

## **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.

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## ARTICLE 1 INTRODUCTION TO TERMS

1.1 The term “**ADA**” means the Americans with Disabilities Act of 1990, as implemented through design standards of ANSI A117.1/ICC A117.1.

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 “**Application(s) for Payment**” shall mean a written request submitted by Contractor to the Project Manager for payment of Work completed in accordance with the Contract Documents and the approved Schedule of Values, the form of which request shall be the AIA Form G-702 “Application and Certification for Payment” or equivalent form acceptable to the Project Manager, and shall include such supporting documentation as may be required by the Contract Documents.

1.4 The term “**As-Built Drawings**” shall mean the IFC Set that has been kept, maintained and marked by Contractor during completion of the Work as required by Section 2.10 below.

1.5 The term “**Baseline Milestone Schedule**” shall have the meaning set forth in Section 2.4 of the Scope of Work.

1.6 The term “**Basis of Design**” shall have the meaning set forth in Section 2.3 of the Scope of Work.

1.7 The term “**Business Day**” shall mean any day, other than a Saturday, Sunday, or a federal, state, or local holiday recognized by the City, that the City is open for business.

1.8 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.

1.9 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.

1.10 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.

1.11 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.

1.12 The term “**City Council**” shall mean the City Council for the City of Hampton, Virginia.

1.13 The term “**City Manager**” shall mean the person then serving as the City Manager of the City of Hampton, Virginia, or the person then serving as the acting City Manager, as applicable.

1.14 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.

1.15 The term “**Construction Change Directive**” means a written order issued by the Project Manager directing a change in the Work prior to agreement on adjustment, if any, in the GMP, or Time for Completion, or both.

1.16 The term “**Contract Cost Limit**” or “**CCL**” shall have the meaning set forth in Section 11 of the Agreement.

1.17 The term “**Contingency Fees**” shall have the meaning set forth in Section 5.1.3 of the Scope of Work.

1.18 The term “**Contract Documents**” shall have the meaning set forth in Section 3 of the Agreement.

1.19 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 Project Manager issues the Construction NTP.

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

1.21 The term “**Construction Schedule**” shall have the meaning set forth in Section 6.3(a)(i) of this Attachment G, and shall be a component part of the Project Schedule.

1.22 The term “**Control Budget**” shall mean the detailed line item budget for the Project prepared by Contractor in accordance with the Contract Documents, including the preliminary and revised Control Budgets, as required by Sections 2.5 and 3.1 of the Scope of Work at Attachment F. The final Control Budget shall not exceed the GMP once that value is established in accordance with the Contract Documents.

1.23 The term “**Construction Fees**” shall have the meaning set forth in Section 5.1.2 of the Scope of Work.

1.24 The term “**Contractor Fee**” shall have the meaning set forth in Section 5.1.3 of the Scope of Work.

1.25 The term “**Cost of the Work**” shall mean costs necessarily incurred by Contractor in the proper performance of the Work. The Cost of the Work shall include the Design Fees, the Construction Fees, Contractor Fee, and those portions of the Contingency Fees utilized by Contractor once permitted to do so in accordance with the Contract Documents.

1.26 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.

1.27 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.

1.28 The term “**Cure Period**” shall have the meaning set forth in Section 25(A)(1) of the Agreement.

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

1.30 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.

1.31 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.

1.32 The term “**Design Fees**” shall have the meaning set forth in Section 5.1.1 of the Scope of Work.

1.33 The term “**Design Implementation Stage**” shall mean the period during which the Drawings are prepared and finalized as part of the IFC Set, 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.

1.34 The term “**Design Team**” shall have the meaning set forth in Section 1.3 of the Scope of Work.

1.35 The term “**Drawings**” means the plans and drawings prepared by Contractor and approved by the Project Manager in accordance with the terms of the Contract Documents, and once approved will be deemed to be a part of the IFC Set. In general, the Drawings show and describe the locations, character, dimensions, and details

of the Work to be performed under the Contract Documents in sufficient detail and provide sufficient information for the City to determine compliance with the Contract Documents, for Code Officials' approval, and for Contractor to perform the Work.

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

1.37 The terms “***Final Completion***”, “***Final Completion of the Work***” or “***Finally Complete***” shall be deemed to have occurred when the conditions set forth in Section 6.2(b) of this Attachment G have been satisfied, including, but not limited to, the satisfactory completion of all items on the Punchlist, but not including warranty items.

1.38 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 of this Attachment G.

1.39 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, pandemic or epidemic, 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.

