

REGIONAL CONSTRUCTION STANDARDS

Sixth Edition (Modified by the City of Newport News)

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**Specific sections are not included in bid documents. Please refer to the sixth edition of the HRPDC Specification for the specific sections.

End Section

SECTION 101

DEFINITIONS OF TERMS

I. GENERAL DEFINITIONS

Wherever used in the Contract Documents, the following terms shall have the meanings indicated and shall be applicable to both the singular and plural thereof:

- 1.1 *Addenda* - Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bid Documents or the Contract Documents.
- 1.2 *Agreement* - The written agreement between the Owner and the Contractor covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
- 1.3 *Application for Payment* - **The Contractor shall use the City's Project and Contract Management System (Projectmates) for the electronic submission of invoices and change orders. Submissions for payment shall be based on the pricing contained in the contract documents.**
- 1.4 *Bid* - The offer of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.5 *Bid Documents* – **The entire invitation for bid issued by the City** including documentation accompanying the Bid (Drawings, Project Specifications, HRPDC *Regional Construction Standards*, Addenda, and Special Provisions) and any **other** documentation **incorporated by the City**.
- 1.6 *Bidder* - Any person, firm or corporation submitting a Bid for the Work.
- 1.7 *Bonds* - Performance **and Labor and Material** Payment Bonds furnished by the Contractor and the Contractor's surety in accordance with the Contract Documents. **The Contractor's surety shall be licensed in the Commonwealth of Virginia.**
- 1.8 *Bid Security* - Bid Bonds and other instruments of surety, furnished by the Contractor or the Contractor's surety in accordance with the Contract Documents. **The Contractor's surety shall be licensed in the Commonwealth of Virginia.**
- 1.9 *Change Order* - A written order to the Contractor authorizing an addition, deletion, or revision in the Work within the general scope of the Contract Documents that authorizes an adjustment in the Contract Price and/or Contract Time, issued on or after the Effective Date of the Agreement.
- 1.10 *Completion Date* - The date specified in the Notice to Proceed for final completion of the Work.
- 1.11 *Contaminated Effluent* – Effluent from construction dewatering activities that is impacted with contaminants of concern and require special handling in accordance with applicable federal, state and local regulations.
- 1.12 *Contaminated Groundwater* - Groundwater that is impacted with contaminants of concern and require special handling in accordance with applicable federal, state and local regulations.
- 1.13 *Contract Documents* - The Agreement, including the Bid Documents, Notice of Award, Notice to

Proceed, Field Orders, Change Orders, and Modifications.

- 1.14 *Contract Price* - The total monies payable to the Contractor under the terms and conditions of the Agreement.
- 1.15 *Contract Time* - The number of calendar days stated in the Agreement for the completion of the Work. Calendar days shall be understood to be consecutive.
- 1.16 *Contractor* - The person, firm or corporation with whom the Owner has executed the Agreement.
- 1.17 *Day* - A calendar day of twenty-four hours measured from midnight to the next midnight. Calendar days shall be understood to be consecutive.
- 1.18 *Defective* - An adjective, which when modifying the word Work, refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to the Owner's acceptance.
- 1.19 *Drawings* - The plans that show the character and scope of the Work to be performed.
- 1.20 *Effective Date of the Agreement* - The date indicated in the introductory paragraph of the Agreement.
- 1.21 *Engineer* - The person, firm or corporation named as such in the Agreement. In the event the Owner should not require the services of the Engineer, then the powers, duties, and responsibilities conferred in the Contract Documents to the Engineer shall be construed to be those of the Owner.
- 1.22 *Field Order* - A verbal or written order effecting a change in the Work not involving an adjustment in the Contract Price or an extension of the Contract Time, issued by the Engineer or Owner to the Contractor during construction.
- 1.23 *Final Completion* - All work, including punch list items noted at the final inspection, is complete to the satisfaction of the Owner.
- 1.24 *Groundwater Effluent* - Groundwater that is pumped from the ground during construction.
- 1.25 *Laws and Regulations* - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

The contractor shall keep fully informed of all federal, state and local laws, ordinances and regulations that in any manner affect the conduct of the work. The contractor shall at all times observe and comply with all such laws, ordinances and regulations.

- 1.26 *Liens* - Liens, charges, security interests or encumbrances upon real or personal property.
- 1.27 *May* - The term "may" is permissive.
- 1.28 *Notice* - All written notices, demands, instructions, claims, approvals, and disapprovals required to obtain compliance with the Contract Documents. **The City's primary communications shall be through email for routine correspondence; however, more formal communications will sent via email and U.S. Postal Service.** Any written notice by either party to the Agreement shall be sufficiently given if delivered to or at the last known business address of the person, firm or corporation constituting the party to the Agreement, or to his, their, or its authorized agent, representative or officer, or when enclosed in a postage envelope addressed to such last known business address and deposited in a United States mailbox. Notice shall be deemed received **the day the email is sent or within 3 business days of U.S. Mail Service postmark date. The email date shall have precedence over the U.S. Mail date.**

- 1.29 *Notice to Proceed* - A written notice given by the Owner to the Contractor (with a copy to the Engineer, if appropriate) fixing the date on which the Contract Time will commence to run and on which the Contractor shall start to perform its obligations under the Agreement.
- 1.30 *Owner* - The public body or authority, corporation, association, firm or person with whom the Contractor has entered into the Agreement and for whom the Work is to be provided. **The “Owner” and the “City” are synonymous;** References to “Owner” shall be construed to mean “The City of Newport News”.
- 1.31 *Owner's Representative* - **The Owner’s Representative is an authorized City employee.**
- 1.32 *Partial Utilization* - Use by the Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
- 1.33 *Project* - The entire Work as described in the Contract Documents, including Work that is necessary and incidental to the furnishing of all materials, services, equipment, labor and supplies required to install, perform, and complete all items of Work in accordance with Contract Documents.
- 1.34 *Reference Standards* - Those bulletins, standards, rules, methods of analysis or tests, codes, and specifications of other agencies, engineering societies, or industrial associations referred to in the Contract Documents. These refer to the latest edition, including amendments in effect and published at the time the Project was advertised, unless specifically referred to by edition, volume, or date.
- 1.35 *Regional Construction Standards* - The construction standards, published by the Hampton Roads Planning District Commission (HRPDC) as amended from time to time.
- 1.36 *Responsible Bidder* - **A person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance and who has been prequalified, if required.**
- 1.37 *Responsive Bidder* - **A person who has submitted a bid which conforms in all material respects to the invitation for bid.**
- 1.38 *Resident Project Representative* - The authorized representative of the Engineer or Owner who is assigned to the Project or any part thereof.
- 1.39 *Roadway Prism* - All of the land or area within the right of way that needs to be cut, filled, graded, or otherwise disturbed to produce the design cross section, including, but not limited to, areas for curbs, ditches, sidewalks, paths, and slopes to match existing grade.
- 1.40 *Rock* - Any indurated material with a minimum compressive strength of 200 psi that requires drilling, wedging, blasting, or other methods of brute force for excavation.
- 1.41 *Shall* - The term "shall" is mandatory.
- 1.42 *Shop Drawings* - All drawings, diagrams, illustrations, schedules, specified design related submittals, and other data or information which are specifically prepared or assembled by or for the Contractor and submitted by the Contractor to illustrate some portion of the Work.
- 1.43 *Special Provisions* - Requirements in addition to or modification of the HRPDC *Regional Construction Standards*.
- 1.44 *Specifications* - **Any description of the physical or functional characteristics or of the nature of a good, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a good, service or construction item for delivery. Includes those portions of the Contract Documents or HRPDC *Regional Construction Standards* consisting of written technical**

descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

- 1.45 *Standard Details* - Those portions of the HRPDC *Regional Construction Standards* consisting of drawings, explanatory of another drawing, indicating in detail and at a larger scale, the design, location, composition and correlation of elements and materials.
- 1.46 *Subcontractor* - A person, firm or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the site.
- 1.47 *Substantial Completion* - That date certified by the Owner when the construction of the Project or a specified part thereof is sufficiently completed in accordance with the Contract Documents, including completion of all tests, so that the Project or specified part can be utilized for the purpose for which it is intended.
- 1.48 *Successful Bidder* - The lowest, responsible and responsive Bidder to whom the Owner (on the basis of the Owner's evaluation as hereinafter provided) makes an award.
- 1.49 *Supplier* - Any person or organization that supplies materials or equipment for the Work, including that fabricated to a special design.
- 1.50 *Underground Facilities* - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.
- 1.51 *Work* - All labor, materials, equipment, transportation, supervision, or other facilities, duties or incidentals necessary for execution and completion of the Project in compliance with the Contract Documents.

End of Section

SECTION 102

I. INSTRUCTIONS TO BIDDERS

1. Bid Documents

- 1.1 Complete sets of Bid Documents shall be used in preparing Bids. Neither the Owner nor the Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bid Documents.
- 1.2 The Owner, in making copies of the Bid Documents available on the above terms does so only for the purpose of obtaining Bids on the Work and does not confer or license or grant permission for any other use.
- 1.3 The Special Provisions for this Project as set forth in Section 110. Additional Special Provisions for this Project appear as modifications to the **Owner or by** HRPDC *Regional Construction Standards* by strike-through, deletions and bold type for additions in Sections 100 through 109.
- 1.4 Delete

2. Examination of Bid Documents and Project Site

- 2.1 It is the responsibility of each Bidder before submitting a Bid:
 - A. To examine thoroughly the Bid Documents;
 - B. To become familiar with and satisfy the Bidder as to the general, local and site conditions that may affect cost, progress, performance, or furnishing of the Work;
 - C. To study and carefully correlate the Bidder's knowledge and observations with the Bid Documents and such other related data; and,
 - D. To promptly notify the Owner of all conflicts, errors, ambiguities or discrepancies which the Bidder has discovered in or between the Bid Documents and such other related documents or field/site conditions.
- 2.2 Reference is made to Sections 104 III and 104 IV, for information relating to reports, explorations, underground facilities, and easements. On request, at the discretion of the Owner, the Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. The Bidder shall fill all holes and clean up and restore the site to its former condition, including reseeding and/or resodding any disturbed areas upon completion of such explorations, investigations, tests and studies, and hold the Owner harmless from any damage to property or injury to persons resulting from or arising out of such exploration, investigation, tests, and studies. The Bidder shall obtain and comply with all local and state permitting requirements.

3. Interpretations and Addenda

- 3.1 No oral explanation in regard to the meaning of the **Bid** Documents will be made, and no oral instructions will be given before the award of the Work. Discrepancies, omissions or doubts as to the meaning of the **Bid** Documents shall be communicated in writing to the Owner for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them before the submission of their Bids. Any interpretation made will be in the form of an addendum to the **Bid** Documents, and its receipt shall be acknowledged on the Bid.
- 3.2 Addenda may also be issued to modify the **Bid** Documents.

- 3.3 Subsurface Exploration – Subsurface boring data may be included in the Appendix. The Bidder shall be responsible for conducting any further subsurface investigations that he deems necessary.

Geotechnical exploration and analysis information included, in whole or in part, in these Bid Documents gives the physical data on subsurface conditions as obtained for the Owner only, and in no event is this information to be considered as part of the Contract. It is expressly understood that neither the Owner nor the Engineer will be responsible for any interpretation or conclusions drawn therefrom by the Contractor.

Bidders are cautioned that the subsurface boring data was used for general design purposes only and may be inadequate for the purposes of bidding the Contract items. It is strongly recommended that the Contractor perform his own subsurface investigation(s) to the extent necessary to satisfy himself as to the subsurface conditions.

4. Bid Security

- 4.1 Each bid shall be accompanied by a Bidder's bond issued by a company authorized and licensed to transact business as surety in the Commonwealth of Virginia, a certified check, or cash escrow, in an amount equal to not less than five (5) percent of the total amount of the bid, made payable to the **City of Newport News Virginia**. Upon approval of the Owner's attorney, in accordance with **Sec. 2-565.3 of the Code of the City of Newport News, Virginia**, as amended, a Bidder may furnish a bank or savings and loan association's letter of credit on certain designated funds for the amount required for the Bid Security. The Bid Security shall be accompanied by a certified copy of the power of attorney for the surety attorney-in-fact. Said bid security shall be left with the Owner, subject to the conditions specified herein, as a guarantee of good faith on the part of the Bidder that if the bid is accepted, the Bidder shall execute the contract. If a certified check is offered as guarantee, it shall be made payable to **the City of Newport News**.
- 4.2 **Letters of credit, cash escrow or certified checks will be returned after the execution of a Final Agreement and Performance and Payment Bonds and Certificates of Insurance have been approved by the Owner.**

5. Liquidated Damages

- 5.1 Provisions for liquidated damages are set forth in Section 108-X and in the City's eProcurement Portal.

