at the points specified in the Contract. The cost of handling and placing Materials after delivery to the Contractor shall be included in the Contract price for the Contract Item with which they are used.

After receipt of the Materials, the Contractor shall be responsible for Material delivered to it, including shortages, deficiencies, and damages that occur after delivery and any demurrage charges.

106.12—Critical Materials

Raw or manufactured Materials or supplies that are necessary for the fabrication, construction, installation, or completion of any item of Work that is, or becomes, in extremely short supply regionally or nationally as substantiated by recognized public reports such as news media, trade association journals, or government reports, due to catastrophic events of nature, needs of national defense, or industrial conditions beyond the control of the City or Contractor, will be declared critical Materials by the City. When the supply of Materials becomes critical, the provisions of this Section will become applicable to the Contract.

When the Contractor completes all items of Work involving noncritical Materials, or the Work has progressed to a point where no further Work is practicable prior to receipt of critical Materials, the City will grant a complete Suspension of Work. Requests for partial Suspension orders because of delays attributable to nonreceipt of critical Materials will be considered on the basis of merit in each case.

The City reserves the right to substitute critical Materials or methods by means of a Change Order. Contractors, via its' manufacturers or suppliers, requesting relief due to critical shortage of Materials as specified in this Section immediately shall supply information and other supporting data to permit the City an opportunity to assess possible alternatives or methods to avoid undue delay or expenditure.

SECTION 107— LEGAL RESPONSIBILITIES

107.01—Laws To Be Observed

The Contractor shall keep fully informed of federal, State, and local laws, bylaws, ordinances, orders, decrees, and regulations of governing bodies, courts, and agencies having any jurisdiction or authority that affects those engaged or employed on the Work, the conduct of the Work, or the execution of any documents in connection with the Work. The Contractor shall observe and comply with such laws, ordinances, regulations, orders, or decrees and shall defend, indemnify, and hold harmless the City and its agents, officers, or employees from and against any Claim for liability, fine, penalty, or cost, including attorney's fees, arising from or based on the Contractor's violation, whether by itself, its agents, employees, or Subcontractors. The Contractor shall execute and file the documents, statements, certifications, and affidavits required under any applicable federal or State law or regulation required by or affecting its Bid, or the Contract, or prosecution of the Work thereunder. The Contractor shall permit examination of any records made subject to such examination by any federal, State, local law or by regulations promulgated thereunder by any State or Federal Agency charged with enforcement of such law.

107.02—Permits, Certificates, and Licenses

(a) **General**

The Contractor shall conform to the permit conditions as shown in the Contract Documents. Construction methods shall conform to the stipulations of the permit or certification conditions, or both. The Contractor shall assume all obligations and costs incurred as a result of complying with the terms and conditions of the permits and certificates.

(b) The Contractor shall not stockpile Materials (including fill, construction debris, and excavated and woody Materials) within the waterway or wetlands. The Contractor shall construct cofferdams, stream Channel retaining Structures, and all necessary dikes using non-erodible Materials or if specified in the permit(s), faced with coarse non-erodible Materials. If faced with non-erodible Material, filter cloth shall be placed between the granular fill and riprap in accordance with Section 245, 204, 303.03 and 414 of *VDOT's Road and Bridge Specifications*. Temporary Structures shall be removed from the waterway with minimal disturbance of the streambed. Discharge of dredge or fill Material shall be placed in accordance with the best management practice, Project permits, and all applicable laws and regulations. Dredged or fill Material shall be removed to an approved, contained, upland location in accordance with Section 106.04. The Disposal Area will be of sufficient size and capacity to properly contain the dredge Material to allow for adequate dewatering and settling of sediment, and to prevent overtopping. The Disposal Area shall be stabilized prior to placement of dredge Material.

(c) The Contractor's activities shall not disrupt substantially the movement of those species of aquatic life indigenous to the water body including those species that normally migrate through the area. The Contractor, to the maximum extent practicable, shall not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water. The Contractor shall avoid and minimize all temporary disturbances to surface waters during construction. The Contractor shall remove any temporary fill in its entirety, and the affected areas returned to its preexisting elevation conditions within thirty (30) Days of completing the Work, which shall include re-establishing pre-construction contours and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The Contractor shall perform all Work activities during low-flow conditions and shall isolate the Construction Area via the implementation of non-erodible cofferdams, sheet piling, stream diversions, or similar Structures.

(d) The Contractor shall accomplish all construction, construction access (*e.g.*, cofferdams, sheet piling, and causeways) and demolition activities associated with this Project in a manner that minimizes construction

or waste Materials from entering surface waters. Access Roads and associated Bridges or Culverts shall be constructed to minimize the adverse effects on surface waters. Access Roads constructed above preconstruction contours and elevations in surface waters must be bridged or culverted to maintain surface flows. All Utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area shall be returned to its original contours and restored within thirty (30) Days of completing Work in the area.

(e) The Contractor shall prepare and implement an Erosion and Sediment Control Plan in compliance with the Erosion and Sediment Control Law, the Erosion and Sediment Control Regulations, and the annual erosion and sediment control standards and Specifications approved by the Virginia Department of Environmental Quality (DEQ). The Contractor shall stockpile excavated Material in a manner that prevents reentry into the stream, restores original streambed and streambank contours, revegitates barren areas, and implements strict erosion and sediment control measures throughout the Project period.

(f) The Contractor shall comply with the Stormwater Management Act, the Stormwater Management Regulations, and the annual stormwater management standards and Specifications approved by DEQ. The Contractor shall provide fill Material that is clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations. The Contractor shall comply with all applicable Federal Emergency Management Agency (NEMA) approved State or local floodplain management requirements.

(g) The Contractor shall adhere to any time-of-year restriction conditions required by local, State, and federal permitting agencies. No in-stream Work shall be permitted during in-stream time-of-year restriction.

(h) The Contractor shall prohibit wet or uncured concrete or concrete waste from demolition from entry into flowing surface waters. The Contractor shall not dispose of excess or waste concrete in surface waters and prevent wash water from discharging into surface waters. The Contractor shall employ measures to prevent spills of fuels or lubricants into federal, State, local, and private waters.

(i) The Contractor shall not violate the water quality standards when performing construction activities. The Contractor shall not alter the physical, chemical, or biological properties of surface waters and wetlands or make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses.

(j) The Contractor shall not proceed with Work covered by a permit until the Work is released in writing by the Project Manager.

(k) If the City has not released Work covered by a permit and the Contractor believes that it has completed all other Work according to the Contract, it may request Partial Acceptance of such Work according to Section 108.09 excluding that portion of the Work encumbered by the permit. If the Project Manager determines that all of the completed Work is acceptable, the Project Manager will notify the Contractor in writing according to Section 108.09. The City either may continue or terminate the remaining portion of the Contract according to Section 108.08.

(l) [Reserved].

(m) [Reserved]

(n) The Contractor shall permit representatives of State and federal environmental regulatory agencies to make inspections at any time in order to ensure that the activity being performed under authority of the permit(s) is in accordance with the terms and conditions prescribed herein.

107.03—Federal-Aid Provisions

When the U.S. government pays all or any portion of the cost of a Project, the Contractor shall comply with the federal laws, rules, and regulations made pursuant to such laws applicable to the Project. The Work shall be subject to inspection by the appropriate Federal Agency. Such inspection shall in no sense make the federal government a party of the Contract and will in no way interfere with the rights of either party to the Contract. For federally aided Projects, the provisions contained in Form FHWA-1273, and other federal provisions incorporated into the Contract must be made a part of, and physically incorporated into, all Subcontracts so as to be binding in those agreements.

107.04—Furnishing Right of Way

The City will secure necessary rights of way and Easements in advance of construction. The City will not be responsible for delays outside its control in acquiring rights of way or Easements, and the Contractor shall not be compensated for any such delay other than consideration of an extension of time. The City will provide notification of known delays in the Invitation to Bid to assist Bidders in planning the Work and composing its Bids. Without the City being a party to the agreement, the Contractor shall acquire Easements for temporary uses and detours the Contractor requests in lieu of a detour within the Right of Way or Easement area.

107.05—Patented Devices, Materials, and Processes

If the Contractor employs any design, device, Material, or process covered by a patent or copyright outside the requirements of the Contract, it shall provide for its use by obtaining a legal agreement with the patentee or owner. The Contractor and the Surety shall defend, indemnify, and save harmless the City, any affected third party, or political subdivision from and against any and all Claims, lawsuits, or legal actions for infringement because of such use. The Contractor shall indemnify the City for costs, expenses, or damages, including attorneys' fees, resulting from infringement during prosecution or after completion of the Work.

107.06—Personal Liability of Public Officials

In carrying out any of the provisions of these Specifications or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the City, City Manager, Project Manager, or their authorized representatives, either personally or as officials of the City. In all such matters, they act solely as agents and representatives of the City

107.07—No Waiver of Legal Rights

The City shall not be precluded or estopped by any measurement, estimate, approval, acceptance, or certificate made either before or after Final Acceptance of the Work, or payment therefor, from showing (1) the true amount and character of the Work performed and Materials furnished by the Contractor; (2) that any such measurement, estimate, acceptance, certificate, or payment is untrue or incorrectly made; or (3) that the Work or Materials do not comply with the requirements of the Contract. The City shall not be precluded or estopped, notwithstanding any such measurement, estimate, approval, acceptance, certificate, or payment in accordance therewith, from recovering from the Contractor or its Surety, or both, such cost or damage as the City may sustain by reason of the Contractor's failure to comply with the requirements of the Contract. The City's acceptance of the whole or any part of the Work, or the City's payment for the whole or any part of the Work, or the City's granting of any extension of time, or the City's taking any possession of any part of the Work shall not operate as a waiver of any portion of the Contract or of any right or power herein reserved, or of any right to costs or damages. The City's express written waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

107.08—Protecting and Restoring Property and Landscape

The Contractor shall preserve property and improvements along the boundary lines of and adjacent to the Work unless its removal or destruction is specified in the Contract Documents. The Contractor shall use suitable precautions to prevent damage to such property.

When the Contractor finds it necessary to enter on private property, beyond the limits of the construction Easement shown on the Plans, it shall secure from the owner or lessee (if authorized by the owner) written permission for such entry prior to moving thereon. An executed copy of this permission shall be furnished to the Project Manager.

The Contractor shall be responsible for any damage or injury to property during the prosecution of the Work resulting from any act, omission, neglect, or misconduct in the Contractor's method of executing the Work or attributable to defective Work or Materials. This responsibility shall not be released until Final Acceptance of the Project and a written release from the owner or lessee of the property is obtained.

When direct or indirect damage is done to property by or on account of any act, omission, neglect, or misconduct in the Contractor's method of executing the Work or in consequence of the nonexecution thereof on the part of the Contractor, the Contractor shall restore such property to a condition similar or equal to that existing before such damage was done by repairing, rebuilding, or restoring, as may be directed by the Project Manager, or shall make a settlement with the property owner for such property damage. The Contractor shall secure from the owner a written release from any Claim against the City without additional compensation therefor. A copy of this release shall be furnished the Project Manager.

107.09—Contractor's Responsibility for Utility Property and Services

At points where the Contractor's operations are on or adjacent to the properties of any Utility, including railroads, and damage to which might result in expense, loss, or inconvenience, Work shall not commence until arrangements necessary for the protection thereof have been completed.

The Contractor shall cooperate with the Utilities so that removal and Adjustment operations may progress in a timely, responsible, and reasonable manner, duplication of Adjustment Work may be reduced to a minimum, and services rendered by those parties will not be interrupted unnecessarily.

If any Utility service is interrupted as a result of accidental breakage or of being exposed or unsupported, the Contractor promptly shall notify the proper authority and shall cooperate fully with the authority in the restoration of service. If Utility service is interrupted, repair work shall be continuous until service is restored. No Work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority. When the Contractor's Work operations require the disconnection of "in service" fire hydrants, the Contractor shall notify the City's fire department or communication center at least twenty-four (24) hours prior to disconnection. In addition, the Contractor shall notify the City's fire department or communications center no later than twenty-four (24) hours after reconnection of such hydrants. The Contractor shall be responsible for any damage to Utilities that, in the investigation and determination of the Project Manager, is found to be attributable to the Contractor's neglect, means, or methods of performing the Work.

Nothing in this Section shall be construed to be in conflict with the provisions of Section 107.08.

The Contractor shall comply with all requirements of the Virginia Underground Utility Damage Prevention Act (the Miss Utility law). The Contractor shall not make or begin any Excavation or demolition without first notifying the Miss Utility notification center for the area where the Project is located. The Contractor shall wait to begin its Excavation or demolition until 7:00 a.m. on the third working day following the Contractor's notice to the notification center, unless the underground Utilities cannot be marked within that time due to extraordinary circumstances. The Contractor may commence Excavation or demolition Work only if confirmed through the

Ticket Information Exchange (TIE) System, or the Contractor is notified directly, that all applicable Utilities have either marked its underground line locations or reported that no lines are present in the Work vicinity.

107.10—Restoration of Work Performed by Others

The City may construct or reconstruct any Utility service within the Construction Limits or grant a permit for the same at any time. The Contractor shall not be entitled to any damages occasioned thereby other than a consideration of an extension of time unless the Contractor's Work is damaged, altered, or impeded by the condition.

When authorized by the Project Manager, the Contractor shall allow any person, Firm, or Corporation to make an opening in the Highway within the limits of the Project upon presentation of a duly executed permit from the City or any municipality for sections within its corporate limits. When directed by the Project Manager, the Contractor shall satisfactorily repair portions of the Work disturbed by the openings. The Work for such repairs, as the Project Manager authorizes and directs, will be paid for in accordance with the requirements of Section 109.05 and shall be subject to the same conditions as the original Work performed.

107.11—[Reserved]

107.12—Responsibility for Damage Claims

(a) The Contractor shall defend, indemnify, and save harmless the City, its respective officers, agents, and employees in which the Work is performed and its respective officers, agents, and employees, from and against any suits, actions, or Claims for costs, expenses or damages, including attorneys' fees, brought for or on account of any injuries or damages received or sustained by any persons or property resulting from or arising out of the following:

1. the Work performed by the Contractor;

2. by or in consequence of any neglect in safeguarding the Work by the Contractor;

3. through the use of unacceptable Materials in the construction or the improvement; or

4. resulting from any act, omission, neglect, or misconduct of the Contractor.

The City Manager may retain as much of the monies due or to become due the Contractor under and by virtue of its Contract as the City considers necessary to ensure that a fund will be available to pay a settlement or judgment of such suits, actions, or Claims. If no monies are due to the Contractor from the City, the Contractor's Surety and insurers will be held accountable until all such suits, Claims, and actions have been settled and suitable evidence to that effect has been furnished the City. Any extension of time granted the Contractor in which to complete the Contract shall not relieve it or its Surety of this responsibility.

(b) It is not intended by any of the provisions of any part of the Contract to establish the public or any member thereof as a third party beneficiary of the Contract, or to authorize anyone not a party to the Contract to enter into a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

(c) The Contractor shall comply with all requirements, conditions, and terms of the Contract, including but not limited to, environmental permits, commitments identified in the Contract, and applicable environmental laws and regulations. The Contractor shall not cause damage, except as allowed under the terms of the Contract, or as allowed under applicable permits or laws, to the air, water, soil, or other natural resources, or cause damage to adjacent or off-site property.

When any act, omission, or Work performed or neglected by other action of the Contractor occurs that violates the requirements, conditions, or terms of the Contract and affects the health, safety, or welfare of the public or natural resources, the Project Manager will direct the Contractor to take prompt action to repair, replace, or restore the damage or injury within a time frame established by the Project Manager, and to comply with the requirements of Section 107.01. If the Contractor fails to make such repair, replacement, or restoration within the established time frame, the Project Manager will have the damage or injury repaired, replaced, or restored and will deduct the cost of such repair, replacement, or restoration from monies due or to become due the Contractor.

(d) If the City determines by its own investigation that injury or damage has occurred as a result of an act, omission, or Work performed or neglected by the Contractor, the City may suspend the Contractor from future bidding for a period of time commensurate with the severity of the injury or damage as determined by the Project Manager. "Injury" is defined as harm or impairment to persons, property, or natural resources. "Damage" is defined as the loss or harm resulting from an injury. In addition, the City may recover either (i) the loss or damage that the City suffers as a result of such act, omission, or other action; or (ii) any Liquidated Damages established in such Contract; plus (iii) reasonable attorney's fees, expert witness fees, staff salaries, incidental, and Equipment charges associated with any investigation.

Upon the City's determination that injury or damage has occurred as a result of an act, omission, or Work performed or neglected by the Contractor, the Contractor shall be responsible for and shall reimburse the City for all expenses associated with the injury or damage. Expenses include, but are not limited to, costs for investigating the injury or damage, financial penalties incurred by the City as a result of the injury or damage, salary and expenses incurred by employees or consultants of the City, Road user expenses as determined by the City due to damage or loss of use of the Project area, attorneys' fees, and expert witness fees. The City may deduct the reimbursement of expenses from any payments due or to become due the Contractor.

Upon determination by the City of willful, flagrant, or repetitious acts, omissions, or Work performed or neglected by the Contractor related to injury or damage as provided in this Section, in addition to reimbursing the City for all expenses as provided herein, the Contractor shall be subject to other appropriate sanctions, as permitted by law, policy, and Specifications, including but not limited to, Suspension of Work, termination for default, and removal from the Bidders' list.

If the Contractor disputes the City's determination in any respect, the Contractor may submit a Claim in accordance with the provisions and requirements of Section 105.19.

107.13—[Reserved]

107.14—[Reserved]

107.15—[Reserved]

107.16—Environmental Stipulations

By signing the Bid, the Bidder shall have stipulated (1) that any facility to be used in the performance of the Contract (unless the Contract is exempt under the Clean Air Act as amended [42 U.S.C. §§ 1857, *et seq.*, as amended by P.L. 91-604], the Federal Water Pollution Control Act as amended [33 U.S.C. §§ 1251 *et seq.* as amended by P.L. 92-500], and Executive Order 11738 and regulations in implementation thereof [40 C.F.R., Part 15]) is not listed on the EPA's List of Violating Facilities pursuant to 40 C.F.R. § 15.20; and (2) that the Bidder promptly shall notify City prior to the Award of the Contract if the Bidder receives any communication from the

Director, Office of Federal Activities, or the EPA, indicating that a facility to be used for the Contract is under consideration to be listed on the EPA's List of Violating Facilities.

No separate payment will be made for the Work or precautions described herein except where provided for as a specific item in the Contract or except where provision has been made for such payment in these Specifications.

(a) **Erosion and Siltation**: The Contractor shall exercise every reasonable precaution, including temporary and permanent soil stabilization measures, throughout the duration of the Project to control erosion and prevent siltation of adjacent lands, rivers, streams, wetlands, lakes, and impoundments. Soil stabilization and/or erosion control measures shall be applied to erodible soil or ground Materials exposed by any activity associated with construction, including clearing, grubbing, and grading, but not limited to local or on-site sources of Materials, stockpiles, Disposal Areas and haul Roads.

The Contractor shall comply with the requirements of Sections 301.02 and 303.03 of *VDOT's Road and Bridge Specifications*. Should the Contractor, as a result of negligence or noncompliance, leave an area exposed more than fifteen (15) Days, the cost of temporary soil stabilization performed in accordance with the provisions of Section 303 of *VDOT's Road and Bridge Specifications* shall be at the Contractor's expense. As determined by the Project Manager, if the delay in stabilizing an exposed area of land is due to circumstances beyond the Contractor's control, the City will be responsible for the expense.

The Contractor shall coordinate temporary soil stabilization measures with the Work to ensure effective and continuous erosion and sediment control. Permanent erosion control measures and drainage facilities shall be installed as the Work progresses.

For Projects that disturb 2,500 square feet or greater of land, the Contractor shall have within the Project limits during land disturbance activities an employee designated by the City in erosion and sediment control who shall inspect erosion and siltation control devices and measures for proper installation and operation and promptly report its findings to the Inspector. Inspections shall include all areas of the site disturbed by construction activity and all support facilities on City rights of ways or Easements covered by the Project's Stormwater Pollution Prevention Plan. Inspections shall be conducted at least once every fourteen (14) Calendar Days and within forty-eight (48) hours following any runoff producing storm event. (Note: If an inspection is conducted as a result of a storm event, another inspection is not required for fourteen (14) Calendar Days following provided there are no more runoff producing storm events during that period). For those areas that have been temporarily stabilized or runoff is unlikely to occur due to winter conditions (*e.g.*, the site is covered with snow or ice or frozen ground exists), inspections shall be conducted at least once a month. Those definable areas where final stabilization has been achieved will not require further inspections provided such areas have been identified in the Project's Stormwater Pollution Prevention Plan. If the Contractor fails to maintain a City-designated employee within the Project limits during the performance of a land-disturbing activity, the Project Manager will suspend all Work related to any land disturbing activity until such time as a designated employee is present on the Project. If the Project Manager discovers that the Contractor has failed to maintain appropriate erosion and siltation control devices in a functioning condition, the Project Manager will notify the Contractor in writing of specific deficiencies. The Contractor immediately shall correct these deficiencies. If the Contractor fails to correct or take appropriate actions to correct the specified deficiencies within twenty-four (24) hours after receipt of such notification, the City may do one or more of the following: (i) require the Contractor to suspend Work in other areas and concentrate efforts towards correcting the specified deficiencies, (ii) withhold payment of monthly progress estimates, or (iii) proceed to correct the specified deficiencies and deduct the entire cost of such Work, plus twenty-five percent (25%) for supervisory and administrative personnel, from monies due the Contractor.

(b) **Pollution:**

1. **Water:** The Contractor shall exercise every reasonable precaution throughout the duration of the Project to prevent pollution of public and private waters. Pollutants such as, but not limited to, chemicals, fuels, lubricants, bitumens, raw sewage, paints, sedimentation, and other harmful Material shall not be discharged into or alongside rivers, streams, or impoundments or into Channels leading to them. Prior to mobilizing to the Project site, the Contractor shall submit a contingency plan to the Project Manager describing its response to a discharge threat and the immediate actions to be taken in the event of a dump, discharge, or spill to contain, clean up and mitigate the discharge within the shortest feasible time. The contingency plan shall include a complete listing, including 24-hour phone numbers, of all federal, State, and local agencies required to be notified in event of a discharge, and the position title, address, and telephone number of the individual(s) authorized to act on behalf of the Contractor to implement containment and cleanup actions.

   Construction discharge water shall be filtered to remove deleterious Materials prior to discharge into State waters. Filtering shall be accomplished by the use of a standard dewatering basin or a dewatering bag. Dewatering bags shall conform to the requirements of Section 245 of *VDOT's Road and Bridge Specifications*. During specified spawning seasons, discharges and construction activities in spawning areas of State waters shall be restricted so as not to disturb or inhibit aquatic species that are indigenous to the waters. Neither water nor other effluence shall be discharged onto wetlands or breeding or nesting areas of migratory waterfowl. When used extensively in wetlands, heavy Equipment shall be placed on mats. Temporary construction fills and mats in wetlands and flood plains shall be constructed of approved non-erodible Materials and shall be removed by the Contractor to natural ground when the Project Manager so directs.

   If the Contractor dumps, discharges, or spills any pollutant that reaches or has the potential to reach a waterway, it immediately shall notify all appropriate jurisdictional State and Federal Agencies according to the contingency plan and the requirements of Section 107.01, and shall take immediate actions to contain, remove, and properly dispose of the pollutant.

   Excavation Material shall be disposed of in approved areas above the mean high water mark shown on the Plans in a manner that will prevent the return of solid or suspended Materials to State waters. If the mark is not shown on the Plans, the mean high water mark shall be considered the elevation of the top of stream banks.

   Constructing new Bridge(s) and dismantling and removing existing Bridge(s) shall be accomplished in a manner that will prevent the dumping or discharge of construction or Disposable Materials into rivers, streams, or impoundments.

   Construction operations in rivers, streams, or impoundments shall be restricted to those areas where identified on the Plans and to those that must be entered for the construction of Structures. Rivers, streams, and impoundments shall be cleared of Falsework, piling, debris, or other obstructions placed therein or caused by construction operations. Stabilization of the streambed and banks shall occur immediately upon completion of Work if Work is suspended for more than fifteen (15) Days.

   The Contractor shall prevent stream constriction that would reduce stream flows below the minimum, as defined by the State Water Control Board, during construction operations.

   If it is necessary to relocate an existing stream or drainage facility temporarily to facilitate construction, the Contractor shall design and provide temporary Channels or Culverts of adequate size to carry the normal flow of the stream or drainage facility. The Contractor shall submit a temporary relocation design to the Project Manager for review and acceptance in sufficient time to allow for discussion and correction prior to beginning the Work the design covers. Costs for the temporary relocation of the stream or drainage facility shall be included in the Contract price for the related pipe

or box Culvert unless specifically provided for under another Contract Pay Item. Stabilization of the streambed and banks shall occur immediately upon completion of, or during the Work, or if the Work is suspended for more than fifteen (15) Days.

Temporary Bridges or other minimally invasive Structures shall be used wherever the Contractor finds it necessary to cross a stream more than twice in a six (6) month period, unless otherwise authorized by water quality permits issued by the U. S. Army Corps of Engineers, Virginia Marine Resources Commission, or DEQ for the Contract.

2. **Air:** The Contractor shall comply with the provisions of Section 107.01 and the State Air Pollution Control Law and Rules of the State Air Pollution Control Board, including notifications required therein.

   Burning shall be performed in accordance with all applicable local laws and ordinances and under the constant surveillance of watchpersons. Care shall be taken so that the burning of Materials does not destroy or damage property or cause excessive air pollution. The Contractor shall not burn rubber tires, asphalt, used crankcase oil, or other Materials that produce dense smoke. Burning shall not be initiated when atmospheric conditions are such that smoke will create a hazard to the motoring public or airport operations. Provisions shall be made for flagging vehicular traffic if visibility is obstructed or impaired by smoke. At no time shall a fire be left unattended.

