

## ATTACHMENT F

### SCOPE OF WORK

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 at Attachment G, and the other Contract Documents.

#### SECTION 1. GENERAL INTENT

**1.1 Parties Intent, Generally.** It is the intent of the Parties that, unless otherwise specifically set forth in the Contract Documents, Contractor shall perform or provide all design, construction, and services that are necessary to provide City with the Project, which shall comply with the Design Criteria at Attachment D and all other requirements set forth in the Contract Documents. For that purpose, the Project shall proceed in two phases: the Design Confirmation Phase and the Implementation Phase, which phases are more specifically described in the sections that follow.

**1.2 Contractor’s Duties.** As specified in the Contract Documents, Contractor’s Work shall be generally divided into two phases: (i) the Design Confirmation Phase and (ii) the Implementation Phase.

Phase 1: Design Confirmation Phase. During the Design Confirmation Phase, Contractor will meet with City representatives and other stakeholders designated by the City to discuss the Revised Proposal and incorporate any revisions to the Revised Proposal that may be requested by the City. At the conclusion of the Design Confirmation Phase, the City and Contractor will have agreed on a design which will form the basis for the Implementation Phase.

Phase 2: Implementation Phase. The Implementation Phase will have two stages: (1) the “Design Implementation Stage” and (2) the “Construction Implementation Stage” (collectively, the “**Implementation Stages**”). During the Design Implementation Stage, Contractor will advance the design and budget for the Project in iterative steps, each involving the review and input of the Project Manager, such that at the end of this stage Contractor will (i) have produced and the Project Manager will have approved the IFC Set; and (ii) submitted for and received all necessary permits and approvals from Code Officials. During the Construction Implementation Stage, Contractor shall construct the Project in accordance with the IFC Set, the approvals provided by the Code Officials, the Contract Documents, and all applicable laws, codes, and ordinances.

**1.3 Design Team.** Contractor shall, in a manner consistent with applicable state licensing laws, provide the necessary design services, including architectural, engineering and other design professional services, required during the Design Confirmation Phase and the Design Implementation Stage, through its use of qualified, licensed design professionals employed or



subcontracted by Contractor (such employees of Contractor and the design professionals employed by Contractor are referred to herein, collectively, as the “**Design Team**”). The Design Team shall be considered Key Personnel, subject to the provisions of Section 6 below.

**1.4 Compliance with Design Criteria.** Contractor must design and construct the Project in accordance with the Design Criteria at Attachment D and the Basis of Design developed from the Revised Proposal in accordance with Section 2.3.

## **SECTION 2. DESIGN CONFIRMATION PHASE**

**2.1 General Understanding of City’s Selection of Contractor.** The Revised Proposal at Attachment A represents a “Conceptual Design” level of design as that term is used in the design and construction industry. The Revised Proposal was prepared under the direction and supervision of Contractor and its Design Team and was the basis, in large part, for the City’s selection of Contractor for the Construction of the Project. Contractor hereby represents that it: (i) selected the Design Team and assessed whether the Design Team had the necessary experience, qualifications, and resources to implement the Project; (ii) managed the design process during the development of the Revised Proposal; and (iii) had the opportunity to take such measures as Contractor deemed necessary or advisable (including, but not limited to, the opportunity to consult with trade subcontractors) to assure itself that the Project could be completed for an amount that does not exceed the CCL, as that amount is now set forth in the Contract Documents. The City has relied upon representations set forth in the preceding sentence in awarding and entering into the Agreement with Contractor.

**2.2. Initial Notice to Proceed.** The Initial NTP shall be deemed issued upon the execution of the Agreement by all Parties.

**2.3 Revised Proposal Review; Development of the Basis of Design.** The Revised Proposal is the foundation for the development of the of the Project’s ultimate actual design, in accordance with the Design Criteria at Attachment D, which were established by the City based on meetings with stakeholders and other interested parties. The Contractor and City shall meet to discuss any adjustments or refinements to the Revised Proposal that the City may recommend to comport with the Design Criteria at Attachment D and the City’s overall objectives for the Project. Multiple meetings may be held for that purpose at the request of the Contractor or the City. Contractor and its Design Team shall evaluate any such proposed adjustments or refinements to the Revised Proposal and shall provide the Project Manager with a written assessment of whether such adjustments are technically feasible and, if so, the impact such adjustments would have on the CCL and the Project Schedule. Each of those written assessment(s) shall be delivered as soon as practically possible, but in no event more than twenty-one (21) days after the meeting at which the adjustment or refinement was first presented and discussed. The written assessment shall include a line item break-out of the potential cost impact, if any, as well as an analysis that explains the impact of the adjustments or refinements on the Project Schedule. Contractor and the Project Manager will meet as often as necessary in order to discuss and agree upon what adjustments or refinements, if any, will be incorporated in the Project. Contractor shall modify the Revised Proposal to reflect any such approved adjustments or refinements and submit such revisions to the Project Manager for approval, which approval may be withheld in the Project



Manager's sole and absolute discretion. Once the Project Manager is satisfied that no further adjustments or refinements are necessary to comport with the Design Criteria at Attachment D and the City's overall objectives for the Project, the Revised Proposal, with all those adjustments and refinements approved in writing by the Project Manager, shall become the final agreed to design for the Project which shall be referred to thereafter as the "***Basis of Design***" and which shall replace the Revised Proposal as the basis from which further design documents shall be produced.