6. Preparation of Bid

- 6.1 All blanks on the Bid form shall be completed.
- 6.2 Bids by corporations shall be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.
- 6.3 Bids by unincorporated organizations shall be executed in the organization's name and signed by an individual having authority to enter into a contract on behalf of such organization, whose title shall appear under the signature and the official address of the organization shall be shown below the signature. For example, if such organization is a Limited Liability Company, the Bid shall be signed by a member or by its manager, as authorized in its operating agreement; in the case of a manager-led Limited Liability Company, the Bid shall be signed by its manager; or if such organization is a Limited Partnership, the Bid shall be signed by a general partner.
- 6.4 All names shall be typed or printed in ink below the signature. All names shall be the legal name

of the corporation, unincorporated organization and/or individual.

- 6.5 The Bid shall contain an acknowledgment of receipt of all Addenda
- 6.6 The address, telephone number, **and** e-mail address for communications regarding the Bid shall be provided.
- 6.7 It is understood and agreed that, in the event an Agreement is executed for the supplies, equipment or services included in the Bid, no indication of such sales or services to the Owner shall be used in any way in product literature or advertising without the written consent of the Owner.
- 6.8 **A City of Newport News Ordinance requires all contractors performing work in the City of Newport News to have a Newport News Business License. The Business License must be obtained prior to award of contract. All Bids shall be balanced. Such items as profit and general overhead expenses shall be distributed uniformly over all pay items. Other expenses such as labor, materials, engineering, supervision, etc. shall be distributed uniformly among those pay items to which these expenses pertain. Any bid which the City considers unbalanced may be rejected if it cannot be resolved to the City's satisfaction during discussions.**

7. Quantities and Unit Prices

- 7.1 The Owner reserves the right to increase or decrease the amount of any class or portion of the Work. No such change in the Work shall be considered as a waiver of any condition of the Agreement nor shall such change invalidate any of the provisions thereof. Payment will be made at the unit or lump sum prices under the Agreement only for the Work actually performed or materials furnished and accepted.
- 7.2 Bidders shall include in their Bid prices the entire cost of each item set forth in the Bid, and it is understood and agreed that there is included in each lump sum or unit price bid item the entire cost necessary or incidental to the completion of that portion of the Work, unless such incidental Work is expressly included in other lump sum or unit price bid items.

8. General Equipment or Material Specification.

When the Bid Documents specify one or more manufacturer's brand names or makes of materials, devices or equipment as indicating a quality, style, appearance or performance, with the statement "or equal," the Bidder shall base the Bid on either one of the specified brands or an alternate brand which the Bidder intends to substitute. Use of an alternate shall not be permitted unless it has been found to be equal or better by the Owner and at no additional cost to the Owner. The Owner will not prequalify any substitute materials or equipment submitted by the Bidders. Only substitute items submitted by the successful Bidder after the date of the Contract Award will be considered by the Owner or his representative.

- 8.1 The burden of proof as to the comparative quality and suitability of alternative equipment, articles or materials shall be upon the Bidder. The Bidder shall furnish at its own expense, such information relating thereto as may be required by the Owner. The Owner shall be the sole judge as to the comparative quality and suitability of alternative equipment, articles or materials and the Owner's decisions shall be final. Any other brand, make or material, device or equipment which, in the opinion of the Owner is recognized to be the equal of that specified, considering quality, workmanship and economy of operation and is suitable for the purpose intended, shall be accepted. In the event of any adverse decision by the Owner, no claim of any sort shall be made or allowed against the Engineer or Owner. Samples, if requested by the Bidder, may be returned at the Bidder's expense.

- 8.2 If in the sole discretion of the Owner an item proposed by the Contractor does not qualify as an "or-equal" item it may be considered as a proposed substitute item. The Contractor shall furnish the Owner any such information as the Owner may request to evaluate the substitute item to include estimates of costs or credits, redesign, claims or schedule impacts, warranty or maintenance issues or payment of any license or royalty that could directly or indirectly result from acceptance of the substitute. Any cost or time impacts to the project schedule caused by the Contractor's submission of a substitute shall be borne by the Contractor. Any costs incurred by the Owner or by the Owner's Engineer in reviewing the suitability of the substitute item shall be borne by the Contractor. The Owner may refuse to accept a substitute unless an acceptable adjustment in the Contract Price is offered by the contractor.

9. Proprietary Material and Equipment Specification.

Where any item of equipment or material is specified by proprietary name, trade name, catalog reference, or name of one or more manufacturers, without the addition of such expressions as "or equal," it is to be understood that those items are so specified for reasons of standardization in maintenance and operation, or for reasons of obtaining desirable features best suited to the requirements of the Specifications. This specific equipment shall form the basis of the Bid and be furnished under the Agreement. Where two or more items of equipment or material are named, the Contractor has the option to use either.

10. Additive/Alternate Bids

10.1 Additive Bids

Additive bid items are those in addition to the base Bid items. Bidders shall submit additive Bids on all items as shown on the Bid form. Award shall be based on the lowest responsive and responsible Bid for base Bid plus all additive bid items listed.

10.2 Alternate Bids

Alternate bid items are those where more than one type of improvement may be considered for a portion or all of the Work due to the character of the improvement and uncertainties which may be encountered during construction. If alternate Bids are requested for a portion of or all of the Work, Bidders shall submit alternate Bids for all alternate(s) the Bidder or its Subcontractor is qualified to perform. Award shall be based on the lowest responsive and responsible Bid for the base Bid plus the amount added or deleted for the alternate bid items selected by the Owner. The alternates selected shall be at the sole discretion and in the best interests of the Owner.

11. Submission of Bids

- 11.1 Bids shall be submitted in **the City's eProcurement Portal**, and accompanied by the bid guarantee and other required documents. The Bid may not be changed by markings on the envelope. Only the amounts indicated on the Bid form will be considered in determining the final Bid amount.
- 11.2 It will be the responsibility of Bidder to see that its Bid is submitted to the Owner by the specified time and date. There will be no exceptions. Phone or telegraphic bids (including FAX) will not be accepted. **If City Hall is closed for business at the time and date the bid is due Bidders are responsible for submitting the bid; however, the bids will be opened the next business day.**
- 11.3 When a license is required, the Bidder shall include in its Bid: "VIRGINIA LICENSED CONTRACTOR NO. ____" (Ref. Title 2.2, Chapter 43, and Title 54.1, Chapter 11, Code of Virginia).
- 11.4 When a license is not so required and a person who is not the holder of a License enters a Bid, such

person shall include in its Bid: "LICENSING NOT REQUIRED UNDER VIRGINIA STATE CODE."