   Asphalt mixing plants shall be designed, equipped, and operated so that the amount and quality of air pollutants emitted will conform to the rules of the State Air Pollution Control Board.

   a. **VOC Emission Control Areas** - The Contractor is advised that when the Project is located in a volatile organic compound (VOC) emissions control area identified in the State Air Control Board Regulations.

      (1) Open burning is prohibited during the months of May, June, July, August, and September in VOC Emissions Control areas; and

      (2) Cutback asphalt is prohibited April through October except when use or application as a penetrating prime coat or tack is necessary in VOC Emissions Control areas.

      See 9 VAC 5-40, Article 39 (Emission Standards for Asphalt Paving Operations) and 9 VAC 5-130 (Regulation for Open Burning) for further clarification.

      Emission standards for asbestos incorporated in the EPA's National Emission Standards for Hazardous Air Pollutants apply to the demolition or renovation of any institutional, commercial, or industrial building, Structure, facility, installation, or portion thereof that contains friable asbestos or where the Contractor's methods for such actions will produce friable asbestos.

      The Contractor shall submit demolition notification the EPA and the Virginia Department of Labor and Industry a minimum of ten (10) business days prior to starting Work on the following Bridge activities:

         a) Dismantling and removing existing Structures;

         b) Moving an entire Structure; and

         c) Reconstruction and repairs involving the replacement of any load-bearing component of a Structure.

Address notifications to:

Virginia Department of Labor and Industry
Asbestos Program
Powers-Taylor Building
13 South Thirteenth Street
Richmond, VA 23219

Land and Chemical Division
EPA Region III
Mail Code LC62
1650 Arch Street
Philadelphia, PA 19103-2029

3. **Noise:** The Contractor's operations shall be performed so that exterior noise levels measured during a noise-sensitive activity shall not exceed 80 decibels. Such noise level measurements shall be taken at a point on the perimeter of the Construction Limit that is closest to the adjoining property on which a noise sensitive activity is occurring. A noise-sensitive activity is any activity for which lowered noise levels are essential if the activity is to serve its intended purpose and not present an unreasonable public nuisance. Such activities include, but are not limited to, those associated with residences, hospitals, nursing homes, churches, schools, libraries, parks, and recreational areas.

   The City may monitor construction-related noise. If construction noise levels exceed 80 decibels during noise sensitive activities, the Contractor shall take corrective action before proceeding with operations. The Contractor shall be responsible for costs associated with the abatement of construction noise and the delay of operations attributable to noncompliance with these requirements.

   The City may prohibit or restrict to certain portions of the Project any Work that produces objectionable noise between 10 P.M. and 7 A.M.

   Equipment shall not be altered in any way so as to result in noise levels that are greater than those produced by the original Equipment.

   When feasible, the Contractor shall establish haul routes that direct its vehicles away from developed areas and ensure that noise from hauling operations is kept to a minimum.

   These requirements shall not be applicable if the noise produced by sources other than the Contractor's operation at the point of reception is greater than the noise from the Contractor's operation at the same point.

(c) **Forest Fires:** The Contractor shall take all reasonable precautions to prevent and suppress forest fires in any area involved in construction operations or occupied by it as a result of such operations. The Contractor shall cooperate with the proper authorities of the State and federal governments in reporting, preventing, and suppressing forest fires. Labor, tools, or Equipment furnished by the Contractor upon the order of any forest official issued under authority granted the official by law shall not be considered a part of the Contract. The Contractor shall negotiate with the proper forest official for compensation for such labor, tools, or Equipment.

(d) **Archeological, Paleontological, and Rare Mineralogical Findings:** In the event of the discovery of prehistoric ruins, Indian or early settler sites, burial grounds, relics, fossils, meteorites, or other articles of archeological, paleontological, or rare mineralogical interest during the prosecution of Work, the Contractor shall act immediately to suspend Work at the site of the discovery and notify the Project Manager. The Project Manager immediately will notify the proper State authority charged with the responsibility of investigating and evaluating such finds. The Contractor shall cooperate and, upon the

request of the Project Manager, assist in protecting, mapping, and removing the findings. Labor, tools, or Equipment furnished by the Contractor for such Work will be paid for in accordance with the requirements of Section 104.03. Findings shall become the property of the State unless they are located on federal lands, in which event they shall become the property of the U.S. government.

When such findings delay the progress or performance of the Work, the Contractor shall notify the Project Manager in accordance with the provisions of Sections 108.03 and Section 109.05.

(e) **[Reserved]**

107.17—Construction Safety and Health Standards

(a) In the performance of this Contract, the Contractor shall comply with all applicable federal, State, and local laws governing safety, health, and sanitation (23 CFR § 635). The Contractor, Subcontractors at any tier, and its respective employees, agents, and invitees at all times while in or around the Project site shall comply with all applicable laws, regulations, provisions, and policies governing safety and health under the Virginia Occupational Safety and Health (VOSH) Standards adopted under the Code of Virginia, and any laws, regulations, provisions, and policies incorporated by reference including but not limited to the Federal Construction Safety Act (Public Law 91-54), 29 CFR Chapter XVII, Part 1926, Occupational Safety and Health Regulations for Construction, and the Occupation Safety and Health Act (Public Law 91-596), 29 CFR Chapter XVII, Part 1910 Occupational Safety and Health Standards for General Industry, and subsequent publications updating these regulations.

(b) The Contractor shall provide all safeguards, safety devices, and protective Equipment, and take any other needed actions as it determines, or as the Project Manager may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public, and to protect property in connection with the performance of the Work. The Contractor shall be responsible for maintaining and supervising all safety and health protections and programs to ensure compliance with this Section. The Contractor routinely shall inspect the Project site for safety and health violations. The Contractor immediately shall abate any violations of the safety and health requirements or duties at no cost to the City.

(c) It is a condition of this Contract, and shall be made a condition of each Subcontract which the Contractor enters into pursuant to this Contract, that the Contractor and any Subcontractor shall not permit any employees, in performance of the Contract, to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to their health or safety, as determined under construction safety and health standards (29 CFR § 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. § 3704).

(d) VOSH personnel, on all federal-aid construction contracts and related Subcontracts, pursuant to 29 CFR § 1926.3, the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of Contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out its duties.

107.18—Sanitary Provisions

The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of employees as may be necessary to comply with the requirements of the State and local Board of Health or other bodies or tribunals having jurisdiction.

107.19—[Reserved]

107.20—Construction Over or Adjacent to Navigable Waters

The City will obtain a permit from the U.S. Coast Guard for the anticipated construction and/or demolition activities of Structures on City Projects that cross a waterway(s) under the jurisdiction of the U.S. Coast Guard. As the permit holder, the City must apply to the U.S. Coast Guard for approval of permit modification(s) to the original City permit that the Contractor requests.

Prior to starting demolition or construction operations, the Contractor shall meet with the Project Manager and the U.S. Coast Guard (U.S. Coast Guard Coordination Meeting) to present its planned operations and the potential impacts those operations may pose to water traffic. As part of this meeting, the parties shall establish in writing the proper protocol for emergency closures and be governed accordingly.

(a) **Activities subject to Coast Guard regulation under the Permit:** Following the U.S. Coast Guard Coordination Meeting, the Contractor shall submit its proposed schedule of operations in writing to the Project Manager. The Project Manager shall review and provide written comments, if applicable, to the Contractor within seven (7) Days following receipt of the Contractor's schedule of operations. The Contractor shall incorporate the Project Manager's comments and submit its notice of scheduled operations to the Project Manager and to the U.S. Coast Guard at least thirty (30) Days prior to commencement of any permitted construction or demolition operations. U.S. Coast Guard acceptance of the Contractor's written schedule of operations is a condition precedent to the Contractor's commencement of those operations.

(b) **Activities that require Channel closures or restrictions:** In addition to the submittal of its proposed schedule of operations as described in subsection (a) above, the Contractor shall submit Plans that comply with the Permit for Falsework, cofferdams, floating Equipment, and other obstructions to the Channel or Channels to the Project Manager. The Contractor's attention is directed to the possibility that advance notification for consideration of approval may vary depending on the type and duration of proposed closures, the time of year for requested closure(s), location of existing Bridge(s) and waterway(s) involved, and the impact to entities served along or through the waterway(s). The Project Manager shall review and provide written comments, if applicable, to the Contractor within thirty (30) Days following receipt of the Contractor's Plans. The Contractor shall incorporate the Project Manager's comments and submit its Plans to the Project Manager and to the U.S. Coast Guard at least thirty (30) Days prior to commencement of any permitted construction or demolition operations. The Contractor may not commence activities that require Channel closures or restrictions without the prior written approval of the City and the U.S. Coast Guard. The Contractor shall be responsible for complying with all operational requirements that the U.S. Coast Guard may place on the Contractor as conditions of approval.

In addition, the Contractor shall request and obtain City and U.S. Coast Guard approval in writing before commencing any operations that deviate from the Contractor's schedule of operations when these operations interfere or have the potential to interfere with navigation of water traffic outside of timeframes previously approved by the City and the U.S. Coast Guard.

Notices shall be sent to the U.S. Coast Guard, Fifth District Bridge Office (OBR), 431 Crawford Street, Portsmouth, VA 23704-5004. Payment of any penalty or fine that may be levied by the U.S. Coast Guard for Contractor violations of Bridge regulations found in 33 CFR Parts 114, 115, 116, 117, and 118 shall be the responsibility of the Contractor. Further, any delay to the Contract as a result of actions or inaction by the Contractor relative to the requirements herein that are determined by the City to be the fault of the Contractor will be a non-compensable and non-excusable delay.

The cost to comply with the requirements of this provision and to provide and maintain temporary navigation lights, signals, and other temporary Work associated with the Structure(s) under this Contract required by the U.S. Coast Guard for the protection of navigation during construction or demolition operations shall be included in the Bid price for other appropriate Pay Items.

107.21—Size and Weight Limitations

(a) **Hauling or Moving Material and Equipment on Public Roads Open to Traffic:** The Contractor shall comply with legal size and weight limitations in the hauling or moving of Material and Equipment on public Roads open to traffic unless the hauling or moving is covered by a hauling permit.

(b) **Hauling or Moving Material and Equipment on Public Roads Not Open to Traffic:** The Contractor shall comply with legal weight limitations in the hauling or moving of Material and Equipment on public Roads that are not open to traffic unless the hauling or moving is permitted elsewhere herein or is otherwise covered by a hauling permit. The Contractor shall be liable for damage that results from the hauling or moving of Material and Equipment. The hauling or moving of Material and Equipment on the Pavement Structure or across any Structure during various stages of construction shall be subject to additional restrictions as specified or directed by the Project Manager.

(c) **Furnishing Items in Component Parts of Sections:** If the size or weight of fabricated or manufactured items, together with that of the hauling or moving vehicle, exceeds the limitations covered by hauling permit policies and other means of transportation are not available, permission will be given to furnish the items in component parts of sections with adequately designed splices or connections at appropriate points. Permission for such Adjustments shall be requested in writing, and approval in writing shall be secured from the City prior to fabrication or manufacture of the items. The request shall state the reasons for Adjustment and shall be accompanied by supporting data, including Working Drawings where necessary.

(d) **Construction Loading of Structures:** In the construction, reconstruction, widening, or repair of a Bridge, Culvert, retaining wall, and other similar type Structures including approaches, the Contractor shall consider construction loads during the planning and prosecution of the Work. If the loading capacity of these type Structure(s) is not shown in the Contract Documents, the Contractor is responsible for contacting the Project Manager to obtain the loading capacity information. Construction loads include but are not limited to the weight of cranes, trucks, other heavy construction or Material delivery Equipment, as well as the delivery or storage of Materials placed on or adjacent to the Structure or parts thereof during the various stages (phases) of the Work in accordance with the Contractor's proposed Work Plan. The Contractor shall consider the effect(s) of construction loads on the loading capacity of these type Structure(s) in its sequencing of the Work and operations, including phase construction. At the Project Manager's request, the Contractor shall be prepared to discuss or review its proposed operations with the Project Manager with regard to construction loads to demonstrate it has taken such into consideration in planning and execution of the Work.

SECTION 108—PROSECUTION AND PROGRESS OF WORK

108.01—Prosecution of Work

The Contractor shall provide sufficient labor, Materials, Equipment, and tools and shall prosecute the Work with such means and methods and with such diligence as is required to attain and maintain a rate of progress necessary to ensure completion of the Project within the Contract Time Limit in accordance with the Plans, Specifications, and other requirements of the Contract.

Once the Contractor has begun Work, the Contractor shall prosecute the Work continuously and to the fullest extent possible except for Suspensions authorized or ordered by the Project Manager according to Section 108.05. If approval is given to suspend the Work temporarily, the Contractor shall notify the Project Manager at least twenty-fourth (24) hours in advance of resuming operations.

The Contractor shall notify the Project Manager at least twenty-four (24) hours in advance of any changes in the Contractor's planned operations or Work requiring inspection.

108.02—Limitation of Operations

(a) **General**

The Contractor shall conduct the Work in a manner and sequence that will ensure its expeditious completion with the least interference to traffic and shall have due regard for the location of detours and provisions for handling traffic. The Contractor shall not open any Work to the prejudice or detriment of Work already started. The Project Manager may require the Contractor to finish a section of Work before Work is started on any other section.

(b) **Holidays**

Except as is necessary to maintain traffic, Work shall not be performed on Sundays or the following Holidays without the permission of the Project Manager: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Easter, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

If any of these Holidays occurs on a Sunday, the following Monday shall be considered the Holiday.

In addition to the Sunday or Holiday Work limitations, mobile, short duration, short-term stationary, or intermediate-term stationary temporary traffic control zone (as defined in the VWAPM), lane closures on mainline lanes, Shoulders, or Ramps shall not be performed during the following Holiday time periods without the written permission of the Project Manager. Additionally, a long-term stationary temporary traffic control zone (as defined in the VWAPM) shall not be initially put in place, adjusted, or removed during the following Holiday time periods without the written permission of the Project Manager:

- **New Year's Day**: From noon on the preceding day until noon on the following day, except as indicated below for Holidays occurring on a Friday/Saturday or Sunday/Monday.
- **Martin Luther King, Jr. Day**: As indicated below for Holidays occurring on a Monday.
- **Presidents' Day**: As indicated below for Holidays occurring on a Monday.
- **Easter**: As indicated below for Holidays occurring on a Sunday.

- **Memorial Day**: As indicated below for Holidays occurring on a Monday.
- **Independence Day:** From noon on the preceding day until noon on the following day, except as indicated below for Holidays occurring on a Friday/Saturday or Sunday/Monday.
- **Labor Day**: As indicated below for Holidays occurring on a Monday.
- **Veterans' Day**: As indicated below for Holidays occurring on a Monday.
- **Thanksgiving Day**: From noon on the Wednesday preceding Thanksgiving Day until noon on the Monday following Thanksgiving Day.
- **Christmas Day**: From noon on the preceding day until noon on the following day, except as indicated below for Holidays occurring on a Friday/Saturday or Sunday/Monday.

If the Holiday occurs on a Friday or Saturday: From noon on the preceding Thursday to noon on the following Monday.

If the Holiday occurs on a Sunday or Monday: From noon on the preceding Friday to noon on the following Tuesday.

108.03—Progress Schedule

(a) General

The Contractor shall plan the Work and shall prepare and submit to the Project Manager for review and acceptance, a progress schedule that represents the Contractor's plan to complete the Work according to the Contract. Upon acceptance by the Project Manager, the baseline progress schedule shall become the Schedule of Record (SOR), which shall be used by all involved parties for planning and executing the Work. The SOR also shall be used by the City for coordination and inspection activities and to assess progress of the Work.

At least seven (7) Days prior to beginning the Work, the Contractor shall attend a Scheduling Conference with the Project Manager. At the Scheduling Conference, the Contractor shall discuss its overall Plan to accomplish the Work, the detailed Work Plan for the initial thirty (30) Days, scheduling information, and key Project-specific requirements or issues necessary for the preparation and submittal of the progress schedule. The Scheduling Conference may be held in conjunction with the Pre-Construction Conference or at a separate meeting as the Contractor and the Project Manager mutually agree. If the Scheduling Conference is to be held after the Notice to Proceed date, the Contractor may proceed with Project start-up activities such as submittals, mobilization, surveying, construction access and signage, erosion and sedimentation controls, as approved by the Project Manager in writing.

(b) **Progress Schedule Submission Requirements**

Unless otherwise specified in the Contract Documents or directed in writing by the Project Manager, the Contractor shall submit a progress schedule as follows:

1. **Baseline Progress Schedule.** The Contractor shall submit a baseline progress schedule at least seven (7) Days before beginning the Work, or by a date approved by the Project Manager in writing. The baseline progress schedule shall show the Contractor's initial detailed Plan to accomplish the Work in accordance with the requirements of the Contract. The Baseline Progress Schedule submission shall include:

a. A baseline bar-chart or CPM schedule showing in detail the Contractor's intended sequence of Work and the dates during which all activities required to complete the Project are planned to occur.

b. A baseline schedule narrative describing in detail the Contractor's overall Plan to accomplish the Work.

c. A baseline earnings schedule showing the Contractor's anticipated progress of the Work each month based on anticipated monthly earnings.

2. **Monthly Progress Schedule Update.** The Contractor shall submit a progress schedule update each month within five (5) business days after the data date (current progress estimate date). The progress schedule update shall show the current as-built status of the Project and the current Plan to complete the remaining Work as of the data date. The monthly progress schedule update submission shall include:

   a. An updated bar-chart or CPM schedule showing the actual start and finish dates of all activities completed prior to the data date; and the start date, percent complete, and remaining duration of all on-going activities as of the data date.

   b. An updated progress earnings schedule showing the actual earnings for Work completed and projected earnings for the remaining Work as of the data date.

3. **SOR Revisions.** When the Work Plan or sequence of Work deviates significantly from the SOR, the Contractor shall submit a SOR revision as directed by the Project Manager. "Deviate significantly" means major changes in the Work Plan or sequence resulting in schedule impacts that alter the Project Critical Path, Milestones, or the Progress Earnings Schedule significantly. Such changes may include but are not limited to:

   a. A change to the overall Work Plan or sequence that deviates significantly from the SOR.

   b. The actual sequence or duration of critical activities and the planned sequence shown in the SOR deviate significantly from the SOR.

   c. The Project Manager has executed a Change Order that changes or will change the planned sequence or duration of controlling items of Work or Critical Path activities shown on the SOR or will impact the Completion Date of an interim Contract Milestone or the Contract Time Limit.

   d. The percentage of Work completed falls behind by more than ten percent (10%) relative to the SOR and the Project is not presently at risk of finishing late.

   The proposed SOR revision shall be submitted within five (5) business days after the data date (current progress estimate date) or as directed by the Project Manager, in the same form and content as a Baseline Progress Schedule. The proposed SOR revision shall be based on the current SOR that is updated to reflect the current as-built status of the Project as of the data date. Upon the Project Manager's acceptance, the proposed SOR revision will be the SOR until the Project Manager's acceptance of a later SOR revision.

4. **Final As-Built Schedule.** Within thirty (30) Days after Final Acceptance, the Contractor shall submit to the Project Manager a final as-built schedule in the same form as a monthly progress schedule update. The Contractor shall certify in writing that the actual start and finish dates for each activity in the final as-built schedule are accurate.

(c) **Submittal and Reporting Format**

Unless directed otherwise by the Project Manager, the Contractor shall submit its progress schedule in the following manner.

1. A transmittal letter to the Project Manager listing the items, date, and number of copies of items being submitted.

2. Two (2) printed legible paper copies of the bar chart or CPM progress schedule, progress schedule narrative, and progress earnings schedule.

3. One (1) compact disk (CD) containing electronic "PDF" copies of the bar chart or CPM progress schedule, progress schedule narrative, and progress earnings schedule, an electronic back-up file copy of the working bar-chart or CPM schedule; and an electronic working file copy of the progress earnings schedule. Each electronic file submittal shall have a unique file name indicating the Contract ID, submission number, submittal type, and data date of the submission (*e.g.*, C00012345C01_B01_Narrative_6-04-12.pdf).

(d) **Project Manager's Review and Acceptance**

The Project Manager will review and respond to all schedule submittals within fourteen (14) Days of receipt of the Contractor's complete submittal, unless the schedule submittal is incomplete, unacceptable, or needs clarification or justification, as determined by the Project Manager. The Project Manager's acceptance will be based on completeness and conformance with the specified schedule submittal requirements.

When the Project Manager's written response indicates the schedule submittal is incomplete, unacceptable, or requests clarification or justification, the Contractor shall respond as required within seven (7) Days of receipt of the Project Manager's response.

The Project Manager's review and acceptance will not constitute a waiver of any Contract requirement and will in no way make the City responsible for or bound by the Contractor's schedule, Work Plan, scheduling assumptions, or validity of the schedule. Failure of the Contractor to include in the SOR any element of Work required by the Contract for timely completion of the Project will not excuse the Contractor from completing the Work within the Contract specified interim completion Milestone(s) or the Contract Time Limit, as applicable.

(e) **Failure to Comply with Progress Schedule Submission Requirements**

With the exception of Project start-up activities approved in writing by the Project Manager, the Contractor shall not commence Work, until seven (7) Days after the date the Contractor submits a complete Baseline Progress Schedule, unless approved by the Project Manager in writing.

If the Contractor fails to comply with any of the Progress Schedule submissions within the time and in the manner specified, the Project Manager will withhold approval of the Contractor's ensuing monthly progress estimates until the Contractor has satisfied the submission requirements. If the Contractor fails to submit the Final As-Built Schedule in the time and manner required, the Project Manager will withhold approval of the final payment until the Contractor satisfies the submission requirement.

The City shall not be responsible for any delays, costs, or damages resulting from the Contractor's failure to submit the schedule submittals in accordance with the requirements of the Contract Documents.

(f) **Monitoring the Work and Assessing Progress**

The Project Manager will monitor the Work regularly to assess the Contractor's progress and to identify deviations from the Contractor's performance relative to the SOR. The Contractor shall notify the Project Manager at least two (2) working days in advance of any changes in the Contractor's planned operations or critical stage Work requiring City oversight or inspection.

1. **Monthly Progress Meeting.** The Contractor shall attend a monthly progress meeting with the Project Manager on a mutually agreed date in accordance with the provisions of Section 108.01. The Contractor shall furnish a detailed 30-Day look-ahead schedule based on the SOR, and shall discuss the current status of the Project and Work planned for the following thirty (30) Days.

2. **Progress Evaluation.** Progress will be evaluated by the Project Manager at the time of the monthly progress estimate relative to the SOR. The Contractor's actual progress will be considered unsatisfactory if any of the following conditions occur:

   a. The actual total earnings percentage for Work completed to date, based on the Contractor's current progress payment estimate, falls behind the anticipated cumulative earnings percentage indicated in the SOR by more than ten percent (10%). If the Earnings Schedule is based on a cost-loaded CPM schedule, then unsatisfactory progress will be based on falling behind the SOR late earnings percentage by one percent (1%) or more.

   b. The current projected Completion Date of a Contract interim completion Milestone activity is more than fourteen (14) Days after the specified Completion Date, if applicable.

   c. The current projected Completion Date of the Project is more than twenty-one (21) Days after the Contract Time Limit.

(g) **Progress Deficiency and Schedule Slippage**

When a monthly progress evaluation shows that the Contractor's actual progress of the Work is unsatisfactory, the Project Manager will issue a written notice of unsatisfactory performance to the Contractor. Within fourteen (14) Days from the date of receipt of the Project Manager's notice, the Contractor shall respond by submitting a written statement describing any actions taken or proposed by the Contractor to correct the progress deficiency. If the Contractor's response includes a proposed recovery plan, the current progress schedule update shall be modified accordingly to show the Contractor's proposed recovery plan. The Contractor may submit to the Project Manager a written explanation and supporting documentation to establish that such delinquency is attributable to conditions beyond its control. If the Project Manager approves the Contractor's recovery plan, the modified progress schedule update showing the recovery plan will be treated as the current update and will not replace the SOR.

If the Contractor fails to respond within the time required, or the response is unacceptable, five percent (5%) of the monthly progress estimates will be withheld as retainage as provided in Section 109.08(c), for each month the Contractor's actual progress remains unsatisfactory. In addition, the Contractor may be disqualified temporarily from bidding on contracts with the City as provided in Section 102.08 if progress remains unsatisfactory at the time of preparation of the next monthly progress estimate. The Project Manager may postpone taking these actions when a time extension is under consideration.

When the Project Manager determines the Contractor's progress is satisfactory again, the five percent (5%) retainage previously withheld will be released according to the provisions of Section 109.08(c). If the Contractor temporarily is disqualified from bidding, the Contractor will not be reinstated until either the progress of the Work has improved to the extent that in the opinion of the Project Manager the Work can be completed on time or Final Acceptance of the Work has been issued by the Project Manager in accordance with the provisions of Section 108.09.

108.04—Determination and Extension of Contract Time Limit

(a) **Contract Time Limit**

The Contract Time Limit for completion and Final Acceptance of the Work will be determined by the City and specified in the Contract Documents. No request for an extension of time will be considered that is based on any Claim that the Contract Time Limit as originally established in the Contract was inadequate.

In planning and scheduling the Work, the Contractor shall take into consideration normal, expected, and known conditions considered unfavorable for the prosecution of the Work. The Contractor shall place sufficient workers, Materials, and Equipment on the Project to complete the Work in accordance with the specified Contract Time Limit.

(b) **Delays and Extension of Contract Time Limit**

When the Contractor is delayed in commencing the Work due to the City's failure to execute the Contract by the Notice to Proceed date when such date is specified in the Contract, the Contractor will receive an extension of time equal to the number of days between the contract-specified Notice to Proceed date and the actual date of Contract execution. No time extension will be allowed for a delay in commencing Work when the delay is the fault of the Contractor.