**2.4 Baseline Milestone Schedule.** Within thirty (30) days after the Initial NTP is issued, Contractor shall prepare and submit a detailed baseline milestone schedule for all significant milestones to take place during the Implementation Phase (the "***Baseline Milestone Schedule***") that is consistent with the Project Schedule and the requirements of the Design Criteria at Attachment D for the Project Manager's review and written approval.

**2.5 Preliminary Control Budget.** Within thirty (30) days after the Initial NTP is issued, Contractor shall prepare and submit the preliminary Control Budget for the Project Manager's review and written approval, which preliminary Control Budget must confirm that the Project, meeting the requirements of the Design Criteria, can be completed at a cost that is equal to or less than the CCL (the Basis of Design, Baseline Milestone Schedule, the preliminary Control Budget, and consistent with Section 6.3(b) of the General Conditions, the Construction Schedule, and Cash Flow Forecast, are collectively referred to herein as the "***Project Initiation Deliverables***").

**2.6 Project Initiation Deliverables.** The Design Confirmation Phase shall not be complete until all Project Initiation Deliverables have been prepared by Contractor and approved by the Project Manager.

**2.7 End of Design Confirmation Phase.** The Design Confirmation Phase shall conclude when the Project Manager has approved in writing (i) the Basis of Design, (ii) the Baseline Milestone Schedule, to include the revised dates for Substantial Completion and Final Completion for the Project, if needed, and (iii) the preliminary Control Budget; and the Parties have executed an amendment to the Agreement, if necessary, to document any agreed upon modifications that require modification to the CCL or other terms in the Contract Documents.

**2.8 Marketing.** After the end of the Design Confirmation Phase and through any phase thereafter, the Contractor shall, at the reasonable request of the Project Manager, make available renderings, incremental construction photos, and other similar products that have been previously produced by Contractor or its Design Team that may be suitable for the City's use in the marketing of the Project to prospective users and Contractor shall cooperate with the City in those efforts.

**2.9 Modification and Termination.** The Project Initiation Deliverables may be modified only by written agreement of the Parties after the conclusion of the Design Confirmation Phase. In the event the Project Manager is unable to approve one or more of the Project Initiation Deliverables, or the Parties are unable to agree upon the Basis of Design within 45 days after the Initial NTP is issued, the City may terminate the Agreement by issuing written notice to the Contractor, and both Parties shall be relieved from any further obligations under the Agreement. In addition, the Contractor shall be compensated in accordance with the Agreement and this Scope



of Work for all Work performed prior to the termination and title of all design and work product shall be assigned by Contractor to the City in accordance with Section 29 of the Agreement.

### **SECTION 3. IMPLEMENTATION PHASE**

The Implementation Phase shall consist of the Design Implementation Stage and the Construction Implementation Stage. The Implementation Phase shall commence when the Project Manager issues the Implementation NTP and shall be completed in the sequence set forth below.

#### **3.1. DESIGN IMPLEMENTATION STAGE**

**3.1.1 Logical Development of the IFC Set from the Basis of Design.** The IFC Set will be developed by Contractor in an iterative and collaborative process that involves the City and the Project Manager. Contractor shall develop the IFC Set so that it reflects the design intent embodied in the Basis of Design. Contractor and the Project Manager shall meet no less than two (2) times a month to review that progressive development of the IFC Set from the Basis of Design, and the development of the Project Schedule, Control Budget, and compliance with the limitations of the CCL, or if then established, the GMP. If there is more than one option that is a logical inference of such design intent, Contractor shall use all good faith efforts to implement the desires of the City; however, if such desires cannot be accommodated within the CCL or, if then established, the GMP, Contractor shall have the right to select a design alternative that is a logical inference of the Basis of Design documents, with costs that do not exceed the CCL or, if then established, the GMP, but shall not proceed with such design alternative without written approval of the Project Manager; and provided that the Project Manager may direct Contractor to proceed with another option, but in such event Contractor shall be entitled to an equitable adjustment to the CCL or, if then established, the GMP resulting from such directive.

**3.1.2 Schematic Design (15% Design Document).** Contractor shall develop a set of Schematic Design Documents that is consistent with and a logical development of the Basis of Design, and submit it to the Project Manager for review and approval (the “*Schematic Design Submission*”).

**3.1.3 Review and Revisions to Schematic Design Submission.** Within not more than five (5) Business Days after the Project Manager receives the Schematic Design Submission, the Project Manager shall prepare and provide to Contractor written comments on the Schematic Design Submission, and thereafter will meet with Contractor to further explain those comments if so requested by the Contractor. Contractor shall make such revisions to the Schematic Design Submission as necessary to incorporate comments, feedback, and other direction provided by the Project Manager. The Project Manager shall have the right to disapprove the Schematic Design Submission if the submission is inconsistent with the Basis of Design. The Schematic Design Submission, as approved in writing by the Project Manager, shall be referred to as the “*Approved Schematic Design*”.

**3.1.4 Initial Design Development Documents.** Contractor shall develop a set of Design Development Documents that is consistent with and a logical development of the Approved



Schematic Design and in accordance with Basis of Design, and submit it to the Project Manager for review and approval (the “***Design Development Submission***”).

**3.1.5 Review and Revisions to Design Development Submission.** Within not more than five (5) Business Days after the Project Manager receives the Design Development Submission, the Project Manager shall prepare and provide to Contractor written comments on the Design Development Submission, and thereafter will meet with Contractor to further explain those comments if so requested by Contractor. Contractor shall make such revisions to the Design Development Submission as necessary to incorporate comments, feedback, and other direction provided by the Project Manager. The Project Manager shall have the right to disapprove the Design Development Submission if the submission is inconsistent with the Approved Schematic Design. The Design Development Submission, as approved in writing by the Project Manager, shall be referred to as the “***Approved Design Development***”.

