

## **ATTACHMENT G**

### **GENERAL CONDITIONS**

This Attachment is attached to and is made a part of the Comprehensive Agreement (the “*Agreement*”) between the City of Hampton, Virginia (the “*City*”) and Clancy & Theys Construction Co. (“*Contractor*”). Capitalized terms used in this Attachment, but not defined herein, shall have the meanings ascribed to such terms as provided in the Agreement and the other Contract Documents associated therewith.

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ARTICLE 1  
INTRODUCTION TO TERMS

- 1.1 The term “**ADA**” means the Americans with Disabilities Act of 1990.
- 1.2 The term “**Agreement**” means, collectively, the completed and signed Comprehensive Agreement between the City and Contractor and all exhibits and attachments thereto or identified therein.
- 1.3 The term “**As-Built Drawings**” shall mean the IFC Set of Drawings that have been kept, maintained and marked by Contractor during completion of the Work as required by Section 2.10 below.
- 1.4 The term “**Basis of Design**” shall have the meaning provided for in Section 2.2 of the Scope of Work.
- 1.5 The term “**Business Day**” shall refer to any day that the City is open for general business.
- 1.6 The term “**Calendar Day**” means any day of twenty-four (24) hours measured from midnight to the next midnight. Included are weekends and holidays. When the term “Day” or “day” is used it shall be assumed to refer to a Calendar Day unless otherwise specified.
- 1.7 The term “Certificate of Occupancy” means a certificate issued by the appropriate Code Official certifying (i) compliance with all provisions of the Hampton City Code applicable to the construction of the Project; and (ii) allowing use by the public for the Project’s intended purpose. The term shall not include a temporary certificate of occupancy, which may be issued by the applicable Code Official from time to time.
- 1.8 The term “**Change Order**” means a written order to Contractor, signed by the Project Manager and Contractor, which authorizes a change in the Work, and/or adjustment to the GMP, and/or an adjustment to the Time for Completion. A Change Order once signed by all the parties shall be incorporated into and become a part of the Contract Documents.
- 1.9 The terms “**City**” and “**Contractor**” mean the respective parties to the Agreement and their respective authorized agents and representatives. They shall be treated throughout the Contract Documents as though each were of the singular number and masculine gender.
- 1.10 The term “**Code Officials**” means, collectively, all local, state, and federal governmental authorities having jurisdiction over the Project, or any its individual component parts or systems, or the inspection or approval thereof.
- 1.11 The term “**Construction Change Directive**” means a written order issued by the City directing a change in the Work prior to agreement on adjustment, if any, in the GMP, or Time for Completion, or both.
- 1.12 The term “**Contract Documents**” means the Agreement and all the documents and attachments identified therein and arising out of the Agreement, these General Conditions, and the

Construction Documents prepared and approved by the Project Manager in accordance with Section 3.1 of the Scope of Work, as well as all duly authorized modifications, amendments and Change Orders thereto.

1.13 The term “**Construction Implementation Stage**” shall mean the period when construction of the Project shall occur, as more specifically described in Section 3.2 of the Scope of Work. The Construction Implementation Stage shall commence when the City issues the Construction NTP.

1.14 The term “**Construction NTP**” shall mean the notice to proceed issued by the City to Contractor to commence the Construction Implementation Stage.

1.15 The term “**Construction Schedule**” shall have the meaning provided for in Section 6.3(a)(i) below, and shall be a component part of the Project Schedule.

1.16 The term “**Control Budget**” shall mean the detailed line item budget for the Project prepared by Contractor based on the Basis of Design.

1.17 The term “**Cost of the Work**” shall have the meaning provided for in Section 4.1.1 of the Scope of Work.

1.18 The term “**Critical Path**” means the sequence of critical tasks for the Project that add up to the minimum time necessary to complete the Project.

1.19 The term “**Critical Path Method**” or “**CPM**” means a step-by-step project management technique for process planning that defines critical and non-critical tasks with the goal of preventing time-frame problems and process bottlenecks.

1.20 The term “**Delay**” or “**delay**” means an event or condition that results in a work activity starting or being completed later than originally planned.

1.21 The term “**Design Confirmation Phase**” means the period during which the Basis of Design shall be established, as more particularly set forth in Section 2 of the Scope of Work.

1.22 The term “**Design Criteria**” shall mean the general design criteria and specifications for the City of Hampton Aquatic Center that are attached to the Agreement as Attachment D thereto.

1.23 The term “**Design Fee**” means, collectively, any fees incurred by Contractor from time to time with respect to architectural and design services for Work related to the Project. The Design Fee is a part of the Cost of the Work.

1.24 The term “**Design Implementation Stage**” shall mean the period during which the Drawings are prepared and finalized, as more particularly described in Section 3.1 of the Scope of Work. The Design Implementation Stage shall commence when the City issues the Implementation NTP.

1.25 The term “**Design Team**” shall have the meaning set forth in Section 1.2 of the Scope of Work.

1.26 The term “**Drawings**” means the IFC Set of plans and drawings prepared by Contractor and approved by the City in accordance with the terms of the Scope of Work. In general, the Drawings show and describe the locations, character, dimensions, and details of the Work to be performed under the Agreement.

1.27 The term “**Final Acceptance**” means the date on which the City issues the Final Payment for the Work.

1.28 The terms “**Final Completion**” or “**Final Completion of the Work**” mean the condition when the City agrees that all the Work has been fully completed in accordance with the Contract Documents. The date of the Final Completion of the Work under the Agreement is the date on which Final Completion is accomplished, including but not limited to the satisfactory completion of all items on the Punchlist, but not including warranty items.

1.29 The term “**Final Payment**” shall mean the final progress payment payable to Contractor upon Final Completion of the Work in accordance with the requirements of the Agreement including, without limitation, Section 7.8 below.

1.30 The term “**Force Majeure Event**” shall mean, in relation to a party to the Agreement, any event or circumstance beyond the reasonable control of that party such as fire, riot, rebellion, natural disaster, war, act of terrorism, or act of God, which makes performance by such party impossible or illegal, including, but not limited to the inability (notwithstanding good faith and diligent efforts) to procure, or general shortage of, labor, equipment, facilities, materials, or supplies in the open market, defaults of independent contractors or subcontractors (provided that remedies are being diligently pursued against the same), failures of transportation, fires, other casualties, epidemics, quarantine restrictions, freight embargoes, severe weather, inability (notwithstanding good faith and diligent efforts) to obtain governmental permits or approvals, or delays of subcontractors due to such causes, it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delays, the time or times for the performance of the covenants, provisions, and agreements of the Agreement shall be extended for the period of the enforced delay (including any time reasonably required to recommence performance due to such enforced delay). The affected party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations under the Agreement. Notwithstanding the above, the Contractor may not rely on as ground for delay in its performance (a) its own acts or omissions or (b) the absence of immediately available funds.

1.31 The term “**General Conditions**” shall mean these General Conditions, as amended, which are attached to the Agreement as Attachment G thereto.

1.32 The terms “**Guaranteed Maximum Price**” or “**GMP**” shall have the meaning set forth in the Agreement.

1.33 The term “**IFC Set**” shall have the meaning set forth in Section 3.1.11 of the Scope of Work.

1.34 The term “**Implementation Phase**” shall mean, collectively, the Design Implementation Stage and the Construction Implementation Stage.

1.35 The term “**Implementation NTP**” shall mean the notice to proceed issued by the City to Contractor that shall commence the Implementation Phase.

1.36 The term “**Initial NTP**” shall mean the notice to proceed issued by the City to Contractor that shall commence the Design Confirmation Phase.

1.37 The term “**Insurance Requirements**” shall mean Contractor’s insurance coverage requirements set forth in Attachment I to the Agreement.

1.38 The term “**Milestone Date**” shall mean each date or dates set forth in the Project Schedule by which a specific component of the Work must be substantially completed by Contractor.

1.39 The term “**Procurement Officer**” shall mean the City’s Director of Finance or his designee.

1.40 The term “**Project**” means the entire proposed construction to be executed as stipulated in the Contract Documents.

1.41 The term “**Project Initiation Deliverables**” means those deliverables to be provided to the City by Contractor and identified as Project Initiation Deliverables in the Design Criteria.

1.42 The term “**Project Manager**” means the Project Manager assigned by the City’s Manager, and/or the Project Manager’s designee. When one or more designee(s) to act on behalf of the Project Manager is used by the City, the name of the designee(s) and the duties and authority of such designee(s) will be identified in a written notice to Contractor from the Project Manager responsible for the Project. The designee(s) may be a professional architect or engineer or other person(s) employed by the City or contracted by the City to perform design consultation, construction administration services, or Project oversight. The City may substitute or replace the Project Manager or a Project Manager designee from time to time by written notice thereof to Contractor.

1.43 The term “**Project Schedule**” shall mean the agreed upon schedule for the completion of the Work that is attached to the Agreement as Attachment H.

1.44 The term “**Punchlist**” means unfinished items of the construction of the Project, which unfinished items of construction are minor or insubstantial details of construction, mechanical adjustment or decoration remaining to be performed, the non-completion of which would not materially affect use of the Project, and which are capable of being completed within the time specified for Final Completion after Substantial Completion has been achieved.

1.45 The term “**Record Drawings**” shall have the meaning set forth in Section 2.10 below.

1.46 The term “**Request for Interpretations**” or “**RFI**” means a request originated by either Contractor or one of its trade subcontractors requesting clarification or additional information either (i) from the Design Team where Contractor believes there is insufficient information or a conflict in the Contract Documents, or (ii) from the City in regards to the design intent.

1.47 The term “**Scope of Work**” means the Scope of Work that is attached to the Agreement as Attachment F thereto.

1.48 The term “**Schedule of Values**” means a detailed scheduled apportioning the GMP among all cost code divisions of work, itemized in accordance with Construction Specifications Institute divisions.

1.49 The term “**Site**” refers to that portion of the Property on which the Work is to be performed or which has otherwise been set aside for use by Contractor.

1.50 The term “**Specifications**” means that part of the Contract Documents prepared by Contractor acceptable to the City that contain the written design parameters and the technical descriptions of materials, equipment, construction systems, standards, and workmanship that describe the proposed Work in sufficient detail and provide sufficient information for the City to determine code compliance and for Contractor to perform the Work.

1.51 The term “**Substantial Completion**” or “**Substantial Completion of the Work**”, with respect to the Project, shall have the meaning set forth in Section 6.2(a). The date of Substantial Completion of the Work under the Agreement is the date on which the City confirms that the Substantial Completion condition is accomplished.