1.40 The term “***General Conditions***” shall mean these General Conditions, as they may be amended or modified in accordance with the Agreement, and which are this Attachment G.

1.41 The terms “***Guaranteed Maximum Price***” or “***GMP***” shall have the meaning set forth in Section 11 of the Agreement.

1.42 The term “***IFC Set***” shall have the meaning set forth in Section 3.1.10 of the Scope of Work.

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

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

1.45 The term “***Initial NTP***” shall mean the initial notice to proceed that shall be deemed to have been issued upon the execution of the Agreement by all Parties as set forth in Section 2.2 of the Scope of Work and that shall commence the Design Confirmation Phase.

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

1.47 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.

1.48 The term “**Preconstruction and Construction Staff**” shall have the meaning set forth in Section 5.1.2(H) of the Scope of Work.

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

1.50 The term “**Project**” shall have the meaning set forth in R-2 of the Agreement.

1.51 The term “**Project Initiation Deliverables**” shall have the meaning set forth in Section 2.5 of the Scope of Work.

1.52 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.

1.53 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, as such schedule may be adjusted by the mutual agreement of the Parties in accordance with the Contract Documents.

1.54 The term “**Property**” shall mean the real property described on Attachment B to the Agreement.

1.55 The term “**Punchlist**” means a list of unfinished items of the construction of the Project, the content of which is mutually agreed to by the Project Manager and Contractor, and for which the 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, as further set forth throughout Article 6 of this Attachment G.

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

1.57 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 Project Manager in regards to the design intent.

1.58 The term “***Revised Proposal***” shall have the meaning set forth in R-5 of the Agreement, a copy of which is attached to the Agreement as Attachment A thereto.

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

1.60 The term “***Schedule of Values***” means a detailed schedule apportioning the GMP among all cost code divisions of work, itemized in accordance with customary and standard industry practices.

1.61 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.

1.62 The term “***Specifications***” means that part of the Contract Documents prepared by Contractor and that are approved by the Project Manager in accordance with the Contract Documents, and once approved shall be a part of the IFC Set, and which 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 compliance with the Contract Documents, for Code Officials’ approval, and for Contractor to perform the Work.

1.63 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) below.

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

1.65 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 Drawings and stipulated in the Specifications shall be sufficient to 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 to clarify or provide guidance on the Drawings and Specifications will be furnished to Contractor when required for the Work and shall be incorporated into the Contract Documents.

(c) The Project shall be designed to achieve the points necessary to achieve LEED 3.0 Silver. The design team will submit a "LEED Scorecard" identifying the points (design features) required to meet that Silver designation. That LEED Scorecard shall be a component of the IFC Set, as set forth in Section 3.1.10 of the Scope of Work at Attachment F.

2.2 DOCUMENTS ON THE SITE. Contractor shall keep at the Site a copy of the then current IFC Set, to include all authorized revisions and RFI responses, and shall at all times provide the City and its authorized representatives access thereto. Contractor shall mark up the IFC Set 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 without the prior written consent of the City.

#### 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 through the electronic management system described in Section 3.2.10 of the Scope of Work at Attachment F, 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) Project Manager shall have up to five (5) Business 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 in accordance with the Contract Documents. Contractor shall provide multiple options to Project Manager for each material to be selected pursuant to the Specifications. Once a material is selected by the Project Manager, Contractor shall provide two (2) samples of each selected item, both of which may be retained by the Project Manager. Each sample submitted to Project Manager 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 Documents or the GMP. Materials and equipment incorporated in the Work shall reasonably match the accepted samples. Project Manager shall have the right to approve any substitutions once the samples have been approved by the Project Manager. 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. Except for shortages caused by a Force Majeure Event, 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 and test failures (and re-tests due to initial testing failure) shall be borne by Contractor, except testing performed by any special inspector hired by the City. Repeated failure of any material to pass the specified tests will be sufficient cause for refusal by the Project Manager to consider that material and any further materials of the same brand or make of that material; however, the Project Manager's refusal to approve such further materials of the same brand or make shall not be unreasonably withheld in the event that the type or sources of such material are limited in number. 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 Project Manager's approval of the IFC Set, 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 IFC Set 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 Project Manager, if and when the proposed substitution is accepted by the Project Manager. Detail drawings and other information necessary to show and explain the proposed changes and modifications shall be submitted to the Project Manager simultaneously with any request for acceptance of the substitution, which acceptance shall not be unreasonably withheld by Project Manager.

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 IFC Set 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 Project Manager.

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. The IFC Set 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 completed 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 in accordance with 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 in accordance with the Contract Documents.