- 11.5 The Bidder shall complete and submit the Debarment Certification section.
- 11.6 The Bidder shall complete and submit the Certificate of Compliance with Immigration Laws and Regulations form.
- 11.7 The Bidder shall complete and submit the Non Collusion Affidavit form.
- 11.8 The Bidder shall complete and submit a Bid Surety/Bid Bond: A bidder's bond or certified check in the amount of five percent (5%) of the amount bid shall accompany any bid in excess of \$100,000.00 for the bid to be acceptable. The original copy of the certified check must be delivered to the Office of Purchasing. A copy of the bidder's form is included by attachment.**

12. Receipt and Opening of Bids

- 12.1 Bids will be opened publicly at the time and place and under the conditions stated in the Invitation for Bids. The Owner's Representative whose duty it is to open Bids will decide when the specified time has arrived. The official time and date used in the receipt of the Bids is that time and date **electronically** stamped by the **Owner's eProcurement Portal** when the Bid is submitted. **Bids cannot be submitted after the due date and time.** No responsibility will be attached to any such person for the premature opening of a Bid not properly addressed and identified. It is the responsibility of the Bidder to assure that the Bid is delivered to the designated place of receipt prior to the time set for the receipt of Bids.
- 12.2 Bids will be opened and read aloud publicly.

13. Bids to Remain Subject to Acceptance

- 13.1 All Bids shall remain subject to acceptance for 90 Days after the day of the Bid opening, but the Owner may, in its sole discretion, release any Bid and return the Bid Security prior to that date, or extend the acceptance period **for up to** an additional 90 days with the consent of the apparent low Bidder and surety.

14. Withdrawal of Bids

- 14.1 **Bidder may withdraw their bid prior to the due date and time by selecting "Unsubmit Proposal" in the City's eProcurement Portal.**
- 14.2 **A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The bidder shall give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein. The work papers, documents, and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or**

proprietary information subject to the conditions of section 2-557.2(f) of the Code of the City of Newport News.

- 14.3 Should the Bidder refuse to enter into the Agreement after notification of award, the Bid Security shall be forfeited.
- 14.4 No Bid may be withdrawn under this section when the result would be the awarding of the Agreement on another Bid to the same Bidder or to another Bidder in which the ownership of the withdrawing Bidder is more than five percent.
- 14.5 If a Bid is withdrawn under the authority of this section, the remaining Bids shall be evaluated to determine the lowest responsive and responsible Bidder.
- 14.6 No Bidder who is permitted to withdraw a Bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom awarded, or otherwise benefit, directly or indirectly, from the performance of the Project for which the withdrawn Bid was submitted.
- 14.7 **The purchasing agent shall notify the bidder in writing within five (5) business days of his decision regarding the bidder's request to withdraw its bid. If the purchasing agent denies the withdrawal of a bid under the provisions of this section, he shall state in such notice the reasons for his decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the purchasing agent shall return all work papers and copies thereof that have been submitted by the bidder.**

15. Evaluation of Bids

- 15.1 **In evaluating Bids, the City shall evaluate per City Code Sec. 2-563. - Award of contract to lowest, responsive, responsible bidder.**

The purchasing agent shall award contracts governed by this division to the lowest responsive, responsible bidder. When the terms and conditions for multiple awards are provided in the invitation for bids, awards may be made to more than one (1) bidder. In determining the lowest responsive, responsible bidder, in addition to price, the agent shall consider:

- (1) The ability, capacity and skill of the bidder to perform the contract or provide the service required.**
- (2) Whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay or interference.**
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.**
- (4) The quality of performance of previous contracts or service.**
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service.**
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.**
- (7) The quality, availability and adaptability of the supplies or contractual services to the particular use required.**
- (8) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.**
- (9) The number and scope of conditions attached to the bid.**

- 15.2 The Owner may consider the qualifications and experience of subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment) proposed for those portions of the Work for which the identity of Subcontractors and other persons and organizations shall be submitted as specified in the Bid Documents.
- 15.3 The Owner may conduct such investigations as deemed necessary to establish the responsibility, qualifications and financial ability of the Bidders, proposed Subcontractors and other persons and organizations to do the Work in accordance with the Bid Documents to the Owner's satisfaction within the prescribed time.
- 15.4 Bids will be based upon the estimated quantities shown in the Bid form. Bids will be compared on the basis of a total computed price; arrived at by taking the sum of the estimated quantities of each Bid Item, multiplied by the corresponding unit price bid, and any lump sum Bids on the individual items. Discrepancies between the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of words. The right to reject any or all Bids or to accept any Bid considered of advantage to the Owner is reserved.
- 15.5 Unless all Bids are canceled or rejected, the Owner reserves the right granted by Section 2- **563.2 of the Code of the City of Newport News** to negotiate with the lowest responsible, responsive Bidder to obtain a Contract Price within the funds budgeted for the construction project. Negotiations with the lowest Bidder may include both modification of the Contract Price and the Scope of Work/Specifications to be performed. The Owner shall initiate such negotiations **with** the lowest responsible, responsive Bidder that its Bid exceeds the available funds and that the Owner wishes to negotiate a lower Contract Price. The Owner and the lowest responsible, responsive Bidder shall agree to the times, places, and manner of negotiations.
- 15.6 The acceptance of a Bid will be a notice in writing, signed by the Owner, and no other act shall constitute the acceptance of a Bid.
- 15.7 The Owner reserves the right to waive informalities as defined in **the Code of the City of Newport News Section 2-564 (b)** in the Bid, to reject any/or all Bids, to award any Bid in whole or in part, and to award the Bid considered to be in the best interest of the Owner.
- 15.8 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder had an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 15.9 The City reserves the right to reject any and all bids, including if the City determines that any of the bid prices are significantly unbalanced to the potential detriment of the City, and to waive any informality, if it is determined to be in the best interest of the City.
- 16. Qualifications of Bidders and Subcontractors**
- 16.1 **Questions from** the Contractor's Questionnaire **are** included in **the City's eProcurement Portal**. This information will assist the Owner in investigations and determination of the Contractor's qualifications to perform the Work.
- 16.2 To demonstrate their qualification to perform the Work, each Bidder shall be prepared to submit further written satisfactory evidence that the Bidder has sufficient experience, necessary capital, materials, machinery and skilled workers to complete the Work. If financial statements are required they shall be of such date as the Owner shall determine and shall be prepared on forms acceptable to the Owner. The Owner may make such investigations as deemed necessary to determine the ability of the Bidder to perform the Work. The Owner's decision or judgment on these matters shall

be final, conclusive and binding.