When the Contractor is delayed in commencing Work by the Project Manager directing the Contractor not to begin Work on the Notice to Proceed date specified in the Contractor's Notice to Proceed, the Contractor will receive an extension of time equal to the number of days between the Contractor's selected Notice to Proceed date and the actual date the Contractor is allowed to begin Work.

For the purposes of this section, the term "delay" is intended to cover all such conditions, unforeseen events, actions, occurrences, forces or factors, disruption, interference, impedance, hindrance, or otherwise that delays the start or extends the Completion Date of an activity or Work item. Delays are either excusable or non-excusable. The Contractor will be entitled to time extensions only for excusable delays that extend the scheduled Completion Date of the Project beyond the lattermost of the Contract Fixed Completion Date or its most recent extension. Excusable delays are either compensable or non-compensable. The Contractor will be entitled to compensation or damages only for excusable compensable delays.

When the Contractor requests an extension of the Contract Time Limit or additional compensation or damages that are attributable to an excusable delay, the Project Manager will evaluate the Contractor's request to determine if an Adjustment to the Contract is warranted. If warranted, the Project Manager will grant an extension of the Contract Time Limit when an excusable delay extends the scheduled Completion Date of the Project beyond the lattermost of the Contract Fixed Completion Date or its most recent extension. The Project Manager will not consider a request for an extension of the Contract Time Limit without notice and proper documentation and justification as defined herein.

The City will not grant an extension of the Contract Time Limit for any delays incurred on any activities occurring on days not identified in the Contractor's SOR as working days. However, if an excusable delay prevents the Contractor from performing Work as previously scheduled or extends the Completion Date of a scheduled activity into a period identified in the SOR as non-working days and the Contractor is unable to complete the activity due to unsuitable conditions or circumstances beyond its control that prevents the Contractor from performing the Work, the City will consider extending the Contract Time Limit for the excusable delay to include the additional number of days lost due to the extended delay.

The Project Manager will determine entitlement for an extension of the Contract Time Limit and any compensation or damages for delays according to the following:

1. **Excusable, Non-Compensable Delays.** Excusable non-compensable delays are delays affecting the Critical Path that are not caused by the City or the Contractor, or its' respective agents or employees, or causes within its control. They include but are not limited to the following:

    a. Floods, tidal waves, tornadoes, hurricanes, lightning strikes, earthquakes, fires, epidemics, or similar natural phenomena;

    b. Extraordinary, unforeseen, and unavoidable delays in Material deliveries;

    c. Acts of government entities other than the City;

    d. Unforeseen and unavoidable industry-wide labor strikes affecting the Contractor or its Subcontractors' or suppliers' workforce that are beyond the Contractor's control;

    e. Work by third parties that are not the responsibility of the Contractor or within its control such as Utilities, railroad, and the like; or

    f. Civil disturbances or sovereign acts of the State, including but are not limited to City shutdowns, states of emergency, or epidemic or quarantine restrictions.

2. **Critical Path Delays.** In the event of a Critical Path delay that is attributable to acts or omissions of both the City and the Contractor, the delay will be considered excusable non-compensable. The Contractor may be entitled to an extension of the Contract Time Limit, but no additional compensation or damages, for excusable non-compensable delays, provided that the Contractor complies with the applicable notice and time extension request requirements as defined herein.

3. **Excusable, Compensable Delays.** Excusable, compensable delays are delays to the Critical Path that are caused by acts or omissions of the City, its agents or employees, or causes within its control. They include but are not limited to the following:

    a. Changes in the Work authorized by the Project Manager, in accordance with Section 104.02, Changes in Quantities or Alterations in the Work;

    b. Unforeseen changes in site conditions, in accordance with Section 104.03, Differing Site Conditions; or

    c.. Stoppage of Work authorized by the Project Manager, in accordance with Section 108.05, Suspension of Work ordered by the Project Manager.

    The Contractor may be granted an extension of the Contract Time Limit and/or additional compensation or damages for excusable, compensable delay, provided that the Contractor complies with the applicable notice requirements and time extension request requirements as defined herein.

4. **Non-Excusable Delays.** Non-excusable delays are delays to the Critical Path caused by or attributable to acts or omissions of the Contractor, its agents, employees, Subcontractors, or suppliers or causes within its control; or conditions that the Contractor could reasonable have foreseen or avoided. Delays caused by normal or ordinary weather or conditions resulting from normal weather are non-excusable. For purposes of this section, normal weather is defined as that which is not catastrophic or extraordinary and can be anticipated reasonably at the time the Contract was executed. The Contractor is not entitled to an extension of the Contract Time Limit or additional compensation or damages for non-excusable delays.

5. **Concurrent Delays.** Concurrent delays are discrete delay events occurring at the same time to separate critical activities. When an excusable delay occurs concurrently with a non-excusable delay, the Contractor may be entitled to an extension of the Contract Time Limit for the period of concurrency, but no additional compensation or damages for the concurrent delay, provided that the Contractor complies with the applicable notice requirements and time extension request requirements as defined herein. Any portion of an associated concurrent delay event that is outside the period of concurrency will be apportioned to the responsible party and will be treated accordingly as excusable non-compensable, excusable compensable, or non-excusable in accordance with this section. For a delay event to be considered concurrent, the delay event must occur simultaneously in part or in whole with other delay events and must extend the Completion Date of the Project beyond the Contract Time Limit independent of the other delays.

(c) **Notice of a Delay**

Unless specified elsewhere in the Contract Documents, in the event of an occurrence of a delay event for which the Contractor will be seeking an Adjustment to the Contract, the Contractor shall submit a notice in accordance with this subsection unless directed otherwise by the Project Manager. The Project Manager will not consider requests for Adjustments to the Contract unless the following notification procedures are followed:

1. **Initial Notice:** The Contractor shall notify the Project Manager verbally as soon as it discovers or encounters a delay event for which a Contract Adjustment appears necessary. Unless authorized to proceed with the Work by the Project Manager, the Contractor shall not start or continue an activity or item of Work for which an Adjustment to the Contract may be necessary.

2. **Written Notice:** The Contractor shall follow-up within five (5) working days of the initial notice with a written notice to the Project Manager unless directed otherwise by the Project Manager. The written notice shall include:

   a. A description of the issue, time, and date the issue was first identified and specific location of the issue, as appropriate;

   b. An explanation of why the issue is an excusable delay;

   c. Activities or items of Work affected by the issue and the potential impact of the change or delay on the Critical Path, Milestones, or Project Completion Date, as applicable;

   d. Any actions necessary to avoid or mitigate the impact; and

   e. Any additional information that will facilitate timely resolution of the issue.

(d) **Project Manager's Determination of Entitlement to Extension of the Contract Time Limit**

Upon receipt of the Contractor's written notice, the Project Manager will acknowledge receipt of the Contractor's written notice. Within ten (10) business days of receipt of the Contractor's written notice, the Project Manager will provide a written response that will include one of the following:

1. An agreement of entitlement to a Contract Adjustment, in which case the Project Manager will request the Contractor to submit a written request for an Adjustment of the Contract with necessary additional information and justification as defined herein and in accordance with Section 109.05, as applicable;

2. A denial of entitlement to a Contract Adjustment, in which case the Project Manager will provide an explanation why the issue does not represent a change for which an Adjustment to the Contract is warranted; or

3. A request for additional information, in which case the Project Manager will inform the Contractor what is needed and when.

If the Contractor is dissatisfied with the outcome of the Project Manager's response, the Contractor may pursue a Claim in accordance with Section 105.19.

(e) **Submission of Request for Extension of the Contract Time Limit**

In the event of an excusable delay that extends the Completion Date of the Project beyond the Contract Time Limit, the Contractor shall submit a request for an Adjustment to the Contract within fourteen (14) Days of the end date of a delay event unless directed otherwise in writing by the Project Manager. For delays, the Contractor shall prepare and submit a SIA. The Contractor shall submit along with its request for an Adjustment to the Contract a SIA statement and applicable SIA schedules in accordance with the following:

1. **SIA Statement:** The SIA statement shall include the following:

   a. A description of the delay event, including time, date, and location of the event, if appropriate.

   b. An explanation of why the delay constitutes a change to the Contract, including references to applicable portions of the Contract.

   c. A description of the activities or Work items affected and any impact on the Project Critical Path, Milestones, or Completion Date of the Project, as applicable.

   d. A description of any shifts in the Project Critical Path and the reasons for the shifts for each successive schedule update contemporaneous with the delay event relative to the preceding schedule update, as applicable.

   e. A SIA summary showing the data date and calculated Completion Dates for all applicable Milestones and the Project Completion Date for each successive SIA schedule, including as applicable, the SOR, pre-delay unimpacted schedule, any contemporaneous monthly schedule updates, and the post-delay impacted schedule. The SIA summary also shall show any incremental schedule gains or slippages on the Project Completion Date for each SIA schedule. The SIA summary also shall categorize the schedule gain/slippage as excusable compensable, excusable non-compensable, or non-excusable.

      A description of any revisions made to the SIA schedules since the pre-delay schedule update, including added or deleted activities, and changes in logic, activity durations, calendars, and constraints, as well as the reasons for the revisions.

   g. Any actions taken or needed to avoid or mitigate the delay impacts.

   h. Any additional information needed to justify the request or facilitate timely resolution of the issue.

2. **SIA Schedules:** The SIA schedule submission shall include the following:

   a. The SOR in place prior to the date the delay event started, showing the Project Critical Path and any applicable Milestones.

b. The most recently accepted progress schedule update in place prior to the date the delay event started, showing the current status of the Project, including any variances in the durations and Completion Dates of the Critical Path activities, Milestones, and the Project Completion Date, as applicable, relative to the SOR.

c. A pre-delay unimpacted schedule, which shall be based on the most recently accepted progress schedule update in place prior to the start date of the delay event updated to show the current status of the Project, as of the date the delay event started. The pre-delay unimpacted schedule also shall show any variances in the durations and Completion Dates of the Critical Path Activities, Milestones, and the Project Completion Date, as applicable, relative to the most recently accepted Progress schedule update.

d. Any contemporaneous monthly schedule updates submitted during the delay event, showing the current status of the Project, including any variances in the durations and Completion Dates of the Critical Path Activities, Milestones, and the Project Completion Date, as applicable, relative to the previous monthly schedule update.

e. A post-delay impacted schedule, showing the delay events, affected activities, and the current status of the Project, including any variances in the durations and Completion Dates of the Critical Path Activities, Milestones, and the Project Completion Date, as applicable, relative to the pre-delay unimpacted schedule.

(f) **Project Manager's Final Response**

Upon receipt of the Contractor's written request for an Adjustment to the Contract, the Project Manager will acknowledge receipt of the Contractor's written request. Within ten (10) business days of receipt of the Contractor's written request, the Project Manager will provide a written response that will include one of the following:

1. An agreement of the extent of a Contract Time extension, in which case the Project Manager will issue a bilateral Change Order for an Adjustment to the Contract in accordance with this Section and Section 109.05, as applicable;

2. A disagreement of the extent of a Contract Time extension, in which case the Project Manager may issue a unilateral Change Order (Form C-10) for an Adjustment to the Contract in accordance with this Section and Section 109.05, as applicable; or

3. A request for additional information, in which case the Project Manager will inform the Contractor what is needed and when. The Project Manager will provide a final response within ten (10) business days of receipt of the additional information.

If the Contractor is dissatisfied with the outcome of the Project Manager's response or the Project Manager's response is untimely, the Contractor may pursue a Claim in accordance with Section 105.19.

108.05—Suspension of Work Ordered by the Project Manager

(a) If the Project Manager orders the Contractor in writing to suspend performance of all or any portion of Work on the Project Critical Path for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation or Contract Time is due as a result of such Suspension, the Contractor shall submit to the Project Manager a written request for Adjustment according to Section 108.04 within seven (7) Days after receipt of the notice to resume Work. The Contractor's request shall set forth the reasons and support for such Adjustment.

(b) Upon receipt, the Project Manager will review the Contractor's documentation and evaluate the Contractor's request. If the Project Manager agrees that the cost or time required for the performance of the Contract has increased as a result of such Suspension and the Suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or Subcontractors at any tier, and was not caused by weather, the Project Manager will make an Adjustment (excluding profit and consequential damages) and modify the Contract in writing accordingly. The Project Manager will notify the Contractor of the determination regarding whether an Adjustment of the Contract is warranted.

(c) No Contract Adjustment will be allowed unless the Contractor has submitted the request for Adjustment within the time and in the manner prescribed.

(d) No Contract Adjustment will be allowed under this Section to the extent that performance would have been suspended or delayed by any other cause, or for which an Adjustment is provided for or excluded under any other term or condition of the Contract.

108.06—Failure to Complete on Time

(a) **General**

For each Calendar Day that any Work remains incomplete after the Contract Time Limit specified for the completion of the Work, the City will assess Liquidated Damages against the Contractor. Liquidated Damages will be assessed at the rate applicable to the Contract in accordance with the Schedule of Liquidated Damages, Table I-3, or as otherwise specified in the Contract provisions. Liquidated Damages will be deducted from any monies due the Contractor for each Calendar Day of additional time consumed until Final Completion and Acceptance of the Work, subject to such Adjustments as provided in accordance with the requirements of Section 108.04, not as a penalty, but as Liquidated Damages. The Contractor waives any defense as to the validity of any Liquidated Damages stated in the Contract, the Contract Documents, or these Specifications and assessed by the City against the Contractor on the grounds that such Liquidated Damages are void as penalties or are not reasonably related to actual damages.

(b) **Liquidated Damages**

The following Schedule of Liquidated Damages, representing the cost of administration, engineering, supervision, inspection, and other expenses will be charged against the Contractor for each Calendar Day beyond the Contract Time Limit that the Contract remains in an incomplete state:

TABLE I-3

Schedule of Liquidated Damages

Original Contract Amount in Dollars	Daily Charge in Dollars
0.00 – 500,000.00	350
500,000.01 - 2,000,000.00	600
2,000,000.01 - 8,000,000.00	1,350
8,000,000.01 - 15,000,000.00	2,500
15,000,000.01 or more	3,100

108.07—Default of Contract

The Contractor may be declared in default if they do any one of the following:

(a) Fails to begin the Work within ten (10) Days after the Notice to Proceed date, except as otherwise permitted by specific Contract language, or the provisions of Section 105.01 or Section 108.02;

(b) Fails to perform the Work with sufficient workers and Equipment or with sufficient Materials to ensure prompt completion of the Work;

(c) Performs the Work in such manner that it is unacceptable, or fails, neglects, or refuses to promptly remove and replace Materials or Work that are unacceptable;

(d) Discontinues prosecution of the Work without an order to do so from the Project Manager;

(e) Fails to resume Work that has been discontinued within a reasonable time after notice to do so;

(f) Becomes insolvent, is declared bankrupt, or commits any act of bankruptcy or insolvency;

(g) Allows any final judgment to stand against them unsatisfied for a period of ten (10) Days;

(h) Makes an assignment for the benefit of creditors;

(i) Fails for any other cause whatsoever to carry on the Work in accordance with the Contract Documents or to perform contractual obligations in an acceptable manner; or

(j) Disregards laws, regulations, ordinances, the Project Manager's written instructions, or otherwise remains in substantial violation of any provision of the Contract.

If any of these conditions exists, the Project Manager will give notice in writing to the Contractor and its Surety of the delay, neglect, or default. If within ten (10) Days after the date of such notice the Contractor or its Surety has not taken measures that, in the judgment of the Project Manager, will ensure satisfactory progress of the Work or give assurances satisfactory to the Project Manager that the provisions of the Contract will be carried out fully and instructions complied with, the City Manager may then, or at any time thereafter, declare the Contractor in default. Without violating the Contract, the City Manager may call upon the Contractor's Surety for the satisfactory and expeditious completion of all Work under the Contract, the removal and replacement of any unacceptable or unauthorized Work, or may otherwise terminate the Contract in accordance with the provisions of Section 108.08. If the City Manager declares the Contractor in default, payments to the Contractor will be withheld and may be made directly to the Contractor's Surety. Further negotiations regarding the remaining Work will be conducted with the Contractor's Surety.

If the Contractor's Surety fails or refuses to proceed in accordance with the City Manager's instructions, the City Manager will appropriate and use any or all Materials and Equipment on the Project site that are suitable and acceptable and will enter into an agreement with others for the completion of the Work, or he will use such other methods as they deem necessary to ensure the completion of the Work.

Costs and charges incurred by the City, including the cost of completing the Work under the Contractor, the cost of removal and replacement of any unacceptable or unauthorized Work will be deducted from any monies due or that will become due the Contractor and its Surety. If the expense incurred by the City is less than the sum that would have been payable under the Contract had the Work been completed by the Contractor, the Contractor and its Surety will be entitled to receive the difference. If the expenses exceed the sum that would have been payable under the Contract, the Contractor and its Surety shall be liable for and shall pay to the City the amount of the excess.

108.08—Termination of Contract

(a) **Non-Appropriation Availability of Funds.** It is understood and agreed between the Contractor and the City that the City shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of this Contract. In the event funds are not appropriated and budgeted in any fiscal year for payments due under this Contract, the City shall notify the Contractor immediately of such occurrence; and this Contract shall terminate on the last day of the fiscal year for which an appropriation was received without penalty or expense to the City of any kind whatsoever.

(b) **Conditions for Termination.** The City may terminate the Contract or any portion thereof because of any of the following conditions:

1. Default;

2. National emergency;

3. Action by the State, U.S. government, or court order;

4. Conditions beyond the control of the City; or

5. For the convenience of the City.

Termination of the Contract or a portion thereof shall not relieve the Contractor of its responsibilities for completed Work, nor shall it relieve its Surety of its obligation for and concerning any just Claims arising out of the Work performed or remaining to be performed.

(c) **Termination for Convenience.** The Project Manager will deliver to the Contractor and Surety written notice of termination for convenience specifying the extent of the termination and the effective date. A termination for convenience may be directed at any time after the Notice of Award of the Contract. Termination for convenience will be accomplished in accordance with the following:

1. **Procedure.** Immediately upon receipt of the notice of termination, the Contractor shall:

   a. Stop Work as directed in the notice;

   b. Disturbed areas shall be promptly placed in an acceptable condition as directed by the Project Manager;

   c. Place no further Subcontracts or orders for Materials, services, or Equipment, unless necessary for any part of the Work not terminated or to protect any part of the Work completed;

   d. Terminate all Subcontracts or orders to the extent related to the terminated work unless instructed otherwise by the City;

   e. Settle all outstanding liabilities with Subcontractors and suppliers arising from the termination;

   f. Transfer title and deliver to the City any Work in progress, completed Work, Materials, supplies, Equipment, drawings, Plans, information, warranties or other property that were purchased, acquired, fabricated, produced, supplied, or constructed for the Work, whether completed or terminated, would be required to be furnished to the City on completion of the Contract;

   g. Complete performance of Work not terminated, if any;

h. Inventory along with the Project Manager any acceptable Materials obtained, but not incorporated into the Work; and

i. Take any action necessary or that the Project Manager may direct for the protection and preservation of the site or other property that is in the Contractor's possession or control in which the City has or may acquire an interest.

At any time and for any reason, the City may terminate this Contract by written notice to the Contractor specifying the termination date, which shall be not less than thirty (30) Days from the date such notice is mailed. Notice shall be given to Contractor by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal.

In the event of such termination, Contractor shall be paid such amount as shall compensate Contractor for the Work satisfactorily completed, and accepted by the City, at the time of termination. If the City terminates this Contract, the Contractor shall withdraw its personnel and Equipment, cease performance of any further Work under this Contract as specified in the notice, and turn over to the City any Work completed or in process for which payment has been made.

2. **Payment.** Within thirty (30) Days after the Contractor receives the City's notice of termination for convenience, or within such time as the Contractor and the Project Manager mutually agree, the Contractor shall submit a request for payment due for Work performed through the effective date of termination and as a result of the termination for convenience. The Contractor shall submit with the request sufficient cost records to substantiate the payment amount requested.

   The City shall pay and the Contractor shall accept, as full payment for all Work and Materials provided, a sum mutually agreed to by the Contractor and the City determined as follows:

   a. Work on Contract Pay Items performed prior to termination for which the Contractor has not been paid will be paid at the Contract price according to Section 109.03, or in the absence of Contract unit prices, in accordance with the requirements of Section 109.05 (Extra and Force Account Work). Items eliminated entirely by termination will be paid for as provided in Section 109.07. No Claim for loss of anticipated overhead and profits will be considered, and the provisions of Section 104.02 will not apply.

   b. Reimbursement for organizing the Work when not specified in the Contract and moving Equipment to and from the Project site will be considered where the volume of Work completed is too small to compensate the Contractor for these expenses under the Contract unit prices.

   c. At the option of the Project Manager, Materials the Contractor obtains for the Work that have been inspected, tested, and accepted by the Project Manager and that have not been incorporated in the Work may be purchased from the Contractor at Actual Costs as shown by receipted bills, purchase orders, bills of lading, paid invoices, or other similar Actual Cost records at such points of delivery as may be designated by the Project Manager.

   d. If a sum cannot be agreed upon, the Contractor shall be paid by unilateral Change Order and may seek recourse for the disputed amount in accordance with Section 105.19.

   e. When requested by the City, the Contractor shall furnish itemized statements of the cost of the Work performed and shall give the City (and/or the City's Auditors) access to any and all financial and/or Project records and documents relating thereto. Unless the Contractor, when requested to do so, furnishes such itemized statements and access to any and all financial and/or Project records and documents, the Contractor shall not be entitled to payment for Work for which such information is sought by the City.

3. The Contractor shall incorporate the provisions of this Section as provisions in its Contracts with each of its Subcontractors.

(d) **Termination for Default.** In the event the City Manager declares the Contractor in default as provided in Section 108.07, the City may terminate the Contract in accordance with the following:

1. Upon such termination becoming effective, the City shall provide written notice to the Surety confirming that the Contract is terminated, and that the City is proceeding to finish the Work as set forth in the Contract performance bond and the terms and conditions therein. The City also will take possession of the Project site and of all Materials purchased for the Project thereon. If the expense of completing the Work, including compensation for additional managerial and administrative services, exceeds the unpaid balance of the Contract Amount and the penal amount of the Contract performance bond, the Contractor shall pay the difference to the City, together with any other costs and expenses of terminating the Contract and having it completed by others.

2. If it should be judicially determined that the City's termination for default was improper or in error, then the termination shall be deemed to be a termination for convenience and the Contractor's rights and remedies shall be limited exclusively to those provided under Section 108.08(b).

3. Termination for default as provided herein is in addition to and without prejudice to the City's other rights or remedies. Any of the City's actions permitted herein shall not be deemed a waiver of any other right or remedy of the City under the Contract or under the law. The City may offset any Claims it may have against the Contractor against the amounts due or to become due to the Contractor under any other Contract the Contractor may have with the City. The provisions of this Section shall survive termination of the Contract.

4. When the Contractor is terminated for default, any Claims timely identified in a written notice of intent may be submitted in accordance with provisions of Section 105.19 or the Code of Virginia as amended and as applicable, except that the Contractor shall submit the required Claim within sixty (60) Days after the City's notice of termination for default to the Contractor. The Contractor's failure to submit a Claim within such 60-Day period shall constitute a waiver and release of such Claim.

In the event the Contractor shall for any reason or through any cause be in default of the terms of this Contract, the City may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal.

Unless otherwise provided, the Contractor shall have ten (10) Days from the date such notice is mailed in which to cure the default. Upon failure of the Contractor to cure the default, the City immediately may cancel and terminate this Contract as of the mailing date of the default notice.

Upon termination, the Contractor shall withdraw its personnel and Equipment, cease performance of any further Work under the Contract as specified in the notice, and turn over to the City any Work in process for which payment has been made.

In the event of violations of law, safety or health standards and regulations, the Contract may be cancelled immediately and terminated by the City, and provisions herein with respect to opportunity to cure default shall not be applicable.

108.09—Acceptance

(a) **Contractor's Responsibility for Work**: Until Final Acceptance of the Work by the Project Manager in accordance with the requirements of this Section, the Contractor shall have charge and care thereof and shall take every precaution against damage to any part thereof by action of the elements or from any other

cause. The Contractor shall rebuild, repair, restore, and make good on damage to any portion of the Work occasioned by any of the foregoing causes before Final Acceptance and shall bear the expense thereof. The City may reimburse the Contractor for repair of damage to Work attributable to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor as determined by the Project Manager.

In case of Suspension of Work, the Contractor shall be responsible for the Project and shall take such precautions as may be necessary to prevent damage to the Work, provide for erosion control and drainage, and erect any necessary Temporary Structures, signs, or other facilities as determined by the Project Manager. During the Suspension of Work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living Material in newly established plantings, seedings, and soddings furnished under the Contract and shall take adequate precautions to protect new tree growth and other important vegetation against damage.

(b) **Partial Acceptance:** If at any time during the prosecution of the Project the Contractor completes a unit or portion of the Project, such as a Structure, an interchange, slopes, pavement, or a section of a Roadway in its entirety, it may ask the Project Manager to make final inspection of such Work. If the Project Manager finds upon inspection that the Work conforms to the requirements of the Contract and that acceptance is in the best interest of the public, it may accept the Work as being completed, and the Contractor will be relieved of further responsibility for the Work. Partial acceptance shall in no way void or alter any terms of the Contract.

If any damage is sustained by an accepted unit or portion of the Project attributable to causes beyond the control of the Contractor, the Project Manager may authorize the Contractor to make the necessary repairs. These repairs will be paid for at the Contract price for the items requiring repair. In the absence of Contract prices covering the items of repair, the repair work will be paid for in accordance with the requirements of Section 109.05.

(c) **Final Acceptance:** Upon receipt of a written notice from the Contractor of presumptive completion of the entire Project, the Project Manager will make an inspection. If all Work specified in the Contract has been completed, the inspection will constitute the final inspection and the Project Manager will make the Final Acceptance. The Contractor will be notified in writing, of the determination of Final Acceptance within five (5) Days of the date of the Project Manager's Final Acceptance.