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 the first to occur of (a) the time of the occurrence or the date of discovery thereof, if later; or (b) commencement of the Work upon which the claim is based; 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 Contractor shall not act until the order from the City is 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 Notice of Claim.

(b) Final Decision. The final decision of the City with respect to any claim shall be considered final and conclusive unless Contractor files an appeal with respect to 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 42 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 any non-disputed amounts agreed to by the City to otherwise then be due and payable.

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 reasonable 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 in accordance with the Contract Documents, 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, as and when applicable.

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 and in accordance with 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 reasonably requests it, Contractor, at any time before Final 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 be found to be defective or nonconforming, 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 under the circumstances then existing. 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. Any suspension shall not exceed seven (7) consecutive days, and, if practicable under the circumstances, the City shall provide reasonable advance notice to Contractor before implementing such suspension. 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, and the Parties may mutually agree upon, a reasonable adjustment to the Project Schedule and/or the Guaranteed Maximum Price. For the purposes of this Section 3.7, agreement shall not be unreasonably withheld by either Party.

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 fifteen (15) Calendar Days after receipt of written notice from the City or such other time period as may be mutually agreed to in writing subsequent to that written notice, to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other remedies, 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 the employment eligibility requirements in Sections 20 and 21 of the Agreement and/or any other employment training and/or testing requirements required by law or the Contract Documents. 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, except any additional utilities or improvements located off the Project Site and not identified in Attachment A, which access shall be secured by the City and with associated costs paid by the City.

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 Project Manager 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 Project Manager 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.

(a) Contractor shall continuously maintain protection of all its Work from damage and shall protect the 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, or a third party who is not an agent or employee of Contractor.

(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 streets and/or right-of-ways surrounding the Property, as identified by the survey at Attachment J, 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 to the foregoing items that occurs by reason of the Work performed under the Contract Documents shall be completely repaired by Contractor at Contractor's expense.

(d) Contractor shall shore, brace, underpin, secure, and protect, as may be necessary, all existing foundations, structures, or parts thereof adjacent to, adjoining, and in the vicinity of the Site, and as identified on the survey at Attachment J, 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 separate contracts in connection with this Project (each, a "**City Subcontractor**"). Contractor shall afford each City Subcontractor 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 each City Subcontractor. The City shall cause each City Subcontractor to obtain insurance as set forth in Section 5 of the Insurance Requirements at Attachment I.

(b) If any part of Contractor's Work depends, for proper execution or results, upon the work of a City Subcontractor, 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 that City Subcontractor's work as fit and proper for the reception of Contractor's Work, except as to defects which may develop in that City Subcontractor's work after its execution, which defects the City shall be responsible for resolving with that City Subcontractor.

(c) If Contractor or any of Contractor's subcontractors at any tier or employees cause loss or damage to any City Subcontractor's work, Contractor agrees to settle or make every effort to settle or compromise with such City Subcontractor. If such City Subcontractor 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) If any City Subcontractor or any of the City's Subcontractors' subcontractors or employees at any tier cause loss or damage to any Work completed by Contractor, the City shall require that City's Subcontractor(s) agree to settle or make every effort to settle or compromise with Contractor. Upon any such loss so sustained as a result of the City Subcontractor's or a subcontractor or employee of the that City Subcontractor's work, the Contractor shall notify the City, who shall cause the City Subcontractor to indemnify and hold the Contractor harmless against any expense, claim, or judgment arising therefrom, including reasonable attorney's fees. The City shall ensure contract provisions include the obligations as set out in this Subsection 3.13(d) in any agreements between the City and a City Subcontractor.

(e) For the purposes of this subsection, the Project Manager shall provide to Contractor no later than or simultaneous with its approval of the 65% Design Documents, as further set forth in Section 3.1.7 of the Scope of Work at Attachment F, 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 Project Manager shall subsequently provide Contractor notice of those City 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, which approval shall not be unreasonably withheld. 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, as applicable, 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 Project Manager, 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 therein. The Project Manager shall only make such requests for the replacement if for cause. No additional time or compensation will be provided in the event a subcontractor is removed due to material non-compliance with the requirements outlined within the Contract Documents and sufficient to constitute cause.

(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 delegated 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 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 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 as implemented by ANSI A117.1/ICC A117.1, and 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, unless herein specified to the contrary.