- 16.3 The Bidder shall, submit to the Owner a list of all Subcontractors who will be performing Work on the Agreement **at such time and date directed by the Owner**. Such list shall be accompanied by an experience statement with pertinent information as to similar projects and other evidence of experience and qualification for each such Subcontractor, person and organization. If the Owner, after due investigation, has reasonable objection to any proposed Subcontractor, other person or organization, the Owner may, before giving the Notice of Award, request the apparent low Bidder to submit an acceptable substitute without an increase in Bid price. If the apparent low Bidder declines to make any such substitution, the contract shall not be awarded to such Bidder, but his declining to make any such substitution will not constitute grounds for sacrificing his Bid Security. For any Subcontractors, other person or organization so listed and to whom Owner does not make written objection prior to the giving of the Notice of Award, it will be deemed the Owner has no objection.
- 16.4 By submitting their Bid, Bidders certify that they are not now debarred by the Federal Government or by the Commonwealth of Virginia or by any other state, or by any town, city, or county, from submitting Bids, nor are they an agent of any person or entity that is now so debarred.
- 16.5 If the Bidder is organized as a stock or nonstock corporation, a limited liability company, a business trust, or a limited partnership, or is registered as a registered limited liability partnership, the Bidder must be authorized to transact business in the Commonwealth as a domestic or foreign entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law. The Bidder shall include the identification number issued by the State Corporation Commission on the Bid or describe why the Bidder is not required to be so authorized. Any Bidder failing to do so shall not be awarded the Contract unless the Owner issues a waiver of this requirement and administrative policies and procedures are established by the locality. If the Bidder allows its existence to lapse, or its certificate of authority or registration to transact business in the Commonwealth of Virginia to expire, or be revoked or cancelled, such will be deemed as an act of default enabling the Owner to all remedies for default, including but not limited to revocation of this Agreement.

17. Sham or Collusive Bids

- 17.1 The Bids of any Bidder or Bidders who engage in collusive bidding shall be rejected. Any Bidder who submits more than one Bid in such a manner as to make it appear that the Bids submitted are on a competitive basis from different parties shall be considered a collusive Bidder.
- 17.2 The provisions contained in **Sec. 2-580 through Sec. 2-584, City Code**, shall be applicable to all contracts solicited or entered into by Owner. By submitting their Bids, all Bidders certify that their Bids are made without collusion or fraud, and that they have not offered or received any kickbacks or inducements from any other Bidder, Supplier, manufacturer or subcontractor in connection with their Bid, and they have not conferred with any public employee having official responsibility for this procurement transaction, any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

18. Time of Essence

- 18.1 As the provisions hereof relating to the time for performance and completion of the Work are for the purpose of enabling the Owner to proceed with the construction of public improvements in accordance with pre-planned programs, such provisions are of the essence.

19. Immigration Reform and Control Act of 1986

- 19.1 By submitting their **bid**, Bidders certify that they do not, and will not during the performance of

this contract, employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.

- 19.2 All Bidders must submit a completed Certification of Compliance with Immigration Laws and Regulations form with their Bid.

20. Notice of Required Disability Legislation Compliance

- 20.1 The Owner is required to comply with State and Federal disability legislation:

- 20.2 The Rehabilitation Act of 1973, Section 504, the Americans with Disabilities Act (ADA) of 1990, Title II and the Virginians with Disabilities Act of 1990. Specifically, the Owner may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II or the ADA, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973, Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the ADA. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973, Section 504.

II. BID FORM (Completed form must be submitted as bid cover page)



Bids to be opened: X:XX p.m., Month Date, Year or Addendum Date
 Work to be completed in: ___ Days (Substantial), ___ Days (Final)
 Liquidated Damages: \$_____ per calendar day after
 time for Substantial Completion has expired.
 \$_____ per calendar day after time
 for Final Completion has expired.
 Performance Bond: 100%
 Payment Bond: 100%
 Bid Security: 5%
 DBE Goal: _%

TO: City of Newport News
 Office of Purchasing
 City Hall - Fourth Floor
 2400 Washington Avenue
 Newport News, Virginia 23607

A. BID PRICE

In compliance with the Bid Documents titled, IFB#XX-XXXX-XXXX, Project Name, and all Addenda issued to date all of which are part of this Bid, the undersigned hereby proposes to furnish all items including materials, supervision, labor, and equipment in strict accordance with Contract Documents for the sum of:

Line No.	Item Description	Quantity or Estimated Annual Quantity	Unit of Measure	Unit Price	Extended Price (Quantity multiplied by Unit Price)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
				TOTAL BID	

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities provided, determined as provided in the Contract Documents. The prices quoted shall include without exception all materials, supervision, labor, equipment, appliances, clean-up, incidental items, applicable sales, use and other taxes, insurance, building permit or fees, and the Contractor's labor, overhead, profit, mobilization and other mark-ups, and in full accordance with the Contract Documents. Include allowance for waste where appropriate. The unit prices shall be maintained throughout the Contract Time. Unit prices shall be used in determining additions or deductions from the total Contract Price in the event of changes due to unforeseen conditions in the Work.

AWARD CLAUSE: The City will make the award on Total Bid to the lowest responsive and responsible bidder. The City reserves the right to conduct any test it may deem advisable and make all evaluations. The City also reserves the right to reject any or all bids, to award whole or in part, and to waive informalities prior to making the award, whenever it is deemed to be in its best interest.

Bid Items: (Descriptions and Measure of Payments):

Item 1. Mobilization/Demobilization

Item 2.

Item 3

Item 4.

Item 5.

Item 6

Item 7.

Item 8.

Bid Notes:

1.

2.