**3.1.6 65% Design Documents; Preliminary GMP and Control Budget.** Contractor shall develop a set of 65% Design Documents that is consistent with and a logical development of the Approved Design Development and in accordance with the Basis of Design, and submit it to the Project Manager for review and approval (the “***65% Design Documents Submission***”). Within fifteen (15) days of that submission, Contractor shall submit to Project Manager a preliminary GMP that contains no more than \$250,000 in escalation costs (which preliminary GMP must be less than the CCL), a Control Budget, and a Schedule of Values based on the 65% Design Documents and in compliance with Section 11 of the Agreement which must reflect that the Project, as set forth on the 65% Design Documents Submission, can be completed at a cost that is equal to or less than the preliminary GMP.

**3.1.7 Review and Revisions to 65% Design Documents and Preliminary GMP.** Within not more than five (5) Business Days after the Project Manager receives the last of the 65% Design Documents Submission, the preliminary GMP, the Control Budget, and/or the Schedule of Values, the Project Manager shall prepare and provide to Contractor written comments on the 65% Design Documents Submission and the preliminary GMP, and thereafter will meet with Contractor to further explain those comments if so requested by Contractor. Contractor shall make such revisions to the 65% Design Documents Submission, preliminary GMP, Control Budget, and Schedule of Values, as necessary to incorporate comments, feedback, and other direction provided by the Project Manager. The Project Manager shall have the right to disapprove the 65% Design Documents Submission if the submission is inconsistent with the Approved Design Development. The 65% Design Documents Submission, as approved in writing by the Project Manager, shall be referred to as the “***Approved 65% Design Documents***”.

**3.1.8 90% Design Documents; Final GMP and Control Budget.** Contractor shall develop a set of 90% Design Documents that is consistent with and a logical development of the Approved 65% Design Documents and in accordance with the Basis of Design, and submit it to the Project Manager for review and approval (the “***90% Design Documents Submission***”). Within fifteen (15) days of that submission, Contractor shall submit to the



Project Manager an updated GMP that contains no more than \$250,000 in escalation costs (which updated GMP must be less than the CCL) and a Control Budget based on the 90% Design Documents and in compliance with Section 11 of the Agreement which must reflect that the Project, as set forth on the 90% Design Documents Submission, can be completed at a cost that is equal to or less than the proposed GMP. Once the GMP is established in accordance with Section 11 of the Agreement, a final Control Budget and Schedule of Values that correspond to and do not exceed that GMP shall be agreed upon, and, thereafter, Contractor shall update the Control Budget and Schedule of Values, as necessary, to incorporate any increase and/or decrease to the GMP that occurs by agreed to Change Orders, Construction Change Directives, and/or other modifications and amendments that are permitted by the terms of the Contract Documents.

**3.1.9 Review and Revisions to 90% Design Documents Submission, Final GMP, and Control Budget.** Within not more than five (5) Business Days after the Project Manager receives the last of the 90% Design Documents Submission, the updated GMP, the updated Control Budget, and/or the updated Schedule of Values, the Project Manager shall prepare and provide to Contractor written comments on the 90% Design Documents Submission, and thereafter will meet with Contractor to further explain those comments upon the request of the Contractor. Contractor shall make such revisions to the 90% Design Documents Submission as necessary to incorporate comments, feedback and other direction provided by the Project Manager. The Project Manager shall have the right to disapprove the 90% Design Documents Submission if the submission is inconsistent with the Approved 65% Design Documents. As approved in writing by the Project Manager, the 90% Design Document Submission shall be referred to as the “*Approved 90% Design Documents*”.

**3.1.10 Issued for Construction (IFC) (100% Design Documents).** Based on the Approved 90% Design Documents, Contractor shall submit for the Project Manager’s approval an IFC Set submission, which shall be based on the Approved 90% Design Documents and the Basis of Design (the “*IFC Set Submission*”), and shall include (at a minimum), each of the following, in a form that meets the City and Code Official requirements for permitting purposes:

- a. Civil site plans, including but not limited to notes, erosion control, existing conditions, demolition, grading, layout, improvements, utilities, landscaping, enlarged/typical details;
- b. Architectural plans, including but not limited to notes, life-safety, floor plans, roofing plans, reflected ceiling plans, elevations, cut sections, finish schedule, door/window opening schedule, enlarged/typical details;
- c. Structural plans, including but not limited to typical notes, foundation plans, floor plans, roofing plans, cut sections, and enlarged/typical details;
- d. Plumbing plans, including but not limited to notes, floor plans, roofing plans, equipment schedules, and enlarged/typical details;
- e. Fire suppression plans, including but not limited to notes, floor plans, roofing plans, equipment schedules, and enlarged/typical details;
- f. Mechanical plans, including but not limited to notes, floor plans, roofing plans, equipment schedules, and enlarged/typical details;



- g. Electrical plans, including but not limited to notes, floor plans, roofing plans, equipment schedules, and enlarged/typical details;
- h. Technical specifications manual for all products, installation, and quality;
- i. All Drawings and Specifications (to the extent not already encompassed above), as those terms are defined in Attachment G; and
- j. LEED scorecard, as prepared in accordance with Section 2.1(c) of the General Conditions at Attachment G.