1.52 The term “**Time for Completion**” means the time period set forth in the Project Schedule for all or any portion of the Work.

1.53 The term “**Work**” means all of Contractor’s design, construction, and other services required by the Contract Documents to fully complete the Project, including, but not limited to, procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents, and all cost estimating, value engineering, scheduling, trade subcontractor bidding, submittals and shop drawing associated therewith.

## ARTICLE 2

### DRAWINGS, SPECIFICATIONS, RELATED DATA, AND RECORDKEEPING

#### 2.1 INTENT OF THE DRAWINGS AND SPECIFICATIONS DURING IMPLEMENTATION PHASE.

(a) It is understood that, except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all professional services, materials, labor, tools, equipment, water, water haulage, light power, transportation, superintendence, temporary construction of all kinds, and other services and facilities of every nature whatsoever that are necessary to execute and deliver the Work, complete and usable within the scope of the Contract Documents with all parts in working order, and all connections properly made.



(b) The general character and scope of the Work are illustrated by the Drawings and listed in the Specifications prepared by Contractor. The level of detail on the plans and stipulated in the Specifications shall be sufficient to clearly demonstrate that the design conforms to the requirements of the Contract Documents. Any additional drawings and/or other instructions deemed necessary by the Project Manager will be furnished to Contractor when required for the Work and shall be incorporated into the Contract Documents.

2.2 DOCUMENTS ON THE JOBSITE. Contractor shall keep at the Site a copy of current Drawings and Specifications, to include all authorized revisions and RFI responses, and shall at all times give the City and its authorized representatives access thereto. Contractor shall mark up the Drawings on a daily basis in red in accordance with Section 2.10 below.

2.3 OWNERSHIP OF DRAWINGS AND SPECIFICATIONS. All Drawings and Specifications and copies thereof are the property of the City and shall not be used by Contractor on any other projects.

2.4 SUBMITTALS.

(a) The term “submittals”, as used herein, shall include fabrications, erection and setting drawings, manufacturers’ standard drawings, schedules, descriptive literature, catalogs, brochures, performance and test data, wiring and control diagrams, product data, samples, and other descriptive data pertaining to the materials and equipment as required to demonstrate compliance with the Agreement requirements.

(b) Contractor shall be responsible for managing the submittal and RFI process between the subcontractors and Contractor. Contractor bears the risk of delays associated with the submittal process.

(c) Submittals shall be submitted in *[TBD – Mutually Accessible Electronic Management System or Comparable System – See Also Scope of Work]*, with the exception of samples. Each submission shall be accompanied by a letter of transmittal, listing the contents of the submission and identifying each item by reference to specification section or drawing. All submittals shall be clearly labeled with the name of the Project and such information as may be necessary to enable their complete review by the Project Manager. Catalog plates and other similar material that cannot be so labeled conveniently shall be bound in suitable covers bearing the identifying data.

(d) Submittals shall be accompanied by all required certifications and other such supporting material, and shall be submitted in sequence or groups that all related items can be checked together.

(e) City shall have up to fifteen (15) days after a submittal or re-submittal is received to review and provide comments on that submittal. Contractor shall make such revisions as necessary to incorporate comments, feedback and other direction provided by the Project Manager.

2.5 SAMPLES. Contractor shall submit to the Project Manager all samples required by the Specifications or reasonably requested by the Project Manager. Contractor shall submit three (3) samples, which may be retained by the Project Manager after review and acceptance. Each sample shall bear a label indicating the material represented, including, but not limited to, the name of the producer and the title of the Project. Acceptance of a sample shall be only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents, and only for the characteristics or use named in such acceptance. Such acceptance shall not be construed to change or modify any Contract requirements or the GMP. Materials and equipment incorporated in the Work shall match the accepted samples. The Contractor agrees that the City may use samples accepted pursuant to this section in marketing and other promotional activities related to the Project. Contractor shall be responsible for researching the availability of the specified product in the dimensions and colors specified at no additional cost to the City. Failure of Contractor to identify specified products that are not commercially produced in sufficient time to maintain compliance with the Construction Schedule shall not be grounds for additional time or compensation.

2.6 TESTS. Any specified laboratory tests of materials and finished articles shall be made by bureaus, laboratories, or agencies approved by the Project Manager and the certified reports of such tests shall be submitted to the Project Manager. All costs in connection with the testing, except testing performed by a special inspector, and test failures shall be borne by Contractor. Failure of any material to pass the specified tests will be sufficient cause for refusal by the City to consider that material and any further materials of the same brand or make of that material. Samples of various materials delivered on the site or in place may be taken by the Project Manager or a special inspector, if applicable, for testing. Contractor will not be compensated for additional time and/or cost incurred in finding an acceptable replacement or the removal and replacement of the defective item.

#### 2.7 MATERIALS AND EQUIPMENT LIST.

(a) Within thirty (30) days of the IFC Set approval, Contractor shall submit to the Project Manager a submittal log for use in connection with the Project. Partial lists and/or addendums to the list approved by the Project Manager that may be submitted from time to time will not be considered unless specifically approved by the Project Manager.

(b) After any material or piece of equipment has been approved through the submittal process, no change in brand or make will be permitted unless satisfactory written evidence is presented to prove that the manufacturer cannot make the scheduled delivery of the accepted material, or that the material delivered has been rejected and the substitution of a suitable material is an urgent necessity, or that other conditions have become apparent which indicate that acceptance of such other material is in the best interest of the City. Contractor is solely responsible for the cost and time required to obtain and install a suitable replacement.

#### 2.8 STANDARDS AND SUBSTITUTIONS.

(a) Any material specified by reference to the number, symbol, or title of a specific standard, such as a Commercial Standard, a Federal Specification, a Trade Association Standard, or other similar standard, shall comply with the requirements in the latest revision of

the standards or specification and any amendment or supplement in effect at the time building permits are first obtained for the Project, except as limited to type, class or grade, or as modified in such reference. The standard referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications.

(b) Technical words, abbreviations and acronyms in the Contract Documents shall be used and interpreted in accordance with customary usage in the construction industry.

(c) Reference in the Specifications or on the Drawings to any article, device, product, material, fixture, form or type of construction by name, make or catalog number shall be interpreted as establishing a standard of quality and shall not be construed as eliminating from competition other products of equal or better quality by other approved manufacturers. Applications for acceptance of substitutions for the specified items will be considered only upon request of Contractor, not of individuals, trades or suppliers, and only for a specific purpose; no blanket acceptance will be granted. No acceptance of a substitution shall be valid unless it is in written form and signed by the Project Manager.

(d) If any proposed substitution will affect a correlated function, adjacent construction, or the Work of other contractors, then the necessary changes and modifications to the affected Work necessary to implement the proposed substitution shall be considered an essential part of the proposed substitution, to be accomplished by Contractor without additional expense to the City or an extension of the Time for Completion unless otherwise agreed in writing by the City, if and when the proposed substitution is accepted by the City. Detail drawings and other information necessary to show and explain the proposed changes and modifications shall be submitted to the City simultaneously with any request for acceptance of the substitution.

2.9 SURVEYS AND CONTROLS. Unless otherwise specified, Contractor shall establish all baselines for the location of the principal component parts of the Work, establish a suitable number of benchmarks adjacent to the Work, and develop all detail surveys necessary for construction. Contractor shall carefully preserve benchmarks, reference points, and stakes, and in the case of destruction thereof by Contractor or due to Contractor's negligence or the negligence of any of Contractor's subcontractors or suppliers at any tier, Contractor shall be responsible for expense and damage resulting therefrom and shall be responsible for any mistakes that may be caused by the loss or disturbance of such benchmarks, reference points, and stakes. Contractor shall perform a full site survey to verify all control points shown on the drawings against existing conditions within the Site limits. Such survey shall be scheduled and performed so as not to delay the commencement of the Work. Any discrepancies found during this effort shall be made known immediately to the Project Manager. Failure to perform this survey and provide proof and acceptance of Project datum, control points, and existing benchmarks will not give rise to any extensions of the Time for Completion or increases in the GMP, unless otherwise agreed to in writing by the City.

2.10 AS-BUILT DRAWINGS. As-Built Drawings shall be the responsibility of Contractor. Contractor shall maintain and mark up one set of prints of the IFC Set to portray actual construction. The prints shall be neatly and clearly marked in red to show all variations between the Work actually provided and that indicated on the IFC Set, and all utilities

encountered in the Work. All drafting shall conform to good drafting practice and shall include such supplementary notes, legends and details as may be necessary for legibility and clear portrayal of the record construction. These Drawings shall be marked upon any approved change to the Work or discovery of any undocumented utility or obstruction and shall be submitted to the Project Manager in sufficient time to be approved no later than thirty (30) calendar days after the date of Substantial Completion. The final As-Built Drawings approved by the Project Manager shall be submitted in paper copy and .pdf format electronic files prior to Final Completion. In addition, no later than upon Final Completion, the City, at its sole cost and expense, may request that Contractor prepare a set of updated Drawings that accurately reflect the Work, without mark up (“**Record Drawings**”).

### ARTICLE 3 CITY, PROJECT MANAGER, AND CONTRACTOR RELATIONS

3.1 STATUS OF PROJECT MANAGER. The Project Manager shall be the City’s representative. The Project Manager shall have authority to suspend the Work whenever such suspension may be necessary in the reasonable opinion of the Project Manager to ensure the proper execution of the Contract Documents. The Project Manager shall also have authority to reject all Work and materials that do not conform to the Contract Documents and to decide questions that arise in the execution of the Work. The Project Manager will, within a reasonable time, make decisions on all matters relating to the execution and progress of the Work.

3.2 LIMITATION ON CITY’S RESPONSIBILITIES. The City shall not supervise, direct, or have control or authority over, nor be responsible for: Contractor’s means, methods, techniques, sequences or procedures of construction; the safety precautions and programs related to safety, or Contractor’s failure to perform or furnish the Work in accordance with the Contract Documents.

3.3 DISPUTES.

(a) Procedure for Consideration of Contractual Claims:

(i) 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, Contractor shall provide City with written notice of Contractor’s intention to file a claim (“**Notice of Claim**”) which (A) describes the act or omission by City or its agents that Contractor contends caused the damages or entitles Contractor to other relief; (B) provides a description of the nature and amount of the claim; and (C) the time, place, and manner in which the claim arose.