If the Project Manager's inspection discloses that any Work, in whole or in part, is incomplete or unacceptable, the Contractor immediately shall correct the deficiency. The Project Manager shall provide a written list of deficiencies to the Contractor. Upon completion or correction of the Work, another inspection will be made of the deficient Work. If the Work is then satisfactory, the Project Manager will notify the Contractor in writing within five (5) Days of the Project Manager's Final Acceptance. In any event, the Contractor shall be responsible for and maintain the Project until Final Acceptance except under conditions that may be specifically exempted by the Specifications or other Contract Documents.

108.10—Termination of Contractor's Responsibilities

The Contract will be considered fully complete upon Final Acceptance. The Contractor's responsibility for the Work then will cease except as set forth in its bonds, and Sections 107.12, 109.08, 109.10, and other provisions of the Contract Documents that extend the Contractor's responsibility beyond Final Acceptance.

SECTION 109—MEASUREMENT AND PAYMENT

109.01—Measurement of Quantities

(a) **General.** Work specified in the Contract will be measured by the Project Manager in accordance with U.S. Standard Measure. The methods of measurement and computations to be used to determine quantities of Material furnished, and Work performed will be those generally recognized as conforming to good engineering practice.

Specific methods of measurement shall be as indicated in the specific Section for the Contract Item.

Longitudinal measurements for surface area computations will be made along the surface, and transverse measurements will be the surface measure shown on the Plans or ordered in writing by the Project Manager. Individual areas of obstructions with a surface area of 9 square feet or less will not be deducted from surface areas measured for payment.

Structures will be measured in accordance with the neat lines shown on the Plans.

Items that are measured by the linear foot will be measured parallel to the base or foundation upon which they are placed.

Allowance will not be made for surfaces placed over an area greater than that shown on the Plans or for any Material moved from outside the area of the cross-section and lines shown on the Plans.

When standard manufactured items are specified and are identified by weights or dimensions, such identification will be considered nominal. Unless more stringently controlled by tolerances in cited the Specifications, manufacturing tolerances established by the industries involved will be accepted.

(b) **Measurement by Weight:** Materials that are measured or proportioned by weight shall be weighted on accurate scales as specified in this Section. When Material is paid for on a tonnage basis, personnel performing the weighing shall be certified by VDOT and shall be bonded to the City of Hampton in the amount of Ten Thousand and 00/100 Dollars ($10,000.00) for the faithful observance and performance of the duties of the weighperson required herein. The bond shall be executed on a form having the exact wording as the Weighpersons Surety Bond Form available from VDOT and shall be submitted to the City prior to the furnishing of the tonnage Material.

The Contractor shall have the weighperson perform the following:

1. Furnish a signed weigh ticket for each load that shows the date, load number, plant name, size, and type of Material, Project number, schedule or purchase order number, and the weights specified herein;

2. Maintain sufficient documentation so that the accumulative tonnage and distribution of each lot of Material, by contract, may be readily identified; and

3. Submit by the end of the next working day a summary of the number of loads and total weights for each type of Material by contract.

Trucks used to haul Material shall be equipped with a cover suitable to protect the Material and to protect the traveling public.

The truck tare to be used in the weighing operation shall be the weight of the empty truck determined with full tank(s) of fuel and the operator seated in the cab. The tare weight of trucks shall be recorded to the

nearest 20 pounds. At the option of the Contractor, a new tare may be determined for each load. When a new tare is obtained for each load, the requirement for full tank(s) of fuel will be waived.

Net rail shipment weights may be used for pay quantities when evidenced by railroad bills of lading. However, such weights will not be accepted for pay quantities of Materials that subsequently pass through a stationary mixing plant.

Scales shall conform to the requirements for accuracy and sensitivity as set forth in the National Institute of Standards and Technology Handbook No. 44 for Specification Tolerances and Requirements for Commercial and Weighing Devices. Scales used in the weighing of Materials paid for on a tonnage basis shall be approved and sealed in accordance with the requirements of the policies of the Bureau of Weights and Measures of the Department of Agriculture and Consumer Services, or other approved agencies, at least once every six (6) months and upon being moved. Hopper and truck scales shall be serviced and tested by a scale service representative at least once every six (6) months. Hopper scales shall be checked with a minimum 500 pounds of test weights, and truck scales shall be checked with a minimum 20,000 pounds of test weights.

Copies of scale test reports shall be maintained on file at the scale location for at least eighteen (18) months, and copies of all scale service representative test reports shall be forwarded to the City.

The quantity of Materials paid for on a tonnage basis shall be determined on scales equipped with an automatic printer. Truck scale printers shall print the net weight and either the gross or tare weight of each load. Hopper scale printers shall print the net weight of each load. The weigh ticket also shall show the legal gross weight for Material weighed on truck scales and the legal net weight for Material weighed on hopper scales.

If the automatic printer becomes inoperative, the weighing operation may continue for forty-eight (48) hours provided satisfactory visual verification of weights can be made. The written permission of the City Engineer shall be required for the operation of scales after forty-eight (48) hours.

If significant discrepancies are discovered in the printed weight, the ultimate weight for payment will be calculated on volume measurements of the Materials in place and unit weights determined by the Project Manager or by other methods deemed appropriate to protect the interests of the City.

(c) **Measurement by Cubic Yard.** Material that is measured by the cubic yard, loose measurement, or vehicular measurement shall be hauled in approved vehicles and measured therein at the point of delivery. Material measured in vehicles, except streambed gravel, silt cleanout, or other self- consolidating Material will be allowed at the rate of two-thirds (2/3) the volume of the vehicle. The full volume of the vehicle will be allowed for streambed gravel. Such vehicles may be of any size or type acceptable to the Project Manager provided the body is of such shape that the actual contents may be readily and accurately determined. Unless all approved vehicles are of uniform capacity, each vehicle shall bear a plainly legible identification mark indicating the specific approved capacity. Each vehicle shall be loaded to at least its water level capacity.

When approved by the Project Manager in writing, Material specified to be measured by the cubic yard may be weighed and such weights converted to cubic yards for payment purposes. Factors for conversion from weight to volume measurement will be determined by the Project Manager and shall be agreed to by the Contractor before it is used.

(d) **Measurement by Lump Sum**. When used as an item of payment, the term “lump sum” will mean full payment for completion of Work described in the Contract. When a complete Structure or structural unit is specified as a Contract Item, the unit of measurement will be lump sum and shall include all necessary fittings and accessories. The quantities may be shown on the Plans for items for which lump sum is the method of measurement. If shown, the quantities are approximate and are shown for estimating purposes

only, and no measurement of quantities will be made for payment. Items that are to be measured as complete units will be counted by the Inspector in the presence of a representative of the Contractor.

(e) **Measurement for Specific Materials:**

1. **Concrete (Measured by Volume Measure):** Concrete will be measured and computed by dividing the Work into simple geometrical figures and adding its volumes.

2. **Concrete (Measured by Square or Lineal Measure):** Concrete will be measured and computed by dividing the Work into simple geometrical figures and adding its areas or measuring linearly along the item's surface.

3. **Excavation, Embankment, and Borrow**: In computing volumes of Excavation, Embankment, and Borrow, methods having general acceptance in the engineering profession will be used. When the measurement is based on the cross-sectional area, the average end area method will be used.

4. **Asphalt:** Asphalt will be measured by the gallon, volumetric measurement, based on a temperature of 60° F using the following correction factors:

   a. 0.00035 per °F for petroleum oils having a specific gravity 60/60°F above 0.966;

   b. 0.00040 per °F for petroleum oils having a specific gravity 60/60°F between 0.850 and 0.966; and

   c. 0.00025 per °F for emulsified asphalt;

   Unless volume correction tables are available, the following formula shall be used in computing the volume of asphalt at temperatures other than 60°F:

   $$V^1 = V \times [1 - K(T - 60)]$$

   Where:
   V = volume of asphalt to be corrected;
   V^1 = volume of asphalt at 60°F;
   K = correction factor (coefficient of expansion); and
   T = temperature in degrees F of asphalt to be corrected.

   When asphalt is delivered by weight, the volume at 60°F will be determined by dividing the net weight by the weight per gallon at 60°F.

   When specified in the Contract, asphalt will be measured by weight. Net certified scale weights, or weights based on certified volumes in the case of rail shipments, will be used as a basis of measurement, subject to correction when asphalt has been lost from the car or the distributor, disposed of, or otherwise not incorporated in the Work.

   When asphalt is shipped by truck or transport, net certified weights or volumes subjected to correction for loss or foaming may be used to compute quantities.

   Only the quantity of asphalt actually placed in the Work and accepted will be considered in determining the amount due the Contractor.

5. **Timber**: Timber will be measured in units of 1,000 foot board measure actually incorporated in the Structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.

109.02—Plan Quantities

When specified in the Contract, Contract Items will be measured and paid for on the basis of Plan quantities. The quantities allowed for compensation will be those shown on the Plans with deductions from or authorized additions to such quantities resulting from authorized deviations from the Plans. In the case of Excavation, only Excavation within the cross-section prism will be paid for on a Plan quantity basis.

If the Contractor believes that any Plan quantity is incorrect, it may solicit, at its own expense, the aid of a Professional Engineer to verify the quantity, or it may ask the City in writing to verify computations of the quantity. Written requests for quantity verifications by the City shall be accompanied by calculations, drawings, or other evidence indicating why the Plan quantity is believed to be in error. If any item of the Contract is found to be in error and so verified by the Project Manager, payment will be made in accordance with the corrected Plan quantity.

If the City determines during construction that there is an error in the Plan quantity, or that conditions vary from those anticipated in the design to the extent that an actual measurement of a Plan quantity item is warranted, the City will make such measurement and will notify the Contractor, in writing, of the rationale for Adjustment. Payment will then be based on the measured quantity in lieu of the Plan quantity.

109.03—Scope of Payment

Payments to the Contractor will be made for the actual quantities of Contract Items performed in accordance with the Plans and the requirements of the Specifications and other Contract Documents. If, upon completion of the Work, the actual quantities vary, either by an increase or decrease from the estimated quantities shown in the Contract, the Contract unit prices shall prevail; and payment will be made for actual quantities performed at such unit prices unless the unit prices have been modified by written Change Orders according to Sections 104 and 109.04, as determined by the Project Manager.

Quantities appearing on the Invitation to Bid are estimated quantities for the basic design shown on the Plans. With the Project Manager's approval, the Contractor may furnish other design(s) that may involve changes in quantities or the use of different Materials. However, payment will be made for the original quantities listed in the Contract only and in the units of measure given in the Contract for the basic design unless the dimensions for the basic design are changed by an authorized Change Order to conform to field conditions encountered. In this event, the original quantities listed will be modified based on the change in dimension, and the modified quantities will be used for pay quantities at Contract unit prices for the items listed on the Invitation to Bid.

The Contractor shall accept the compensation provided for in the Contract as full payment for the following:

(a) Furnishing all Materials, labor, tools, Equipment, and incidentals necessary to complete the Work according to the Contract;

(b) Performing all Work specified in the Contract;

(c) All loss or damage arising from the nature of the Work or from action of the elements or any other unforeseen difficulties that may be encountered during prosecution of the Work and until its Final Acceptance;

(d) Any license, use, or infringement of a patent, trademark, or copyright; and

(e) The completion of the Work in accordance with the requirements of the Contract.

If the payment clause in the Specifications relating to any unit price in the Contract requires that the unit price cover and be considered compensation for certain work or Material essential to the item, the Work or Material will not be measured or paid for under any other item except as provided in Section 106.05.

The payment of any partial estimate, the final estimate, or any retainage shall in no way affect the obligation of the Contractor to repair or replace any unacceptable, unauthorized or defective Work or Materials; nor shall the City be responsible for any damages attributable to such unacceptable, unauthorized, or defective Work or Materials.

109.04—Payment for Non-Significant Changes and Additional Units of In-scope Work

When the accepted quantities of Work vary from the estimated quantities set forth in the Contract, regardless of whether there have been any alterations in the Plans, the quantities of Work, or the character of Work, the Contractor shall accept as payment in full, so far as Contract Items are concerned, payment at the original Contract unit prices for the accepted quantities of Work performed, except where such variance is a significant change as set forth in Section 104.02. No allowance or other Adjustment, except as provided for a significant change in Section 104.02, will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor resulting directly from such variance, or from the Contractor's unbalanced allocation among the Contract Items of overhead expense and subsequent loss of expected reimbursements therefor, or from any other cause.

109.05—Payment for Contract Changes

The City will pay the Contractor for Adjustments to the Contract Amount based on one of the following methods.

(a) **Payment for Extra Work**

The City may add any Extra Work that in the judgment of the Project Manager is necessary for the satisfactory fulfillment of the Contract within its intended scope. Extra Work may be accomplished by Change Order if the scope is defined as provided in this Section (a), or on a force account basis, if the scope is not defined as provided in Section 109.05(b). Where possible, the City and Contractor will each proceed to secure any information, documentation, or Plans to assist in detailing the extent and character of such Work, if known, in sufficient detail to define, analyze, and estimate the cost and time required to perform such Work. Extra Work does not include overruns of Contract Items according to 104.02.

1. The Project Manager may notify the Contractor in writing that Extra Work is necessary. When no such notice is given, but the Contractor believes Extra Work is necessary, the Contractor shall notify the Project Manager in writing within two (2) Days of such a determination or before performing any such Work. If the Project Manager agrees with the Contractor, the Project Manager will notify the Contractor that Extra Work is necessary. Within seven (7) Days of the Project Manager's notifying the Contractor of Extra Work, or within such time as mutually decided with the Project Manager, the Contractor shall submit a proposal that includes a determination of the extent of such Work, and the additional compensation and/or time it seeks, if any, relative to its determination. The Contractor's request shall be in sufficient detail to enable the Project Manager to determine the basis for and extent of the Contractor's entitlement to additional compensation or time. The Contractor's failure to furnish sufficient documentation or to qualify its reason for failure to do so will delay the determination of entitlement for such Work. If such delay occurs, it will in no way relieve the Contractor of its obligation to meet the Contract Time Limits or other Contract requirements or constitute a basis for the Contractor to make a delay Claim.

2. If the Contractor requests a time extension based on Extra Work, the requested time extension will only be considered if the Extra Work impacts the Critical Path to the extent that it extends the Completion Date of the Project beyond the lattermost of the Contract Fixed Completion Date or its

most recent extension. The Contractor shall submit detailed documents and information showing how the Extra Work impacted the Critical Path in accordance with the requirements in Section 108.04. Any time extension given, including time extensions in accordance with the requirements of Section 108.04, must be included in the executed Change Order.

3. Upon receipt and review of the Contractor's costs for the proposed Extra Work, if it is found that the Contractor's prices and/or the time differ considerably from the City's estimate, the Project Manager may request the Contractor to provide support for its prices and/or its requested time extension.

(b) **Payment by Force Account**

The City will require the Contractor to proceed with Extra Work on a Force Account Basis only when neither the City nor the Contractor can firmly establish a reliable estimate for the cost of the Extra Work because the scope of Work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy, that is, the level of effort required to perform and complete the Extra Work is unknown or not quantifiable at the time of discovery or start of the Extra Work, and will be determined as the Work progresses. The compensation provided for in this Section for Force Account Work applies only to Extra Work the Project Manager orders in writing to be performed on a Force Account Basis and does not apply to any other Work performed under the Contract or to Claims.

The Contractor shall be paid for all labor, Materials, Equipment, services, supplies, taxes, overhead, profit, and miscellaneous costs or expenses for Extra Work performed on a Force Account Basis in the following manner:

1. **Labor:** Unless otherwise approved, the Contractor will receive the rate of wage or scale as set forth in its most recent payroll for each classification of laborers, forepersons, and Superintendent(s) who are in direct charge of the specific operation. The time allowed for payment will be the number of hours such workers are actually engaged in the Work. If overtime work is authorized, payment will be at the normal overtime rate set forth in the Contractor's most recent payroll. If workers performing the class of labor needed have not been employed on the Project, mutually agreed on rates will be established. However, the rates shall be not less than those predetermined for the Project, if applicable. An amount equal to forty-five percent (45%) of the approved force account payroll will be included in the payment for labor to cover administrative costs, profit, and benefits and/or deductions normally paid by the Contractor.

2. **Insurance and Tax:** The Contractor will receive an amount equal to twenty-five percent (25%) of the approved force account payroll exclusive of additives of administrative cost as full compensation for property damage and liability, workers' compensation insurance premiums, unemployment insurance contributions, and social security taxes of Force Account Work.

3. **Materials:** The Contractor will receive the Actual Cost of Materials accepted by the Project Manager that are delivered and used for the Work including taxes, transportation, and handling charges paid by the Contractor, not including labor and Equipment rentals as herein set forth, to which fifteen percent (15%) of the cost will be added for administration and profit. The Contractor shall make every reasonable effort to take advantage of trade discounts offered by Material suppliers. Any discount received shall pass through to the City. Salvageable temporary construction Materials will be retained by the City, or its appropriate salvage value shall be credited to the State, as agreed on by the City.

4. **Equipment:** The Contractor shall provide the Project Manager a list of all Equipment to be used in the Work. For each piece of Equipment, the list shall include the serial number; date of manufacture; location from which Equipment will be transported; and, for rental Equipment, the rental rate and name of the company from which it is rented. The Contractor will be paid rental rates for pieces of machinery, Equipment, and attachments necessary for prosecution of the Work that are approved for use by the Project Manager. Equipment rental will be measured by time in hours of actual time

engaged in the performance of the Work and necessary traveling time of the Equipment within the limits of the Project or source of supply and the Project. Hourly rates will not exceed 1/176 of the monthly rates of the schedule shown in the *Rental Rate Blue Book* modified in accordance with the *Rental Rate Blue Book* rate Adjustment tables that are current at the time the force account is authorized. Equipment rental rates not modified by the Adjustment factors or rate modifications indicated in the *Rental Rate Blue Book* will not be considered. Hourly rates for Equipment on standby will be at fifty percent (50%) of the rate paid for Equipment performing Work**.** Operating costs shall not be included in the standby rate. For the purposes herein, "standby time" is defined as the period of time Equipment ordered to the jobsite by the Project Manager is available on-site for the Work but is idle for reasons not the fault of the Contractor or normally associated with the efficient and necessary use of that Equipment in the overall operation of the Work at hand.

Payment will be made for the total hours the Equipment is performing Work. When Equipment is performing Work less than forty (40) hours for any given week and is on standby, payment for standby time will be allowed for up to forty (40) hours, minus hours performing Work. Payment will not be made for the time that Equipment is on the Project in excess of twenty-four (24) hours prior to its actual performance in the Force Account Work. An amount equal to the *Rental Rate Blue Book* estimated operating cost per hour will be paid for all hours the Equipment is performing Work. This operating cost shall be full compensation for fuel, lubricants, repairs, greasing, fueling, oiling, small tools, and other incidentals. No compensation will be paid for the use of machinery or Equipment not authorized by the Project Manager.

The Contractor will be paid freight cost covering the moving of Equipment to and from the specific force account operation provided such cost is supported by an invoice showing the Actual Cost to the Contractor. However, such payment will be limited to transportation from the nearest source of available Equipment. If Equipment is not returned to the nearest Equipment storage lot but is moved to another location, the freight cost paid will not exceed the cost of return to the nearest storage lot.

The rates for Equipment not listed in the *Rental Rate Blue Book* schedule shall not exceed the hourly rate being paid for such Equipment by the Contractor at the time of the force account authorization. In the absence of such rates, prevailing rates being paid in the area where the authorized Work is to be performed shall be used.

If the Contractor does not possess or have readily available Equipment necessary for performing the Force Account Work and such Equipment is rented from a source other than a company that is an Affiliate of the Contractor, payment will be based on actual invoice rates, to which fifteen percent (15%) of the invoice cost will be added for administrative cost and profit. If the invoice rate does not include the furnishing of fuel, lubricants, repairs, and servicing, the invoice rate will be converted to an hourly rate, and an amount equal to the *Rental Rate Blue Book* estimated operating cost per hour will be added for each hour the Equipment is performing Work.

5. **Miscellaneous:** No additional allowance will be made for attachments that are common accessories for Equipment as defined in the *Rental Rate Blue Book*, general Superintendents, timekeepers, secretaries, the use of small hand-held tools or other costs for which no specific allowance is herein provided. The Contractor will receive compensation equal to the cost of the bond, special railroad insurance premiums, and other additional costs necessary for the specific Force Account Work as determined by the City. The Contractor shall supply documented evidence of such costs.

6. **Compensation:** The compensation as set forth in this Section shall be accepted by the Contractor as payment in full for Work performed on a Force Account Basis. At the end of each day, the Contractor's representative and the Inspector shall compare and reconcile records of the hours of work and Equipment, labor and Materials used in the Work as ordered on a Force Account Basis. Such accounting may not include Actual Costs or labor rates where these are not available but shall be used to verify quantities, types of Materials or labor, and number and types of Equipment.

If all or a portion of the Force Account Work is performed by an approved Subcontractor, the Contractor will be paid ten percent (10%) of the Subcontract net force account costs to cover the Contractor's profit and administrative cost. The amount resulting will not be subject to any further additives. The itemized statements of costs as required below shall be submitted on a form that separates the subcontracted portions of the force account labor, Materials, and Equipment from the other force account costs.

7. **Statements:** Payments will not be made for Work performed on a Force Account Basis until the Contractor has furnished the Project Manager duplicate itemized statements of the cost of such Work detailed as follows:

   a. payroll indicating name, classification, date, daily hours, total hours, rate, and extension of each laborer, foreperson, and Superintendent;

   b. designation, dates, daily hours, total hours, rental rate, and extension for each unit of Equipment;

   c. quantities of Materials, prices, and extensions; and

   d. transportation of Materials.

   Statements shall be accompanied and supported by invoices for all Materials used and transportation charges. However, if Materials used on the Force Account Work are not purchased specifically for such Work but are taken from the Contractor's stock, then in lieu of the invoices, the Contractor shall furnish an affidavit certifying that such Materials were taken from its stock; that the quantity claimed was actually used; and that the price, transportation, and handling claimed represented its Actual Cost.

(c) **Payment for Significant Changes**

When the Contractor alleges that there is a significant change as defined in Section 104.02, then within seven (7) Days it shall submit a request for the additional compensation, excluding anticipated profits for reduced or eliminated Work, for such significant change. The Contractor's request shall be in sufficient detail to enable the Project Manager to determine the basis for and extent of the Contractor's entitlement to additional compensation.

The Contractor's failure to furnish sufficient documentation or to qualify its reason for failure to do so will delay the determination of entitlement to additional compensation. If such delay occurs, it will in no way relieve the Contractor of its obligation to meet Milestone dates, the Contract Time Limit, or other Contract requirements, or constitute the basis for a Claim of any kind.

(d) **Payment for Differing Site Conditions**

When the Contractor encounters a differing site condition as defined in Section 104.03, then within seven (7) Days it shall submit a written request for the additional compensation, excluding anticipated profits, it seeks as a result of such condition. The Contractor's request shall be in sufficient detail to enable the Project Manager to determine the basis for and extent of the Contractor's entitlement to additional compensation.

The Contractor's failure to furnish sufficient documentation or to qualify its reason for failure to do so will delay the determination of entitlement to additional compensation. If such delay occurs, it will in no way relieve the Contractor of its obligation to meet the Contract Time Limits or other Contract requirements or constitute basis for a Claim of any kind.

If the Project Manager determines that the conditions materially differ and cause an increase or decrease in the cost required for the performance of any of the Work, an Adjustment, excluding anticipated profits, will be made; and the Contract may be modified accordingly.

(e) **Payment for Compensable Delay**

The Contractor will be entitled to compensation or damages for a compensable delay, which is an unreasonable delay in performing the Contract, either on its behalf or on behalf of its Subcontractor if and to the extent the delay is caused by acts or omissions of the City, its agents or employees as provided herein.

When there is a compensable delay, the amount of the Contractor's compensation or damages will be uncertain, difficult, and costly to ascertain and verify. Therefore, the City and the Contractor agree that the Liquidated Damages as provided herein shall be the full, entire, and agreed payment for any and all of the Contractor's compensation and damages as a result of a compensable delay, including but not limited to all costs, expenses, damages, business losses, lost profits, consequential damages, or any other delay damages, whether for delay, Suspension, inefficiency, disruption, standby, or extended performance.