Within five (5) Business Days after the IFC Set Submission, the Project Manager shall prepare and provide to Contractor written comments on the IFC Set Submission, and thereafter will meet with Contractor to further explain those comments upon request of the Contractor. Contractor shall make such revisions as necessary to incorporate comments, feedback and other direction provided by the Project Manager. The Project Manager shall have the right to disapprove the IFC Set Submission if the submission is inconsistent with the Approved 90% Design Documents. Once approved in writing by the Project Manager, the IFC Set Submission shall be referred to as the “*IFC Set*”. Notwithstanding the design/build nature of the Agreement, Contractor shall be required to fully and faithfully implement the IFC Set, including any amendments to the IFC Set approved, in writing, by the Project Manager.

**3.1.11 Design Documents Submission to Code Officials.** Contractor shall submit the IFC Set to the Code Officials in order to obtain the necessary building permits to construct the Project. Contractor shall monitor the permit process and shall incorporate any changes or adjustments required by the Code Officials into the IFC Set, in accordance with all applicable federal, state, and local regulatory requirements in effect at such time, and with no change to the GMP. Contractor shall also meet with the Project Manager to discuss any such changes required by the Code Officials for which it seeks approval. Contractor shall highlight any aspect of the design that represents a material deviation from the IFC Set and shall address in a narrative format the impact, if any, such deviation shall have on the Project’s aesthetics, functionality, or performance. Review and response times applicable to the City and Project Manager, as the owner of the Project, stated in this Scope of Work or anywhere else in the Contract Documents shall not be applicable to the regulatory review and other duties of Code Officials necessary for the completion of the Project.

**3.1.12 Design Changes.** Any design changes made to the IFC Set shall be implemented only upon the issuance of a Change Order or Construction Directive that is submitted and approved in accordance with the Contract Documents.

**3.1.13 Proceeding to Construction Implementation Phase.** Contractor shall not proceed to the Construction Implementation Stage until (1) the Project Manager and all applicable Code Officials have approved the IFC Set in writing; and (2) the Project Manager has approved in writing all material boards for the exterior of the Project and after which those two deliverable may only be modified if agreed to in writing by the Parties, and (when applicable) that any and all agreed to amendments have been approved by the Code Officials.



**3.1.14 Pre-Purchasing for Savings.** Notwithstanding anything to the contrary in the Contract Documents, prior to its receipt of the Construction NTP, Contractor may notify the Project Manager that Contractor can purchase or contract for portions of the Work, whether materials, equipment, or labor, in order to obtain savings for the benefit of the Project (each, a “*Savings Notice*”). Upon its receipt of a Savings Notice, Project Manager may elect, in its sole discretion, to provide written notice to Contractor to proceed with the portion of the Work identified in the Savings Notice, and Contractor shall be entitled to be compensated by the City in accordance with the Contract Documents for performing such portion of the Work. Contractor shall not proceed with any Work not specifically set forth in a Savings Notice that has been approved in writing by the Project Manager before the Contractor’s receipt of the Construction NTP.

## **3.2. CONSTRUCTION IMPLEMENTATION STAGE**

The Construction Implementation Stage will begin when the IFC Set documents are approved by the Project Manager and after the Project Manager issues the Construction NTP.

**3.2.1 Drawings & Specifications.** All of the Work shall be constructed in accordance with the final IFC Set and all other Contract Documents. In the event of a conflict, the Specifications shall take precedence over the Drawings.

**3.2.2 On-Site Management.** Contractor shall provide on-site management and superintendence during all working hours.

**3.2.2.1 Site Office.** Throughout the Project, Contractor shall provide and maintain a fully-equipped construction office, to include internet access and all utilities, on the Site with sufficient space available within that construction office, or in a separate office within the Site, to accommodate up to two City representatives.

**3.2.2.2 Supervision.** Throughout the Project, the construction office shall be manned by personnel competent to oversee the Work at all times while construction is underway. Such personnel shall maintain full-time on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log.

**3.2.3 Monthly Progress Meetings.** Throughout the Project, Contractor, unless otherwise directed in writing by the Project Manager, shall conduct not less than two (2) progress meetings per month with the Project Manager, the City Consultants, and any others selected by the Project Manager following a Contractor generated agenda. At Contractor’s sole discretion, Contractor may include key trade subcontractors and/or personnel in those weekly meetings. Contractor shall draft and circulate meeting minutes within five (5) Business Days after each meeting.

**3.2.4 Hazardous Materials.** In performing any and all hazardous materials abatement, Contractor shall comply with the Contract Documents and all local, state, and federal laws. Contractor shall not commence any abatement work without an authorization from the Project Manager. Further, Contractor shall seek and obtain authorization for any abatement



or remediation work in a timely manner so as not to delay the Work. If any notices to governmental authorities are required, Contractor shall also give those notices at the appropriate times. Any hazardous materials encountered by Contractor will be treated as “unforeseen conditions” and removal or remediation of the hazardous materials will be handled by Change Order for additional cost and/or time, as applicable and appropriate. Any removal of hazardous materials will be done in accordance with all applicable local, state, and federal laws.

**3.2.4.1** If Contractor encounters a hazardous material or hazardous substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from such hazardous material or hazardous substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the Site by Contractor, Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the City in writing, but notwithstanding such condition, Contractor shall continue to Work as much as reasonably practicable in the areas not affected by such condition in order to keep the Work on schedule.

**3.2.4.2** Upon receipt of Contractor’s written notice, the City shall cause the affected area to be promptly inspected and, if appropriate, the City shall obtain the services of a licensed laboratory to verify the presence or absence of the hazardous material or hazardous substance reported by Contractor and, in the event such hazardous material or hazardous substance is found to be present, to cause it to be properly remediated in accordance with all applicable governmental requirements. When the hazardous material or hazardous substance has been lawfully remediated, Work in the affected area shall resume upon written agreement of the City and Contractor.