#### 4.5 WARRANTY.

(a) Contractor shall cause the City to be named as a third party beneficiary to all design contracts or agreements between the Contractor and the Design Team in a form acceptable to the Project Manager, approval for which shall not be unreasonably withheld, evidence of which status shall be provided to the Project Manager by Contractor promptly after the execution of this Agreement. 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 Substantial Completion. In that certificate, the Contractor shall further cause the Design Team to consent in writing to the assignment of 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, 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; and

(ii) No warranty term shall apply for materials, equipment, or other items for which a servicing agreement is required in order for any manufacturer's or supplier's warranty to apply, and the City fails to enter into such servicing agreement.

(d) Upon or before Substantial Completion, Contractor shall confirm in a written warranty certificate satisfactory to the Project Manager 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 the Contract Documents 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 Contract Documents 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 Project Manager in triplicate. Delivery of any such guarantees or warranties shall not relieve Contractor from any obligations assumed under any provision of the Contract Documents. During the 1-year warranty period, and upon the reasonable request of the Project Manager thereafter, 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 Project Manager, 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 Contract Documents.

(h) The provisions of this Section 4.5 shall survive the termination of this Agreement.

4.6 CORRECTION OF DEFECTIVE WORK. All elements of the Project not conforming to the IFC Set, the Specifications and/or other Contract Documents shall be considered “defective.” Any and all such defective 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 Substantial 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 or otherwise not in compliance with the Contract Documents, Contractor shall, at its sole expense, promptly commence to correct any such defects after written notice of the City to do so, and the Contractor shall diligently pursue the completion thereof and, in any event all defective Work shall be corrected within fifteen (15) days of Contractor’s receipt of each notice thereof, unless a longer period of time is approved in writing by the Project Manager. 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 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 timely correct defective Work in conformity with the Contract Documents, including the IFC Set, the Specifications, and the 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 TO MATERIALS.

Inspection of materials by the Project Manager for conformance with the Contract Documents will be at the Site and within ten (10) Calendar Days of delivery unless otherwise provided 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 the 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 and for which said invoice has been paid by the City, regardless of any sum retained in accordance with the Contract Documents. The City may request proof of title or payment upon payment 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 will become the property solely of the City at the time the progress or partial payment is paid by the City to the Contractor, 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 in accordance with the Contract Documents. 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 other 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, unless such maintenance or repair is caused by the negligent acts of the City or its employees or agents, or a third party who is not an agent or employee of Contractor.

4.11 CUTTING, PATCHING, AND DIGGING. Contractor shall do all cutting, patching, or digging of Contractor's Work that may be reasonably 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 IFC Set 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 the newly constructed smoothly connects and transitions to existing areas and that the physical appearance 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 approved by the Project Manager, 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 applicable warranty or guarantee period as provided for in the Contract Documents.

(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 hired by the City. 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, mutually agreeable, and appropriate adjustment to the GMP may be made.

4.13 OSHA REQUIREMENTS. Contractor shall ensure that all material supplied or used under the Agreement will meet all Occupational Safety and Health Administration ("**OSHA**") requirements, both Federal and those of the Commonwealth of Virginia, and 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 Project Manager 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 at the Site 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 brought to the Site by Contractor or any of its subcontractors 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 to the Project Manager of such disposal. 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. Any undercut material, unsuitable materials, or need for import of material at undercut, unsuitable locations will be reimbursed at sixty and 00/100 dollars (\$60.00) per cubic yard, except that no reimbursement shall apply to shallow cut foundations for which an undercut of five (5) feet is incorporated in the GMP.

(b) The locations of existing utilities, including underground utilities, which may affect the Work, are indicated in the survey at Attachment J, on the Drawings, or in the Specifications insofar as their existence and location were known at the time of preparation of those documents. However, except as otherwise provided in this Agreement, nothing in the 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 as identified on the survey at Attachment J. However, if it is determined that such existing utility lines or structures require relocation or reconstruction or any other Work beyond normal protection, or any additional lines not included on the survey at Attachment J are discovered, then such additional Work will be ordered under Section 7.3 below.

(c) To the extent of its actual knowledge, the City is responsible for the adequacy and accuracy of information provided by the City to Contractor and included as an Attachment to this Agreement or provided after the execution of this Agreement, and the City shall advise the Contractor of any known limitation, inadequacy, and/or inaccuracy in that information that is known by the City at the time the information is provided to the Contractor. 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 Contract Documents.

a. 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) Except as otherwise set forth in the Contract Documents, Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and locations of the Work required by 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, materials, tools, 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, which are included as Attachment C and Attachment J. 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 as identified in that Attachment J.