B. ADDENDA

The undersigned acknowledges receipt of the following addenda:

Addendum No. _____	Dated: _____
Addendum No. _____	Dated: _____
Addendum No. _____	Dated: _____
Addendum No. _____	Dated: _____
Addendum No. _____	Dated: _____

C. We agree to enter into an Agreement with the City of Newport News, Virginia within seven (7) days of the notice of award for the price named in our Bid.

D. It is expressly agreed by us that the City of Newport News, Virginia shall have the right to reject any and all Bids and to waive any minor non-substantive errors in the Bid and accept the Bid in the City of Newport News best interests.

E. In default of the performance on our part of the conditions of Bid, our failure to enter into an Agreement with the City of Newport News, Virginia, within the time above set, we herewith furnish a Bid Bond in the amount of \$ _____, which shall be absolutely forfeited to the City of Newport News, Virginia.

F. We agree to begin Work at any time we may be notified by the Owner, and complete all of the Work embraced in the Agreement within _____ days;

G. [This applies to projects over \$200,000 unless otherwise indicated]. I/We elect to utilize the Escrow Account Procedure described in the provision of this bid if determined to be the successful low Bidder. _____ (write "Yes" or "No")
_____ Bid total does not qualify for escrow account option

H. The undersigned has read all sections under "Instructions to Bidders."

I. By signing, each signatory acknowledges any strike-throughs contained herein, unless handwritten.

J. Contractor's Registration, SCC Number and Signature

Registered Virginia Contractor Class and No. _____

Registration Expires _____

State Corporation Commission (SCC) Number _____

(NOTE: Failure to include Contractor's registration and SCC Number are grounds for rejections of the bid.)

Contractor _____ Signed _____

Date _____ Title _____

NOTE: If Bidder is a corporation, write state of incorporation under signature.

Mailing Address and Telephone/E-Mail/Fax Number of Bidder:

() Telephone; E-mail; Fax

If Corporation, Provide Name and Mailing Address as required below.

President

Secretary

Treasurer

If Partnership, Proprietorship, Limited Liability Company or other Firm, Provide Name and Mailing Address of each partner, Proprietor, or member of Firm.

Information Gathered Electronically

K. NON COLLUSION AFFIDAVIT (Return with Submittal)

City of Newport News project: _____
(insert project description)

_____ Bid Date: _____

COMMONWEALTH OF VIRGINIA
(City/County)

This day personally appeared before the undersigned, a Notary Public in and for the
City/County and State aforesaid,

_____ who having been first duly sworn according to law, did
depone and aver as follows:

(a) That he/she is _____
(Owner, Partner, President, etc.)

of _____
(insert name of Bidder)

(b) That he/she is personally familiar with the Bid of _____
(insert Company Name)

submitted in connection with the above captioned Owner's project.

(c) That said Bid was formulated and submitted in good faith as the true bid of said
Bidder.

1. In preparation and submission of this Bid, the Bidder did not either directly or indirectly, enter into any combination or agreement with any person, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman act (15 U.S.C. Section 1) or sections 59.1-9.1 through 59.1-9.17 or sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.

2. The undersigned Bidder hereby certifies that neither this Bid nor any claim resulting therefrom, is the result of, or affected by, any act of collusion with, or any act of another person or persons, firm or corporation engaged in the same line of business or commerce; and that no person acting for or employed by the Owner has any personal interest in this Bid.

3. The undersigned hereby further agrees that upon request of the Owner, the records and books pertaining to this Bid will be voluntarily supplied, furnished, and released to the Owner.

4. The undersigned hereby further certifies that the Bidder has not knowingly falsified, concealed, misled, or covered up by any trick, scheme, or device a material fact in connection with this bid. The undersigned also certifies that the Bidder has not made any false, fictitious or fraudulent statements or representations or made or used any false writing or documents knowing the same to contain any false, fictitious or fraudulent statement or entry in connection with this Bid.

5. The undersigned further agrees that the Bidder will comply with section 2.2-4374 of the Code of Virginia, 1950, as amended, and has not bought or purchased any equipment from any person employed by the Owner as an independent contractor to furnish architectural or engineering services for this Project, nor from any partnership, association or corporation in which such architect or engineer has a pecuniary interest.
6. The undersigned further agrees to inform and require compliance by the following persons and entities with this anti-collusion statement as a condition of payment: all subcontractors, consultants, subconsultants, or any person, corporation, or legal entities that provide or furnish labor, material, equipment, or Work related to this project.
7. All Covenants and Agreements made by the Contractor are made by it on behalf of the Contractor and its successors, personal representatives and assigns, the same as if they had been specifically named in each instance.

And further this deponent sayeth not.

Name of Company/Bidder

Title (Owner, Partner, President)

Subscribed and sworn to before me this _____ day of _____, 20____

My commission expires: _____, 20____

III. BID BOND (City Form, Must be submitted with bid, if applicable)

KNOW ALL MEN BY THOSE PRESENT: That we, the undersigned:

_____, _____ as Principal, and _____

as Surety, acknowledge ourselves held and firmly bound unto the City of Newport News, Virginia, in the just and full sum of five percent (5%) of the maximum amount of accompanying bid for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

WHEREAS, the Principal has submitted a bid, dated _____, 20____, **Project Name, IFB#XX-XXXX-XXXX.**

NOW, THEREFORE, if the Oblige shall accept the bid of the Principal and the Principal shall enter into a contract with the Oblige in accordance with such bid and give bond with good and sufficient surety for the faithful performance of such contract, or in the event of the failure of the Principal to enter into such contract and give such bond, if the Principal shall pay to the Oblige the difference, not to exceed the penalty hereof, between the amount specified in said bid and the amount for which the Oblige shall legally contract with another party to perform the work covered by said bid, if the latter shall be in excess of the former, then this obligation shall be null and void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused their corporation names and seals, respectively, to be hereunto subscribed and affixed by their officers in that behalf duly authorized this _____ day of _____.

CONTRACTOR

BY _____
SEAL

ATTEST:

SURETY

BY _____
SEAL

ATTEST:

Resident Virginia Agent of Surety

Submit with Power of Attorney

IV. QUESTIONNAIRE (Return with Submittal)

The following questions shall be answered in full and returned with the bid failure to submit may result in a determination of non-responsive.

1. Name of Company: _____
Trade Name (if different from Company Name): _____
Principal Office Address: _____

Telephone No(s): _____
Fax No(s): _____

Is business a Small Business, Women-Owned and Minority-Owned (SWAM) firm?