**3.2.5 Site Safety Generally.** Contractor shall provide a safe and efficient Site, with controlled access. As part of this obligation, Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project.

**3.2.5.1 Safety Barriers/Fences.** As part of its responsibility for Project safety, Contractor shall install such fences and barriers sufficient to separate and reasonably shield from view the construction areas of the Site from adjacent areas.

**3.2.5.2 Site Security.** Contractor shall be responsible for Site security at Contractor’s sole cost and expense. In addition, Contractor shall provide lockable entrances to prevent, as much as commercially practicable, unauthorized entrance, vandalism, theft, and similar violations of security; and shall lock such entrances at the close of each work day. Contractor shall, at Contractor’s expense, provide to the Project Manager keys, passcodes, or other similar protocols as may be needed to access those construction areas.

**3.2.5.3 Exculpation.** The right of the City to comment on Contractor’s safety plan and the nature and location of the required fences and barriers shall in no way absolve Contractor from the obligation to maintain a safe Site.



### **3.2.6 Workhours; Coordination with the Community.**

**3.2.6.1 Workhours.** Hampton City Code §22-1, et seq., the City's ordinance related to noise, generally limits workhours for construction activities. However, City acknowledges that the Project is city-sponsored, and is therefore legally exempt pursuant to Hampton City Code §22-10(3). Regardless of that exemption, Contractor recognizes that the Site is situated adjacent to a residential apartment complex throughout which construction noise will be plainly audible. Accordingly, Contractor agrees that it will not engage in Work that would generate sound plainly audible to the residents of that adjacent apartment complex between the hours of 10:00 p.m. and 6 a.m. without the prior written consent of the Project Manager.

**3.2.6.2 Parking.** Contractor shall organize its Work in such a manner so as to minimize the impact of its operations on the surrounding community, including existing City facilities in that surrounding area. To the extent that the parking for workers on the Site cannot be accommodated on the Site, Contractor shall develop a parking plan for any and all parking needs outside the Site that shall be approved by the Project Manager which approval shall not be unreasonably withheld. To the extent that approved plan includes City-owned parking areas, the City reserves the right at any time to require the Contractor to utilize alternate parking plans to accommodate City parking needs that may arise due to the City facilities operating in the vicinity of the Project, subject to the Project Manager providing Contractor not less than seven (7) days' notice of such need.

**3.2.6.3 Community Outreach.** Contractor shall keep the Project Manager informed of the construction activities and their potential impact on the community.

**3.2.7 Quality Control Generally.** Contractor shall be responsible for all activities necessary to manage, control, and document Work to ensure compliance with the Contract Documents. Contractor's responsibility includes ensuring adequate quality control services are provided by Contractor's employees and its subcontractors at all levels. The Work activities shall include safety, submittal management, document reviews, reporting, and all other functions related to quality of construction. In addition, during the Construction Implementation Stage, Contractor shall perform regular quality control inspections to ensure compliance with the Contract Documents. Quality control reporting shall be provided to the Project Manager through the daily reports submitted monthly as required by Section 3.2.9. Contractor shall incorporate a quality control section in the progress meetings to discuss outstanding deficiencies, testing/inspections, and upcoming Work.

**3.2.8 Final Completion and Project Closeout.** In addition to the Final Completion requirements contained elsewhere in the Contract Documents, Contractor shall be responsible for:

**3.2.8.1 Eleven Month Walk.** Contractor must schedule a joint inspection of the Project with the Project Manager during the eleventh (11<sup>th</sup>) month after Substantial



Completion is achieved. During such inspection, Contractor and the Project Manager will walk the Project to identify any necessary warranty work that is covered by the warranties of Contractor set forth in Section 4.5 of the General Conditions. For this purpose, both the Contractor and Project Manager may include any additional representatives, as each shall deem appropriate, for assistance with this inspection.

**3.2.8.2 Commissioning and Warranty Support for the Heating and Cooling Season.** Contractor and its subcontractors shall provide commissioning support to the City throughout the commissioning process in accordance with the commissioning requirements of the Contract Documents. In addition to commissioning support, Contractor and its subcontractors shall perform warranty work, to include parts and labor, throughout the duration of Contractor's warranty period provided in Section 4.5 of the General Conditions.

**3.2.9 Monthly Reports.** Using the mutual use electronic management system designated in Section 3.2.10, Contractor shall provide written reports to the Project Manager at least monthly from Construction NTP until Final Completion of the Project. The monthly reports shall include: (i) an updated Project Schedule; (ii) if that Project Schedule shows the Contractor to be thirty (30) or more days behind the current contract Substantial Completion date, the Contractor shall include in that monthly report a recovery schedule; and (iii) all daily reports from the reported month, to include progress photos.

**3.2.10 Mutual Use Electronic Management System; Record Production and Retention.** Contractor acknowledges that the City, as a municipal corporation, is subject to the Virginia Freedom of Information Act (Code of Virginia §2.2-3700 et. seq., as it may be amended from time to time) and those record retention regulations prescribed by the Library of Virginia pursuant to Code of Virginia §42.1-85. Accordingly, the City will establish a web-based electronic management or document sharing site, such as SharePoint or a similar system, to be utilized by the Contractor to transmit, return, and store submittals and requests for information ("RFIs").