(ii) Contractor’s Notice of Claim shall be submitted to City within twenty (20) days of (a) the time of the occurrence; or (b) beginning of the Work upon which the claim is based, whichever occurs first; provided, however, if such damage is deemed certain in the opinion of Contractor to result if Contractor acts on an order from City, Contractor shall provide the City written explanation of the expected damage prior to acting thereon, and shall not act until said then affirmed or modified by the City. For purposes of this Section 3.3, “claim”

shall include, without limitation, any request for an increase in the GMP or Time for Completion and any request for equitable adjustment.

(iii) Submission of a Notice of Claim in compliance with the requirements described above shall be mandatory, and failure to submit a Notice of Claim that complies with the requirements above shall be a conclusive waiver to such claim for damages or other relief by Contractor. Oral notice and/or untimely notice shall not be sufficient to satisfy the requirements stated in this Section 3.3.

(iv) The City will review each Notice of Claim and provide Contractor with a written decision forty-five (45) days after its receipt of the claim.

(b) Final Decision. The final decision of the City shall be considered final and conclusive unless Contractor appeals the decision within three (3) months of the final decision or the due date of the final decision by instituting legal action, subject to the applicable law, venue, forum, and jurisdiction provisions set forth in Section 43 of the Agreement.

(c) No Cessation of Performance. Nothing in this Section 3.3 shall be construed to authorize or permit Contractor to cease performance of the Agreement while utilizing the dispute resolution procedures outlined in this Section 3.3 or any other dispute resolution procedures available to Contractor. Pendency of claims shall not delay payment of amounts agreed by the City to be due in the Final Payment.

3.4 INSPECTION OF WORK. As a Party to the Agreement and separate and apart from its duties and obligations as a Code Official, the City and representatives of any public authority having jurisdiction shall, at all times, have access to the Work while in progress. Contractor shall provide suitable facilities for such access and for proper observation of the Work and shall conduct all special tests required by the Specifications, the Project Manager's instructions, and any laws, ordinances or regulations of any public authority applicable to the Work. Nothing in this Section 3.4 shall abrogate or otherwise limit or relieve Contractor's independent duty to inspect the Work or obligation of Contractor to call for and receive the approval of the Work by Code Officials.

3.5 INSPECTION OF MATERIALS. All articles, materials, and supplies purchased by Contractor for the Work are subject to inspection by the City upon delivery to the Site and during manufacturing or fabrication. The City reserves the right to return for full credit, at the risk and expense of Contractor, all or part of the articles, materials, or supplies furnished contrary to those otherwise agreed to pursuant to the Contract Documents. Nothing in this Section 3.5 shall abrogate or otherwise limit or relieve Contractor's independent duty to inspect materials.

3.6 EXAMINATION OF COMPLETED WORK. If the Project Manager requests it, Contractor, at any time before acceptance of the Work, shall remove or uncover such portions of the finished Work as may be directed. After examination, Contractor shall restore said portions of the Work to the standard required by the Specifications. Should the Work thus exposed or examined prove acceptable, then the uncovering or removing and the replacing of the covering or making good of the parts removed shall be paid for as extra Work as set forth in Section 7.3

below, but should the Work so exposed or examined prove unacceptable, then the uncovering, removing and replacing shall be at Contractor's expense, and shall not be reimbursed by the City.

3.7 RIGHT TO SUSPEND WORK. As a Party to the Agreement and separate and apart from its duties and obligations as a Code Official, the City shall have the authority to suspend the Work, in whole or in part, for such periods and such reasons as the City may reasonably deem necessary or desirable. Any such suspension shall be in writing to Contractor and Contractor shall obey such order immediately and not resume the Work until so ordered in writing by the City. Unless otherwise agreed by the City, no such suspension of the Work shall be the basis for any claim by Contractor, including, but not limited to a claim for any increase in the GMP or modification to the Project Schedule, provided that the suspension is for a reasonable time under the circumstances then existing. However, if the suspension of Work is caused by the City's belief that non-conforming Work is being or has been installed, and subsequent investigation proves that the Work was non-conforming, Contractor shall not be awarded additional time or costs. If the suspension is due to reasons other than Contractor's non-conforming Work, Contractor may request an adjustment to the Project Schedule and/or the Guaranteed Maximum Price.

3.8 RIGHT TO CARRY OUT THE WORK. In addition to the remedies available to the City in Sections 23, 24, and 25 of the Agreement, if Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten (10) day period after receipt of written notice from the City or such shorter time as may be reasonable under the circumstances and is clearly stated in the City's written notice, to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other remedies the City may have, correct such deficiencies. In such case an appropriate Change Order shall be issued by the City deducting from payments then or thereafter due Contractor the actual cost of correcting such deficiencies for which the City provided Contractor notice, including, but not limited to, the City's actual expenses, and any additional architect or engineering costs necessary due to the Contractor's default, neglect, or failure. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to the City upon written demand.

3.9 SUPERINTENDENCE BY CONTRACTOR. Contractor shall at all times enforce strict discipline and good order among the workers performing Work under the Agreement, and shall not employ on the Work any person not reasonably proficient in the Work assigned. Persons permitted to perform Work under Contractor, or any subcontractor, or sub-subcontractor at any tier, shall meet all employment eligibility, safety training, security or drug/alcohol testing requirements required by law or by the City. Any person not complying with all such requirements shall be immediately removed from the Site.

3.10 LANDS BY CITY. The City shall provide access to the Property and to any other lands of the City which it agrees may be used for rights of way and for access. In case all the lands, rights-of-way, or easements have not been obtained as herein contemplated before construction begins, then Contractor shall begin its Work on such lands and rights-of-way that the City has acquired access to. No additional time or compensation shall be awarded to Contractor for modifying the Work location provided other locations are comparable and available for Work.

3.11 LANDS BY CONTRACTOR. If Contractor requires additional land or lands for temporary construction facilities and for storage of materials and equipment other than the areas available on the Site or right-of-way, or as otherwise furnished by the City, then Contractor shall provide such other lands and access thereto entirely at Contractor's own expense and without liability to the City. Contractor shall not enter upon private property or City-owned property other than the Property for any purpose without prior written permission of all of the persons and entities who own the property. Contractor shall provide copies of any and all agreements to the City and shall include language in those agreements indemnifying and holding the City harmless for any damages, repairs, restoration, or fees associated with Contractor's use of the property. Upon termination of any such agreement, Contractor shall provide to the City a fully executed release from the property owner. Contractor shall be responsible for obtaining permission from adjoining land owners (such as crane swing easements) should such access rights be required in order to prosecute the Work.

3.12 PROTECTION OF WORK AND PROPERTY. Through insurance required pursuant to the terms of the Agreement, or otherwise:

(a) Contractor shall continuously maintain protection of all its Work from damage and shall protect the City's property from damage or loss arising in connection with the Agreement. Contractor shall make good any such damage or loss, except such as may be caused by agents or employees of the City.

(b) Contractor shall not place upon the Work, or any part thereof, any loads which are not consistent with the design strength of that portion of the Work.

(c) Contractor shall be responsible for the preservation of all public and private property, trees, monuments, etc., along and adjacent to the street and/or right-of-way, and shall use every reasonable precaution to prevent damage to pipes, conduits, and other underground structures, curbs, pavements, etc., except those to be removed or abandoned in place and shall protect carefully from disturbance or damage all monuments and property marks until the City has witnessed or otherwise referenced their location and shall not remove them until directed by the City. Any damage which occurs by reason of the the Work performed under the Contract Documents, whether or not shown on the approved construction plans, shall be completely repaired by Contractor at Contractor's expense.

(d) Contractor shall shore, brace, underpin, secure, and protect, as may be necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the Site that may be affected in any way by excavations or other operations connected with dewatering or any other the Work required under the Contract Documents. Contractor shall be responsible for giving any and all required notices to owners or occupants of any adjoining or adjacent property or other relevant parties before commencement of any Work. Contractor shall provide engineering services (signed and sealed), supportive excavation, and other matters as are customarily the responsibility of a contractor. Contractor shall indemnify and hold the City harmless from any damages on account of settlements or loss of all damages for which the City may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

(e) In an emergency affecting the safety of life or of the Work, or of adjoining property, Contractor, without special instruction or authorization from the Project Manager, or the City, shall act so as to prevent and/or minimize such threatened loss or injury, and Contractor shall so act without appeal, if so instructed or authorized by the City.

### 3.13 SEPARATE CONTRACTS.

(a) The City reserves the right to enter into other contracts in connection with this Project. Contractor shall afford other contractors reasonable access to the Project including storage of their materials and the execution of their work, and shall properly connect and coordinate its Work with the work of other such contractors.

(b) If any part of Contractor's Work depends, for proper execution or results, upon the work of any other contractor under separate contract with the City, Contractor shall inspect and promptly report to the Project Manager any defects in such work that renders it unsuitable for such proper execution and results. Contractor's failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of Contractor's Work, except as to defects which may develop in other contractor's work after its execution.

(c) If Contractor or any of Contractor's subcontractors at any tier or employees cause loss or damage to any separate contractor on that separate contractor's work, Contractor agrees to settle or make every effort to settle or compromise with such separate contractor. If such separate contractor sues the City on account of any loss so sustained, the City shall notify Contractor, who shall indemnify and hold the City harmless against any expense, claim, or judgment arising therefrom, including reasonable attorney's fees.

(d) For the purposes of this subsection, City shall provide to Contractor no later than or simultaneous with its approval of the IFC Set, a list of tasks for which the City anticipates entering into separate contracts so that Contractor may integrate that work into the Project Schedule. The City shall subsequently provide Contractor notice of those subcontractors actually engaged for those tasks as they are engaged by the City from time to time.

### 3.14 SUBCONTRACTS BY CONTRACTOR.

(a) Contractor acknowledges that the City has a policy to solicit proposals from minority and/or women owned businesses when feasible (see Hampton City Code §2-320 *et. seq.*). Contractor agrees to also abide by that policy in the solicitation of subcontractors to perform Work on the Project, to the extent practicable and in consideration of the compensation to be paid to Contractor under the Agreement. For that purpose, the GMP shall not be modified, but may be considered by the Contractor in determining the practicability of any subcontract so awarded.

(b) Contractor shall provide the City a list, to include the name, address, and primary point of contact, of all subcontractors engaged by Contractor to work on the Project, and shall make no substitutions for any subcontractor previously selected/approved unless first submitted to the City for approval. The Contractor shall supplement this list as additional subcontractors are retained by Contractor from time to time.



(c) Contractor shall be as fully responsible to the City for the acts and omissions of subcontractors as Contractor is for the acts and omissions of persons directly employed by Contractor.