☐ Yes ☐ No

If you are a SWAM firm please indicate type(s) below:

Small Business ☐ Woman-Owned ☐ Minority-Owned ☐

Service Disabled Veteran (SDV) ☐

Disadvantaged Business Enterprise (DBE) Federal Designation ☐

Certification by (SBSD, Other U.S. State Entity, Local Government, etc.):

attach certificate if available

- a. If a Corporation, answer the following:

When Incorporated: _____

In what State: _____

Name and Address of Directors: _____

Name and Address of Shareholders: _____

- b. If an Unincorporated Organization, answer the following:

Date of Organization: _____

Name and Address of Owners or Members: _____

Type and State of Organization: _____

- c. If a Partnership, state whether Partnership is General or Limited: _____

Name and Address of Owners or Partners:

2. a. How many years has this Bidder been in business as a Contractor under its present business name? _____
- b. What are prior names of this Bidder, if any? _____

3. How many years' experience in this type of construction work has this Bidder had:

a. As a Contractor _____ b. As a Subcontractor _____

4. Provide a list of uncompleted Contracts at present held by this Bidder (attach supplemental sheet if necessary):

<u>Contract</u>	<u>Type of Work</u>	<u>Amount</u>	<u>Percentage Completed</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

5. List the Bidder's crew foremen and supervisors proposed for this Project and their years of related experience:

<u>Name</u>	<u>Years of Experience</u>	<u>Dates of Employment With Bidder</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. What construction equipment does this Bidder own that is available for the proposed Work (attach supplemental sheet if necessary)?

7. Does this Bidder plan to subcontract any part of this work? If so, list name, address, years of experience, type, and amount of work to be performed by each subcontractor:

In the spaces below, state the anticipated dollars that you intend to subcontract to each business type if a contract is awarded to your firm. (If you do not intend to sub-contract any work to others, even if you are a SWAM business enterprise, put zeros in the spaces below).

Total dollars to be sub-contracted:

Company Name:

Total Small Business	\$ _____	_____
Total Woman-Owned	\$ _____	_____
Total Minority-Owned	\$ _____	_____
Total SDV Dollars	\$ _____	_____
Total DBE Dollars	\$ _____	_____

RESOURCES

For your reference a link to the Virginia Department of Supplier Diversity (SBSD) SWAM Directory is provided here: <https://www.sbsd.virginia.gov/directory/>

Other Resources

National Minority Supplier Development Council	www.nmsdc.org
Carolina-Virginia Minority Supplier Diversity	www.cvmsdc.org
Small Business Administration	www.sba.gov

Offerors and potential subcontractors are encouraged to communicate and collaborate using the B2B Connect through the B2B Connect tab on the solicitation webpage on eVA. This a tool to aid in establishing prime and subcontractor relationships.

8. Provide a list of projects similar in character and scope to the Work specified under this Contract which have been successfully completed by this Bidder and proposed subcontractors or employees with principal roles in this contract during the past three years (attach supplemental sheet if necessary).

(The term "completed" means accepted and final payment received from the Owner or authorized representative).

Location and Type of Work	Owner's Name/ Address	Contact Person (Name and Telephone)	Date Completed	Contract Price
------------------------------	-----------------------------	---	-------------------	-------------------

9. Have you ever performed work for a municipal corporation, local governing body, or similar agency previously? (If all such bodies are listed under 8, this question need not be completed).

10. a. Has this Bidder ever failed to complete any work awarded to it? _____ If yes, give name of Owner, name of Bonding Company and circumstances:

b. Is the Bidder debarred by the Federal Government or by the Commonwealth of Virginia or by any other state, or by any town, city or country?:
Yes _____ No _____ If yes, please provide details:

c. Has this Bidder ever had any judgements entered against it for the breach of contract for construction? _____ If yes, please provide details:

d. **If requested by the Owner, Give a summary of your financial statement with the bid of requested.** (List assets and liabilities, use an insert sheet, if necessary).

11. State approximate largest dollar volume of work performed by this Bidder in one year:

12. Give two (2) Banking Institution References:

a. Name:

Address:

Credit Available:

b. Name:

Address:

Credit Available:

13. List three material suppliers and amount of credit available:

14. List insurance coverage and amount (or attach certificate of insurance):

Liability-Property

Liability-Personal Injury

Vehicle and Equipment

Other - Identify

15. Bonding reference - List surety company and highest coverage:

16. Have you or your authorized representative, personally inspected the location of the proposed Work, and do you have a clear understanding of the requirements of the Bid Documents?

The undersigned hereby authorizes and consents to any person, firm or corporation to furnish any information requested by the Owner in verification of this statement of contractor's qualifications. Also, if it is the apparent low Bidder, the undersigned hereby agrees to furnish the Owner upon request, a complete and current financial statement:

Contractor:

By:

Title:

Date:

Information Gathered Electronically

V. CERTIFICATION REGARDING DEBARMENT (Must be submitted with the bid.)

This is to certify that this person/firm/corporation is not now debarred by the Federal Government or by the Commonwealth of Virginia or by any other state, or by any town, city, or county, from submitting Bids, nor are they an agent of any person or entity that is now so debarred.

Name of Official

Title

Firm or Corporation

Date

Information Gathered Electronically

VI. CERTIFICATION OF COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS (Must be submitted with the bid.)

Section 2.2-4311.1 of the Code of Virginia every public body to provide in every written contract that the Contractor does not, and shall not, during the performance of the contract knowingly employ an unauthorized alien in violation of federal immigration laws and regulations. These laws include the Federal Immigration Reform and Control Act, which makes it unlawful for a person or other entity to hire, recruit or refer for a fee for employment in the United States, an alien knowing the alien is unauthorized, and Section 40.1-11.1 of the Code of Virginia, which makes it unlawful for any employer to knowingly employ an alien who cannot provide documents indicating that he or she is legally eligible for employment in the United States. The state law, in particular, places an affirmative duty on employers to ensure that aliens have proof of eligibility for employment.

Accordingly this certification shall be completed and attached to all contracts and agreements for goods and services made by the City of Newport News or any of its boards and commissions. **This certification is hereby incorporated into the contract documents.**

Type or print legibly when completing this form.

Legal Name of Contractor: (Note: This is your name as reported to the IRS. This should match your Social Security card or Federal ID Number.)

