

ATTACHMENT I
INSURANCE REQUIREMENTS

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, the General Conditions attached thereto, and the other Contract Documents associated therewith.

1. General

1.1 Contractor shall obtain and maintain insurance coverage provided herein and in the Agreement. These insurance obligations are in addition to and do not alter, modify, or reduce in any way any and all obligations of the Contractor to indemnify the City or Contractor’s full responsibility for any and all damages caused by the acts and omissions of Contractor, its employees, subcontractors, or agents in the performance of this Agreement as set forth in the Contract Documents.

1.2 Prior to the execution of the Agreement by the City, Contractor obtained, at its own expense, all of the insurance called for hereunder and such insurance has been submitted to and approved by the City; additionally, Contractor shall not allow any subcontractor, to start Work on any subcontract until all insurance required of the subcontractor has been so obtained and approved by Contractor. Contractor shall submit to the Project Manager copies of all required endorsements and documentation of coverage consistent with the requirements herein or, alternately, at the City’s request, will provide Certificates of Insurance (“COIs”) and relative endorsements in compliance with the insurance requirements. All endorsements and documentation shall state the Agreement’s title and any other unique identifiers (i.e. contract number) used by the Parties to reference the Agreement.

1.3 Contractor shall require that all subcontractors maintain during the term of the Agreement liability insurance in amounts and of a type reasonably determined necessary by Contractor to perform applicable Work under this Agreement. Contractor shall furnish subcontractors’ evidence of insurance to the Project Manager immediately upon request by the Project Manager.

1.4 If there is a material change or reduction in coverage, non-renewal of any insurance coverage or cancellation of any insurance coverage required by the Agreement, Contractor shall notify the Project Manager immediately. It is Contractor’s responsibility to notify the Project Manager upon receipt of a notice indicating that a policy will not be renewed or will be materially changed. Any policy on which Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be immediately replaced with another policy consistent with the terms of the Agreement and in such a manner that there is no lapse in coverage, and the Project Manager immediately notified of the replacement. Not having the required insurance throughout the term of the Agreement is considered a material breach of the

Agreement and grounds for termination. Contractor shall also obtain an endorsement providing to the City thirty (30) days advance notice of cancellation or non-renewal (ten days for non-payment of premium). A copy of that endorsement shall be provided to the Project Manager prior to the execution of the Agreement or any extension thereafter.

1.5 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing Contractor, any surety, or any bond, from any liability or obligation imposed under the Agreement.

1.6 Any COI detailing coverage of the Contractor shall list as Certificate Holder: the City of Hampton, 22 Lincoln Street, Hampton, Virginia 23669. Policies which provide commercial general liability, excess/umbrella liability, automobile/vehicle liability, and contractor's pollution liability shall also name the City and its elected and appointed officials, agents, employees and volunteers as additional insureds for the Project as an additional insured as it pertains to third party liability. Each COI which names the City and others as additional insureds shall be accompanied by an endorsement to the policy. The endorsement to the policy would be that document which is attached to Contractor's policy by the insurance company that acknowledges the City as an additional insured. This shall be either a direct endorsement that actually names the City or a blanket endorsement within the insurance policy that states that under a contractual agreement the City will be named as an additional insured on the required insurance policy. Such insurance shall also contain an endorsement stating that the insurance is primary with respect to any self-insurance or insurance maintained by the City, unless otherwise required by law. The City's primary insurance shall not be used to satisfy any claims, unless otherwise required by law. Liability insurance maintained by Contractor shall specifically delete any exclusions that could compromise coverage because of the design-build delivery of the Project. Contractor shall be responsible for the filing and settling of claims and liaison with insurance adjusters or, otherwise liaison with insurance adjusters that may be required to file and settle claims under the law.

1.7 The required insurance coverage shall remain in force throughout the term of the Agreement or as otherwise stated in the Contract Documents or these Insurance Requirements. If Contractor fails to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the term of the Agreement, the City shall have the absolute right to suspend all Work until acceptable evidence is provided, which shall not cause a corresponding adjustment to the Project Schedule, unless otherwise agreed to in writing by the Contractor and City. Notwithstanding any other term of the Agreement, the City shall have an absolute right to terminate the Agreement without any further obligation of the City to Contractor if the failure to provide acceptable evidence extends beyond 30 days of the City's written notice as provided herein, except any outstanding obligations and amounts owed by the City to the Contractor pursuant to the terms of the Contract Documents at the time of such termination.

1.8 Contractual and other liability insurance provided under the Agreement shall not contain a supervision, inspection or engineering services exclusion that would preclude the City from supervising or inspecting the Work as to the end result. Contractor shall assume all responsibilities as to the control of persons directly employed by it and of the subcontractors and any persons employed by the subcontractor and/or carriers delivering and receiving materials from

the Project, except other contractors, subcontractors, suppliers and other persons directly hired by the City to perform work, other than the Work to be performed by Contractor, but Contractor shall maintain a safe work site for all present.