(d) Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind subcontractors to Contractor by the terms of these General Conditions and other Contract Documents comprising the Agreement insofar as such documents are applicable to the work of subcontractors. In addition, in each subcontractor contract, Contractor shall require each subcontractor to be and remain registered with and authorized to transact business in the Commonwealth of Virginia during the entire term of its subcontract, and keep valid licensure and maintain in good standing with any applicable license division of the Virginia Department of Professional and Occupational Regulation, or other licensing authority of the Commonwealth of Virginia.

(e) Nothing contained in the Agreement shall be construed to create any contractual relation between any subcontractor and the City, nor shall it establish any obligation on the part of the City to pay to, or see to the payment of any sums to any subcontractor. The City will not discuss, negotiate or otherwise engage in any contractual disputes with any subcontractor.

(f) If requested by the City, Contractor shall replace any subcontractor at no cost to the City within thirty (30) days of the Project Manager's written notice or as otherwise specified. No additional time or compensation will be provided in the event a subcontractor is removed due to non-compliance with the requirements outlined within the Contract Documents.

(g) For the purposes of this Section and all purposes under the Agreement, the term "subcontractor" shall include all those persons and/or entities having a direct contract with Contractor for Work to be performed on the Project and it shall include, but not be limited to, (i) all those who provide all or any part of the design, construction, and other services required by the Contract Documents; and (ii) those who furnish material worked to a special design according to the plans and Specifications for the Work but shall not include those who merely furnish material not so worked to a special design.

#### ARTICLE 4 MATERIALS AND WORKMANSHIP

4.1 MATERIALS FURNISHED BY CONTRACTOR. Unless otherwise specified, all materials and equipment incorporated in the Work under the Agreement shall be new and as required per the Contract Documents. All Work shall be accomplished by persons qualified in the respective trades.

4.2 IBC AND VUSBC REQUIREMENTS. Contractor certifies that all material supplied or used under the Contract Documents meets all current requirements of the Virginia Uniform Statewide Building Code ("*VUSBC*") at the time Contractor obtains building permits for the Project; and further certifies that, if the material delivered or used in the performance of the

Work is found to be deficient in any of the applicable state or national code requirements, all costs necessary to bring the material into compliance with the requirements shall be borne by Contractor. The City shall be entitled to offset such costs against any sums owed by the City to Contractor under the Agreement.

#### 4.3 ADA COMPLIANCE.

(a) Contractor is solely responsible for Contractor's and the Project's compliance with the ADA and must defend and hold the City harmless from any expense or liability arising from Contractor's non-compliance. Contractor's responsibilities related to ADA compliance include, but are not limited to, the following:

(i) Contractor must design and construct the Project to meet all ADA requirements applicable at the time Contractor obtains building permits for the Project ("*Applicable ADA*").

(ii) Contractor must monitor construction Work and inform the City immediately of any Work that does not conform with the Applicable ADA.

(b) Neither the City nor any third-party inspection service is responsible for verifying that the Project's design complies with the Applicable ADA.

(c) Contractor shall ensure that all Work performed under the Agreement is completed in accordance with the Contract Documents, including Work intended to meet the accessibility requirements of the Applicable ADA, and any other applicable regulations and standards.

(d) Contractor shall defend and hold the City harmless from any expense or liability arising from Contractor's non-compliance in meeting its obligations set forth in this Section 4.3. Contractor shall be responsible for all costs related to permitting delays, redesign, corrective Work, and litigation relating to any such non-compliance.

4.4 MANUFACTURER'S DIRECTIONS. Manufactured articles, material, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's directions as accepted by the Project Manager, unless herein specified to the contrary.

#### 4.5 WARRANTY.

(a) To the extent the City is not otherwise a party, the Contractor shall cause the City to become a third party beneficiary to all design contracts or agreements between the Contractor and the Design Team in a form acceptable to the City, approval for which shall not be unreasonably withheld. The Contractor shall further cause such design contracts to include provisions reasonably acceptable to the City that indemnify the Contractor from any and all acts and omissions on the part of the Design Team, and such parties employees and agents, and such indemnification rights shall be assigned to the City. In addition, upon or before Final Completion, Contractor and the Design Team, as applicable, shall confirm in a written warranty certificate satisfactory to the City that the Project's design complies with all applicable federal,

state, and local laws and regulations, including, but not limited to, the VUSBC. Said warranty shall be for a period of one (1) year from the date of Final Completion or, if longer, as set forth in the Specifications of the Work by the City or as otherwise set for in this Agreement or under the law. In that certificate, the Contractor shall further cause the Design Team to consent in writing to the Contractor's rights (but not obligations) under the contracts for the design of the Project to the City, and will cause title to all design work to be conveyed to the City (if not already done so at the time of execution of the certificate). In all cases, the Contractor shall cooperate with the City in asserting any claim the City reasonably deems worthy of assertion as to the Project's design, or any other Work applicable to the Design Team.

(b) All material provided to the City shall be new and shall be fully guaranteed against manufacturing defects within the period of the manufacturer's standard warranty. Such defects shall be corrected by Contractor at no expense to the City during Contractor's warranty period set forth in Section 4.5(c) below, and for that purpose Contractor shall make all reasonable efforts to use and/or assist the City in obtaining the benefit of all applicable manufacturers' warranties. Contractor shall provide all manufacturers' warranties to the Project Manager by the date of Final Completion.

(c) All Work is guaranteed by Contractor against defects, including, but not limited to defects resulting from the use of inferior or faulty materials. Contractor warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, or inferior or faulty workmanship, and that any Work not in accordance with the Contract Documents, for a period of one (1) year from the date of Substantial Completion or, if longer, as set forth in the Specifications of the Work by the City, as otherwise set forth in this Agreement, or under the law, in addition to and irrespective of any manufacturer's or supplier's warranty, except that the warranty term of the following elements of the Work shall be as follows:

(i) Glazing, including all elements of windows, curtain walls and other fenestration shown in the Contract Documents, including the joining between the glazing assemblies and the building shell. The warranty period shall be a minimum of three (3) years, including labor and materials.

(d) Upon or before Substantial Completion, Contractor shall confirm in a written warranty certificate satisfactory to the City the provisions of subsections (b) and (c) above and that all Work complies with all applicable federal, state, and local laws and regulations, including, but not limited to, the VUSBC.

(e) No date other than the date of Substantial Completion shall govern the effective date of any warranty, unless that date is agreed upon by the City and Contractor in advance and in a signed writing.

(f) Without limiting any other obligation set forth in this Agreement or otherwise, Contractor shall assign to the City no later than upon conveyance of title to the City any and all warranties of any kind or nature, including extended warranties and service life policies, of Contractor, subcontractor, and vendors as to any equipment, materials, or services (including, but not limited to, design work product) furnished, or as to the performance of any

construction or development of the Project. When special guarantees are required by the Specifications or other terms of the Agreement for specific parts of any aspect of the construction and development of the Project, the Contractor shall procure Contractor-certified copies of such guarantees or warranties, countersigned and submitted to the City in triplicate. Delivery of any such guarantees or warranties shall not relieve Contractor from any obligations assumed under any provision of this Agreement. Upon request of the City, Contractor shall cooperate with the City in enforcing any rights arising under any warranties, guarantees, service life policies and patent indemnities of manufacturers of equipment or items incorporated in the Project, and the Contractor shall assign to the City any rights that Contractor has related thereto. At the request of the City, Contractor shall give notice (with copies to the City) to any such manufacturers of the assignment of such warranties, service life policies and patent indemnities.

(g) Nothing contained in this Section 4.5 shall be construed to establish a period of limitations with respect to other obligations Contractor may have under the Agreement.

(h) The provisions of this section 4.6 shall survive the termination this Agreement.

4.6 CORRECTION OF DEFECTIVE WORK. All elements of the Project not conforming to the Specifications and other Contract Documents shall be considered “defective.” Any and all such defective elements, including design elements, shall be promptly corrected by Contractor at no cost to the City after receipt of a written notice from the City to do so. In addition, if within one (1) year after the Final Completion of the Project (or such longer period as may be prescribed by the terms of any other applicable special guarantee or warranty), any of the elements of the Project is found to be defective, Contractor shall, at its sole expense, promptly correct any such defects after written notice of the City to do so. All corrective redesign and all corrective Work shall be covered by the same warranties set forth in Section 4.5 for the remainder of the original 12-month period, or six (6) months after completion of the corrective redesign or corrective Work, whichever is longer. The Contractor, at its sole cost and expense, shall provide or shall cause to be provided all labor, supervision, engineering, field service representation, equipment, tools, materials, and anything else necessary to gain access to and correct the defective condition and shall bear all expenses (including, but not limited to, redesign and labor costs) in connection therewith. The cost of transporting new, repaired, replaced, or modified items of material or equipment to and from the Project site shall be borne by the Contractor. All defective work that is not corrected as provided in this Section 4.6 shall be removed from the Project, if deemed necessary by the City. The Contractor shall perform or cause to be performed remedial obligations hereunder in a timely manner consistent with the City’s reasonable expectations and requirements. If the Contractor fails to correct timely defective Work in conformity with this Agreement, including the Specifications and other Contract Documents, City may correct such defective work, and Contractor shall be obligated to reimburse City for all actual costs, expenses, and damages, including, but not limited to, redesign fees, repair and replacement costs, reasonable attorneys’ fees, interest, and litigation costs incurred by the City in correcting the defective work.

The provisions of this section 4.6 shall survive the termination of this Agreement.

4.7 INSPECTION, ACCEPTANCE, AND TITLE OF MATERIALS. Inspection and acceptance of materials by the City will be at the Site and within ten (10) calendar days of delivery unless otherwise provided for in the Contract Documents. Title of materials shall pass to the City in accordance with Section 4.9 below; however, risk of loss or damage to all items and the sole responsibility, care, and custody thereof shall be the responsibility of Contractor until Final Acceptance by the City. The City's right of inspection shall not be deemed to relieve Contractor of its obligation to ensure that all articles, materials, and supplies are consistent with Specifications and instructions and are fit for their intended use and in accordance with the VUSBC and any other applicable laws and regulations. The City reserves the right to conduct any tests or inspections it may deem appropriate before acceptance. Contractor shall be responsible for maintaining all articles, materials, and supplies in the condition in which they were accepted until they are used in the Work.

4.8 CONTRACTOR'S TITLE TO MATERIALS. No materials or supplies for the Work shall be purchased by Contractor or any subcontractor at any tier subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. Contractor warrants that it has good title to, and that it will require all subcontractors, regardless of tier, to warrant that they have good title to, all materials and supplies for which Contractor invoices for payment. The City may request proof of title or payment prior to acceptance of Contractor's invoice.