To request payment for a compensable delay, the Contractor shall within fourteen (14) Days after the end date of a delay event, unless directed otherwise in writing by the Project Manager, submit a written request for a Change Order for the Project Manager's approval in accordance with Section(s) 108.04. With the request, the Contractor shall submit a SIA and all supporting data to objectively substantiate its request. The Project Manager will evaluate the Contractor's SIA and all supporting data to determine entitlement and the amount of Liquidated Damages in accordance with the following:

1. **Field Office Overhead (FOOH)**

   a. FOOH is the extended Project field office overhead and site costs and expenses that are not attributable to specific Contract Pay Items, but are incurred in support of the Project as a result of a delay, which include:

      (1) Extended site supervision costs such as salaries for Project field Superintendent and administrative staff;

      (2) Extended site office costs such as Utilities, trailers, field office, office Equipment, sanitary, and toilet facilities; and

      (3) Extended site Equipment and tool costs for support Equipment and tools that are not used for specific Contract Pay Items.

   b. The Contractor is entitled to FOOH only for compensable delays for which the Project Manager has granted a Contract Time extension. The Contractor is not entitled to additional compensation for FOOH for compensable delays that are caused by Extra Work performed on a Force Account Basis or by increased quantities or by added Work required under an approved Change Order for which the Contractor is paid for any delay as a result of such Work.

   c. The Contractor's agreed amount of Liquidated Damages for FOOH shall be based on the Project daily FOOH rate derived from the Contractor's Itemized Project FOOH Costs (IPFC). The Contractor shall submit the IPFC information to the Project Manager no later than thirty (30) Days after the Notice to Proceed date or as approved by the Project Manager. On the IPFC form, the Contractor shall list each Project FOOH item, the total estimated costs or expenses for each FOOH item for the original Contract Time, the total Project FOOH, and the Project daily FOOH rate based on the total Project FOOH divided by the original Contract Time. The Liquidated Damages for FOOH will be calculated as follows:

Daily FOOH Rate	X	No. of Days of Compensable Delay	=	Amount of FOOH Liquidated Damages

2. **Home Office Overhead (HOOH)**

HOOH is the Contractor's allowable home office overhead costs and expenses that cannot be attributed and are not billed to a particular Project, but are incurred in support of all of the Contractor's Projects, including but not limited to rent or mortgage, office Equipment and furnishings, insurance, office supplies, depreciation, taxes, and Utilities, as well as executive salaries, administrative staff salaries, Project support staff salaries, and accounting and payroll services.

a. The Contractor is entitled to payment of HOOH only for compensable delays for which the Project Manager has granted a Contract Time extension and only when the Contractor could not reasonably recoup its HOOH while its workforce was idled by the delay because the Contractor was required to remain on standby, ready to resume Work, and unable to perform other Work at the Project or elsewhere during the delay. The Contractor is not entitled to additional compensation for HOOH for compensable delays that are caused by Extra Work performed on a Force Account Basis or by increased quantities or by added Work required under an approved Change Order for which the Contractor is paid for any delay as a result of such Work;

b. The agreed amount of Liquidated Damages for extended or unabsorbed HOOH for a compensable delay will be determined according to the Contract and shall be calculated using the following HOOH equations:

$$\frac{(A \times C)}{B} = D$$

$$D \times E = F$$

Where:

A = Original total Contract Amount
B =Original Contract Time (number of Calendar Days between and inclusive of the Contract Notice to Proceed (NTP) date and the Contract Time Limit)
C = 4% (Agreed allowable HOOH percentage applied to the original total Contract Amount)
D = Daily allowable HOOH rate
E = Number of Days of compensable delay
F = Agreed amount of Liquidated Damages for HOOH

3. **When Audit to Determine FOOH and HOOH**

The IPFC and FOOH shall be subject to field verification and City audit, at any time, as determined by the Project Manager if the Project Manager determines that the rate the Contractor submits is not an accurate representation of the Contractor's actual FOOH at the time of occurrence of the delay. If the Project Manager determines the daily FOOH rate is not an accurate representation of the Contractor's actual FOOH, the Contractor shall submit its actual Project FOOH records at the time of occurrence of the delay, as requested by the Project Manager. The City may perform an audit of the Contractor's records as necessary to verify the Contractor's actual Project FOOH. Adjustments to the daily FOOH rate may be made upon verification or City audit of the Contractor's actual Project FOOH. The Project daily FOOH rate will then be calculated utilizing the rate determined by the audit. The City also may elect to perform an audit of the Contractor's actual Project FOOH at the completion of the Contract, as

determined by the Project Manager, in which case the Project FOOH paid previously by Change Order may be adjusted based on the rate determined by the audit.

The Contractor's actual extended FOOH are defined to be those costs and expenses incurred from the original Contract Time Limit to the actual Final Acceptance of the Project as documented by timesheets, payroll records, accounting records, Contracts, invoices, bills, receipts, tickets, cancelled checks, and similar business records showing the costs and expenses actually incurred for the Project field supervision and administrative staff, Project field office, and overhead items submitted in accordance with this provision; and the records must be accurate and auditable. Failure to submit the required information shall constitute a waiver of that portion of the delay Claim that cannot be verified and shall bar recovery of costs, expenses, or damages for that portion of such Claim.

If the total sum of the extended Project FOOH and unabsorbed or extended HOOH for all approved Change Orders exceeds twenty percent (20%) of the original Contract Amount, the City may at its option calculate the amount of FOOH and HOOH based on a City audit of the Contractor's actual Project FOOH and HOOH records. In such event, the City will perform the audit according to Section 103.08 at the City's expense. The City audit may begin on 10-Days' notice to the Contractor, its Subcontractors, and suppliers. The Contractor, Subcontractors, and suppliers shall make a good faith effort to cooperate with the auditors. Failure to cooperate with the auditors shall constitute a waiver by the Contractor of the FOOH and HOOH portions of any delay Claim. Failure of the Contractor, Subcontractor, or supplier to maintain and retain sufficient records to allow the City's auditor to verify the FOOH and HOOH shall constitute a waiver of that portion of any delay Claim that cannot be verified.

109.06—Common Carrier Rates

The common carrier rates and taxes thereon that are current on the date of the opening of Bids shall be considered applicable to all items subject to transportation charges thereunder. If such rates or taxes are thereafter increased by public authority on any Materials entering into and forming a part of the Contract, an amount equal to the sum of all such increases, when evidenced by receipted common carrier bills, will be paid the Contractor by the City. Requests for such payments shall be made not later than sixty (60) Days after Final Acceptance. If after the date of the opening of Bids such rates or taxes are reduced by public authority on any Materials entering into and forming a part of the Contract, an amount equal to the sum of all such decreases, when evidenced by receipted common carrier bills, will be deducted by the City from the monies due the Contractor for the Work performed under the Contract.

The carrier rates for petroleum tank truck carriers, as defined in the Code of Virginia, that are in effect on the date of the opening of Bids for the Project shall be considered effective for at least one (1) year after that date. After one (1) year from that date, the City will pay the Contractor additional compensation equal to the cost of any carrier rate increases, subject to a maximum of eight percent (8%) of the original carrier rate for any Materials ordered, delivered, and actually incorporated into the Work after the one- year period. However, the Contractor shall advise the Project Manager in writing of its intent to request additional compensation attributable to carrier rate changes at the time of occurrence and shall submit receipted carrier bills and all relative information concerning the original and current carrier rates as it pertains to the Project. If carrier rates are decreased after the one-year period, the City will deduct from monies due the Contractor an amount equal to the cost of any carrier rate decreases, subject to a maximum of eight percent (8%) of the original carrier rate, for any Materials ordered, delivered, and actually incorporated into the Work, based on receipted carrier bills that the Contractor shall furnish. On each succeeding year of the Contract, a maximum difference of eight percent (8%) of the original rate will be considered for increases or decreases in compensation under these terms and conditions.

Except for the aforementioned carriers, additional compensation attributable to changes in hauling rates of other contract carriers will not be allowed.

109.07—Eliminated Items

If all or a part of any Contract Item is determined to be unnecessary for the proper completion of the Work, upon written notice to the Contractor and issuance of an appropriate Change Order, the City may eliminate all or part of such item from the Contract. Payment will not be made for such item except that the Contractor will be compensated for the Actual Cost of any Work performed for such item and the net cost of Materials purchased, including freight and tax costs, as evidenced by invoice. No additional compensation will be made for overhead or anticipated profit.

109.08—Partial Payments

(a) **General**

Partial payments will be based on a monthly progress estimate consisting of approximate quantities and value of Work performed as determined by the Project Manager. When the method of measurement for a Contract Item is in units of each or lump sum, the value of Work accomplished for partial payment will be determined on a pro rata basis. Partial payments will be made once each month for the Work performed in accordance with the Contract requirements. The Contractor will be given the opportunity to review the monthly progress estimate prior to each partial payment. Upon Final Acceptance, one last monthly estimate will be prepared and any additional payment due will be Vouchered for payment.

For Contracts without a payment bond, the Contractor shall submit to the Project Manager a letter from each Materials supplier and Subcontractor involved stating that the Contractor has paid or made satisfactory arrangements for settling all bills for Materials and subcontracted Work that was paid on the previous month's progress estimate. The City will use the source of supply letter and approved subcontracting request to verify that certifications have been received for Work that was paid on the previous monthly estimate. The Contractor shall furnish these and other required certificates as a prerequisite to the issuance of payment for the current monthly estimate.

The City may withhold the payment of any partial or final estimate Voucher or any sum(s) thereof from such Vouchers if the Contractor fails to make payment promptly to all persons supplying Equipment, tools, or Materials for any labor it uses in the prosecution of the Contract Work. Unless otherwise provided under the terms of the Contract, interest shall accrue at the rate of one percent (1%) per month.

(b) **Payment to Subcontractors**

1. Within seven (7) Days after receipt of amounts the City paid to the Contractor, the Contractor shall take one of two steps relating to Work performed by the Subcontractor.

    a. Pay the Subcontractor for the proportionate share of the total payment received from the City attributable to Work the Subcontractor performed under that Contract; or

    b. Notify the City and the Subcontractor, in writing, of intention to withhold all or a part of the Subcontractor's payment with the reason for nonpayment.

    Unless the Contractor has complied with a. or b. above, interest shall accrue to the Subcontractor at the rate of one percent (1%) per month.

2. The Contractor's obligation to pay an interest charge to a Subcontractor pursuant to the payment clause in this Section shall not be construed to be an obligation of the City. A Contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement Claim shall not include any amount for reimbursement for the interest charge.

The Contractor shall require each Subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier Subcontractor.

3. Upon written request and authorization to do so, the City may consider making payments directly to Subcontractors or suppliers and deduct the amount due the Contractor. Any amount the City so pays shall be subject to the five percent (5%) retainage. Any such payment shall not relieve the Contractor of any obligations under this Contract nor shall any such payment limit or reduce any recourse of action or rights of the City relative to this Contract.

(c) **Retainage**

If the Project Manager determines the Contractor's progress is unsatisfactory according to the provisions of Section 108.03 or other applicable Contract Documents, the Project Manager will send a notice of unsatisfactory progress to the Contractor advising it of such determination. This notification also will advise the Contractor that five percent (5%) retainage of the monthly progress estimate is being withheld and will continue to be withheld for each month the Contractor's actual progress is determined to be unsatisfactory.

When the Project Manager determines that the Contractor's progress is satisfactory in accordance with these requirements, the five percent (5%) retainage previously withheld because of unsatisfactory progress will be released in the next monthly progress estimate, and the remaining monthly progress estimates will be paid in full provided the Contractor's progress continues to be satisfactory.

109.09—Payment for Material on Hand

When requested in writing by the Contractor, payment allowances may be made for Materials secured for use on the Project and required to complete the Project. Such Material payments will be made for only those actual quantities of Materials identified in the Contract, approved Change Orders, or otherwise **authorized and** documented **by the Project Manager** based on delivery tickets, bills of lading, or paid invoices. All such payments shall be in accordance with the following terms and conditions:

(a) **Structural Steel or Reinforcing Steel:** An allowance of one hundred percent (100%) of the cost to the Contractor for structural steel **or reinforcing steel** Materials secured for fabrication not to exceed sixty percent (60%) of the Contract price may be made when such Material is delivered to the fabricator and has been adequately identified for exclusive use on the Project. **The provisions of this Section for steel reinforcement will only apply where the quantity of steel reinforcement is identified as a separate and distinct Bid Item for payment.** An allowance of one hundred percent (100%) of the cost to the Contractor for Superstructure units and reinforcing steel, not to exceed ninety percent (90%) of the Contract price, may be made when fabrication is complete. Prior to the granting of such allowances, the Materials and fabricated units shall have been tested or certified and found acceptable to the City and shall have been stored in accordance with the requirements specified herein. Allowances will be based on invoices, bills, or the estimated value as approved by the Project Manager and will be subject to the retainage requirements of Section 109.08. **For the purposes of this Section, "fabrication" is defined as any manufacturing process such as bending, forming, welding, cutting, or coating with paint or anti-corrosive Materials which alters, converts, or changes raw Material for its use in the permanent finished Work.**

(b) **Other Materials**: For aggregate, pipe, guardrail, signs and sign assemblies, and other nonperishable Material, an allowance of one hundred percent (100%) of the cost to the Contractor for Materials, not to exceed ninety percent (90%) of the Contract price, may be made when such Material is delivered **to the Project** and stockpiled or stored in accordance with the requirements specified herein. Prior to the granting of such allowances, the Material shall have been tested and found acceptable to the City. Allowances will

be based on invoices, bills, or the estimated value of the Material as approved by the Project Manager and will be subject to the retainage provisions of Section 109.08.

(c) **Excluded Items:** No allowance will be made for fuels, form lumber, Falsework, Temporary Structures, or other Work that will not become an integral part of the finished construction. **Additionally, no allowance will be made for perishable Material such as cement, seed, plants, or fertilizer.**

(d) **Storage:** Material for which payment allowance is requested shall be stored in an approved manner in areas where damage is not likely to occur. If any of the stored Materials are lost or become damaged, the Contractor shall repair or replace them **at no additional cost to the City**. **Repair or replacement of such Material will not be considered the basis for any extension of Contract Time.** If payment allowance has been made prior to such damage or loss, the amount so allowed or a proportionate part thereof will be deducted from the next progress estimate payment and withheld until satisfactory repairs or replacement has been made.

When it is determined to be impractical to store Materials within the limits of the Project, the Project Manager may approve storage on private property or, for structural units and reinforcing steel, on the manufacturer's or fabricator's yard. Requests for payment allowance for such **stored** Material shall be accompanied by a release from the owner or tenant of such property or yard agreeing to permit the removal of the Materials from the property without cost to the City. The City must be allowed access to the Materials for inspection during normal business hours.

(e) **Materials Inventory**: If the Contractor requests a payment allowance for properly stored Material, it shall submit a certified and itemized inventory statement to the Project Manager no earlier than five (5) Days and no later than two (2) Days prior to the progress estimate date. The statement shall be submitted on forms furnished by the City and shall be accompanied by **supplier's or manufacturer's** invoices or other documents that will verify the Material's cost. Following the initial submission, the Contractor shall submit to the Project Manager a monthly certified update of the itemized inventory statement within the same time frame. The updated inventory statement shall show additional Materials received and stored with invoices or other documents and shall list Materials removed from storage since the last certified inventory statement, with appropriate cost data reflecting the change in the inventory. If the Contractor fails to submit the monthly certified update within the specified time frame, the Project Manager will deduct the full amount of the previous statement from the progress estimate. At the conclusion of the Project, the cost of Material remaining in storage for which payment allowance has been made will be deducted from the progress estimate.

109.10—Final Payment

When Final Acceptance has been made by the City as provided for in Section 108.09, the Inspector will prepare the final statement of the quantities of the items of Work performed. Thereafter, the Contractor will be afforded ten (10) Days in which to review the final estimate before payment. The time may be extended by mutual agreement, and the extension added to the 90-Day criteria set forth within this Section.

Prior partial estimates and payments shall be subject to correction in the final estimate and payment.

For Contracts not requiring a payment bond, the Contractor shall certify to the City that it has paid or made satisfactory arrangements for settling all bills for Materials, labor, Equipment, supplies, and other items entering into or used on the Work and shall furnish other certificates as are required by the City as a prerequisite to the issuance of final payment.

The Contractor's failure to provide required information and certifications will extend the 90-Day period for final payment by the number of days equivalent to the delay attributable to the Contractor.

Upon the Contractor's review of the final estimate and approval by the Project Manager, the Contractor will be paid the entire sum due after previous payments are deducted and other amounts are retained or deducted under the provisions of the Contract. Final payment will become due within ninety (90) Days after Final Acceptance.

Interest will accrue on the amount the City owes to the Contractor that remains unpaid after seven (7) Days following the 90-Day payment date. The rate of interest will be the base rate on corporate loans (prime rate) at large U.S. money center commercial banks as reported daily in *The Wall Street Journal*. When a split rate is published, the lower of the two rates shall be used. The rate effective on the 91st Day following Final Acceptance will be applicable throughout the period of time for which interest is paid. However, in no event shall the rate of interest paid exceed the rate of interest established pursuant to Code of Virginia § 58.1-1812. The period subject to payment of interest will begin on the 91st Calendar Day after Final Acceptance and will extend through the date of the payment of the final estimate.

No interest penalty shall be charged when payment is delayed because of disagreement between the City and the Contractor regarding the quantity, quality, or time of delivery of goods or services or the accuracy of any invoice received for the goods or services, or because of Contractor delay. This exception from the interest penalty shall apply only to that portion of a delayed payment that is actually the subject of the disagreement or Contractor delay and shall apply only for the duration of the disagreement or delay.

The City may deduct monies owed to the Contractor from the final payment. If the final payment is insufficient, monies owed to the Contractor will become due and payable within thirty (30) Days of Contractor's receipt of a certified letter giving notification of the amount owed. The Contractor will be assessed annual interest at the rate determined as specified within this Section for any balance that remains unpaid after thirty-one (31) Days from receipt of the letter.

After Final Acceptance and prior to final payment, the Contractor may request reimbursement for additional performance and payment bond premiums but only to the extent that the final Contract Amount exceeds the original Contract Amount. If the Contractor requests reimbursement on such additional bond premiums, the Contractor shall submit to the City a written request for reimbursement, together with a notarized statement from the Surety, or its agent that certifies the Contractor's actual bond premium rate for any increase in the amended Contract Amount above the original Contract Amount. Such request also shall contain the Contractor's calculation of the additional premium requested for reimbursement as verified by the Surety or its agent.

Upon the Contractor's submission of such request, the City will calculate the additional bond premium payment due the Contractor by multiplying the difference between the final Contract Amount, including all Change Orders, overruns, and Adjustments, and the original Contract Amount, times the percentage bond premium rate provided by the Contractor and certified by the Surety or its agent. The additional premium amount will be paid to the Contractor on the final estimate.

SAMPLE CONTRACT AND GENERAL TERMS AND CONDITIONS

CITY OF HAMPTON
PROCUREMENT OFFICE
Division of Finance
Hampton, Virginia

CONTRACT BETWEEN
CITY OF HAMPTON, VA
AND

THIS CONTRACT, made in triplicate on this ___ day of _____, 2016, by and between the City of Hampton, Virginia, a municipal Corporation of the Commonwealth of Virginia (hereinafter, the "City") and _____, a Virginia Corporation having a place of business at _____ (hereinafter, the "Contractor").

It is mutually understood and agreed that the entire contents of ITB No. ___ Terms and Conditions of Contract (General, Special, and Other Conditions as they may be titled), Addendum No. 1 dated _____, No. 2 dated _____, and No. 3 dated _____; ___ letter dated _____, ____ letter dated _____; Intent to Award Letter dated _____; and all Contractor's documents dated _____ submitted in response to the ITB are incorporated herein by reference the same if each had been fully set out and attached hereto.

WITNESSETH, that the Contractor and the City, for the considerations hereinafter named, agree as follows:

SECTION 1. SCOPE OF WORK

Contractor shall perform services as specified in ITB _____, which is a certain proposal of Contractor dated _____, 2016, which is attached hereto and made a part of this Contract by reference, as if repeated verbatim herein. In the event that a conflict exist between the referenced proposal of Contractor dated _____, 2016, and the terms of this Contract, the terms of this Contract shall govern and supersede any such conflicting terms of the proposal. The Contractor further agrees it will furnish all labor, Equipment, and Material necessary to perform all Work in accordance with the requirements and provisions of the Contract as defined in the General Conditions.

SECTION 2. TIME OF COMPLETION

A. The Work to be performed under this Contract shall be commenced within fifteen (15) Calendar Days after receipt of Written Notice to Proceed. The Work shall be completed within **insert # of days **( )** Calendar Days after receipt of Notice to Proceed.

B. Failure to complete the Work, within the number of Calendar Days stated in this Section, including extension(s) granted thereto, shall result in Liquidated Damages as set forth below.

C. The City and Contractor hereinafter referred to as (the "Parties") agree that time is of the essence and the City will be substantially damaged in amounts that will be difficult or impossible to determine if Substantial Completion of the Project is not achieved within **insert # of days **( )** Calendar Days. Therefore, the Parties have agreed on sums which the Parties agree are reasonable as Liquidated Damages for such occurrences. It is further understood and agreed that the payment of the liquidated damage is in lieu of actual damages for such occurrences. The Contractor hereby waives any defense as to the validity

of any Liquidated Damages stated in this Contract as it may appear on the grounds that such Liquidated Damages are void as penalties or are not reasonably related to actual damages. The Contractor shall be liable for **($) *insert amount ** and 00/100 Dollars per day** for every Calendar Day after expiration of the Contract Time that the Project is not substantially completed**.**

SECTION 3. CONSIDERATION / PROVISION OF SSN OR FIN

A. In consideration of the Work to be performed by Contractor, as set forth under Section 1, entitled Scope of Work, the City agrees to pay Contractor the total sum of _____ 00/100 Dollars [**insert amount] ($).**

B. To obtain payment for Work performed under this Contract, individual Contractors shall provide their social security numbers and proprietorships, partnerships, and Corporations shall provide its Federal Identification Number.

SECTION 4. CHANGE IN SCOPE OF WORK

It is understood that, during the course of construction, changes in the Scope of Work may be necessary as covered in the General Conditions.

A. Changes in the Scope of Work which affect the Contract price or Extra Work shall require a formal written Change Order before Work proceeds. Changes affecting cost and/or Extra Work shall be performed at mutually agreed-upon unit prices, or on a lump sum basis. The Contractor shall be prepared to justify any price for Extra Work by providing detailed breakdown and supporting documents when requested by the City.

1. If sub-contractor does the actual Work, the mark-up shall be limited to a maximum of fifteen percent (15%). If the Subcontractor does not enter into the Work, it shall not be added into the cost. General Contractor mark-up shall be limited to a maximum of ten percent (10%).

2. If the General Contractor is solely responsible for the Work the maximum mark-up shall be limited to ten percent (10%).

B. Changes in the Scope of Work affecting Contract cost or Extra Work shall be performed only after receipt of a formal written modification to the Contract. Any Work performed prior to receipt of such formal written modification shall be done at the Contractor's risk.

C. The provisions of (A) and (B) above shall not limit or restrict the Contractor's responsibility or authority for emergency work.

D. Should the number of units of completed Work of any individual items of the Bid sheets vary by more than twenty-five percent (25%) from the estimated number of units, either the City or the Contractor may request a revision of the unit price for the item so affected, and both parties agree that under such conditions an equitable revision of the price shall be made.

SECTION 5. SCHEDULE OF PAYMENT

A. The following Schedule of Payment shall be followed:

(a) On Contracts of less than Ten Thousand and 00/100 Dollars ($10,000.00) or Contracts where Work is to be completed in less than forty-five (45) Days, payment shall be made as a lump sum upon

completion of all Work and acceptance by the City. Such payment shall be subject to retainage as defined in the General Conditions, Acceptance and Final Payment.

1. After the first of each month, Contractor may present to the City an invoice covering the total quantity of Work that has been completed from the start of the job up to and including the last Day of the preceding month, and the value of the Work so completed as determined in accordance with the schedule of measurement and values established for the Contract. The monthly invoice also may include any allowance for the cost of such Materials and Equipment required in the permanent Work as have been delivered to the site but not as yet incorporated in the Work. However, any such allowance shall not be included on the monthly invoice unless the Contractor has received prior approval from the City.

   Receiving payment from the City for Material stored on site does not in any manner relieve Contractor of either its responsibility to properly protect the Material or its sole liability to replace Material damaged or stolen. Payment by the City shall not be evidence that the City either approves Material as suitable for the Work intended, or that the City accepts any liability for the safe storage and protection of the Material or its replacement if damaged or stolen.

   The City reserves the right to request additional documentation from the Contractor to support any request for payment.

2. After determining the accuracy of monthly invoices, and after deducting previous payments made, the City shall pay to the Contractor ninety-five percent (95%) of the amount of the approved invoice. The five percent (5%) retained percentage shall be held by the City until the Work is complete.

3. The City shall make payment to the Contractor within forty-five (45) Days from the date each invoice is received by the City or its agent responsible for approval of such invoices.

   Within twenty (20) Days after receipt of the invoice, the City shall notify the Contractor of any defect or impropriety which would prevent payment within the forty-five (45) Day limit.

   The City's failure to pay within forty-five (45) Days shall allow the Contractor to assess a finance charge not to exceed one percent (1%) per month.

SECTION 6. <u>OBLIGATION TO SUBCONTRACTOR / INTEREST RATE</u>

A. Within seven (7) Days after receipt of amounts paid to the Contractor by the City, the Contractor shall take one of two steps relating to Work performed by the Subcontractor.

1. Pay the Subcontractor for the proportionate share of the total payment received from the City attributable to the Work performed by the Subcontractor under that Contract; or

2. Notify the City and the Subcontractor, in writing, of intention to withhold all or a part of the Subcontractor's payment with the reason for nonpayment.

   Unless the Contractor has complied with subsections 1 or 2 above, interest shall accrue to the Subcontractor at the rate of one percent (1%) per month.

B. The Contractor's obligation to pay an interest charge to a Subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the City. A Contract modification shall not

be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement Claim shall not include any amount for reimbursement for the interest charge.

The Contractor shall require each Subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier Subcontractor.

C. Upon written request and authorization to do so, the City may consider making payments directly to Subcontractors and deduct the amount due the Contractor. Any amount so paid by the City shall be subject to the five percent (5%) retainage. Any such payment shall not relieve the Contractor of any obligations under this Contract nor shall any such payment limit or reduce any recourse of action or rights of the City relative to this Contract.

SECTION 7. COMPLIANCE WITH ALL LAWS / FOREIGN AND DOMESTIC BUSINESSES-AUTHORITY TO TRANSACT BUSINESS IN THE STATE / COMPLIANCE WITH FEDERAL IMMIGRATION LAW

A. Compliance With All Laws:

Contractor shall comply with all federal, State and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of the Scope Work set forth herein. Contractor represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of this Contract, for example, demolition, land disturbance, and/or right-of-way permits, prior to the initiation of Work.