1.9 If any policy contains a warranty stating that coverage is null and void (or words to that effect) if Contractor does not comply with all regulations governing the Work, such policy shall be modified so that coverage shall be afforded in all cases except for Contractor's willful or intentional noncompliance with applicable government regulations.

1.10 All Contractor policies shall include the following or comparable language: "The insolvency or bankruptcy of the insured or of the insured's estate will not relieve the insurance company of its obligations under this policy"

1.11 All Contractor policy forms must "Pay on behalf of" rather than, "Indemnify" the insured.

1.12 Nothing contained in these Insurance Requirements or the other Contract Documents shall be construed as creating any contractual relationship between any subcontractor of Contractor and the City. Contractor shall be fully responsible to the City for losses that occur during any lapse in a subcontractor's insurance coverage.

1.13 For any claims related to the Work, Contractor's insurance, except Professional Liability and Workers' Compensation, shall be deemed primary and noncontributory with respect to the City's coverage as it relates to the City, its representatives, officials, employees, and agents. As to the City, Contractor shall waive its right of subrogation for all insurance claims. Subcontractors hired by Contractor shall also be required to waive their rights of subrogation for all insurance claims in favor of the City and Contractor.

1.14 If Contractor does not meet the insurance requirements set forth by the Contract Documents, alternate insurance coverage or self-insurance, satisfactory to the City's Risk Manager, may be considered. Written requests for consideration of alternate coverages including Contractor's most recent actuarial report and a copy of its self-insurance resolution to determine the adequacy of the insurance funding must be received by the City's Risk Manager at least ten (10) days prior to the date set for receipt of bids or proposals. If the City denies the request for alternate coverages, the specified coverages will be required to be submitted. If the City permits alternate coverage, an Addendum to the Insurance Requirements will be prepared and distributed prior to the time and date set for receipt of bids or proposals.

1.15 All required insurance coverages must be obtained from insurers authorized to do business in the Commonwealth of Virginia. The insurers must also have a rating of "A" (financial strength) and a "VII" (size) or greater in the latest edition of the A.M. Best Co.'s Insurance Reports, unless the City grants specific approval for an exception, in the same manner as described in Section 1.14 above.

1.16 Contractor shall be solely responsible for payment of any and all deductibles applicable to the insurance coverages carried by Contractor. Contractor must disclose the amount

of any deductible or self-insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Builders' Risk, Intellectual Property and any other policies required by the Contract Documents. Subsequent to that initial disclosure, Contractor shall notify the City of any material increase in the amount of a deductible or self-insurance component of all policies required under this Attachment I. In the event of a material increase in the amount of any deductible, the City may request, and upon such request, Contractor shall provide adequate proof of the ability to pay any such increased deductible.

2. Contractor's Insurance:

2.1 Contractor shall obtain and maintain, at its expense, the following insurance coverages, including the terms, provisions and limits shown below:

2.1.1 Commercial General Liability, in the amount of one million dollars (\$1,000,000) per incident with an aggregate of two million dollars (\$2,000,000) including any or all of the following:

- i. General aggregate limit is to apply per project;
- ii. Premises/Operations;
- iii. Actions of Independent Contractors;
- iv. Products/Completed Operations to be maintained for five (5) years after completion of the Work;
- v. Contractual Liability, including protection for Contractor from claims arising out of liability assumed under the Agreement;
- vi. Personal Injury Liability including, including but not limited to, coverage for offenses related to employment and copyright infringement; and
- vii. Explosion, Collapse, or Underground (XCU) hazards.

2.1.2 Excess/Umbrella insurance in an amount not less than ten million (\$10,000,000).

2.1.3 Business Automobile Liability, in an amount not less than one million dollars (\$1,000,000 including coverage for any owned, hired, or non-owned motor vehicles, Uninsured Motorists coverage, and automobile contractual liability.

2.1.4 Workers' Compensation. Coverage equal to the statutory benefits as required by Virginia law and Employers' Liability coverage. The policy shall not contain any provision or definition which would serve to eliminate third party action over claims, including exclusion for bodily injury to an employee of the insured, employees of the premises owner, or

employees of the general contractor to which the insured is subcontracted, or employees of the insured's subcontractor.

2.1.5 Contractor shall maintain Professional Liability Insurance that covers all Work under the Agreement, to include the Work of the subcontractors with per claim and aggregate limits of the greater of one million dollars (\$1,000,000) or the amount in the Control Budget attributed to professional services, including, but not limited to, design, with such insurance to stay in place for a period of three (3) years after completion of the Project.

2.1.6 Contractors Pollution Liability (CPL) Policy. Contractor shall maintain a CPL policy or have comparable coverage under another policy set forth herein with minimum liability limits of one million dollars (\$1,000,000) Per Loss and one million dollars (\$1,000,000) Total All Losses, including, but not limited to, property damage, bodily injury, loss of use, and clean-up costs.