4.9 TITLE TO MATERIALS AND WORK COVERED BY PARTIAL PAYMENTS. All material and Work covered by progress or partial payments made by the City will become the property solely of the City at the time the progress or partial payment is made, regardless of any sum retained in accordance with the Agreement. However, risk of loss or damage to all items shall be the responsibility of Contractor until Final Acceptance by the City. This provision will not be construed as relieving Contractor from having sole responsibility for all materials and Work upon which payments have been made and for the restoration of any damaged Work or replacement or repair at the City's option of any damaged materials. This provision will not be construed as a waiver of the City's right to require fulfillment of all terms of the Agreement, including full rights under the terms of the warranty provisions of these General Conditions or the Contract Documents, nor shall payment indicate acceptance of the materials or Work.

4.10 MAINTENANCE OF NEWLY CONSTRUCTED WORK. Prior to Final Completion, Contractor is solely responsible for protecting and maintaining all the Work and materials installed on the Work. Failure to adequately protect the Work and materials installed on the Work shall not be grounds for additional compensation for any maintenance and/or repairs to such Work or materials.

4.11 CUTTING, PATCHING, AND DIGGING. Contractor shall do all cutting, patching, or digging of Contractor's Work that may be required to make its several parts come together properly and fit it to receive or be received by Work of other contractors as shown upon or reasonably implied by the Drawings and Specifications for the completed Project. This Work will be performed in a workmanlike manner utilizing proper care and equipment to achieve proper line and grade. Contractor shall not endanger any Work by cutting, patching, or digging, or

otherwise, and shall not cut or alter the work of any other contractor except with the prior written consent of the Project Manager. Contractor shall ensure that seamless physical appearance of the newly constructed and existing areas is maintained.

#### 4.12 REJECTED WORK AND MATERIALS.

(a) Any of the Work or materials, goods, or equipment which do not conform to the requirements of the Contract Documents, or are not equal to samples accepted by the Project Manager, or are in any way unsatisfactory or unsuited to the purpose for which they are intended, shall be rejected and promptly replaced by Contractor so as not to cause delay to the Project or Work by others. Any defective Work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, shall be removed and the Work shall be re-executed by Contractor. The fact that the Project Manager may have previously overlooked such defective Work shall not constitute acceptance of any part of it.

(b) If Contractor fails to promptly proceed with the replacement of rejected material and/or the correction of defective workmanship when notified to do so by the Project Manager, the City may, by contract or otherwise, replace such material or correct such workmanship and charge the cost to Contractor. This clause applies during the Agreement and during any warranty or guarantee period.

(c) Contractor shall be responsible for managing, addressing within a timely manner, and formally closing out all non-compliances related to the Work issued by the Project Manager, the Design Team, and any Code Official, including, but not limited to, the City's Code Officials and any special inspectors. Contractor shall be solely liable for any costs or time associated with the corrective action to address any non-compliance with Work or materials. Contractor must work directly with the entity issuing the non-compliance.

(d) If the Project Manager deems it expedient not to require correction of Work which has been damaged or not done in accordance with the Agreement, a reasonable and appropriate adjustment to the GMP may be made.

4.13 OSHA REQUIREMENTS. Contractor certifies that all material supplied or used under the Agreement meets all Occupational Safety and Health Administration ("**OSHA**") requirements, both Federal and those of the Commonwealth of Virginia, and further certifies that, if the material delivered or used in the performance of the Work is found to be deficient in any of the applicable state or federal occupational safety and health requirements, all costs necessary to bring the material or Work into compliance with the requirements shall be borne by Contractor.

4.14 HAZARDOUS MATERIALS. As applicable to the Work, Contractor agrees that it will provide or cause to be provided Safety Data Sheets ("**SDS**") required under the Hazard Communication Standard, 29 CFR §1910.1200 ("**Standard**") for all hazardous materials supplied to the City or used in the performance of the Work. Such SDS shall be delivered to the City no later than the time of actual delivery of any hazardous materials to the City or use of such material in the performance of Work under the Agreement by Contractor or its subcontractors at all tiers, whichever occurs first. Container labeling meeting the requirements of the Standard shall be appropriately affixed to the shipping or internal containers. The City reserves the right to refuse

shipments of hazardous materials not appropriately labeled, or when SDS have not been received prior to or at the time of receipt of the shipment for use by the City or for use by Contractor in the performance of the Agreement, or whenever the material is delivered in a manner inconsistent with any applicable law or regulation. Any expenses incurred due to the refusal or rejection of SDS are the responsibility of Contractor. Contractor shall comply with all federal, state, and local laws governing the storage, transportation, and use of toxic and hazardous materials. Contractor shall maintain onsite an up to date SDS binder for all material used and delivered to the Project. The Project Manager shall be allowed access to the SDS book at all times.

Contractor agrees that it shall dispose of all Hazardous Materials in strict compliance with local, City, state, and federal statutes, laws, ordinances, codes, rules, regulations, orders, or decrees, and shall within five (5) days of any such disposal provide evidence of such disposal satisfactory to City to the Project Manager. In the event of Contractor's failure to comply, Contractor shall, at its sole cost and expense, promptly commence and diligently pursue any required investigation, assessment, cleanup, remediation, restoration, and monitoring of any waters and lands affected by Contractor's failure to comply, and to restore the damaged water and/or land to the condition existing immediately prior to the occurrence which caused the damage. Upon discovery of a failure or violation related to its disposal operations, Contractor shall immediately report such failure or violation to all applicable governmental agencies having jurisdiction, and to the City. The provisions of this Section 4.14 shall survive the termination or expiration of the Agreement.

4.15 PROHIBITION AGAINST ASBESTOS CONTAINING MATERIALS. No goods or equipment provided to the City or construction material installed shall contain asbestos. If a Contractor or supplier provides or installs any goods, equipment, supplies, or materials that contain asbestos in violation of this prohibition, Contractor shall be responsible for all costs related to the immediate removal and legal disposal of the goods, equipment or materials containing asbestos and replacement with a City-approved alternate. Contractor shall be responsible for all goods, equipment, supplies, or materials installed or provided by any of its employees, agents, or subcontractors, including any tier subcontractor, in connection with the Work under the Agreement. Contractor shall also reimburse to the City all costs of such goods, equipment, supplies or materials installed if not corrected by Contractor.

4.16 CONTRACTOR ACKNOWLEDGMENTS.

(a) Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including all exploratory work done by the City, as well as from the Drawings and Specifications made a part of the Agreement. Any failure of Contractor to take the actions described and acknowledged in this paragraph will not relieve Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work without additional expense to the City.

(b) The locations of existing utilities, including underground utilities, which may affect the Work, are indicated on the Drawings or in the Specifications insofar as their existence and location were known at the time of preparation of the Drawings. However, nothing in these Drawings or Specifications shall be construed as a guarantee that such utilities are in the

location indicated or that they actually exist, or that other utilities are not within the area of the operations. Contractor shall make all necessary investigations to determine the existence and locations of such utilities. Contractor will be held responsible for any damage to and maintenance and protection of existing utilities and structures, of both public and private ownership. However, if it is determined that such existing utility lines or structures require relocation or reconstruction or any other Work beyond normal protection, then such additional Work will be ordered under Section 7.3 below.

(c) The City assumes no responsibility for any conclusions or interpretations made by Contractor based on the information made available by the City. The City assumes no responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of the Agreement, unless that understanding or representation is expressly stated in the Agreement.

#### 4.17 POLLUTION PREVENTION/UNAUTHORIZED DISCHARGES.

(a) Unauthorized discharges and pollution releases are prohibited from entering the City's Municipal Separate Storm Sewer System ("MS4"), which includes the curb and gutter as well as the underground pipe network. An unauthorized discharge is any discharge to the storm drain system or surface waters that is not composed entirely of uncontaminated stormwater or authorized under the City's MS4 permit, or a separate Virginia Pollutant Discharge Elimination System permit. Unauthorized discharges include sediment, slurry runoff from saw cutoff, discharges associated with vehicle, equipment, and/or material washing, concrete water wash, process water, waste water, leaks from portable lavatories, equipment, vehicles and/or waste receptacles.

(b) Contractor must implement pollution prevention measures and controls to prevent unauthorized discharges to the City's storm drain system or surface waters. Contractor shall ensure the pollution prevention practices are implemented throughout the Project and, to the extent required, are in conformance with the Hampton City Code §33.2-1 *et. seq.*, as it may be amended from time to time, and all other federal, state, and local laws and regulations applicable to the responsible management of stormwater and pollution discharge are implemented throughout the duration of the Project.

### ARTICLE 5 LEGAL RESPONSIBILITY AND PUBLIC SAFETY

#### 5.1 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK.

(a) Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and locations of the Work of the Contract Documents, and that it has investigated and satisfied itself as to the general and local conditions and factors which can affect the Work or its cost, including, but not limited to:

- (i) conditions bearing upon transportation, disposal, handling, and storage of materials;
- (ii) the availability of labor, water, electric power, and roads;



(iii) uncertainties of weather, river stages, tides, or similar physical conditions at the Site;

(iv) the information and conditions of the ground; and

(v) the character of equipment and facilities needed before and during work performance.

(b) Contractor, by executing the Agreement, represents that it has reviewed and understands the Contract Documents and has notified the City of and obtained clarification of any discrepancies which have become apparent during the bidding period.

(c) Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including all exploratory work done by the City and included as an Attachment(s) to the Agreement. Any failure of Contractor to take the actions described and acknowledged in this paragraph will not relieve Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work without additional expense to the City.

(d) Contractor shall make all necessary investigations to determine the existence and locations of underground utilities, including, but not limited to, review and consideration of the survey attached to the Agreement as Attachment J. Contractor will be held responsible for any damage to and maintenance of protection of existing utilities and structures, of both public and private ownership.

(e) The City assumes no responsibility for any conclusions or interpretations made by Contractor based on the information made available by the City. The City assumes no responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of the Agreement, unless that understanding or representation is expressly stated in the Agreement.