## **SECTION 4. CONSTRUCTION MANAGEMENT**

Pursuant to Section 3.13 of the General Conditions at Attachment G, the City intends to enter into other contracts with City Subcontractors in connection with this Project for certain work that will be excluded from the Work being performed by Contractor. A portion of the work to be performed by a City Subcontractor is related to the RPA (as hereinafter defined) for the Project, which is described in this Section 4, for which the City engages Contractor to serve as the City's consultant and construction manager for such work (in such capacity, the "**Construction Manager**").

**4.1. Initial Information.** The agreement included in this Section 4 is based on the Initial Information set forth in this Section 4.1. The Construction Manager and the City may rely on the Initial Information; however, both parties recognize that the Initial Information may materially change and, in that event, the Construction Manager and the City shall appropriately adjust the Construction Manager's services, schedule for the Construction Manager's services and the Construction Manager's compensation.



**4.1.1 Separate Project Work or RPA Work:** Design, preconstruction and construction of a resilient parking area (“**RPA**”) to accompany the Project (collectively, the “**RPA Work**”). The area of the Site on which the RPA Work is being performed is shown on the diagram attached to this Scope of Work as Schedule 4.1.1.

**4.1.2 Separate Project Work Costs:** The City’s budget for the RPA Work, for both design and construction work, is currently estimated to be approximately \$1,500,000.

**4.1.3 Initial Design:** The City has contracted with Kimley Horn (“**Civil Engineer**”) to develop a set of 35% design development documents that are consistent with and a logical development of the basis of design for the RPA, which are intended to be submitted to the Project Manager for review and approval by no later than July 30, 2020 (once approved by the Project Manager, such design documents will be deemed to be the “**Approved 35% RPA Design Development Documents**”).

**4.1.4 RPA Design Confirmation Phase:** Upon achieving the Approved 35% RPA Design Development Documents, the City shall engage the Construction Manager, and:

**4.1.4.1** Construction Manager shall review and consult with the Project Manager and Civil Engineer as to the progression, preparation, submission and approval of a final or 100% RPA design development documents (once approved by the Project Manager, such design documents will be deemed to be the “**Approved 100% RPA Design Development Documents**”) and make recommendations whenever the Construction Manager determines that the design or details adversely affect cost, scope, schedule, constructability or quality of either the RPA Work or the overall Project.

**4.1.4.2** Construction Manager shall prepare and periodically update the schedule for the RPA Work, highlighting any adverse impacts to the Project Schedule caused by the RPA Work schedule, for review and acceptance by the Project Manager, and shall coordinate and integrate the Construction Manager’s services, the City Subcontractors’ services and the City’s responsibilities with respect to the RPA Work, and highlight items that affect the overall Project’s, including the RPA Work, timely completion.

**4.1.4.3** Construction Manager shall review the Approved 100% RPA Design Development Documents and make recommendations as required that provide that the RPA Work of the City Subcontractor is logically coordinated with Contractor’s Work and that proper coordination is provided for the RPA Work Implementation Phase (as hereinafter defined).



**4.1.4.4** Construction Manager, in consultation with the Project Manager, shall develop bidders' packages or bid proposals and establish bidding schedules for the RPA Work. The Construction Manager shall assist the Project Manager with the development of a prequalification package for prospective bidders and bidding documents, which consist of bidding requirements and proposed contract documents for the RPA Work. The Construction Manager shall provide the current Project Schedule, that includes the integration of the RPA Work schedule, with each set of bidding documents and assist the Project Manager in regards to questions from bidders and with the issuance of addenda.

**4.1.4.5** Construction Manager acknowledges that permitting for the Project relies upon approval of a single site plan that combines the RPA design with the Project site design. Construction Manager will coordinate with the Civil Engineer and provide timely information needed to complete RPA design. Construction Manager's schedule shall allow for a minimum of three (3) submissions of the site plan prior to receiving approval.

**4.1.5 RPA Work Implementation Phase:** Construction Manager's primary services during the RPA Work Implementation Phase will be to coordinate, as optimally as reasonably practicable, the activities of the City Subcontractors who are performing the RPA Work with Contractor's performance of the Work so that both the RPA Work and the Work are completed in accordance with the Project Schedule. Upon achieving Approved 100% RPA Design Development Documents, the City shall engage the Construction Manager, and:

**4.1.5.1** Construction Manager's responsibility to provide services associated with the RPA Work Implementation Phase commences with the City's award of the contracts for construction of the RPA Work to a City Subcontractor(s) and terminates upon issuance of a final certificate for payment to such City Subcontractor(s) with respect to the RPA Work.

**4.1.5.2** The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the City Subcontractor(s) completing the RPA Work with those of the Contractor in its completion of the Work for the Project. The Construction Manager shall consult with the Project Manager from time to time during the RPA Work Implementation Phase, and advise the Project Manager if the completion of the RPA Work is adversely impacting the Contractor's completion of the Work for the Project. The Construction Manager shall coordinate the activities of the City Subcontractor(s) performing the RPA Work so that the RPA Work can be completed, as reasonably practicable, in accordance with the latest approved Project Schedule.



**4.2** The Construction Manager shall coordinate its services with those services provided by the City, Civil Engineer, City's other consultants and the separate contractors performing RPA Work. With respect to the RPA Work, the Construction Manager shall be entitled to rely on, and shall not be responsible for, the accuracy and completeness of services and information furnished by the City, Civil Engineer, City's other consultants and City Subcontractor(s). The Construction Manager shall provide prompt reasonable written notice to the Project Manager if the Construction Manager becomes aware of any error, omission, or inconsistency in such services or information.