2.1.7 Coverage under Professional Liability Insurance and Pollution Liability (CPL) Policy may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than five million (\$5,000,000) per claim and seven million (\$7,000,000) in the aggregate.

2.1.8 Should any of the Work hereunder involve the cleanup, remediation and/or removal of bio-solids, bio-hazards waste, or any hazardous or toxic materials, trash, debris, refuse, or waste, Contractor shall provide, or shall require its subcontractor performing the Work to provide, in addition to the above requirements, Business Automobile Liability for transportation or regulated and/or hazardous waste, products, or materials with limits of not less than \$1,000,000 per occurrence. Said coverage shall include City as an additional insured and shall include both the MCS-90 and CA 9948 (or equivalent) endorsements, which shall be specifically referenced on the certificate of insurance.

3. Commercial General or other Liability Insurance - Claims-made Basis:

3.1 If Commercial General or other liability insurance purchased by Contractor has been issued on a claims-made basis, Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described herein remain the same. Contractor must either:

i. Agree to provide insurance, copies of the endorsement and certified documentation evidencing the above coverages and naming the City as an additional insured for a period of five (5) years after Final Payment under the Agreement. Such documentation shall evidence a retroactive date, no later than the beginning of Contractor's or any subcontractors' Work under the Agreement, or

ii. Purchase an extended (minimum five [5] years) reporting period endorsement for the policy or policies, in force during the term of the Agreement and evidence of the purchase of this extended reporting period endorsement by means of a copy of the endorsement itself. The extended reporting period will begin upon Final Payment under the Agreement.

4. Builder's Risk Insurance

4.1 Contractor, at its cost, shall obtain and maintain builder's risk insurance upon the entire structure or structures on which the Work is to be done and upon all material in or adjacent thereto which is intended for use thereon, to one hundred percent (100%) of the insurable value thereof (i.e. construction costs, soft costs, FF&E, and the residual value of the existing structure to remain), which the Parties agree will initially be the Guaranteed Maximum Price, which coverage shall be adjusted for any amendments to the Agreement that affect the Contract Amount on a replacement cost basis. Builder's risk insurance shall be maintained until Substantial Completion under the Agreement has been made or until no person or entity other than the City has an insurable interest in the covered property, whichever is earlier. The builder's risk insurance shall name the City as the named insured by means of an endorsement to the policy and gives coverage to protect the interests of the City and Contractor. Except with respect to the Limits of Insurance, and any rights or duties specifically assigned by the Builders' Risk policy to the first named insured the insurance shall apply as if each Named Insured were the only Named Insured. The City and the Contractor waive all rights against each other and any of their subcontractors, subcontractors, suppliers, vendors, agents, and employees, each of the other, for damages caused by fire or other similar causes of loss, only to the extent those losses are covered by Builder's Risk insurance required by the Contract Documents, except such rights as each has to the proceeds of such insurance.

4.2 The builder's risk insurance shall be on an all-risks policy form including the perils of fire, theft, vandalism, malicious mischief, lightning, wind, force majeure, collapse, hail, rain, named storm(s), earthquake, and flood or other inundation of water. Coverage is to apply for demolition occasioned by enforcement of any applicable legal requirements, and Architect's fees.

4.3 Unless otherwise provided in the Contract Documents, the builder's risk insurance shall also cover materials to be incorporated into the Project which are stored off the site.

4.4 Contractor shall purchase and maintain Equipment Breakdown Insurance, if required by the Contract Documents or by law, with a limit satisfactory to the City. The Equipment Breakdown Insurance shall cover objects during installation and until Final Acceptance by the City. The City shall be included as a named insured.

4.5 Any loss under builder's risk insurance shall be payable to the Contractor as fiduciary for the insureds, as their respective interests may appear. Contractor shall pay subcontractors their just shares of insurance proceeds received by Contractor, and by appropriate agreements, written where legally required for validity, shall require subcontractors to make payments to their sub-subcontractors in similar manner. The Contractor, as fiduciary, shall have the right to adjust and settle a loss with insurers.

4.6 If the City finds it necessary to occupy or use a portion or portions of the Work upon Substantial Completion, such occupancy shall not commence prior to a time mutually agreed to by the City and Contractor and to which the insurance company(ies) providing the property insurance have consented by endorsement to the policy(ies).

5. Separate Contracts by the City

5.1 Pursuant to Section 3.13 of the General Conditions at Attachment G, the City has reserved the right to enter into contracts with contractors other than Contractor for certain work on the Project. The City shall require of any other contractors so hired general liability, workers' compensation, and vehicle insurance in amounts determined by the City, and shall require that Contractor and City be named as additional insureds, as applicable. As to the City and Contractor, City Subcontractors hired by the City shall also be required to waive their rights of subrogation for all insurance claims in favor of the City and Contractor.