(e) If in the performance of Work, the Contractor encounters hidden physical conditions in the subsurface or latent conditions at the Site are found which are materially different from those present in the locality or from those indicated in the Contract Documents, Contractor must report such conditions and provide notice to the Project Manager before the conditions are disturbed and not later than seven (7) days after discovery. Upon such notice provided by Contractor and as a condition precedent, or upon Project Manager's own observations, Contractor shall promptly propose such changes in the Work necessary to conform to the difference in conditions or to address the conditions in accordance with Section 7.3 of this Attachment G.

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 the Contractor's Maintenance of Traffic Plan, as approved by the Project Manager, 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 person who will be present at the Site and is Contractor's competent, qualified, and authorized safety officer for the Site 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 and others authorized to be on the Site, 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 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 these General Conditions. The Safety Plan shall be submitted to the Project Manager, and Contractor shall incorporate such comments as the Project Manager may reasonably request. Once the Safety Plan has been approved by the Project Manager, 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 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.

5.6 WORK SITE DAMAGES. Any damage to finished surfaces resulting from Work performed under the Contract Documents shall be repaired to the Project Manager’s reasonable satisfaction at Contractor’s expense unless caused in whole or in part by the City, its agents, employees, or City Subcontractors.

5.7 CLEANING UP. Contractor shall remove and legally dispose of, as necessary or at the reasonable request of the Project Manager, 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 keep a 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 workmanlike 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 workmanlike 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 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 Project Manager 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 Project Manager has agreed (which agreement shall not be unreasonably withheld) that the condition of the Work is sufficiently complete in accordance with the Contract Documents, such that 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) Contractor and the Project Manager have agreed to a Punchlist. 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;

(ii) Final test reports as required by the Agreement have been accepted by the Project Manager;

(iii) Approval forms and transfer documents for all utilities, other than data, have been accepted by the Project Manager;

(iv) The City has been trained on all life safety systems, including, but not limited to, fire alarms, visual and audios alarms, fire detectors and fire alarm annunciator system, sprinkler systems, and all mechanical and electrical systems;

(v) Operation and Maintenance Manuals have been submitted to the Project Manager for review;

(vi) All documents and verification of training for mechanical, electrical, and aquatics systems have been accepted by the Project Manager;

(vii) The As-Built Drawings showing the record condition have been submitted for review and approval by the Project Manager;

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

(ix) A Certificate of Occupancy has been issued for the Project by the City's applicable Code Official, who will have verified the following, in addition to all other aspects of the Work required for the issuance of that Certificate of Occupancy:

1. 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,

2. All requisite certificates of inspection for use and occupancy have been issued;

3. The Fire Marshal has approved the Project;

4. The HVAC system Testing and Balancing Report needed for commissioning have been properly conducted, prepared, and provided to the City; and

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

When the Project Manager has agreed the Work is Substantially Complete in accordance with this Section 6.2(a), Contractor shall prepare for the City's signature a Certificate of Substantial Completion that shall, upon the City's signature, establish the date of Substantial Completion; establish the responsibilities of the City and Contractor for security, maintenance, utilities, damage to the Work, and insurance obligations of the Parties; and fix the time within which Contractor shall finish all items on the Punchlist accompanying the Substantial Completion Certificate.

(b) FINAL COMPLETION: The Work will be considered Finally Complete when the Project Manager has agreed and accepted (which agreement and acceptance shall not be unreasonably withheld) that the condition of the Work warrants Final Completion in accordance with the Contract Documents and all of the following conditions have been met:

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

- (ii) Attic stock, which shall be limited to (1) paint (one (1) gallon of each material/color used; (2) luxury vinyl tile (three percent (3%) of each size/color used; (3) vinyl base (10LF for each 500LF of size/color used; and (4) acoustical ceiling tiles (two percent (2%) of each type/size used), 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;

(iii) 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;

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

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

(vi) All support for commissioning has been completed.

(c) Occupancy at Substantial Completion. Notwithstanding anything to the contrary in any of the Contract Documents, the City shall be permitted to take occupancy and utilize the Project once Contractor has achieved Substantial Completion and the City has signed the Certificate of Substantial Completion. Project Manager shall work with Contractor to ensure that such occupancy can occur in a safe and secure manner without unreasonably interfering with Contractor's completion of the Punchlist and achieving Final Completion.

### 6.3 CONSTRUCTION SCHEDULE AND CASH FLOW.

#### (a) CONSTRUCTION SCHEDULE.

(i) Contractor shall submit as part of the Design Confirmation Phase a 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 Project Manager 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 the 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, state, 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.

(iii) The Construction Schedule shall give due consideration of Code Official availability for regulatory inspections, in addition to those of the City, as the owner. 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 within 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 of Work that did not pass inspection by the Code Official shall be borne by Contractor without reimbursement by the City.