**4.3** Construction Manager's compensation for the services described under this Article 4 shall be included in the Contractor's Fee in the manner set forth in Section 5.1.4 of this Attachment F. Payments for Construction Manager's services under this Article 4 shall be made monthly in proportion to the services then performed, and shall be separately itemized on each Application for Payment.

**4.4** If the Agreement is terminated for any reason, then the engagement of the Construction Manager by the City as provided in this Article 4 shall also terminate. The Construction Manager shall be compensated for services performed prior to termination.

**4.5** The Construction Manager shall only be responsible for its negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the City, City Subcontractor performing the RPA Work, Civil Engineer (but only as to the Civil Engineer's duties as set forth in Section 4.1.3), or their agents or employees, or any other persons or entities performing portions of the RPA Work.

**4.6** To the fullest extent permitted by law, without waiving sovereign immunity or other immunities provided by law, the City covenants for itself, its employees and agents, at its sole cost and expense, to fully defend the Construction Manager and each of its officers, employees, representatives, agents, affiliates, subcontractors, vendors, and consultants (collectively "Construction Manager Parties") from and against all claims, demands, suits, judgments, fines, or penalties, of any nature whatsoever, arising out of or resulting from the RPA Work and involving the City Subcontractor performing the RPA Work, or any subcontractors, vendors, or suppliers of that City Subcontractor. For this purpose, the Construction Manager shall reasonably cooperate in such defense. The City shall not defend the Construction Manager if the claim or demand is caused by the negligence or willful misconduct of the Construction Manager or any of Construction Manager's employees, agents, subcontractors, or assigns.

## **SECTION 5. COMPENSATION**

**5.1 Compensation.** Contractor's sole compensation for the Work shall be the Design Fees, the Construction Fees, the Contractor Fee, and the Contingency Fees, all of which shall constitute the Cost of Work, as further set forth in the General Conditions at Attachment G, and which in the aggregate, shall not exceed the GMP, and shall be reasonably allocated in the Schedule of Values and the Guaranteed Maximum Price Certification at Attachment L.



**5.1.1 Design Fees.** The “*Design Fees*” shall include all costs necessary to complete all Work necessary for the Design Confirmation Phase, the Design Implementation Stage, the construction administrative services of the Design Team during the Construction Implementation Stage, and those costs mutually agreed by the City and Contractor to be administrative in nature and not reasonably allocable to Construction Fees or to any other compensable category. The Design Fees shall be reimbursable at cost and without mark-up of any kind, other than the Contractor Fee as set forth in Section 5.1.4.

**5.1.2 Construction Fees.** The “*Construction Fees*”, shall include all costs necessary to complete all Work necessary for the Construction Implementation Phase, which are reimbursable, at cost and without mark-up of any kind other than the Contractor Fee as set forth in Section 5.1.4, including, but not be limited to, the following:

A. Payments made by Contractor to subcontractors and suppliers for Work and materials, products, supplies, equipment and materials used for the Project or in the performance of the Work, but only in accordance with the subcontracts and supply agreements;

B. All amounts due to Contractor for self-performed Work. If Contractor self-performs Work on any one (1) line item in the Schedule of Values in excess of \$250,000, the Contractor must submit three quotes by potential subcontractors validating price competitiveness of Contractor’s decision to self-perform. The Project Manager may, in their sole discretion, approve self-performed Work without competitive pricing submission; in such situation Contractor must submit the following documentation with each Application for Payment:

1. Labor. Properly documented wages actually paid to Project foremen, construction workers, and other personnel in the direct employ of Contractor while engaged in approved self-performed Work, together with contributions, assessments, payroll taxes, or fringe benefits required by the laws or applicable collective bargaining agreements.

2. Incorporated Materials. The cost, net of trade discounts, of all materials, products, supplies and equipment incorporated into the self-performed Work, including, without limitation, costs of transportation and handling.

3. Unincorporated Materials. The cost of materials, products, supplies and equipment not actually installed or incorporated into the self-performed Work, but with a reasonable allowance for waste or spoilage.

C. Royalty and license fees paid for use of a design, process or product, if its use is required by the Contract Documents or has been approved in advance by the Project Manager;



- D. Fees, if actually imposed on and paid by Contractor, for obtaining all applicable and required approvals or permits associated with the abatement, demolition, utilities abandonment, and utility relocation, as well as all trade permit fees, City business license fees that are related solely to this Project (or if not related solely to this Project, then only a prorata portion thereof that is applicable to this Project), and the building permit fee;
- E. All fees and other costs necessarily incurred to carry out testing and inspections required by the Contract Documents or applicable laws, or otherwise to maintain proper quality assurance, other than special inspections (the cost of which shall be paid directly by the City). The costs Contractor incurs to schedule and coordinate any additional testing and inspections the City may decide to conduct itself shall be reimbursable unless the additional testing establishes that the Work tested was defective or otherwise failed to satisfy contract requirements, in which case Contractor shall pay the costs, without reimbursement;
- F. All applicable bonds to jurisdictional agencies (including, without limitation, utilities, storm water management, land disturbance, and grading);
- G. All performance and payment bonds and insurance attributable to the Project;
- H. The cost of Preconstruction and Construction Staff. The term “***Preconstruction and Construction Staff***” shall mean the Project Executive, Design Team Manager, Project Manager(s) and superintendents assigned to the Project by Contractor, administrative staff assigned to the Site who may, at times, be working from the home or regional offices, and professional staff performing project management, scheduling, cost estimating and accounting services;
- I. Fringe Benefits associated with Preconstruction and Construction Staff;
- J. Payroll taxes and payroll insurance associated with Preconstruction and Construction Staff;
- K. Staff costs associated with obtaining permits and approvals;
- L. Out-of-house consultants;
- M. The field office for Contractor including, but not limited to: (i) trailer purchase and/or rent; (ii) field office installation, relocation and removal; (iii) utility connections and charges during the Construction Implementation Stage; (iv) furniture; and (v) office supplies;
- N. Office equipment including, but not limited to: (i) computer hardware and software; (ii) fax machines; (iii) copying machines; (iv) telephone installation, system and use charges; and (v) job radios;
- O. Local delivery and overnight delivery costs;