5.2 PUBLIC CONVENIENCE. Contractor shall at all times conduct its Work so as to reasonably ensure the least possible obstruction to traffic (vehicular, bicycle and pedestrian) and inconvenience to the general public, City employees, and the residents in the vicinity of the Work. Traffic shall be maintained by Contractor in accordance with a City-approved plan for the traffic maintenance. No road, street or sidewalk shall be closed to the public except with the permission of the Project Manager and proper governmental authority. Fire hydrants on or adjacent to the Work shall be kept accessible to firefighting equipment at all times. Temporary provisions shall be made by Contractor to ensure the use of sidewalks and the proper functioning of all gutters, drainage inlets, drainage ditches, and irrigation ditches, which shall not be obstructed except as approved by the Project Manager.

### 5.3 SAFETY AND ACCIDENT PREVENTION.

(a) Contractor shall comply with, and ensure that Contractor's employees and subcontractors at all tiers comply with, all current applicable local, state and federal policies, regulations and standards relating to safety and health, including, by way of illustration and not

limitation, OSHA Construction Industry Regulations, the standards of the Virginia Occupational Safety and Health program of the Department of Labor and Industry for General Industry and for the Construction Industry, the Federal EPA Standards and the applicable standards of the Virginia Department of Environmental Quality.

(b) Contractor shall provide, or cause to be provided, all technical expertise, qualified personnel, equipment, tools and material to safely accomplish the Work specified to be performed by Contractor and subcontractor(s) at any tier.

(c) Contractor shall identify to the Project Manager at least one on-site person who is Contractor's competent, qualified, and authorized safety officer on the worksite and who is, by training or experience, familiar with and trained in policies, regulations and standards applicable to the work being performed. The competent, qualified and authorized person must be capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employees, shall be capable of ensuring that applicable safety regulations are complied with, and shall have the authority and responsibility to take prompt corrective measures, which may include removal of Contractor's personnel from the work site.

(d) Prior to the start of construction activities, Contractor shall prepare a safety plan (the "**Safety Plan**") for the Construction Implementation Phase conforming to all applicable OSHA regulations and in accordance with the General Conditions. The Safety Plan shall be submitted to the Project Manager, and Contractor shall incorporate such comments as the City may reasonably request. Once such plan has been approved, Contractor shall comply with it at all times during construction.

(e) Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all injury to persons and damage to property either on or off the site, which occur as a result of Contractor's prosecution of the Work.

(f) Contractor shall take or cause to be taken such additional safety and health measures as the City may determine to be reasonably necessary. Machinery, equipment, and all hazards shall be guarded in accordance with the safety provisions of the current version of "Manual of Accident Prevention" published by the Associated General Contractors of America, Inc., to the extent that such provisions are not in conflict with applicable local laws. Contractor is directed to the "Rules and Regulations Governing Construction, Demolition and All Excavation" and adopted by the Safety Codes Commission of Virginia, 1966, or latest edition, covering requirements for shoring, bracing, and sheet piling of trench excavations.

5.4 **CROSSING UTILITIES.** When construction crosses highways, railroads, streets, or utilities under the jurisdiction of the Commonwealth of Virginia, the City, or other public agency, public utility, or private entity, Contractor shall secure written permission where necessary from the proper authority before executing such new construction. A copy of such written permission must be filed with the City before any work is started. Contractor shall be required to furnish a release from the proper authority before Final Acceptance of the Work.

5.5 OVERHEAD HIGH VOLTAGE LINES SAFETY ACT. If any Work required herein will be performed within ten (10) feet of an overhead high voltage line, the provisions of Code of Virginia §59.1-406, et. seq., “Overhead High Voltage Line Safety Act” (the “*Act*”) shall apply. The “person or contractor responsible for the work to be done”, as that term is used in the Act, will be interpreted to mean Contractor. Contractor shall notify the owner or operator of the high voltage line in the manner prescribed in Section 59.1-411 of the Act in sufficient time prior to the time Work is to be commenced to avoid any delays in the Work. The City will not pay for lost time, profits, or permit any extension of the Work for any delays caused by the failure of Contractor to make such arrangements in a timely manner. All costs for the Work shall be paid by Contractor. The City shall reimburse Contractor for the actual reasonable cost paid to the owner or operator of the high voltage line by Contractor on presentation to the City by Contractor of original invoices from the owner or operator of the high voltage line in the same manner as for other Contractor invoices submitted for Work performed. Retention, if applicable to the Agreement, shall not be withheld from the payment to Contractor by the City for this Work. No processing, administrative, or other charges above the actual amount charged by the owner or operator of the high voltage line shall be paid to Contractor by the City.

5.6 SANITARY PROVISIONS. Contractor shall provide and maintain such sanitary accommodations for the use of Contractor’s employees and those of its subcontractors at all tiers as may be necessary to comply with the requirements and regulations of OSHA and of the local and State departments of health.

5.7 WORK SITE DAMAGES. Any damage to finished surfaces resulting from Work performed under the Agreement shall be repaired to the City’s reasonable satisfaction at Contractor’s expense unless caused in whole or in part by the City.

5.8 CLEANING UP. Contractor shall remove and legally dispose of, as frequently as necessary or at the request of the City, all refuse, rubbish, scrap materials and debris from the Site to the extent they are the result of Contractor’s operations to the end that the Site shall present a neat, orderly, and workmanlike appearance at all times. Contractor shall isolate the trash cans and recycling bins installed during construction related to the Project from public use until Final Acceptance. However, failure to adequately restrict public access shall not relieve Contractor from maintenance of those cans and bins. At completion of the Work, but before Final Acceptance, Contractor shall remove and legally dispose of all surplus material, falsework, temporary structures including foundations thereof, and debris of every nature resulting from Contractor’s operations or resulting from any activity on the site related to Contractor’s operations and put the Site in a neat, orderly condition; if Contractor fails to do so, the City shall have the right to remove and legally dispose of the surplus material, falsework, temporary structures including foundations thereof, and debris, put the Site in a neat, orderly condition, and charge the actual costs to Contractor.

## ARTICLE 6 PROGRESS AND COMPLETION OF THE WORK

6.1 TIME FOR COMPLETION. It is hereby understood and mutually agreed by and between Contractor and the City that the date of issuance of the Construction Implementation Stage NTP, the rate of progress, and the Time for Completion of the Work to be done hereunder in

accordance with the Project are essential conditions of the Agreement. The Work shall be prosecuted regularly, diligently, and uninterruptedly at a rate of progress that will ensure full completion of the Project within the Time for Completion specified in the Project Schedule, the Construction Schedule, and the Contract Documents. Contractor shall perform the Implementation Phase services in accordance with the timelines set forth in the Scope of Work and the Project Schedule approved by the Project Manager. Contractor agrees that the Implementation Phase Work shall be started promptly upon issuance of the Implementation NTP by the City and shall be completed in accordance with the schedule set forth in the Project Schedule and the other Contract Documents.

## 6.2 CONDITIONS FOR COMPLETION.

(a) SUBSTANTIAL COMPLETION: Substantial Completion of the Work will be considered to have occurred when the City agrees that the Work, or a specific portion thereof, is sufficiently complete, in accordance with the Contract Documents, so the Project can be utilized by the City for the intended purposes, and all of the conditions set forth in this Section (a) have been satisfied:

(i) The Project Manager has agreed that the condition of the Work warrants Substantial Completion;

(ii) Contractor has provided a Punchlist and that list has been reviewed and approved by the Project Manager. Failure to include an item on the Punchlist does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents;

(iii) Final test reports as required by the Agreement and certificates of inspection and approval required for use and occupancy have been accepted by the Project Manager;

(iv) Fire Marshal's report, if applicable, has been accepted by the Project Manager;

(v) Approval forms and transfer documents for all utilities have been accepted by the Project Manager;

(vi) All life safety systems, including fire alarms, visual and audios alarms, fire detectors and fire alarm annunciator system, sprinkler systems, and all mechanical and electrical systems are complete and working in an automatic mode, and the City has been adequately trained in the operation of the systems;

(vii) The HVAC system Testing and Balancing Report need for commissioning and building air quality test results as required by LEED standards have been accepted by the Project Manager;

(viii) Operation and Maintenance Manuals have been submitted for review;

(ix) All documents and verification of training required in accordance with any Commissioning Plan have been accepted by the Project Manager;

(x) Mark-ups of construction Drawings showing the record condition have been submitted for review and approval by the Project Manager;

(xi) Entrances and egress pathways have been constructed and can remain clear of construction activities;

(xii) A Certificate of Occupancy has been issued for the Project by the City's applicable Code Official;

(xiii) All commissioning has been performed and completed to the satisfaction of the Project Manager; and

(xiv) A schedule to complete the Punchlist and value of Work not yet complete has been accepted by the Project Manager.

(b) FINAL COMPLETION: The Work will be considered Finally Complete when all of the following conditions have been met:

(i) The Project Manager has agreed that the condition of the Work warrants Final Completion;

(ii) All construction deficiencies and Punchlist items have been closed and all construction deficiencies corrected and accepted by the Project Manager;

(iii) All spare parts and attic stock requested by the City have been delivered, stored in an orderly manner in a space designated by the Project Manager and a complete inventory list has been verified and accepted by the Project Manager;

(iv) All warranty certificates and contact information for parties providing warranties have been delivered, are in the name of or assigned to the City, and accepted by the Project Manager;

(v) All final Operating and Maintenance manuals have been delivered and approved and accepted by the Project Manager;

(vi) All final As Built Drawings in .pdf format on a CD or a flash drive delivered and accepted by the Project Manager;

(vii) All commissioning has been completed and any open construction items in the commissioning agent's report have been closed and accepted by the Project Manager; and

(viii) All documents and submittals necessary to confirm compliance with LEED Silver standards to be provided by Contractor or subcontractors have been submitted and accepted by the Project Manager.

6.3 CONSTRUCTION SCHEDULE AND CASH FLOW.

(a) CONSTRUCTION SCHEDULE.

(i) Contractor shall submit as part of the Design Confirmation Phase a cost loaded schedule which shall show the sequence of events and activities in which Contractor proposes to carry on the Work, with dates for starting and completing the various events and activities of the Work (the “**Construction Schedule**”). The Construction Schedule shall be logic based and show the Critical Path. Review and acceptance by the City of Contractor’s Construction Schedule shall in no way relieve Contractor of its responsibility to complete the Work within the Time for Completion. Contractor shall submit an updated progress schedule monthly with each monthly request for partial payment. The Construction Schedule shall include, in addition to the elements set forth in this Section 6.3(a), the following elements:

(A) A listing of all long lead time items and a schedule for Contractor’s acquisition and delivery of such long lead items;

(B) A schedule for the processing of shop drawings and submittals, providing for appropriate periods of review, which periods shall not be more than twenty-one (21) calendar days, or longer where appropriate or required by the Specifications for the Project;

(C) Itemization of work provided by the City, or others, for Contractor’s incorporation into the Work; and

(D) Preparation of a Punchlist, and completion of the Work identified by the Punchlist, delivery of Record Drawings and Operation and Maintenance Manuals to the Project Manager, and commissioning, and completion of all closeout requirements.