B. Foreign and Domestic Businesses-Authority to Transact Business in the State:

Contractor, whether organized as a stock or non-stock Corporation, limited liability company, Business trust, or limited partnership or registered as a registered limited liability partnership, shall be authorized to transact business in the State as a domestic or foreign Business entity and shall provide proof thereof. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the State to be revoked or cancelled at any time during the term of the Contract. The Contractor's failure to remain in compliance with the provisions of this section shall be deemed a material breach of this Contract.

C. During the performance of the Contract, Contractor certifies it does not and shall not knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

SECTION 8. APPLICABLE LAW / VENUE

A. Applicable Law:

This Contract shall be deemed to be a Virginia Contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

B. Venue:

Any and all suits for any Claims or for any and every breach or dispute arising out of this Contract shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton, Virginia.

SECTION 9. NONDISCRIMINATION

A. Employment discrimination by Contractor is prohibited. During the performance of this Agreement, Contractor agrees as follows:

1. The Contractor 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 Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Contractor, in all solicitations or advertisements for employees placed by or on its behalf, shall state that Contractor is an equal opportunity employer.

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

B. The Contractor will include the provisions of the foregoing subsections 1 through 3 in every Subcontract or purchase order of over Ten Thousand and 00/100 Dollars ($10,000.00), so that the provisions will be binding upon each Subcontractor or vendor.

SECTION 10. DRUG-FREE WORKPLACE PROVISIONS

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every Subcontract or purchase order of over Ten Thousand and 00/100 Dollars ($10,000.00) so that the provisions will be binding upon each Subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor in accordance with this chapter, the employees of who are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of the Contract.

SECTION 11. NON-ASSIGNMENT CLAUSE

Contractor shall not assign its rights and duties under this Contract without the prior written consent of the City.

SECTION 12. ENVIRONMENTAL CONSIDERATION

Any costs or expenses associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of hazardous substances, including, but not limited to, the costs of any cleanup activities, removals, remediations, responses, damages, fines, administrative or civil penalties, or charges imposed on the Contractor, whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the storage, accumulation, or release of any hazardous substances, or any noncompliance with or failure to meet any federal, State or local standards, requirements, laws, statutes, regulations or the law of nuisance by Contractor (or by its agents, officers, employees, Subcontractors, consultants, subconsultants, or any other persons, Corporations or legal entities employed, utilized, or retained by Contractor) in the performance of this Contract or related activities, shall be paid by Contractor. This paragraph shall survive the termination, cancellation or expiration of this Contract.

SECTION 13. FAITH BASED NON-DISCRIMINATION

The City of Hampton does not discriminate against faith based organizations at that term is defined in Virginia Code Section 2.2-4343.1

SECTION 14. FORMAL CORRESPONDENCE / REPRESENTATIVES AND NOTICES

Any notice, demand, or request by or made pursuant to this Contract shall be deemed properly made if personally delivered in writing or sent by the Parties in the United States mail, postage paid, to the representative specified below or as otherwise designated in writing and mutually agreed.

The Project Manager shall be (name and title of representative goes here):

All formal correspondence from Contractor to City shall be addressed to:

Gayle Hicks, PE, CPM
Water Resources Engineer
City of Hampton Department of Public Works
22 Lincoln Street, 4th Floor
Hampton, Virginia 23669

The Contractor's representation shall be (name and title of representative goes here): All formal correspondence from the City to the Contractor shall be addressed to:

_____
_____
_____

With a copy to:

Doris McRae
Purchasing Manager
City of Hampton
One Franklin Street, Suite 345
Hampton, Virginia 23669

Nothing contained in this Section shall be construed to restrict the transmission of routine communications between representatives of the Contractor and the City.

SECTION 15. ENTIRE AGREEMENT AND MODIFICATIONS

A. The Contract shall be signed in triplicate by the City and the Contractor.

B. The Contract Documents shall be the whole and entire agreement between the City and the Contractor, and cannot be modified, altered, or amended except in writing and signed by the Parties. No agreements, verbal or written, shall be interpreted as a change or modification to this Contract unless issued as prescribed in Sections 15(C) and (D).

C. Formal, written modifications shall be the only method used to change the Contract between the City and the Contractor. Any change otherwise issued and accepted by the Contractor is so accepted by the Contractor at its own risk. Any Extra Work performed by the Contractor subsequent to such acceptance is also at the Contractor's own risk.

D. Formal written communications proposing to change scope of Work, terms and conditions, cost of Contract, shall be addressed as specified in Contract.

E. The Contract Documents are complementary and what is called for by one shall be as binding as if called for by all.

F. If any provision of this Contract is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this Contract, and all other provisions of this Contract shall remain in force and effect.

SECTION 16. CORRELATION OF DOCUMENTS

The City will furnish to the Contractor, free of charge, copies of Drawings and/or Specifications reasonably necessary for the execution of the Work.

The City will be responsible for the adequacy of design and sufficiency of the Drawings and/or Specifications, issuing, if necessary, addendum to clarify the Work. However, when the Work involved is that common to a trade or industry, which may be judged as acceptable, or not by commonly accepted standards for a specific trade, the Contractor shall not use the inadequacy or omission of Drawing detail or Specification language to excuse its failure to perform to the highest industry standards. All Drawings and/or Specifications shall remain the property of the City and shall not be reused on other Work by the Contractor.

SECTION 17. ACCESS TO WORK SITE

The City shall provide access to the site upon which the Work under this Contract is to be done and to such other areas which are designated for use by the Contractor.

The Contractor shall provide at its own expense and without liability to the City any additional land and access thereto that may be required for temporary facilities, or for storage of Materials.

SECTION 18. WORK SITE CONDITIONS/DISCREPANCIES

The Contractor, by careful examination, shall satisfy itself as to the nature and location of the Work, the character of Equipment and facilities needed preliminarily to and during prosecution of the Work, the general and local conditions, and all other matters which may in any way affect the Work under this Contract.

If the Contractor finds any discrepancy between the Drawings and/or Specifications and the physical conditions of the Work site, or any errors or omissions in Drawings and/or Specifications, it immediately shall inform the Project Manager in writing, and the Project Manager promptly shall verify the same. Any Work done after such discovery, until authorized, will be done at the Contractor's risk except in the event of an emergency.

SECTION 19. CHANGED CONDITIONS

During the course of the Work and before such conditions are disturbed, except in the event of any emergency, the Contractor promptly shall notify the Project Manager in writing of previously unknown conditions at the Work site, differing materially from those ordinarily encountered and which prevent the proper execution of the Work of the character provided for in this Contract. The Project Manager promptly shall investigate the conditions; and if he finds that such conditions materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this Contract, an equitable Adjustment shall be made and the Contract formally modified accordingly. Any Claim of the Contractor for Adjustment hereunder shall not be allowed unless it has given notice as required above and the Contract has been formally modified.

SECTION 20. MATERIAL AND APPLIANCES

Unless otherwise stipulated, the Contractor shall provide and pay for all Materials, labor, water, tools, Equipment, light, power, transportation and other facilities of a quantity and quality necessary for the execution and completion of the Work. If required, the Contractor shall furnish satisfactory evidence as to the kind and quality of Materials.

The Contractor promptly shall notify the Project Manager in writing if any change in Materials as specified is contemplated or proposed. Any such proposed change shall be investigated promptly, and if found to be necessary and/or acceptable, the Contract shall be modified formally. Any change in Materials shall be made at the Contractor's own risk unless approved as prescribed above.

SECTION 21. PERMITS, UTILITY FEES, AND BUSINESS LICENSE

Utility fees of a temporary nature necessary for the prosecution of the Work shall be secured and paid for by the Contractor. Utility fees for permanent Structures or permanent changes in existing facilities shall be secured and paid for by the City unless otherwise specified.

Permits (building, plumbing, mechanical, and electrical) shall be obtained from the Division of Building Inspection prior to performance of Work. No permit fee will be charged for City-owned property. However, fees will be charged for all other publicly owned property.

Contractor shall comply with business license requirements on all publicly owned Projects.

SECTION 22. ROYALTIES AND PATENTS

The Contractor shall pay all applicable royalties and license fees. It shall defend all suits or Claims for infringement of any patent rights and save harmless the City from loss on account thereof except that the City shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, unless the City has notified the Contractor prior to the signing of the Contract that the particular process, design, or product is patented or is believed to be patented.

SECTION 23. SUPERINTENDENCE

The Contractor shall keep assigned to the Project at all times during its progress, a representative who shall represent the Contractor and have authority to make decisions in day-to-day activities.

SECTION 24. EMPLOYEES

At all times, the Contractor shall enforce proper discipline and order among its employees and shall seek to avoid employing on the Work any unfit person or anyone not skilled in the Work assigned to him. Adequate sanitary facilities shall be provided by the Contractor. The Contractor shall be responsible for complying with all OSHA requirements.

SECTION 25. APPLICABLE FEDERAL, STATE, AND LOCAL RESPONSIBILITIES

The Contractor shall keep itself fully informed of all applicable federal, State, and local ordinances, regulations, and laws. It shall at all times observe and comply with said ordinances, regulations, and laws. It further shall post all notices to the public and employees as required.

SECTION 26. PROTECTION OF THE PUBLIC AND OF WORK AND PROPERTY

The Contractor shall provide and maintain all necessary watchmen, flagmen, barricades, and signage in accordance with requirements of the Project Manager and take all reasonable precautions for the protection and safety of the public. It continuously shall maintain reasonable protection of all Work from damage, and shall take all reasonable precautions to protect property from injury or loss arising in connection with this Contract. The Contractor shall take reasonable precautions to protect private property adjacent to the Project from such nuisances as debris and excessive noise. It shall make good any damage, injury, or loss to its Work and to the Property or the City resulting from lack of reasonable protective precautions except such as may be caused by agents or employees of the City.

SECTION 27. EMERGENCY WORK

If a situation affects the safety of life, the Work, or adjoining property, without special instructions or authorization from the Project Manager, the Contractor is permitted to act at its discretion to prevent such threatening loss or injury. It also shall act, without appeal, if the Project Manager so authorizes or instructs. Any compensation claimed by the Contractor for emergency work shall be negotiated and approved by the City in writing.

SECTION 28. SUBCONTRACTS

As soon as practicable after signing the Contract, but in any event prior to the performance of any Work on the Project, the Contractor shall notify the City in writing of the names of Subcontractors proposed for the Work, designating the portions of Work to be performed by each. This list shall include the estimated dollar amount with each and identify those Firms who are defined as a Minority Business Enterprise, Small Business Enterprise, Woman-Owned Enterprise.

A Minority Business Enterprise (MBE) is a Business that is owned and controlled by one or more socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background, or other similar cause. A MBE is at least fifty-one percent (51%) owned and controlled by one or more such disadvantaged persons. In the case of publicly owned companies, at least fifty-one percent (51%) of its voting stock must be owned and controlled by minorities or members of other groups. Additionally, the management and daily business operations must be controlled by one or more such individuals.

"Minority" means any African American, Hispanic American, Native American or Alaskan and/or Aleut native, Asian, or a person of Pacific Island descent who is either a citizen of the United States or a permanent resident. Members of other groups means all other individuals found to be socially disadvantaged by the United States Small Business Administration under Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a).

The Contractor agrees that it is as fully responsible for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by it, as it is for the acts and omissions of persons directly employed by it.

Nothing contained in the Contract Documents shall create any Contractual relation between any Subcontractor and the City.

SECTION 29. ORDER OF COMPLETION

The Contractor shall submit, as soon as practical after Award of Contract, a schedule which shall show the order (and value of) in which the Contractor proposes to carry on the Work, with dates at which the Contractor will start the several parts of the Work, and estimated dates of completion of the several parts. The schedule of values, once approved by City, shall be the basis for submittal and approval of monthly progress payments.

SECTION 30. SEPARATE CONTRACTS

The City reserves the right to allow other Contractors to provide goods or perform services in connection with the Project. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of Materials and the execution of Work and properly shall connect and coordinate its Work with theirs. If the proper execution or results of any part of the Contractor's Work depends upon the Work of any other Contractors, the Contractor shall inspect and promptly report to the Project Manager any defects in such Work that render it unsuitable for such proper execution and results.

SECTION 31. PROJECT MANAGER'S STATUS

The Project Manager at all times shall have access to the Work whenever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and for inspection.

The Project Manager shall perform technical inspection of the Work. He has authority to stop the Work whenever such stoppage may be necessary to insure the proper execution of the Contract. He also shall have authority to reject all Work and Materials which do not conform to the Contract and to decide questions which arise in the execution of the Work.

Notwithstanding such inspection, the Contractor will be held responsible for the acceptability of the finished Work. If the Specifications, the Project Manager's instructions, laws, ordinances, or any public authority require any Work to be specially tested or approved, the Contractor shall give the Project Manager timely notice to its readiness for inspection, and if the inspection is by an authority other than the City, of the date fixed for such inspection. If any Work required to be inspected should be covered without proper approval or consent, if required, it must be uncovered for examination and properly restored at the Contractor's expense.

Reexamination of any Work may be ordered, and if so ordered, the Work must be uncovered by the Contractor. If such Work is found to be in accordance with the Contract, the City shall pay the cost of reexamination and replacement. If such Work is not in accordance with the Contract, the Contractor shall pay such cost.

The Project Manager's presence and actions do not replace the legal requirements of the State and/or local building codes. Notwithstanding the Project Manager's actions or instructions, the Contractor shall adhere to all building code requirements regarding inspection and approvals.

Whenever Work being done by the City's forces, Utility companies, or by other Contractors' forces is contiguous to Work covered by this Contract, the respective rights of the various interests involved shall be established by the Project Manager to secure the completion of the various portions of the Work in general harmony.

Within a reasonable time after presentation to him, the Project Manager shall make decisions in writing on all matters relating to the execution and progress of the Work or the interpretation of the Specifications and/or drawings.

In making these decisions, the Project Manager shall have authority to make interpretations and minor changes as to the scope of Work not involving extra cost, and not inconsistent with the purpose of the Work. If the Contractor claims that any such instructions involve extra cost, it shall give written notice thereof within ten (10) Days, after the receipt of such instruction. Except in an emergency endangering life and/or property, the City shall accept no extra cost unless pursuant to a formal modification of the Contract.

SECTION 32. RESPONSIBILITY FOR WORK

The Contractor assumes full responsibility for the Work until Final Acceptance. The Contractor shall be responsible for damage to or destruction of the Work caused by the negligence of the Contractor, or any other party under the control and supervision of the Contractor. The Contractor agrees to make no Claims against the City for damages for the Work from any cause except negligence or willful acts of the City, improper or faulty design, acts of any foreign or domestic enemy, or acts of war. Contractor shall obtain and maintain in force until City's Final Acceptance of Project, Builders' Risk Insurance that fully covers any loss or damage to Project.

SECTION 33. CHANGES IN THE WORK

The City may make changes in the Drawings and Specifications or scheduling of the Contract within the general scope at any time. If such changes add to or deduct from the Contractor's cost of the Work, the Contract price shall be adjusted accordingly. All such Work shall be executed under the conditions of the original Contract except that any Claim for extension of time caused thereby shall be included as part of the negotiated Change Order.

SECTION 34. EXTENSION OF TIME

A. Extension of time stipulated in the Contract for completion of the Work will be made when formally approved changes in the Work increase the overall scope; when the Work is suspended; or when the Work of the Contractor is delayed on account of physical conditions or acts of others which could not have been foreseen by, or which were beyond the control of the Contractor, its Subcontractors, and which were not the result of its fault or negligence.

B. **NO TIME EXTENSION WILL BE GRANTED BY THE CITY UNLESS THE FOLLOWING PROCESS IS FOLLOWED.** If, during any month the Contractor is unable to Work for reasons beyond its control and believes it is due an extension, it shall submit in writing, along with its monthly request for progress payments, a request for the extension which clearly explains the circumstances which it feels justifies an extension. The request will be reviewed by the City and a written response, granted or rejecting the request, will be issued. Any request for days older than the current month will be dismissed without consideration. Time extensions shall constitute a formal change to the Contract terms and conditions and shall be issued accordingly.

SECTION 35. SUSPENSION OF WORK

The City may at any time suspend the Work, or any part thereof, by giving ten (10) Days' notice to the Contractor in writing. The Work shall be resumed by the Contractor within ten (10) Days after the date fixed in the written notice from the City to the Contractor to do so. The City shall reimburse the Contractor for expenses incurred as a result of such Suspension.

SECTION 36. TERMINATION

A. Contractor's Right to Stop Work or Terminate Contract

If the Work should be suspended by City, stopped under an order of any court or other public authority, or delayed by Project Manager's failure to respond for a period of more than three (3) months, through no act or fault of the Contractor or of anyone employed by it, upon having given ten (10) Days' written notice, and having received no reply, the Contractor may terminate Contract. The Contractor shall be paid for all Work properly executed, plus any loss sustained upon any plant or Materials plus reasonable profit and damages.

B. Non-Appropriation –Availability of Funds

It is understood and agreed between the Parties that the City shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of this Contract. In the event funds are not appropriated and budgeted in any fiscal year for payments due under this Contract, the City immediately shall notify Contractor of such occurrence, and this Contract shall terminate on the last day of the fiscal year for which an appropriation was received without penalty or expense to the City of any kind whatsoever.

C. Termination for Convenience

The City may at any time, and for any reason terminate this Contract by written notice to the Contractor specifying the termination date, which shall be not less than thirty (30) Days from the date such notice is mailed. Notice shall be given to the Contractor by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal.

In the event of such termination, the Contractor shall be paid such amount as shall compensate the Contractor for the Work satisfactorily completed and accepted by the City at the time of termination. If the City terminates this Contract, Contractor shall withdraw its personnel and Equipment, cease performance of any further Work under this Contract, and turn over to the City any Work completed or in process for which payment has been made.

D. Termination with Cause/Default – Cancellation

If the Contractor for any reason or through any cause shall be in default of the terms of this Contract, the City may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal.

Unless otherwise provided, the Contractor shall have ten (10) Days from the date such notice is mailed in which to cure the default. Upon failure of the Contractor to cure the default, the City immediately may cancel and terminate this Contract as of the mailing date of the default notice.

Upon termination, the Contractor shall withdraw its personnel and Equipment, cease performance of any further Work under the Contract, and turn over to the City any Work in process for which payment has been made.

In the event of violations of law, safety, or health standards and regulations, this Contract immediately may be cancelled and terminated by the City and provisions herein with respect to opportunity to cure default shall not be applicable.

SECTION 37. REMOVAL OF EQUIPMENT

In the case of termination of this Contract before completion for any cause whatever, the Contractor, if notified to do so by the City, promptly shall remove any part or all of its Equipment and supplies from the property, failing which the City shall have the right to remove such Equipment and supplies at the expense of the Contractor.

SECTION 38. PARTIAL COMPLETION AND ACCEPTANCE

If at any time prior to Final Completion, any portion of the Work has been satisfactorily completed, and if the Project Manager determines that access to that portion is not required for the future operation of the Contractor, the Project Manager may issue to the Contractor a certificate of partial completion, and thereupon or at any time thereafter the City may take over and use the portion of the Work described in such certificate.

The issuance of a certificate of partial completion shall not be construed to constitute an extension of the Contractor's time to complete the portion of the Work to which it relates if it has failed to complete it in accordance with the terms of this Contract. The issuance of such a certificate shall not operate to release the Contractor or its Sureties from any obligations under this Contract or performance bond.

If such prior use increases the cost of or delays the Work, the Contractor shall be entitled to extra compensation, or extension of time, or both, as the City may determine, unless otherwise provided.

SECTION 39. PAYMENTS WITHHELD PRIOR TO FINAL ACCEPTANCE OF WORK

As a result of discovered evidence, the City may withhold or nullify the whole or part of any certificate of payment to such extent as may be necessary to protect itself from loss caused by:

A. Defective Work not remedied;

B. Claims filed or reasonable evidence indicating probable filing of Claims by other parties against the Contractor;

C. Failure of the Contractor of making payments properly to Subcontractors or for Material or labor; or

D. Damage to another Contractor.

SECTION 40. CORRECTION OF WORK BEFORE FINAL PAYMENT

The Contractor promptly shall remove from the premises all Materials and Work condemned by the Project Manager as failing to meet Contract requirements, regardless of whether incorporated in the Work, and the Contractor promptly shall replace Materials and/or re-execute Work in accordance with the Contract and without expense to the City and shall bear the expense of making good all Work of other Contractors destroyed or damaged by such removal or replacement.

All removal and replacement Work shall be done at the Contractor's expense. If the Contractor does not take action to remove such condemned Work and Materials within ten (10) Days after written notice, the City may remove them and store the Material at the expense of the Contractor. If the Contractor does not pay the expense of such removal and storage within ten (10) Days' time thereafter, the City may, upon ten (10) Days' written notice, sell such Materials at auction or at private sale and shall pay to the Contractor any net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

SECTION 41. CLEANING UP

The Contractor shall remove at its own expense from the Work site and from all public and private property all temporary storage Structures, rubbish, and waste Materials resulting from its operations. This requirement shall not apply to property used for permanent disposal of rubbish or waste Materials in accordance with permission for such disposal granted to the Contractor by the Project Manager where such disposal is in accordance with local ordinances.

SECTION 42. ACCEPTANCE AND FINAL PAYMENT

A. Upon receipt of written notice that the Work is substantially completed or ready for final inspection and acceptance, the Project Manager promptly will make such inspection; and when he finds the Work acceptable under the Contract and the Contract fully performed or substantially completed, he promptly shall issue a certificate, over his own signature, stating that the Work required by this Contract has been completed or substantially completed and is accepted by him under the terms and conditions thereof, and the entire balance found to be due the Contractor, including the retained percentage, less a retention based on the estimate of the fair value of the Claims against the Contractor and the cost of completing the incomplete or unsatisfactory items of Work with specified amounts for each incomplete or defective item or Work, is due and payable. The date of Substantial Completion of a Project or specified area of a Project is the date when the construction is sufficiently completed in accordance with the Contract as modified by any Change Orders agreed to by the Parties so that the City may occupy the Project or specified area of the Project for the use for which it is intended.

B. The making and acceptance of the final payment shall constitute a waiver of all Claims by the City, other than those arising from unsettled Claims or from faulty Work appearing within the guarantee period provided in the Special Conditions, from the requirements of the Drawings and Specifications, or from manufacturer's guarantees. It also shall constitute a waiver of all Claims by the Contractor, except those previously made and still unsettled.

SECTION 43. HOLD HARMLESS-INDEMNIFICATION

It is understood and agreed that Contractor hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Contractor, its Subcontractors, agents or employees under or in connection with this Contract or the performance or failure to perform any Work required by this Contract. Contractor agrees to indemnify and hold harmless the City and its agents, volunteers, servants, employees, and officials from and against any and all Claims, losses, or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of Claims or suits due to, arising out of or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Contract, and (c) the performance of the Work by Contractor or those for whom Contractor legally is liable. Upon the City's written demand, Contractor shall assume and defend at Contractor's sole expense any and all such suits or defense of Claims made against the City, its agents, volunteers, servants, employees or officials.

SECTION 44. INSURANCE

Contractor agrees to secure and maintain in full force and effect at all times during the term of this Contract, the following policies of insurance:

A. Workers' Compensation Insurance as required under Virginia Code Title 65.2.

B. Comprehensive General Liability Insurance, including Contractual liability and products and completed operations liability coverages, in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) combined single limits (CSL). Such insurance shall name the City of Hampton as an additional insured by policy endorsement.

C. Automobile Liability Insurance including coverage for non-owned and hired vehicles in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) combined single limits (CSL).

D. Umbrella/Excess Liability Insurance at limits not less than Two Million and 00/100 Dollars ($2,000,000.00).

Contractor shall submit to the Procurement Officer certificates of insurance with endorsement to the policy attached, prior to beginning Work under this Contract and no later than ten (10) Days after Award of the Contract.

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in the State, and acceptable to the City, and shall carry the provision that the insurance will not be cancelled or materially modified by Contractor without thirty (30) Days prior written notice to the City.

The Contractor's insurance shall be used primary and the City's primary coverage shall not be used to satisfy any Claims.

IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO IMMEDIATELY NOTIFY THE CITY SHOULD ANY POLICY BE CANCELLED. FAILURE TO NOTIFY THE CITY SHALL CONSTITUTE A MATERIAL BREACH OF THE CONTRACT.

The certificates of insurance shall list the City of Hampton, 1 Franklin Street, Hampton, Virginia 23669, as the additional insured for the Project. The endorsement to the policy would be that which is attached to the Contractor's liability policy that acknowledges the City as an additional insured on all policies the City requires to be endorsed. This shall be either a direct endorsement that actually names the City or a blanket endorsement that the Contract states that the City will be named as an additional insured on the insurance policy.

SECTION 45. PAYMENT/PERFORMANCE BONDS

Unless otherwise noted, all Surety documents required herein shall be received and approved by the Procurement Officer prior to beginning Work under the Contract and not later than ten (10) Days after issuance of the "Notice of Intent to Award" or "Notice of Award" (whichever is sooner) for this ITB. Each of the required bonds shall be payable to the City of Hampton. Bonds shall be executed by one or more Surety companies legally authorized to issue bonds and do business in the State. Said bonds shall be payable to the City of Hampton, 1 Franklin Street, Hampton, Virginia 23669. With the exception of any required Bid Bond, each of the required bonds shall be maintained through the term of the Contract and any extensions.

Contractor shall furnish to the City a payment bond and a performance bond in conformity with the Virginia Code §§ 2.2-4337, *et seq*. Each bond shall be payable to the City of Hampton and each in the sum of the City Contract Amount. The performance bond shall be conditioned upon the faithful performance of the Contract in strict conformity with the terms and conditions of the Contract, and each payment bond shall be conditioned upon the prompt payment for all such Material furnished or labor supplied or performed in the prosecution of the Work.