(iv) The Construction Schedule shall include anticipated time lost due 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 Section 7.6 of this Attachment G. 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 standard Microsoft project format selected by Contractor, subject to approval of the Project Manager, which approval shall not be unreasonably withheld. 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) Calendar Days following each month's requested progress payment. The Cash Flow Forecast shall be prepared in an electronic 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 current contract Substantial Completion date, the Project Manager 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 Project Manager for review within seven (7) days of the Project Manager's notice of unsatisfactory progress. The recovery schedule shall be reviewed and approved by the Project Manager, which approval shall not be unreasonably withheld. Provided the notice provisions of this Section 6.3(c) are complied with, the cost of Contractor's compliance with the approved recovery schedule shall not justify an adjustment to the Guaranteed Maximum Price or the Time for Completion.



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 the Agreement. The City shall not be deemed in breach of the 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 to the Project Manager, which Applications for Payment shall be submitted by the twenty-fifth (25<sup>th</sup>) day of each calendar month, 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. Each Application for Payment will not be reviewed or processed by the City unless an updated Construction Schedule and Cash Flow Forecast, and a partial or final (as applicable) release of liens are also attached. The agreed form of partial lien waiver to be provided by Contractor is attached as Schedule 7.1(b) to this Attachment G, and the form of the Final Release and Request for Final Payment to be provided by Contractor is attached as Schedule 7.8 to this Attachment G. Each Application for Payment shall also contain a certification by Contractor that due and payable amounts and bills have been paid by Contractor, including amounts paid to or, if in dispute, 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 approval of all or part of an Application for Payment to the extent and in an amount reasonably 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 and such defective Work is not remedied during any cure period associated therewith. Any such withholding shall not, by itself, result in any liability to Contractor for damages.

7.3 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 any emergency endangering life or property, or as otherwise

provided in the Contract Documents, 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 associated with a change 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. In the event Contractor determines the requested or directed change will require a modification to the Project's design and that Contractor will be not be able to provide the itemized breakdown required by this Section 7.3(c) without a material investment in design work, Contractor shall first furnish the City with the an itemized breakdown of the pricing of that design work for consideration by the City and shall not proceed further with the requirements of this Section 7.3(c) until such time as the City approves the any increase or decrease in Time for Completion and GMP associated with that design work.

(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 and Contractor shall mutually agree upon the appropriate method based on the nature of the changes applicable thereto.

(e) A cost proposal for a change in the Work shall provide a complete breakdown itemizing the estimated quantities and costs of the change. Eligible costs for this purpose shall be the same as those allowed for Design Fees and Construction Fees as set forth in Subsections 5.1.1 and 5.1.2 of the Scope of Work at Attachment F, but at cost without mark up of any kind (including, but not limited to the Contractor Fee) (the "Base Cost"). 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%) of that subcontractor's Base Cost.

(ii) Contractor's markup for overhead and profit on a subcontractor's price derived pursuant to 7.3(e)(i) for 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%) of the Base Cost.

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

(f) 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.

(g) Allowable costs for changes in the Work shall not include home office expenses including payroll costs for Contractor's officers, executives, administrators, project managers (unless otherwise permitted under the Contract Documents), 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, unless otherwise expressly provided in the Contract Documents. These costs are deemed overhead included in the percentage markups in Section 7.3(e) above.

(h) 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 construction staff on the Site;
- (ii) temporary Site office trailer expense; and
- (iii) temporary Site utilities including basic telephone service, electricity, heat, water, and sanitary/toilet facilities; and
- (iv) not more than a five percent (5%) markup on those Site direct overhead expenses may be allowed as compensation for the Contractor's home office and all other direct and indirect overhead expenses for days added to the Time for Completion for a change in the Work.

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.

(i) 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 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. No extension to the Time for Completion shall be granted unless the additional or change to the Work directly impacts the timing for Substantial Completion as demonstrated on the Project Schedule.

(j) 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 to the Project Manager a correct accounting and breakdown of the Base Cost incurred, together with vouchers associated with the change to the Work. The Project Manager shall be permitted to verify such records on a periodic basis and may require such additional records as are reasonably 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 costs associated with the changes to the Work shall be made within fourteen (14) days after completion of the Work involved in the Construction Change Directive.