(ii) The Construction Schedule shall be in calendar days and shall include weekends and all federal and local holidays. The Construction Schedule shall be used by the Project Manager to monitor the progress of the Project. Contractor shall update the Construction Schedule monthly for review and acceptance by the Project Manager, and without extending the construction period beyond the Time for Completion. Contractor shall give specific notice of any change in the logic of the Construction Schedule or any part thereof, or the removal of any restraints, or the deduction of any duration. The review and acceptance by the Project Manager shall in no way relieve Contractor of its responsibility to complete the Work within the Time for Completion. Time is of the essence. As necessary, adjustments to the sequence of Work must be made due to availability of permits, easements, and other administrative items. These adjustments to the sequence of Work shall not entitle Contractor to additional compensation or time.

(iii) The Construction Schedule shall give due consideration of Code Official availability for regulatory inspections, including those of the City. The City’s regulatory inspection services are generally available on week days before 3:00 P.M., with no such inspection services available after 3:00 P.M., on weekends, or on City holidays. Inspections are generally conducted with two (2) business days of any request made. Contractor is to coordinate

its Work and request regulatory inspections during the course of construction, including, but not limited to any necessary special inspections, in such a manner as to minimize the cost to the City without impacting the overall schedule of the Project within reason. All costs associated with re-inspection shall be borne by Contractor without reimbursement by the City.

(iv) The Construction Schedule shall include anticipated time lost to adverse weather. The number of lost days anticipated shall be clearly shown on the Construction Schedule. Contractor will use the number of weather days derived in accordance with the Time Extension for Weather paragraph of these General Conditions. The Construction Schedule updates shall include changes in events and activities that will show how Contractor intends to recover from delays.

(v) Contractor shall provide the Project Manager with the electronic files for the initial Construction Schedule, the final Construction Schedule, and all monthly Construction Schedule updates, in a format acceptable to the Project Manager. The electronic file shall include a PDF copy of the schedule and an accessible/working electronic file.

(b) CASH FLOW FORECAST. Concurrent with the Construction Schedule, Contractor shall provide a forecast of cash flow or expected progress payments (the “*Cash Flow Forecast*”), including the retention amount, to be paid within the thirty (30) day period following each month’s requested progress payment. The Cash Flow Forecast shall be prepared in an Excel spreadsheet format and indicate both the current and cumulative payment amounts through the scheduled Final Payment date.

(c) PROGRESS DELAY. When the Work is thirty (30) calendar days or more behind the Construction Schedule, the City may require Contractor to prepare and submit, at no extra cost to the City, a recovery schedule indicating by what means Contractor intends to regain compliance with the Construction Schedule. The recovery schedule must be submitted to the City for review within seven (7) days of the City’s notice of unsatisfactory progress. The recovery schedule shall be reviewed and approved by the Project Manager. If the City and Contractor are unable to agree on the terms of the recovery schedule and the plan upon which it is based, within ten (10) days after the issuance of Contractor’s submission of the recovery schedule, the Project Manager shall have the right to direct such acceleration as the Project Manager, in his/her reasonable judgment, deems necessary. Provided the notice provisions of this Section 6.3(c) are complied with, the cost of any acceleration directed under this Section 6.3(c) shall not justify an adjustment to the Guaranteed Maximum Price or the Time for Completion.

6.4 USE OF COMPLETED PORTIONS. The City shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the entire Work or such portions may not have expired; but taking such possession and use shall not be deemed an acceptance of any Work not done in accordance with the Contract Documents. If Contractor claims that such prior use increases the cost or delays, the completion of remaining Work, or causes refinishing of completed Work, Contractor may submit a claim for compensation or extension of time, or both. However, upon the City occupying

or partially occupying the Project, all liability and maintenance of those portions shall transfer to the City.

ARTICLE 7  
PAYMENT, CHANGES, CLAIMS, AND DELAYS

7.1 PAYMENTS TO CONTRACTOR.

(a) Contractor must provide City a complete and accurate Internal Revenue Service Form W-9 in order to receive any and all payments for any purpose under this Agreement. The City shall not be deemed in breach of this Agreement or otherwise liable to Contractor if its failure to pay any amounts that may be owed to Contractor is due to Contractor's failure to comply with this subsection.

(b) Subject to Contractor's regular and timely submission of complete applications for payment, the City will make partial payments not more frequently than monthly, less retainage, to Contractor on the basis of Contractor's written estimate of the Work performed during the preceding calendar month as reviewed and accepted by the Project Manager within thirty (30) days of such acceptance, unless otherwise provided herein. The accepted Schedule of Values shall be used as the basis for preparing the estimates, and each partial payment shall represent the value, proportionate to the amount stated in the approved Schedule of Values less the aggregate of previous payments. Contractor shall submit payment applications using AIA Form G-702 "Application and Certification for Payment" or equivalent form acceptable to the Project Manager. Each application for payment will not be reviewed or processed by the City unless an updated Construction Schedule and Cash Flow Forecast, and a release of liens are also attached. The application shall also contain a certification by Contractor that due and payable amounts and bills have been paid by Contractor, including amounts paid to or withheld from subcontractors in accordance with Section 14 of the Agreement and payments to suppliers, for Work for which previous payment was received by Contractor from the City. Partial waivers from subcontractors and suppliers shall also be provided if requested by the Project Manager.

(c) Contractor shall provide photographs of materials stored offsite, certificates of insurance for the stored material shall be included with the application for payment.

7.2 PAYMENTS WITHHELD. The Project Manager may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate for payment to the extent necessary to protect the City from loss on account of defective Work not remedied, or withhold payment for violation of any term or condition not remedied after any applicable notice required by the Contract Documents is given to Contractor. Any such withholding shall not result in any liability to Contractor for damages.

7.3 CITY ORDERED CHANGES IN WORK.

(a) The City, without invalidating the Agreement, may order extra Work or make changes by addition, deletion, or revision in the Work, with the total GMP being adjusted accordingly if applicable. Except in an emergency endangering life or property, no extra Work or



change shall be made unless in pursuance of a written Construction Change Directive or written Change Order and no claim for an addition to the GMP or Time for Completion shall be valid unless so ordered.

(b) Any change that will increase the GMP more than ten percent (10%) will require notice to sureties and require that Performance and Payment Bonds then in place for the Project be increased by Contractor. The increased Performance and Payment Bonds must be sent to the City's Office of Consolidated Procurement within fifteen (15) calendar days of the City's approval of such change. All such Work shall be executed under the conditions of the original Contract Documents, except that modification of the Time for Completion caused thereby shall be made at the time of approving such change.

(c) Contractor shall review any City requested or directed change and shall respond in writing within thirty (30) days after receipt of the proposed change stating the effect of the proposed change upon Contractor's Work, including any increase or decrease in Time for Completion and GMP. Contractor shall furnish the City an itemized breakdown of the quantities and prices used in computing the proposed change. Contractor shall also furnish any sketches, drawings, and or pictures to properly explain the change or impact to the Project Manager. It is the sole responsibility of Contractor to provide adequate change order backup to satisfy the Project Manager.

(d) The value of any such extra Work or change shall be proposed by Contractor in one or more of the following ways: (i) by estimate in a lump sum, (ii) by cost and fixed fee, (iii) by unit price additions or deletions of quantities stated in the unit price contract, or (iv) by any other method permitted under the Hampton City Code, as it may be amended from time to time. The Project Manager will determine the method appropriate based on the nature of the changes.

(e) A cost proposal for a change in the Work shall provide a complete breakdown itemizing the estimated quantities and costs of labor, materials, and equipment (based on Base Cost (as hereinafter defined)) required in addition to any markup used. The allowable percentage markups for overhead and profit for a change to the Work performed by Contractor's own forces or performed by the subcontractor shall be negotiated based on the nature, size, and complexity of the Work involved but shall not exceed the percentages for each category listed below:

(i) Subcontractor's markup for overhead and profit for the Work it performs in a change to the Work shall be a maximum of fifteen percent (15%).

(ii) Contractor's markup for overhead and profit on the subcontractor's Base Cost in a change to the Work shall be a maximum of ten percent (10%).

(iii) Contractor's markup for overhead and profit (including bonds and insurance) for Work it performs in a change to the Work shall be a maximum of fifteen percent (15%).

(iv) The markup for overhead and profit of a sub-subcontractor at any tier on a change to the Work it performs shall be a maximum of fifteen percent (15%). Contractor

and all intervening tiers of subcontractors' markup on such sub-subcontractor's Base Cost in the change to the Work shall not exceed a total of ten percent (10%).

(f) "**Base Cost**" is defined as the total of labor, material, and equipment costs, it does not include markup for overhead and profit. The labor costs include only the costs of employees directly constructing or installing the change in the Work and exclude the costs of employees coordinating or managing the work.

(g) The allowable percentage markups for overhead and profit stated above shall compensate Contractor, subcontractor, and sub-subcontractor for all other costs associated with or relating to the change to the Work including by way of illustration and not limitation, general conditions, supervision, field engineering, coordination, insurance, bond(s), use of small tools, incidental job costs, and all other general and administrative home and field office expenses.

(h) Allowable costs for changes in the Work shall not include home office expenses including payroll costs for Contractor's officers, executives, administrators, project managers, estimators, clerks, timekeepers, and other administrative personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work. These costs are deemed overhead included in the percentage markups in Section 7.3(e) above.

(i) If the change to the Work also changes the Time for Completion by adding days to perform the Work, an itemized accounting of the following Site direct overhead expenses for the change to the time may be considered as allowable costs for compensation in addition to the Base Cost indicated above:

- (i) the cost of on-site construction staff;
- (ii) temporary site office trailer expense; and
- (iii) temporary site utilities including basic telephone service, electricity, heat, water, and sanitary/toilet facilities.

All other direct and indirect overhead expenses are considered covered by and included in the Section 7.3(e) markups above. In no case shall subcontractor extended overhead be submitted or considered. The City does not have a direct contractual relationship with any subcontractor or supplier and therefore will not direct, discuss or negotiate with subcontractors employed by Contractor.