SECTION 46. CLAIMS FOR EXTRA COMPENSATION

If Contractor encounters Work and services not included in this Contract or any supplement thereto but which in the opinion of Contractor is necessary for the successful completion of the Contract and requires extra compensation, before it begins the Work on which it bases its Claim, Contractor promptly shall notify the City in writing of its intention to perform the Work and to make Claim for extra compensation. Notification by Contractor under the terms of this section shall not be construed as proving the validity of the Claim. **No Claim for extra compensation will be filed or considered unless notification is given as herein set forth.**

Upon notification, the City promptly shall review any Claim for extra compensation. If a Claim is accepted by the City, it shall be paid as Extra Work in accordance with the terms of a supplemental agreement executed by the Parties before such Work is begun.

The amounts claimed as extra compensation by Contractor shall be itemized separately, become a part of the Claim, and serve as documentation thereto. The amounts itemized shall be in sufficient detail to enable the City to analyze the need for the Extra Work and the costs claimed for the Work.

SECTION 47. SUBMISSION AND DISPOSITION OF CONTRACTUAL CLAIMS

Prompt knowledge by the City of an existing or impending Claim for damages or other relief may alter the Plans, scheduling, or other action of City and/or result in mitigation or elimination of the effects of the Claim.

Therefore, a written statement providing City with notice of Contractor's intention to file a Claim which (i) describes the act or omission by City or its agents that Contractor contends caused it damages or entitles it to other relief; and (ii) provides a description of the nature and amount of the Claim. Such written statement shall be submitted to City within twenty (20) Days of the time of the occurrence or beginning of the Work upon which the Claim is based; provided, however, if such damage is deemed certain in the opinion of Contractor to result from its acting on an order from City, it immediately shall take written exception to the order. For purposes of this provision, "Claim" shall include, without limitation, any request for an increase in the Contract price or time and any request for equitable Adjustment. Submission of a notice of Claim as specified shall be mandatory, and failure to submit such notice shall be a conclusive waiver to such Claim for damages or other relief by Contractor. Neither an oral notice or statement, nor an untimely notice of statement will be sufficient to satisfy the requirements herein.

The City will review the Claim and render a final decision in writing thirty (30) Days of receipt of Contractor's written request for a final decision. Such decision shall be final and binding to the fullest extent allowed by law.

SECTION 48. FEDERAL FUNDING / REGULATIONS (24 CFR § 85.36(I))

The following provisions shall apply specifically to all Contracts and Subcontracts resulting from an Award based on the use of Federal Funds.

1. Remedies for breach of Contract shall be in accordance with General Conditions, as previously stated herein.

2. Termination by the Owner/Grantee shall be permitted in accordance with General Conditions, as previously stated herein.

3. Contractor and all Subcontractors with Contracts in excess of Ten Thousand and 00/100 Dollars ($10,000.00) shall abide by the requirements under Executive Orders No. 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), including specifically the provisions of equal opportunity clause and submittal of written affirmative action program. The Contractor must certify that segregated facilities are not provided or maintained.

4. Section 3 of the Housing and Urban Development Act of 1968 requires that, to the greatest extent feasible, opportunities for training and employment arising from Community Development Block Grant ("CDBG") will be provided to low-Income persons residing in the program service area. Also, to the greatest extent feasible, Contracts for Work (all types) to be performed in connection with CDBG will be awarded to Business concerns that are located in or owned by persons residing in the program service area.

5. Contractors and Subcontractors must comply with the policy stated herein pertaining to Minority/Women's Business Enterprise to ensure the inclusion to the maximum extent possible.

6. Contractor and all Subcontractors shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

7. Contractor and all Subcontractors with Contracts in excess of Two Thousand and 00/100 Dollars ($2,000.00) shall comply with the Davis-Bacon Act (40 U.S.C. §§ 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).

8. Contractor and all Subcontractors with Contracts in excess of Two Thousand and 00/100 Dollars ($2,000.00) shall comply with Sections 103 and 107 of the Contractors Work Hours and Safety Standards Act (40 U.S.C. § 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

9. Contractor shall comply with requirements and regulations pertaining to reporting.

10. Contractor shall comply with requirements and regulation pertaining to patent rights in accordance with General Conditions as previously stated herein.

11. Contractor shall pay applicable royalties and license fees pertaining to copyrights and rights in data. Contractor shall defend all suits or Claims for the infringement thereof and shall save the City harmless from loss on account thereof as previously stated herein.

12. Contractor shall allow access by the City/Grantee, the sub-grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representative to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific Contract for the purpose of making audit, examination, excerpts, and transcriptions.

13. Contractor shall retain all required records for three years after final payments and all other pending matters are closed.

14. Contractor and all Subcontractors with Contracts in excess of One Hundred Thousand and 00/100 Dollars ($100,000.00) shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (41 U.S.C. § 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

15. Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

16. In accordance with 24 CFR Part 5, CDBG funds may not be used to directly or indirectly employ, award Contracts to or otherwise engage the services of any Contractor or sub-recipient during any period of debarment, Suspension or placement of ineligibility status.

17. Contractor shall comply with Buy America requirements mandated by the Surface Transportation Assistance Act of 1982 (49 CFR Ch. VI Part 661).

[SIGNATURES APPEAR ON FOLLOWING PAGE]

SIGNATURE OF PARTIES

As evidence of this Contract to the preceding terms and conditions set forth herein, the Parties affix their authorized signatures hereto:

Name of Company _____

ATTEST:

_____ By: _____

Corporate Secretary/Authorized Agent

Signature of Corporate Officer

Its: _____

Title

CITY OF HAMPTON, VIRGINIA

ATTEST:

_____ By: _____

City Clerk

City Manager/Authorized Designee

Approved as to form and legal sufficiency

_____

Deputy City Attorney

Date: _____

STATE OF
CITY/COUNTY OF , to-wit:

The foregoing Contract was acknowledged before me this _____ day of _____, 2016, by ___[name of officer to sign]_____, _[title]__, of _____[name of company]_____, a_____Corporation on its behalf. He/She is known to me personally or produced _____ as identification.

_____

Notary Public

My Commission expires: _____

Registration No.: _____

PROCUREMENT OFFICE
Division of Finance
Hampton, Virginia

ATTACHMENT A: CONTRACT PERFORMANCE AND PAYMENT BOND
PROJECT NO. 17-3/CLP

KNOW ALL MEN BY THESE PRESENTS: That, we _____ *(Name of Contractor)*, a _____*(Corporation, Partnership or Individual)* (hereinafter "Principal") and _____*(Name of Surety)*, of ____ _____, State of _____ (hereinafter the "Surety"), are by this performance and payment bond held and firmly bound unto the City of Hampton, Virginia, a municipal cooperation of the Commonwealth of Virginia (hereinafter the "City"), in the penal sum under each bond of _____ _____ Dollars ($) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that:

Whereas, the Principal entered into a certain Contract with the City, dated the _____ day _____ of _____, 2016, a copy of which is attached hereto and made a part hereof for the construction of:

(Salt Ponds Beach Breakwater Construction)

PERFORMANCE

NOW, THEREFORE, if the said Principal shall well and faithfully do and perform the things agreed to be done and performed and shall comply with all terms of the aforesaid Contract and Plans and Specifications, advertisement, proposal, made a part hereof and shall maintain and replace all defective Work under this Contract for a period of one (1) year from its acceptance, and shall protect and save harmless the actions of every kind and description arising from injury or damage to persons and property in the prosecution of said Work, or in the failure to properly safeguard the same, and from all Claims arising under the workman's compensation laws or from infringement of any patent rights, then this obligation shall be void; otherwise, it shall remain in full force and virtue.

PAYMENT

NOW, THEREFORE, if the Principal promptly shall make payment to all persons, Firms, Subcontractors, and Corporations furnishing Materials for or performing labor in the prosecution of the Work provided for in such Contract, and any authorized extension or modification thereof, including all amounts due for Materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, Equipment and tools, consumed or used in connection with the construction of such Work, and all insurance premiums on said Work, and for all labor, performed in such Work

whether by Subcontractor or otherwise, then this obligation shall be void; otherwise, it shall remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in any wise affect its obligation on this performance and payment bond and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the Work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the City and the Contractor shall abridge the right of any beneficiary hereunder, whose Claim may be unsatisfied.

CONTRACT PERFORMANCE AND PAYMENT BOND
PROJECT NO. 17-3/CLP

IN WITNESS WHEREOF, the parties hereto have caused their names to be subscribed and affixed by its duly authorized officers on its behalf this _____day of_____, 2016.

(For use by an individual
trading under trade name) _____

_____

(For use by an individual
trading under trade name)

Trading as _____

_____

(For use by partnership) _____
(Partnership Name)

_____
(Partner)

_____

(For use by Corporation) _____
(Corporate Name)

By _____
(Corporate Officer Signature)

_____
(Official Title/Position)

_____

_____
Surety

By _____(Seal)
Attorney-in-Fact

Countersigned: _____
Resident Virginia Agent *Registration No.*

_____
Address

_____
Telephone Number

NOTE: Submit Certificate of Power-of-Attorney with Bond

ATTACHMENT B: RETAINED FUNDS ESCROW AGREEMENT

THIS RETAINED FUNDS ESCROW AGREEMENT (this "Agreement"), made and entered into this _____ day of _____ _____, 201_____ by, between and among the City of Hampton, Virginia, a municipal Corporation of the Commonwealth of Virginia, and __ _____ *(Contractor)*, and _____ _____ *(Name of Bank)*, located at _____ _____ *(Address of Bank)*, a trust company, bank, or savings and loan institution with its principal office located in the Commonwealth (hereinafter referred to collectively as "Bank") and _____ ("Surety") provides:

I.

The City and the Contractor have entered into a contract with respect to: _____ _____ _____ ("the Contract"). This Agreement is pursuant to, but in no way amends or modifies, the Contract. Payments made hereunder or the release of funds from escrow shall not be deemed approval or acceptance of performance by the Contractor.

II.

In order to assure full and satisfactory performance by the Contractor of its obligations under the Contract, the City is required thereby to retain certain amounts otherwise due the Contractor. With the approval of the City, the Contractor has elected to have these retained amounts held in escrow by the Bank. This agreement sets forth the terms of the escrow. The Bank shall not be deemed a party to, bound by, or required to inquire into the terms of, the Contract or any other instrument or agreement between the City and the Contractor.

III.

From time to time and pursuant to its Contract, the City shall pay to the Bank amounts retained by it under the Contract. Except as to amounts actually withdrawn from Escrow by the City, the Contractor shall look solely to the Bank for the payment of funds retained under the Contract and paid by the City to the Bank.

The risk of loss by diminution of the principal of any funds invested under the terms of this Contract shall be upon the Contractor solely.

Funds and securities held by the Bank pursuant to this Agreement shall not be subject to levy, garnishment, attachment, lien, or other process whatsoever. Contractor agrees not to assign, pledge, discount, sell, or otherwise transfer or dispose of its interest in the escrow account or any part thereof, except to the Surety.

IV.

Upon receipt of checks drawn by the City and made payable to it as escrow agent, the Bank promptly shall notify the Contractor, negotiate the same, and deposit or invest and reinvest the proceeds in approved securities in accordance with the written instructions of the Contractor. In no event shall the Bank invest the escrowed funds in any security not approved.

V.

The following securities, and none other, are approved securities for all purposes of this Agreement.

(d) United States Treasury Bonds, United States Treasury Notes, United States Treasury Certificates of Indebtedness or United States Treasury Bills;

(e) Bonds, notes, and other evidences of indebtedness unconditionally guaranteed as to the payment of principal and interest by the United States;

(f) Bonds or notes of the Commonwealth of Virginia;

(g) Bonds of any political subdivision of the Commonwealth of Virginia, if such bonds carried, at the time of purchase by the Bank or deposit by the Contractor, a Standard and Poor's or Moody's Investors Service rating of at least "A;"

(h) Certificates of deposit issued by commercial banks located within the Commonwealth of Virginia, including, but not limited to, those insured by the Bank and its Affiliates; and

(i) Any bonds, notes, or other evidences of indebtedness listed in Sections (I) through (III) may be purchased pursuant to a repurchase agreement with a bank, within or outside the Commonwealth of Virginia having a combined capital, surplus, and undivided profit of not less than Twenty-Five Million and 00/100 Dollars ($25,000,000.00), provided the Bank's obligation to repurchase is within the time limitations established for investments as set forth herein. The repurchase agreement shall be

considered a purchase of such securities even if title and/or possession of such securities is not transferred to the Escrow Agent so long as the Bank's repurchase obligation is collaterized by the securities themselves, and the securities have on the date of the repurchase agreement a fair market value equal to at least one hundred percent (100%) of the amount of the repurchase obligation of the Bank, and the securities are held by a third party, and segregated from other securities owned by the Bank.

No security is approved hereunder, which matures more than five (5) years after the date of its purchase by the Bank or deposit by the Contractor.

VI.

One of the following methods may be used to withdraw funds from the escrow account:

- From time to time, the Contractor may withdraw the whole or any portion of the escrow funds by depositing with the Bank approved securities listed in Section V above in an amount equal to, or in excess of the amount so withdrawn. Any securities so deposited or withdrawn shall be valued at such time of deposit or withdrawal at the lower of par or market value, the latter as determined by the Bank. Any securities so deposited thereupon shall become a part of the escrowed fund.

- Upon receipt of a direction signed by the City Manager or Director of Finance, the Bank shall pay the principal of the fund, or any specified amount thereof, to the City. Such payment shall be made in cash as soon as is practicable after receipt of the direction.

- Upon receipt of a direction signed by the City Manager or Director, the Bank shall pay and deliver the principal of the fund, or any specified amount thereof, the Contractor, in cash or in kind, as may be specified by the Contractor. Such payment and delivery shall be made as soon as is practicable after receipt of the direction.

VII.

For its services hereunder, the Bank shall be entitled to a reasonable fee in accordance with its published schedule of fees or as may be agreed upon by the Bank and the Contractor. Such fee and any other costs of administration of this Agreement shall be paid from the income earned upon the escrowed fund and, if such income is not sufficient to pay the same, by the Contractor.

VIII.

The net income earned and received upon the principal of the escrowed fund shall be paid to the Contractor in quarterly or more frequent installments. Until so paid or applied to pay the Bank's fee or any other costs of administration, such income shall be deemed a part of the principal of the fund.

IX.

The Surety undertakes no obligation hereby but joins in this Agreement for the sole purpose of acknowledging that its obligations as Surety for the Contractor's performance of the Contract are not affected hereby.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

WITNESS the following signatures, all as of the date first above written.

CITY OF HAMPTON, VIRGINIA

By: _____

City Manager or Authorized Designee

ATTEST:

_____

Clerk

_____

CONTRACTOR

By: _____

OFFICER OR PARTNER

_____

BANK

By: _____

PRESIDENT/VICE-PRESIDENT

_____

SURETY

By: _____

ATTORNEY-IN-FACT

MINORITY AND WOMAN-OWNED BUSINESS PROGRAM

The City of Hampton is implementing new strategies to solicit and utilize minority and woman-owned Businesses. To encourage and sustain utilization of minority and woman-owned Businesses, subcontracting goals have been established for City Contracts of One Hundred Thousand and 00/100 Dollars ($100,000.00) and above. The minority and woman-owned subcontracting goals are established by business categories.

The subcontracting goals established for this Contract include:

Minorities (MBE): 4.34% **Non-minority women (WBE): 3.82%**

Solicitation meetings will be held on contracts One Hundred Thousand and 00/100 Dollars ($100,000.00) and above to assist in attaining the minority and woman-owned Business goals outlined in the Contract.

The City requires that each minority and woman-owned Business become a certified Small, Woman and Minority owned Business (SWAM) by the State Department of Minority Business Enterprises (DMBE).

Any minority or woman-owned Business that is not a certified SWAM vendor will not be considered for meeting the Contract goals as established or included in the City utilization data.

Prime Contract solicitations require Bidders to include, as part of their proposal or Bid, a subcontracting plan to include certified minority and woman-owned vendors during the course of the Contract Work.

- A listing of all certified minority and woman-owned Subcontractor vendors
- The dollar value of each Subcontract
- A description of type of Work to be performed under each Contract
- SWAM certification number and contact information for each minority and woman-owned Firm

Prime Contractor Subcontractor/supplier solicitation information will be submitted to document Firms contacted for quotes.

Prime Contractor solicitations and resulting Contracts will require each successful Bidder to report actual Subcontract payments quarterly to the City Procurement Department to ensure accurate utilization records.

Prime Contractors quarterly must submit sub-contractor payment information on all certified minority and woman-owned vendors no less than quarterly after the Notice to Proceed (NTP) is issued by the Public Works Department.

Failure of a Prime Contractor to submit required documentation to the City may result in the City's withholding of a payment and/or other sanctions imposed by the City of Hampton.

All Bids submitted must include a subcontracting plan to be considered when determining the lowest responsible and responsive Bidders by the City.

Changes to the subcontracting plan will require approval from the Procurement Office and Minority Business Program Office during the life of the Contract.

Under certain circumstances, the Contractor's failure to adhere to its subcontracting plan may result in future loss of Contracts and/or debarment from bidding by the City of Hampton.

In these cases, Contractors will be requested to submit documentation of good-faith efforts used to meet its subcontracting plan. Determination of efforts will be made on an individual Contract basis. It is recommended that Contractors pre-qualify or determine the Subcontractors' capabilities prior to subcontracting Work.

Good-faith efforts are documented reasonable steps taken to achieve a Contract goal. These efforts are those taken by a Bidder actively and aggressively trying to obtain the established goal. Mere pro forma efforts do not constitute good-faith efforts. It is not intended to be a mandatory checklist; nor is it intended to be exclusive or exhaustive. **Other factors or types of efforts may be relevant in appropriate cases. The following is a list of types of actions which are considered good-faith efforts:**

- Soliciting through reasonable and available means (pre-Bid meetings, advertisements, telephone calls, community organizations, and the like);
- Selecting portions of the Work to be subcontracted out to increase the likelihood that a Contract goal may be achieved;
- Providing interested Firms with information necessary to respond in a timely manner to a request for solicitation; and
- Effectively using the services of available minority and woman-owned organizations, local, State and federal small business assistance offices, and the like.

Documentation of such efforts may include a listing of M/WBE Firm names, contact information, description of information provided, dates quotes are received quotes, and the like.

(Please note: This requirement should not be construed as authorizing or directing the exclusion of non-SWAM owned Businesses; rather, the purpose is to include as many qualified Businesses as possible).

Any Prime Contractor that is a DMBE certified minority or woman-owned vendor that is awarded a Contract of One Hundred Thousand and 00/100 Dollars ($100,000.00) and above is not required to submit the above information as the Prime Contractor is itself such a certified Business. This relief, however, does not discharge the Prime Contractor from the obligation to achieve both Contract goals during the life of the Contract. The City reserves the right to review subcontracting Plans and good-faith efforts to ensure both goals are achieved.

The City will utilize a performance evaluation process that will include documenting the quality of Work and business practices of all vendors used on City Contracts of One Hundred Thousand and 00/100 Dollars ($100,000.00) and above.

The suggested forms are attached for Bidders' use to ensure consistent submission of required data.

FREQUENTLY ASKED QUESTIONS (FAQ's) - MBE & WBE GOALS

1. ***How do I know if there is a goal on a Project?***
   It will be mentioned in the Invitation to Bid (ITB) or Request for Proposal (RFP). Bidders are encouraged to utilize certified SWAM vendors towards their efforts in meeting the MBE and WBE goals.

2. ***What is a SWAM vendor?***
   SWAM is the acronym for Small, Women and Minority owned Businesses. A SWAM vendor is a Business that has been certified by the Virginia Department of Minority Business Enterprise (DMBE) and is listed in the SWAM Vendor Directory.

3. ***Where may I find a list of SWAM certified MBE and WBE Businesses?***
   A list of certified SWAM Businesses may be found at the following websites:
   - City of Hampton Small Business Directory: http://hamptonpublic.hampton.gov/swam/search.aspx allows searches by SWAM type, city location, and description of Work.
   - Virginia Department of Minority Business Enterprise: The DMBE website at www.dmbe.state.va.us allows searches by company name, SWAM type, NIGP commodity code or description, and zip and NIGP Code.

4. ***Is it possible to meet both the MBE and WBE goals utilizing one Contractor?***
   No. It is not possible to meet both the MBE and WBE goals utilizing one Contractor. These are two separate goals; one for MBE, and the other for WBE. They are independent of one another.

5. ***I have worked with a minority-owned Business in the past, but they are not SWAM certified. May I still use them towards meeting the goal?***
   No. The City requires that each minority and woman-owned Business become SWAM certified by DMBE. Any minority or woman-owned Business that is not a certified SWAM vendor will not be considered for meeting the Contract goals as established or included in the City utilization data.

6. ***I am a Minority /Woman Owned Business, but I am not SWAM certified. How do I get certified?***
   As found on the DMBE website, there are four steps to get certified: Complete an online application at www.dmbe.state.va.us, print the application, collect supporting documentation on the checklist, and send the signed application form to the DMBE.

7. ***I am a SWAM certified minority / woman-owned Business. Do I still need to meet the MBE and WBE goals?***
   Yes. The City of Hampton encourages all prime Contractors bidding on a Project to document efforts and meet the goals.

8. ***May I utilize vendors certified as a Small Business (S) that I found on the City of Hampton's / Department of Minority Business Enterprise directory?***
   Yes, you can; but it will not be counted towards meeting the MBE and WBE goals. To meet the MBE goal, a Business must be certified as a Minority Owned Business Enterprise (M), Minority Owned Small Business Enterprise (MS). To meet the WBE goal, a Business must be certified as a Woman Owned Business Enterprise (W) or Woman Owned Small Business Enterprise (WS).

9. ***Which forms do I have to turn in at Bid opening?***
   There are two forms in your Bid response forms pertaining to the Minority Business Program. At time of Bid opening, submit Form 1 (Subcontracting/Supplier Utilization Form) and Form 2 (Subcontractor/Supplier Solicitation and Utilization Form). If awarded the Contract, Payment Information must be submitted MONTHLY during the course of the Contract using Attachment E.

10. ***Which is the official form to list the Minority and Woman-Owned Subcontractors I propose utilizing on the Project?***

Fully complete Form 1 (Subcontracting/Supplier Utilization Form). Bidders must include this form as part of their proposal or Bid to list certified minority and woman-owned vendors they plan to utilize on the Project. This form should include information on:

- The dollar value and percentage for each Subcontractor;
- A description of type of Work to be performed ; and
- SWAM certification number and contact information for each minority and woman-owned Firm.

11. I contacted a SWAM certified minority/women-owned Business, but I won't be utilizing them. How do I document this scenario?

Fully complete Form 2 (Subcontractor/Supplier Solicitation and Utilization Form).

12. How do I document good-faith efforts?

Fully complete Form 2 (Subcontractor/Supplier Solicitation and Utilization Form Solicitation). Documentation of such efforts may include a listing of M/WBE Firm names, contact information, description of information provided and dates received quotes, and the like.

13. If awarded a Contract, on what form do I report the payments made to subcontractors?

Successful Bidders on City Contracts will be required to report actual Subcontract payments quarterly to the City Procurement Department to ensure accurate utilization records. Fully complete Attachment E (Payment Information) to report this information.

14. At what point must a vendor be SWAM certified in order to be counted towards meeting the MBE and WBE goals?

Subcontractors must be SWAM certified by the Bid opening date when an Invitation to Bid is due.

15. Who may I contact if I have specific questions or need additional help finding certified minority or woman owned Businesses?

You may contact the City of Hampton's Minority Business Office located within the Economic Development Department at (757) 728-5171.

CITY OF HAMPTON
ITB 17-3/CLP
MINORITY AND WOMAN-OWNED BUSINESS PAYMENT REPORT

Contractor: _____ Date: _____

Project No.: _____ Reporting Period: _____ to _____

Firm Name	Certification No.	SWAM Type (M/WBE)	This Quarter	To Date	Type of Work
Total dollar value amount paid to date to SWAM vendor					

I/We certify that the information provided herein is accurate, current, and complete to the best of my/our knowledge, information, and belief.

Company _____

Print name _____ Title _____

QUESTIONNAIRE FORMS

PRE-BID QUESTION FORM

ITB NO. 17-3/CLP Salt Ponds Beach Breakwater Construction

DATE: _____

NAME: _____

COMPANY: _____

SPECIFICATION SECTION _____ **PARAGRAPH** _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

NOTE:

All questions regarding this solicitation shall be in writing using this question form. A separate form must be used for each question. Submit all Pre-Bid Question Forms to the City of Hampton Procurement Office via fax: (757) 727-2207 or via email: oandrew@hampton.gov. It shall be the responsibility of the sender to verify receipt of all transmissions. The City of Hampton shall not be responsible for missed transmissions.

All questions are due in the Procurement Office no later than Friday, June 24, 2016, at 3:00 P.M.
NO EXCEPTIONS.

Final addendum and answers to pre-bid questions will be available from the Procurement Office on Wednesday, June 29, 2016 between 9:00 a.m. and 4:00 p.m. Call prior to coming for availability. It shall be the responsibility of prospective bidders to verify, prior to turning in a response, if an addendum was issued. Bidders should check www.hampton.gov/bids-contracts for any addenda issued no later than 12 hours prior to bid receipt deadline.

CONTRACTOR QUESTIONNAIRE FORM: ITB NO. 17-3CLP Salt Ponds Beach Breakwater Construction

If requested by the City, the following questions shall be answered in full by the Bidder, and returned to the City within seventy-two (72) hours.