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 Contract Documents, then, except in emergencies endangering life or property, Contractor shall give the Project Manager written notice thereof no later than fourteen (14) Business Days of the event or instruction giving rise to the claim. Contractor thereafter must provide to the Project Manager a full cost proposal within thirty (30) Business Days, or such longer time period agreed to by Project Manager, 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 or a related extension of time will be determined by one of the methods provided in Section 7.3 of this Attachment G and as mutually agreed upon by the Contractor and Project Manager, which agreement shall not be unreasonably withheld by either Party. Notwithstanding mutual agreement, Project Manager may reject all or any part of a claim for extra cost, and in doing so shall provide Contractor a detailed explanation of how the claimed extra cost is already included in the Contract Documents or not otherwise necessary to achieve Final Completion. Except as otherwise specifically provided in the Contract Documents or expressly agreed to in writing by the Project Manager, 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) Subject to the provisions of Subsection (e), Contractor's relief for any claim for delay which is not weather-related and which is unreasonable, or is caused by the acts and omissions of the City, or is due to causes within the City's control, shall be an extension of the Time for Completion and/or Contractor's Site direct overhead expenses which result from the delay, as appropriate. 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 fourteen (14) Business Days following the perceived onset of the delay. Contractor's written notice shall specify the nature of the delay claimed by Contractor, the cause of the delay, and the anticipated impact of the delay on Substantial Completion in accordance with the Project Schedule. Contractor thereafter must provide to the Project Manager a full claim within twenty-one (21) 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, which shall include, if applicable, an explanation of why Contractor determines the delay to be unreasonable. Based on all of the relevant information submitted by Contractor, Project Manager shall make the determination, in its reasonable discretion, of whether or not the claimed delay was reasonable or unreasonable. If the claimed delay is determined by the Project Manager to be reasonable, then the provisions of Section 7(d) below shall apply.

(b) If Contractor is entitled to compensation for delay based on the factors in Section 7.5(a) above, 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 and project manager (to the extent otherwise allowable under the Contract Documents) pro rata salary, temporary Site office expense, temporary Site facilities, and temporary Site utilities including basic telephone service, electricity, heat, water, and sanitary/toilets, plus a fifteen percent (15%) markup of those expenses will be allowed to compensate Contractor for home office and other direct or indirect overhead expenses.

(c) If Contractor submits a claim to the Project Manager for costs or damages pursuant to this Section 7.5 due to the alleged delaying of Contractor in the performance of the Work, 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(C)). In addition, if Contractor submits a claim to the Project Manager for costs or damages pursuant to this Section 7.5 and such claim is denied by the Project Manager, the City shall be liable to the Contractor for a percentage of all costs incurred by Contractor in investigating, analyzing, negotiating, and litigating the denial of the claim, which percentage shall be equal to the percentage of Contractor's total delay claim for which the City's denial is determined through litigation to have been made in bad faith.

(d) Contractor's sole relief on any claims for delay pursuant to this Section 7.5 that is determined by the Project Manager, in its reasonable discretion, to be reasonable or that is not caused by the acts or omissions of the City, or due to causes not within the City's control, shall be an extension of the Time for Completion provided Contractor gave the Project Manager timely written notice at the inception of such delay as required by this Section 7.5 and no claim for an increase in GMP will be allowed unless mutually agreed to by the Parties.

(e) Notwithstanding anything to the contrary in this Section 7.5, 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 timing of Substantial Completion in accordance with the Project Schedule. If entitled thereto, claims for compensation for direct costs which result from delay must be substantiated by Contractor with adequate documentation clearly showing that the Work delayed directly impacts the timing of Substantial Completion in accordance with the Project Schedule 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 in accordance with this Section 7.5.

#### 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, or as otherwise provided in the Contract Documents.

(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 once Contractor became aware of the inception of such delay and provided the weather affected the timing of Substantial Completion in accordance with the Project Schedule and no claim for an increase in GMP will be allowed. It shall be Contractor's responsibility to provide to the Project Manager the necessary documentation evidencing 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 and affected the timing of Substantial Completion in accordance with the Project Schedule and could not be completed due to the weather condition(s) claimed.

(d) A fully documented claim for a time extension under this Section 7.6 shall be submitted to the Project Manager no later than ten (10) calendar days after the end of the calendar month in which the weather delay occurs. It shall be Contractor's responsibility to provide

the reasonable 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 under this Section 7.6. Unless approved by Project Manager based on the information received from Contractor, 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.

(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 timely obtaining Substantial Completion in accordance with the Project Schedule 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 Project Manager 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 Project Manager's determination shall be final and binding upon the parties except as provided for otherwise in the Contract Documents.

7.7 [INTENTIONALLY OMITTED]

7.8 FINAL PAYMENT. Upon certification of Final Completion by the Project Manager, 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, the form of which is attached as Schedule 7.8 to this Attachment G.