(j) If Contractor requests an extension to the Time for Completion due to changes in the Work it must provide to the Project Manager adequate documentation substantiating its entitlement for the time extension. The documentation must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Agreement as adjusted by prior changes to the Work, not just an increase or decrease in the time needed to complete a portion of the total Work. In the event a CPM schedule has been approved, no extension to the Time for Completion shall be granted unless the additional or change to the Work increases the length of the Critical Path beyond the Time for Completion as demonstrated

on the approved CPM schedule. A written statement in addition to a CPM schedule analysis shall be prepared explaining how no other sequence of Work activities could have been performed to decrease the impact or eliminate the impact altogether. If requested by the Project Manager, Contractor must provide alternate documentation detailing the claim to the City's satisfaction.

(k) If Contractor and City are not able to agree on a Change Order under the terms set forth above, Contractor shall proceed with the Work without delay provided Contractor receives a Construction Change Directive. In such case, Contractor shall keep and present in such form as the Project Manager may direct, a correct account of the cost, together with vouchers. The Project Manager shall be permitted to verify such records on a daily basis and may require such additional records as are necessary to determine the cost of the change to the Work. The Project Manager shall certify to the amount due to Contractor, including a reasonable lump sum allowance for overhead and profit. A complete accounting of the extra cost shall be made within fourteen (14) days after completion of the Work involved in the claim.

7.4 CLAIMS FOR EXTRA COST. In the absence of a Change Order or Construction Change Directive, if Contractor claims that any event will give rise to a claim for an increase in the GMP or that any instructions from the Project Manager, by drawings or otherwise, will incur Contractor extra cost under the Agreement, then, except in emergencies endangering life or property, Contractor shall give the Project Manager written notice thereof no later than three (3) business days of the event or instruction. Contractor thereafter must provide to the Project Manager a full cost proposal within fourteen (14) days detailing the amount of additional compensation claimed, together with the basis therefore and documentation supporting the claimed amount. No such claims shall be valid unless so made. If the Project Manager agrees that such event or instructions involve extra cost to Contractor, any additional compensation will be determined by one of the methods provided in the Changes in Work paragraph of these General Conditions as selected by the Project Manager. Except as otherwise specifically provided, no claims for extra cost shall be allowed unless timely notice, as required by this Section 7.4, is given by Contractor.

7.5 DAMAGES FOR DELAY: EXTENSION OF TIME OTHER THAN FOR WEATHER.

(a) Contractor's relief for any claim for delay which is not weather-related and which is unreasonable, or caused by the acts and omissions of the City, or due to causes within the City's control, shall be an extension of the Time for Completion and/or Contractor's direct costs which result from the delay. Contractor must give the Project Manager written notice of such delay and damages at the time they were incurred but in no event later than three (3) business days following the perceived onset of the delay. Contractor's written notice shall specify the nature the delay claimed by Contractor, the cause of the delay, and the anticipated impact of the delay on Contractor's work schedule. Contractor thereafter must provide to the Project Manager a full claim within fourteen (14) days, or such other time period as allowed by the Project Manager, detailing the amount of additional contract time or compensation claimed, together with the basis therefor and documentation supporting the claim.

(b) If Contractor is entitled to compensation for delay which is unreasonable, or caused by the acts and omissions of the City, or due to causes within the City's control, and

where it is not weather-related and there is no change in the Work, an itemized accounting of the following direct Site overhead expenses will be considered as allowable costs to be used in determining the compensation due Contractor: Site superintendent pro rata salary, temporary Site office expense, temporary Site facilities, and temporary Site utilities including basic telephone service, electricity, heat, water, and sanitary/toilets. A fifteen percent (15%) markup of these expenses will be allowed to compensate Contractor for home office and other direct or indirect overhead expenses.

(c) If Contractor submits a claim for damages pursuant to this Section 7.5, Contractor shall be liable to the City for a percentage of all costs incurred by the City in investigating, analyzing, negotiating and litigating the claim, which percentage shall be equal to the percentage of Contractor's total delay claim that is determined through litigation to be false or to have no basis in law or fact (consistent with Code of Virginia §2.2-4335).

(d) Contractor's sole relief on any claims for delay pursuant to this Section 7.5 which is reasonable or not caused by the acts or omissions of the City, or due to causes not within the City's control, or a Force Majeure Event, shall be an extension of the Time for Completion provided Contractor gave the Project Manager timely written notice at the inception of such delay and no claim for an increase in GMP will be allowed.

(e) No extension of the Time for Completion or additional compensation, if applicable, will be granted for any delay unless Contractor demonstrates the claimed delay directly impacts the Critical Path of the CPM schedule. Claims for compensation for direct costs which result from delay must be substantiated by adequate documentation clearly showing that the Work delayed was on the Critical Path of the Construction Schedule or on the sequence of Work on the CPM schedule, as modified, and that the additional costs incurred by Contractor are directly attributable to the delay in the Work claimed.

(f) No extension of the Time for Completion shall be granted for any delay if Contractor failed to give timely written notice to the Project Manager at the inception of the delay and at the time the damages were incurred. Contractor's complete submittal for a time extension shall be submitted no later than thirty (30) calendar days after cessation of the delay or within such longer period as the City may agree in writing to allow. Contractor's notice to the City shall specify the nature of the delay claimed by Contractor, the cause of the delay, and the impact of the delay on Contractor's Work schedule.

## 7.6 TIME EXTENSIONS FOR WEATHER.

(a) The Time for Completion will not be extended due to inclement weather conditions that are not unusual or disruptive to the general locality of the Site.

(b) Contractor's sole relief on any claims for delay which is caused by unusual or disruptive weather shall be an extension of the Time for Completion provided Contractor gave the Project Manager timely written notice at the inception of such delay and provided the weather affected the Critical Path and no claim for an increase in GMP will be allowed. A fully-documented claim for a time extension under this Section 7.6 must be submitted no later than thirty (30) calendar days after the cessation of the delay. It shall be

Contractor’s responsibility to provide the necessary documentation to satisfy the Project Manager that the weather conditions claimed were encountered, which may include daily reports by Contractor, copies of notification of weather days to the Project Manager, NOAA backup, and pictures from each day claimed.

(c) The Time for Completion will not be extended due to inclement weather conditions which are not unusual or disruptive for the City. The Time for Completion includes an allowance for workdays (based on five (5) day workweek) which according to historical data may not be suitable for construction work. Contractor may request extension to the Time for Completion if it can demonstrate unusual and disruptive weather conditions per the requirements below:

- (i) That a weather condition listed below was encountered; and,
- (ii) The occurrence of the weather condition(s) resulted in an inability to prosecute Work which would have otherwise been performed on the day(s) the weather condition(s) occurred; and
- (iii) The Work which was not able to be completed was on the Critical Path and could not be completed **only** due to the weather condition(s) claimed.

(d) Contractor must provide notice of delay to the Project Manager no later than five (5) calendar days after the onset of the delay which satisfies the criteria listed above. A fully documented claim for a time extension under this Section 7.6 shall be submitted no later than thirty (30) calendar days after the cessation of the delay. It shall be Contractor’s responsibility to provide the necessary documentation to satisfy the Project Manager that the weather condition(s) claimed were encountered.

(e) The Project Manager will determine Contractor’s entitlement to an extension of the Time for Completion. A time extension of no more than one (1) day will be granted for one (1) day of lost Work which satisfies the requirements above, regardless of the number of weather conditions encountered. Contractor’s sole relief shall be an extension of the Time for Completion and no claim for an increase in GMP will be allowed.

(f) Weather shall be considered “unusual and disruptive,” and will be considered by the City based on the requirements set forth above as an extension of the Time for Completion only if a weather condition (or any combination of weather conditions) prevents the Contractor from performing Critical Path work for a number of workdays during a calendar month which number exceeds the number of workdays listed below for that calendar month. Delays will only be allowed for the amount of lost workdays in excess of the following:

January	6	July	4
February	4	August	3
March	4	September	3
April	3	October	3
May	4	November	3
June	4	December	5

The Contractor shall anticipate the potential loss of the number of workdays listed above for each calendar month due to weather, and shall schedule the Work accordingly. Any schedules submitted shall include the above number of days each month as lost days. The City shall determine, upon examination of submitted evidence, whether or not weather prevented the Contractor from performing Work on the days claimed by the Contractor. The City's determination shall be final and binding upon the parties.

7.7 RELEASE OF LIENS. Pursuant to Section 18 of the Agreement, title to the Work, materials, machinery, systems, supplies, or equipment shall pass to the City free and clear of all liens, claims, security interests, and other encumbrances. According, the City, before making any payment, shall require Contractor to furnish a complete release of all liens arising out of the Agreement. Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the City, to indemnify Contractor against any lien. If any lien remains unsatisfied after all payments have been made, Contractor shall refund to the City all money that the latter may be compelled to pay in discharging such lien. However, the City may make payments in part or in full to Contractor without requiring the releases or receipts, and the payments so made shall not impair the obligations of any Surety or Sureties on any bond or bonds furnished under the Agreement.

7.8 FINAL PAYMENT. After Contractor has completed all Work and corrections to the satisfaction of the Project Manager and delivered all maintenance and operating instructions, schedules, quantities, bonds, certificates of inspection maintenance record documents, and other items required as Final Payment submittal documents, Contractor may make application for Final Payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documents required in the Agreement, including a complete and signed and notarized copy of the Release and Request for Final Payment in the form as follows:

RELEASE AND REQUEST FOR FINAL PAYMENT

CONTRACT NUMBER: \_\_\_\_\_ CONTRACTOR NAME: \_\_\_\_\_

FINAL PAYMENT AMOUNT: \_\_\_\_\_

Contractor hereby requests final payment in the amount indicated on the above-referenced Contract. Contractor agrees that its acceptance of final payment releases and forever discharges the City of Hampton and its officers, employees, servants and agents from any and all actions, claims, demands and liability of whatever nature now existing or which may hereafter arise as a result of or in connection with the above-referenced Contract.

Contractor certifies that all of the debts for labor, materials, and equipment incurred in connection with the above-referenced Contract have been fully paid.

AUTHORIZED SIGNATURE DATE: \_\_\_\_\_

The date of Final Acceptance is the date on which the City issues the final payment for the work performed.

COMMONWEALTH OF VIRGINIA  
COUNTY/CITY OF \_\_\_\_\_

On this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, personally appeared \_\_\_\_\_ who acknowledged himself/herself to be \_\_\_\_\_ in the above instrument, and that he/she, as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing his/her name by himself/herself as \_\_\_\_\_

I WITNESS WHEREOF, I hereunto set my hand and official seal.

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

My Commission Expires: \_\_\_\_\_

Draft 12.27.2019