P. The cost of temporary power and water necessary for construction operations and to condition the building during construction, which includes the cost of any construction necessary to provide temporary power and water during the Construction Implementation Stage; and

Q. First aid facilities, training, and support.

**5.1.3 Contingency Fees.** The GMP includes all portions of Contractor's contingency associated with the Work (the "**Contingency Fees**"), the maximum amount of which shall be determined when the GMP is established in accordance with the Contract Documents. Contingency Fees are intended to be used to address the Cost of the Work or other components of the GMP that were reasonably unforeseen at the time the GMP was developed. Any use and payment of Contingency Fees shall be subject to the prior approval of the Project Manager, which approval shall not be unreasonably withheld. The use of Contingency Fees, once approved by the Project Manager, may be applied to any Work or other component of the GMP without the necessity of a Change Order.

**5.1.4 Contractor Fee.** The "**Contractor Fee**" shall be an amount payable to Contractor, established when the GMP is established in accordance with the Contract Documents and shall be (i) no more than five percent (5%) of the aggregate Design Fees, Construction Fees, and Contingency Fees; and (ii) five percent (5%) of the actual amount paid by the City to the City Subcontractor engaged for the RPA Work. Any Contractor Fee so paid pursuant to Subsection (i) of this Section 5.1.4 shall be billed to the City on a pro-rata basis over the Project Schedule in each Application for Payment. In the event the Project Schedule is extended, the monthly portion of the Contractor Fee will be recalculated so that the then remaining unpaid portion of the Contractor Fee is spread evenly over the then-remaining duration of the Implementation Phase. Any Contractor Fee so paid pursuant to Subsection (ii) of this Section 5.1.4 shall be billed and paid in accordance with Section 4.3 of this Attachment F.

**5.2 Non-Reimbursable Costs.** The following costs are not reimbursable, and shall not be paid by the City to the Contractor under any circumstance or for any purpose:

A. Fees for any permits or licenses Contractor requires to conduct its general business operations (as opposed to those permits or licenses applicable to the Work being performed for this Project);

B. Capital expenses and interest on capital employed for the Work;

C. The cost of home or regional offices, unless otherwise as expressly provided for in the Contract Documents;

D. Any costs incurred in performing Work of any kind before the Initial NTP is issued, except those Design Fees contemplated in the GMP in the amount of \$306,880.00 which Contractor may include in its first Application for Payment submitted in



accordance with the Contract Documents, and unless otherwise specifically authorized by the City in writing; and

E. Costs of re-inspection, as set forth in Section 6.3(a)(iii) of the General Conditions.

**5.3 Progress Payments.** Contractor shall be paid its compensation in a series of progress payments and a Final Payment for Work completed in accordance with the Contract Documents, and for which proper Applications for Payment have been submitted and approved in accordance with the Contract Documents.

## **SECTION 6. CONTRACTOR KEY PERSONNEL AND SUBCONTRACTORS**

The City has relied upon representations set forth in the Revised Proposal regarding the qualifications and experience of Contractor's Team outlined therein in awarding and entering into the Agreement with Contractor. Of that Team, the following individuals and organizations shall be considered Key Personnel (whether employed by Contractor or one of its subcontractors) and subcontractors:

- A. Project Executive – Dean Conklin, Clancy & Theys
- B. Design Team/Architect of Record - GuernseyTingle
- C. Lead Superintendent – Gary Nuttal, Clancy & Theys
- D. Project Manager- Nicole Anderson, Clancy & Theys
- E. Lead Structural Engineer- Speight Marshall Francis
- F. Lead MEP Engineer – B2E Consulting Engineers
- G. Landscape Architect – Kimley-Horn
- H. Soil/ Remediation Geotechnical Engineer – GET Solutions
- I. Aquatic Design Firm – Water Technologies, Inc.
- J. Lead Civil Designer – Kimley-Horn
- K. Envelope Consultant – TAM Consultants

Contractor will not be permitted to remove or reassign any of the Key Personnel and subcontractors unless the Project Manager approves the proposed removal or reassignment and the proposed replacement, which approval shall not be unreasonably withheld.

If any of the Key Personnel or subcontractors must be absent for an extended period, Contractor must provide an interim Key Personnel or Subcontractor, subject to the City's written approval, which approval shall not be unreasonably withheld. For this purpose, two (2) weeks or such shorter period as that may reasonably expected by the City to cause a delay in the Construction Schedule shall be considered an "extended period."

If any of the approved Key Personnel or subcontractors resign or is terminated, Contractor will replace those Key Personnel or subcontractor(s) with an individual with similar qualifications and experience, subject to the City's written approval, which approval shall not be unreasonably withheld.



**SCHEDULE 4.1.1 TO ATTACHMENT F**

**RPA WORK DIAGRAM**

[Attached Hereto]