## SCHEDULE 7.1(b) TO GENERAL CONDITIONS

### PARTIAL LIEN WAIVER FORM

Partial Lien Waiver – No. \_\_\_\_\_

To: City of Hampton, Virginia  
From: Clancy & Theys Construction Co.

RE: Comprehensive Agreement to Design and Construct the Hampton Aquatics Center (the “Agreement”)

The undersigned, being duly sworn, states that he/she is the \_\_\_\_\_ of Clancy & Theys Construction Co. (the “Contractor”) who contracted with the City of Hampton, Virginia (the “City”) for furnishing the design and construction of the improvements referred to as the Hampton Aquatics Center erected on real property owned by the City and more particularly described on Attachment B to the Agreement (the “Property”).

The following is a true and accurate accounting of the payment now due Contractor pursuant to the Agreement:

Original Contract Amount:	\$ _____
Approved Change Orders and Construction Directives	\$ _____
Subtotal: Adjusted Contract Amount:	\$ _____
Completed to Date:	\$ _____
Retention:	\$ _____
Total Earned (Completed Less Retention):	\$ _____
Payments to Date:	\$ _____
Current Payment:	\$ _____
Contract Balance:	\$ _____

The Contractor, in consideration for and upon receipt of the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_), requested in Application for Payment No. \_\_\_\_, dated \_\_\_\_\_, does hereby waive and release any and all known claims, liens, or right to claim a lien on the aforementioned Property on account of labor, services, materials, fixtures, or apparatus performed or furnished on the Property through \_\_\_\_\_, except retention as stated above and/or those expressly preserved in accordance with the terms of the Contract Documents. This partial lien waiver is conditioned upon the undersigned’s receipt of the above-referenced sum.

The Contractor warrants that the contract status set forth above is an accurate statement, and no other sums are claimed, that laborers, subcontractors, and suppliers employed by it have been paid all sums previously due and will be paid all current sums due out of this payment in accordance with the Contract Documents (as defined in the Agreement) and that none of such laborers, subcontractors, or suppliers is or will be entitled to claim or assert any claim against the Property or any improvements thereon for labor or materials furnished to or for the account of the Contractor.



Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

CLANCY & THEYS CONSTRUCTION CO.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Subscribed and sworn before me on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ before me, who personally appeared \_\_\_\_\_ and 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 on behalf of Clancy & Theys Construction Co. 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: \_\_\_\_\_

## SCHEDULE 7.8 TO GENERAL CONDITIONS

### RELEASE AND REQUEST FOR FINAL PAYMENT FORM

To: City of Hampton, Virginia  
From: Clancy & Theys Construction Co.

RE: Comprehensive Agreement to Design and Construct the Hampton Aquatics Center (the "Agreement")

The undersigned, being duly sworn, states that he/she is the \_\_\_\_\_ of Clancy & Theys Construction Co. (the "Contractor") who contracted with the City of Hampton, Virginia (the "City") for furnishing the design and construction of the improvements referred to as the Hampton Aquatics Center erected on real property owned by the City and more particularly described on Attachment B to the Agreement (the "Property").

The following is a true and accurate accounting of the final payment due Contractor pursuant to the Agreement:

Original Contract Amount:	\$ _____
Approved Change Orders and Construction Directives	\$ _____
Subtotal: Adjusted Contract Amount:	\$ _____
Completed to Date:	\$ _____
Retention:	\$ _____
Total Earned (Completed Less Retention):	\$ _____
Payments to Date:	\$ _____
Contract Balance Due (including Retention):	\$ _____

The Contractor, in consideration for and upon receipt of the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_), requested in Application for Payment No. \_\_\_, dated \_\_\_\_\_, does hereby waive and release any and all known claims, liens, or right to claim a lien on the aforementioned Property on account of labor, services, materials, fixtures, or apparatus performed or furnished on the Property.

The Contractor warrants that the contract status set forth above is an accurate statement, and no other sums are claimed, that laborers, subcontractors, and suppliers employed by it have been paid all sums due in accordance with the Contract Documents (as defined in the Agreement) and that none of such laborers, subcontractors, or suppliers is or will be entitled to claim or assert any claim against the City or the Property or any improvements thereon for labor or materials furnished to or for the account of the Contractor.

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

The date of Final Acceptance (as defined in the Agreement) is the date on which the City issues the final payment for the work performed.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

CLANCY & THEYS CONSTRUCTION CO.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Subscribed and sworn before me on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ before me, who personally appeared \_\_\_\_\_ and 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 on behalf of Clancy & Theys Construction Co. 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: \_\_\_\_\_