1. Name of Company: _____

   Trade Name (if different from Company Name): _____

   Principal Office Address: _____

   _____

   Telephone No(s). _____

   Fax No(s). _____

   Email Address(es) _____

   a. If a Corporation, answer the following:

      When Incorporated: _____

      What State: _____

      Virginia State Corporation Commission No. _____

   b. If an Unincorporated Organization, answer the following:

      Date of Organization: _____

      Names and Addresses of or Members: _____

      Type and State of Organization: _____

   c. If a Partnership, state whether the Partnership is General or Limited:

      _____

      Names and Addresses of Partners:

      _____

      _____

      _____

2. Experience:

   a. How many years has this Bidder been in business as a Contractor under its present Business name? ___

      _____

   b. List the prior names of this Bidder, if any. _____

_____

3. How many years of experience in this type of construction work does this Bidder have?
   a. As a Contractor? _____
   b. As a Subcontractor? _____

4. Provide a list of uncompleted Contracts/Projects presently held by this Bidder (attach supplemental sheets if necessary):

Contract/Project	Type of Work	Amount	% Complete

5. List this Bidder's crew foremen and supervisors proposed for this Project and their years of related experience:

Name	Years of Experience	Dates of Employment with Bidder

6. What construction Equipment does this Bidder own that is available for the proposed Work? Attach supplemental sheets if necessary.

   _____

   _____

   _____

7. Does this Bidder plan to Subcontract any part of this Work? If so, list the name, address, years of experience, and type and amount of Work to be performed by each Subcontractor.

   _____

   _____

_____

_____

_____

_____

8. Provide a list of Projects similar in character and scope to the Work specified under this Contract which have been completed successfully by this Bidder during the past three (3) years (attach supplemental sheets if necessary). (The term "completed" means accepted and final payment received from the City or authorized representative.)

Location & Type of Work	City's Name and Address	Contact person (name and telephone number)	Date Completed	Contract Price

9. Has this Bidder ever performed work for a municipal Corporation, local governing body, or similar agency previously? If all such bodies are listed under 8, this question need not be completed.

_____

_____

_____

10. Bidder Responsibility:

    a. Has this Bidder ever failed to complete any work awarded to it? _____ If yes, give the name of the city, county, or state, name of Bonding Company, and circumstances:

    _____

    b. Is this Bidder debarred by the Federal Government or by the Commonwealth of Virginia or by any other state, town, city, or county?

    Yes_____ No_____ If yes, please provide details:

_____

_____

_____

c. Has this Bidder ever had any judgments entered against it for breach of Contract for construction? _____ If yes, please provide details:

_____

_____

_____

d. Give a summary of your financial statement, including assets and liabilities (use an insert sheet if necessary):

_____

_____

_____

_____

_____

_____

11. State approximate largest dollar volume of work performed by this Bidder in one year: _____

12. List two (2) banking institution references:

    a. Name: _____

       Address: _____

       Credit Available: _____

    b. Name: _____

       Address: _____

       Credit Available: _____

13. List three (3) Material suppliers and amount of credit available:

    a. Name: _____

       Address: _____

       Credit Available: _____

b. Name: _____

Address: _____

Credit Available: _____

c. Name: _____

Address: _____

Credit Available: _____

14. List insurance coverage (attach certificate of insurance in required Project amount): _____

15. Bonding reference: List Bidder's Surety company and highest coverage:

_____

Has this Bidder or its authorized representative personally inspected the location of the proposed Work, and does it have a clear understanding of the requirements of the Bid Documents? _____

The undersigned hereby authorizes and consents to any person, Firm, or Corporation to furnish any information requested by the City in verification of this statement of Contractor's qualifications. Also, if it is the apparent low Bidder, the undersigned hereby agrees to furnish the City upon request, a complete and current financial statement:

_____

Name of Contractor

Date: _____ By: _____

(Signature)

_____

(Printed Name)

_____

(Title)

REQUIRED DOCUMENTS TO BE RETURNED

**THE FOLLOWING DOCUMENTS ARE BID RESPONSE DOCUMENTS.
PLEASE RETURN THE DOCUMENTS LISTED BELOW WITH THE BID SUBMITTAL.
FAXED OR EMAILED RESPONSES SHALL NOT BE ACCEPTED.
SUBMITTAL REQUIRES TWO (2) COPIES, ONE ORIGINAL AND ONE COPY.**

1. **Compliance Form for Project ITB No. 17-3/CLP**
2. **Bid Sheet (2 pages)**
3. **Debarment Certification**
4. **Notice of Escrow Option (2 pages)**
5. **Subcontractor/Supplier Utilization Form 1**
6. **Subcontractor/Supplier Solicitation and Utilization Form 2**
7. **Anti-Collusion/Nondiscrimination/Drug-Free Workplace Requirements**
8. **Addenda Acknowledgement**
9. **Notice to Commence Work**
10. **Contractor Questionnaire Form**

All forms relating to this solicitation are posted on www.hampton.gov/bids-contracts and on eVAor

PROCUREMENT OFFICE
Division of Finance
Community, Municipal Services/Education
Hampton, VA 23669

RESPONSE FORM FOR PROJECT ITB NO: 17-3/CLP

COMPLIANCE FORM FOR PROJECT ITB NO. 17-3/CLP

In compliance with the Solicitation dated Tuesday, June 14, 2016, the undersigned proposes to furnish all labor, Equipment, and Materials and perform all Work in strict accordance with all requirements for:

SALT PONDS BEACH BREAKWATER CONSTRUCTION

A MANDATORY attendance pre-bid meeting will be held on Tuesday, June 24, 2016 at 11:00 a.m. local time in the Public Works Conference Room, 22 Lincoln Street, 4th Floor, Hampton, VA 23669.

The above scope of Work to be performed at the dollar amount(s) stated herein.

The undersigned agrees and assures that:

- All prices stated herein shall be Firm for a period of _____ Calendar Days (90 Days minimum).
- If Bidder's response is accepted and a purchase order issued, Bidder will accept same and fulfill requirements in strict compliance with all terms and conditions.
- If in acceptance of Bidder's response, Bidder is asked to execute a formal Contract and/or required to furnish a payment bond and a performance bond and/or a certificate of insurance, Bidder will execute and furnish the same within ten (10) Calendar Days of such notice. Failure to do so will mean forfeiture of any Surety Bidder may have been required to post as part of Bidder's response.
- Bidder's Business is organized as a stock or non -stock Corporation, limited liability company, Business trust, limited partnership, or registered as a registered limited liability partnership and is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign Business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, as amended, or as otherwise required by law.
- If a contractor, Bidder is registered with the Commonwealth of Virginia as a Class _____ Contractor; Registration No. _____.
- ***** In Accordance with §§54.1-1115(A)(1) and (A)(6) of the code of Virginia, Bidder should include a copy of Contractors License with Bid Response.*****
- Bidder meets all licensing and permit requirements to conduct business in the City of Hampton, Virginia.

RESPONSE FORM FOR PROJECT ITB NO: 17-3/CLP

BID SHEET

Submitted by:

Company Name _____

Street Address _____

City/State/Zip _____

Phone _____ Fax _____

Date: _____

Federal ID No. _____ SCC Registration #_____

DUNS No. _____

Bidder, in compliance with the Request **for the construction of an offshore rock breakwater at Salt Ponds Public Beach located at the northern end of N. 1st Street** and HEREBY PROPOSES to furnish all labor, Materials, and Equipment, and to complete the Project in accordance with the Contract Documents, within the time set forth therein, and for the Bid price stated herein. Said price shall cover all expenses incurred in performing the Work required by the Contract Documents, of which this proposal is a part.

Discrepancies between multiplication of units of work and unit prices will be resolved in favor of unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in the favor of the correct sum. Discrepancies between words and figures will be resolved in favor of words.

Total Contract Bid Price (Written) _____

Figure $_____

ITB 17-3/CLP Salt Ponds Beach Breakwater at Salt Ponds Public Beach
City of Hampton – Dept of Public Works

BID SHEET

The contract award will be based on the Base Bid (including any properly submitted modification).

BASE BID (includes construction of breakwater, signs and related beach fill)

Bid Item	Description	Quantity	Unit	Unit Price	Extended Price
1	Mobilization/Demobilization (10% limit of total base bid)	1	LS		
2	Stone for Breakwater/Fill Grading (in place)	1	LS		
3	Filter Fabric (in place)	1650	SY		
4	Permanent Warning Signs	3	EA		
Additional Information: Provide an estimate on unit cost for stone placement (per specification). These unit cost will be used as a basis for change order negotiations (if necessary).			TON		N/A
Additional Information: Provide an estimate on unit cost for additional sand (per specification). These unit costs will be used as a basis for change order negotiations (if necessary).			CY		N/A

Total Base Bid for all work in accordance with the Plans and Specifications:

Written Total: _____

Numerical Total: $_____

RESPONSE FORM FOR PROJECT ITB NO. 17-3/CLP

DEBARMENT CERTIFICATION

By its signature hereto, the undersigned certifies that the individual or Business entity represented in this Bid package currently is not debarred by the Federal Government or by the Commonwealth of Virginia or by any other state, or by any town, city, or county from submitting Bids on contracts for construction covered by this solicitation; nor is it an agent of any person or entity that currently is debarred.

_____

Name of Individual or Business Entity

_____

Signature of Official

_____

Printed Name of Official

_____

Title

_____

Date

RESPONSE FORM FOR PROJECT ITB NO: 17-3/CLP

NOTICE OF ESCROW OPTION FOR RETAINED FUNDS

If this is a Bid for construction as defined in Virginia Code Section 2.2-4334 in the amount of Two Hundred Thousand and 00/100 Dollars ($200,000.00) or more, I/we elect to utilize the escrow account procedure described in the provisions of this proposal if determined to be the successful low Bidder(s) _____ (write "yes" or "no"). Date: _____

Any Subcontract for such public Project which provides for similar progress payments shall be subject to the provisions of this section.

OPTIONAL PROVISIONS FOR
RETAINED FUNDS
ON CERTAIN CONSTRUCTION CONTRACTS

- At the time the Contractor submits a Bid Response, the Contractor shall have the option to use the escrow account procedure for utilization of retained funds by so indicating in the space provided in the response documents. In the event the Contractor elects to use the escrow account procedure, the "Escrow Agreement" form included in the Bid package shall be executed and submitted to the _____ within fifteen (15) Calendar Days after notification of Award of the Bid. If the "Escrow Agreement" form is not submitted as noted hereinbefore, the Contractor shall forfeit such rights to the use of the escrow account procedure. In order to have retained funds paid to an escrow agent, the Contractor, the escrow agent, and the Surety shall execute the "Escrow Agreement" form and submit the same to the City of Hampton, Virginia for approval. The Contractor's escrow agent shall be a trust company, bank, or savings and loan institution with its principal office located in the Commonwealth of Virginia. The "Escrow Agreement" form shall contain the complete address of the escrow agent and Surety, and the executed "Escrow Agreement" will be authority for the City of Hampton, Virginia to make payment of retained funds to the escrow agent. After approving the agreement, the City of Hampton, Virginia will pay to the escrow agent the funds retained as provided herein except that funds retained for lack of progress or other deficiencies on the part of the Contractor will not be paid to the escrow agent. In accordance with the stipulations contained in the "Escrow Agreement," the escrow agent may invest the funds paid into the escrow account and pay earnings on such investments to the Contractor or release the funds to the Contractor provided such funds are fully secured by approved securities.

- Retained funds invested and securities held as collateral for retainage may be released only as and when directed by the City. When the final estimate is released for Voucher, the City will direct the escrow agent to settle the escrow account by paying the Contractor or the monies due them as determined by the City. The City reserves the right to recall retained funds and to release the same to the Surety upon receipt of a written request from the Contractor or in the event of default.

- This option shall be applicable only to Contractors with Contracts for Two Hundred Thousand and 00/100 Dollars ($200,000.00), or more, for the construction of Highways, Roads, Streets, Bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage Structures, and the installation of water, gas, sewer lines, and pumping stations.

- This option shall not apply to Contracts for construction for railroads, public transit systems, runways, dams, foundations, or the installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter or the installation or maintenance of telephone, telegraph, or signal systems for public Utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

RESPONSE FORM FOR PROJECT ITB NO: 17-3/CLP

- Should the "Escrow Agreement" include payment of interest on retained funds, the Contractor, exclusive of reasonable circumstances beyond the control of the Contractor stated in the Contract, shall pay the specified penalty for each Day exceeding the Completion Date stated in the Contract.

- Any Subcontract for such public Project which provides for similar progress payments shall be subject to the provisions of this section.

It is the goal of the City to track participation of Small Businesses (SBE), Minority Businesses (MBE), and Woman-owned Businesses (WBE). You are requested to voluntarily report the total dollars which will be subcontracted to each of the business classifications pertaining to this Contract. List the dollar figures separately for each general classification.

If you do not plan to Subcontract, place zeroes in the appropriate spaces.

Total SBE Dollars to be Subcontracted: $_____

Total MBE Dollars to be Subcontracted: $_____

Total WBE Dollars to be Subcontracted: $_____

Total Non-Minority Dollars to be Subcontracted: $_____

This information will enable the City to determine the total amount of business the City does with small, minority, and woman-owned Businesses. Your cooperation enables the City to better understand and evaluate the City's performance in this important segment of the market.

RESPONSE FORM FOR PROJECT ITB NO: 17-3/CLP

CITY OF HAMPTON

SUBCONTRACTOR/SUPPLIER UTILIZATION FORM
POTENTIAL MINORITY AND WOMAN-OWNED BUSINESS PARTICIPATION – FORM 1

Project No. _____ **Date Submitted: _____**

Bid Goal % _____ **Total Contract Value _____**

Firm Name	Certification No.	Type (M/W)	Percent Bid	Dollar Value	Type of Work

I/We propose that the certified DMBE Businesses will be used on this Contract as stated herein and assure that, during the life of the Contract, I/We will meet the goal established by the City of Hampton.

Bidder _____

Signature _____

Title _____ Date _____

RESPONSE FORM FOR PROJECT ITB NO: 17-3/CLP

CITY OF HAMPTON

SUBCONTRACTOR/SUPPLIER SOLICITATION AND UTILIZATION FORM (ALL) – FORM 2

Project No. _____ Date _____

The Bidder certifies that this form accurately represents its solicitation and utilization or non-utilization as indicated of the DMBE certified minority and woman-owned Businesses listed below for performance of Work on this Project. The Bidder further certifies that it has had direct contact (email, fax, telephone) with the named Firms regarding performing Work on this Project.

Bidder _____ Signature _____

Vendor No.	Name of Firm	Telephone No.	SWAM (Yes/No)	Utilized (Yes/No)

RESPONSE FORM FOR ITB NO. 17-3/CLP

ANTI-COLLUSION/NONDISCRIMINATION/DRUG-FREE WORKPLACE REQUIREMENTS

ANTI-COLLUSION CLAUSE:

IN THE PREPARATION AND SUBMISSION OF THIS PROPOSAL, SAID BIDDER DID NOT EITHER DIRECTLY OR INDIRECTLY ENTER INTO ANY COMBINATION OR ARRANGEMENT WITH ANY PERSON, FIRM OR CORPORATION, OR ENTER INTO ANY AGREEMENT, PARTICIPATE IN ANY COLLUSION, OR OTHERWISE TAKE ANY ACTION IN VIOLATION OF THE SHERMAN ACT (15 U.S.C. SECTION 1), SECTIONS 59.1-9.1 THROUGH 59.1-9.17 OR SECTIONS 59.1-68.6 THROUGH 59.1-68.8 OF THE CODE OF VIRGINIA.

THE UNDERSIGNED BIDDER HEREBY CERTIFIES THAT THIS AGREEMENT, OR ANY CLAIMS RESULTING THEREFROM, IS NOT THE RESULT OF, OR AFFECTED BY, ANY ACT OF COLLUSION WITH, OR ANY ACT OF, ANOTHER PERSON OR PERSONS, FIRM OR CORPORATION ENGAGED IN THE SAME LINE OF BUSINESS OR COMMERCE; AND, THAT NO PERSON ACTING FOR, OR EMPLOYED BY, HAS AN INTEREST IN, OR IS CONCERNED WITH, THIS PROPOSAL; AND, THAT NO PERSON OR PERSONS, FIRM OR CORPORATION OTHER THAN THE UNDERSIGNED, HAVE, OR ARE, INTERESTED IN THIS PROPOSAL.

DRUG-FREE WORKPLACE:

DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL BIDDER AGREES TO (I) PROVIDE A DRUG-FREE WORKPLACE FOR THE SUCCESSFUL BIDDER'S EMPLOYEES; (II) POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, A STATEMENT NOTIFYING EMPLOYEES THAT THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION, OR USE OF A CONTROLLED SUBSTANCE OR MARIJUANA IS PROHIBITED IN THE SUCCESSFUL BIDDER'S WORKPLACE AND SPECIFYING THE ACTIONS THAT WILL BE TAKEN AGAINST EMPLOYEES FOR VIOLATIONS OF SUCH PROHIBITION; (III) STATE IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE SUCCESSFUL BIDDER THAT THE SUCCESSFUL BIDDER MAINTAINS A DRUG-FREE WORKPLACE; AND (IV) INCLUDE THE PROVISIONS OF THE FOREGOING CLAUSES IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER $10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUCCESSFUL BIDDER OR VENDOR.

FOR THE PURPOSE OF THIS SECTION, "DRUG-FREE WORKPLACE" MEANS A SITE FOR THE PERFORMANCE OR WORK DONE IN CONNECTION WITH A SPECIFIC CONTRACT AWARDED TO A SUCCESSFUL BIDDER IN ACCORDANCE WITH FEDERAL LAW, THE EMPLOYEES OF WHOM ARE PROHIBITED FROM ENGAGING IN THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION OR USE OF ANY CONTROLLED SUBSTANCE OR MARIJUANA DURING THE PERFORMANCE OF THE CONTRACT.

EMPLOYMENT DISCRIMINATION BY THE SUCCESSFUL BIDDER SHALL BE PROHIBITED:

1. DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL BIDDER AGREES AS FOLLOWS:

a THE BIDDER, SHALL 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 THE SUCCESSFUL BIDDER. THE SUCCESSFUL BIDDER AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.

b. THE SUCCESSFUL BIDDER, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE SUCCESSFUL BIDDER, SHALL STATE THAT SUCH SUCCESSFUL BIDDER IS AN EQUAL OPPORTUNITY EMPLOYER.

c. NOTICES, ADVERTISEMENTS, AND SOLICITATIONS PLACED IN ACCORDANCE WITH FEDERAL LAW, RULE OR REGULATION SHALL BE DEEMED SUFFICIENT FOR THE PURPOSE OF MEETING THE REQUIREMENTS OF THIS SECTION.

2. THE SUCCESSFUL BIDDER WILL INCLUDE THE PROVISIONS OF THE FOREGOING PARAGRAPHS A, B, AND C IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER $10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

Name and Address of BIDDER: Date: _____ Authorized Signature_____

Printed Name:_____Title:_____

Phone Number:_____ Fax Number:_____

Email Address:_____

dentification Number/Social Security Number: _____

Is Bidder a "minority" Business? ☐ Yes ☐ No If yes, please indicate the "minority" classification below:
☐ African American ☐ Hispanic American ☐ American Indian ☐ Eskimo ☐ Asian American ☐ Aleut ☐ Other; Please Explain:
Is Bidder Woman Owned? ☐ Yes ☐ No
Is Bidder a Small Business? ☐ Yes ☐ No
Is Bidder a Faith-Based Organization? ☐ Yes ☐ No

RESPONSE FORM FOR ITB NO. 17-3/CLP

ADDENDA ACKNOWLEDGEMENT

The undersigned initials, Bidder acknowledges receipt of the following addenda (if applicable).

No. 1 _____ No. 2 _____ No. 3 _____

No. 4 _____ No. 5 _____ No. 6 _____

RESPONSE FORM FOR PROJECT ITB NO. 17-3/CLP

NOTICE TO COMMENCE WORK

The undersigned agrees that, if awarded a Contract, Bidder will commence Work within fifteen **15** Calendar Days after the date of the Notice to Proceed letter and that Bidder will complete all Work, as specified (to include codes inspection and City acceptance) **one hundred twenty (120) Calendar Days** acknowledging the City's right to assess Liquidated Damages of **$600.00 per Day**.

(For individual trading in his individual name) _____ Date: _____

(Print Individual's Name)

_____

(Signature)

(For use by an individual trading under trade name)_____ Date: _____

(Print Individual's Name)

_____

(Signature)

Trading as: _____

(Print Trade Name)

_____

(Signature)

(For use by partnership) _____ Date: _____

(Print Partnership's Name)

_____

(Partner's Signature)

(For use by Corporation)_____ Date: _____

(Corporate Name Printed)

_____

(*Corporate Officer Signature)*

_____

(Name Printed)

_____

(Official Title)

Attest: _____

Corporate Secretary

CONTRACTOR QUESTIONNAIRE FORM (ITB NO. 17-3/CLP)

The following questions shall be answered in full by the Bidder and returned to the City with your bid response:

16. Name of Company: _____

Trade Name (if different from Company Name): _____

Principal Office Address: _____

_____

Telephone No(s). _____

Fax No(s). _____

Email Address(es) _____

d. If a Corporation, answer the following:

When Incorporated: _____

What State: _____

Virginia State Corporation Commission No. _____

e. If an Unincorporated Organization, answer the following:

Date of Organization: _____

Names and Addresses of or Members: _____

Type and State of Organization: _____

f. If a Partnership, state whether the Partnership is General or Limited:

_____

Names and Addresses of Partners:

_____

_____

_____

17. Experience:

c. How many years has this Bidder been in business as a Contractor under its present Business name? ___

_____

d. List the prior names of this Bidder, if any. _____

_____

18. How many years of experience in this type of construction work does this Bidder have?

    c. As a Contractor? _____

    d. As a Subcontractor? _____

19. Provide a list of uncompleted Contracts/Projects presently held by this Bidder (attach supplemental sheets if necessary):

Contract/Project	Type of Work	Amount	% Complete

20. List this Bidder's crew foremen and supervisors proposed for this Project and their years of related experience:

Name	Years of Experience	Dates of Employment with Bidder

21. What construction Equipment does this Bidder own that is available for the proposed Work? Attach supplemental sheets if necessary.

    _____

    _____

    _____

22. Does this Bidder plan to Subcontract any part of this Work? If so, list the name, address, years of experience, and type and amount of Work to be performed by each Subcontractor.

    _____

    _____

    _____

_____

_____

_____

23. Provide a list of Projects similar in character and scope to the Work specified under this Contract which have been completed successfully by this Bidder during the past three (3) years (attach supplemental sheets if necessary). (The term "completed" means accepted and final payment received from the City or authorized representative.)

Location & Type of Work	City's Name and Address	Contact person (name and telephone number)	Date Completed	Contract Price

24. Has this Bidder ever performed work for a municipal Corporation, local governing body, or similar agency previously? If all such bodies are listed under 8, this question need not be completed.

_____

_____

_____

25. Bidder Responsibility:

    e. Has this Bidder ever failed to complete any work awarded to it? _____ If yes, give the name of the city, county, or state, name of Bonding Company, and circumstances:

    _____

    f. Is this Bidder debarred by the Federal Government or by the Commonwealth of Virginia or by any other state, town, city, or county?

    Yes_____ No_____ If yes, please provide details:

    _____

_____

_____

g. Has this Bidder ever had any judgments entered against it for breach of Contract for construction? _____ If yes, please provide details:

_____

_____

_____

h. Give a summary of your financial statement, including assets and liabilities (use an insert sheet if necessary):

_____

_____

_____

_____

_____

_____

26. State approximate largest dollar volume of work performed by this Bidder in one year: _____

27. List two (2) banking institution references:

c. Name: _____

Address: _____

Credit Available: _____

d. Name: _____

Address: _____

Credit Available: _____

28. List three (3) Material suppliers and amount of credit available:

d. Name: _____

Address: _____

Credit Available: _____

e. Name: _____

Address: _____

Credit Available: _____

f. Name: _____

Address: _____

Credit Available: _____

29. List insurance coverage (attach certificate of insurance in required Project amount): _____

30. Bonding reference: List Bidder's Surety company and highest coverage:

_____

Has this Bidder or its authorized representative personally inspected the location of the proposed Work, and does it have a clear understanding of the requirements of the Bid Documents? _____

The undersigned hereby authorizes and consents to any person, Firm, or Corporation to furnish any information requested by the City in verification of this statement of Contractor's qualifications. Also, if it is the apparent low Bidder, the undersigned hereby agrees to furnish the City upon request, a complete and current financial statement:

_____

Name of Contractor

Date: _____ By: _____

(Signature)

_____

(Printed Name)

_____

(Title)

PROJECT SPECIFIC PROVISIONS

General:

The work consists of the construction and completion of an offshore breakwater at Salt Ponds Public Beach, at the terminus of North First Street in Hampton, Virginia.

Qualifications/Experience:

Bidder must have been established as full time construction firm for a minimum of five (5) years. The Bidder shall have had a minimum of five (5) years of successful experience in the installation of near or off shore breakwaters. If the Bidder or its principals operated under another name or entity within the past five (5) years, a complete descriptive statement and audited financial statement for a minimum of the previous two (2) years will be required. "Sub-letting" of work to other companies will be allowed under this contract. The Owner shall consider the qualifications and experience of subcontractors who will furnish the structure. The Owner shall be the sole judge as to the determination of whether similar structures are equivalent to the Project.

The Owner will review all construction projects completed in the last five (5) years, particularly on projects of a similar size and nature, including the ability to meet scheduled completion dates. The bidder must show history of contract completion dates, which must include the original and final completion dates, and the compliance with that time schedule.

Specification Index:

The following list of Specification Sections form a part of the contract documents for this project (provided under separate cover) dated January 21, 2016:

DIVISION 00 – PROCUREMENT/CONTRACTING REQUIREMENTS
DIVISION 01 – GENERAL REQUIREMENTS
DIVISION 31 – EARTHWORK
DIVISION 35 – WATERWAY AND MARINE CONSTRUCTION

PLAN SHEETS

The following list of Plan Sheets, all dated January 19, 2016 form a part of the contract documents for this project (provided under separate cover):

Drawing Index:

SHEET C-01 – COVER SHEET
SHEET C-02 – PROJECT PLAN VIEW
SHEET C-03 – SECTIONS & DETAILS
SHEET C-04 – CUT & FILL