Type of Business Entity:

Sole proprietorship (Provide full name and address of owner):

Limited Partnership (Provide full name and address of all partners):

General Partnership (Provide full name and address of all partners):

Limited Liability Company (Provide full name and address of all managing members):

Corporation (Provide full name and address of all officers):

Doing Business As:

If Applicable (Note: This is the name that appears on your invoices but is not used as your reporting name.)

Name and Position of Person Completing this Certificate:

Physical Business Address:

Primary Correspondence Address (If different from physical address):

Number of Employees:

Are all Employees Who Work in the United States Eligible for Employment in the United States?

Under penalties of perjury, I declare on behalf of the Contractor listed above that to the best of my knowledge and based upon reasonable inquiry, each and every one of the Contractor's employees who work in the United States are eligible for employment in the United States as required by the Federal Immigration Reform and Control Act of 1986 and Section 40.1-11.1 of the Code of Virginia. I further declare on behalf of the Contractor that it shall use due care and diligence to ensure that all employees hired in the future who will work in the United States will be eligible for employment in the United States. I affirm that the information provided herein is true, correct, and complete.

Sworn this _____ day of _____, 20____ on behalf of _____ as evidenced by the following signature and seal:

Name of Contractor: _____

Printed Name of Signatory: _____

Signature: _____

Date: _____

COMMONWEALTH OF VIRGINIA:

CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____

_____,
20____, by _____.

Notary Public

Registration No.: _____

My commission expires: _____

VII. SAFETY CERTIFICATION FORM (Must be submitted with bid.)

Project Title: _____

Bid No.: _____

Name of Firm: _____

Project Safety Responsibility (Name): _____

Telephone Number: _____

Cell Number: _____

Email: _____

Emergency Contact (Name): _____

Bid No.: _____

Telephone Number: _____

Cell Number: _____

Email: _____

The undersigned hereby attests that the project has been carefully evaluated for the safety risks it presents and all safety procedures required based on these risks by Virginia Occupational Safety & Health, referenced in the Bid document, will be implemented. Virginia Occupational Safety & Health and all other applicable Federal, State and local laws referenced in the Bid document, will be implemented. All workers on this project will be properly trained on the use of safety equipment and safe work practices.

By: _____

(Type Name and Title)

(Signature)

(Date)

End of Section

SECTION 103

AWARD AND EXECUTION OF AGREEMENT

I. AWARD AND EXECUTION OF AGREEMENT

1. Notice of Award.

- 1.1 The Owner reserves the right to waive any informalities, to reject any and all Bids in whole or in part, and may advertise for new Bids if, in its judgment, the best interests of the Owner will be served.
- 1.2 **A Notice of Award will be posted with the original solicitation on the City's eProcurement Portal (<https://secure.procurenow.com/login>). A direct link to City of Newport News solicitations and related awards on the City's eProcurement Portal is located at www.nnva.gov/691 or from the Office of Purchasing webpage (www.nnva.gov/purchasing) by selecting *Solicitations* from the left side bar.**

2. Signing of Agreement.

- 2.1 When the Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by a **copy** of the Agreement. Within 7 Days thereafter the Contractor shall sign and deliver all the **copies** of the Agreement and attached documents to the Owner with the required **Bonds**, Certificate of Insurance and Safety Certification Form. Within 30 Days thereafter the Owner shall deliver one fully signed copy to the Contractor. **Please note that the City uses DocuSign to obtain signatures on contracts/agreements. The individual who signed the bid or an authorized signature authority will receive an email requesting electronic signature on the contract.**
- 2.2 If the Successful Bidder fails to execute the Agreement within the time specified, the amount of Bid Security shall be paid to the Owner. In such case the Owner, at its discretion, may award the Work to the second Successful Bidder, or reject all Bids.

3. Performance and Payment Bonds.

- 3.1 The Successful Bidder shall execute and provide to the Owner, within 7 Days following Notice of Award, Performance and Payment Bonds with surety in an amount equal to 100% of the accepted Bid. The sureties of all Bonds shall be of such surety company or companies as are approved by the Owner and are authorized to transact business in the Commonwealth of Virginia. If the execution is by an attorney-in-fact, a power of attorney evidencing the authority of such attorney shall be attached to the Bond. Such power of attorney shall bear the same date as the Bond to which it is attached.
- 3.2 All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws and Regulations and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U. S. Treasury Department.
- 3.3 Performance and Payment Bonds shall remain in full force during the warranty period defined in Section 107, VII.

4. Contractor's Insurance

- 4.1 The Contractor shall provide and keep in full force and effect during the performance of the Work the kinds and amounts of insurance specified in Section 4.2 below and shall comply with all other

provisions of this Section. Such insurance shall be provided and kept in full force by insurance companies licensed to do business in the Commonwealth of Virginia (to the extent that the Commonwealth licenses each of the specific lines of insurance required herein), and regulated by the Virginia Bureau of Insurance. To the extent that the Commonwealth does not license a specific line of insurance required herein, the company providing that type of coverage shall be authorized to do business in the Commonwealth and regulated by the Virginia Bureau of Insurance. All premiums and other costs of such insurance shall be paid by the Contractor. It will be assumed that the consideration paid or to be paid to the Contractor for the performance of the Work includes the premiums and other such costs of such insurance, and the Owner shall not be responsible therefore. Prior to the Owner's execution of the Contract, the Contractor shall furnish a certificate(s) of insurance evidencing the coverages required below in Section 4.2. The Contractor shall not be required to furnish the Owner with copies of the insurance contracts required by this Section unless requested from time to time by the Owner

Contractor shall also provide Owner with a copy of an endorsement to all insurance contracts evidencing the required coverage. Contractor shall also provide Owner with not less than 30 days' notice of the termination or cancellation of any insurance contract.

4.2 Insurance Requirements:

- A. The Contractor shall purchase and maintain during the life of the Contract such comprehensive general liability insurance including product and completed operations liability insurance as will provide protection from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether such performance is by Contractor, or by Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and shall otherwise bear responsibility therefore. The Contractor further agrees that all limits will be made available which are excess of the amounts below:

- 1) Worker's Compensation and Employer's Liability

Coverage A - Statutory

Coverage B - \$100,000/\$100,000/\$500,000

A broad form of all states endorsement shall be attached.

Alternate Employer Endorsement

- 2) Commercial Auto Liability Including Hired and Non-Owned Car Liability Coverage

Limit of Liability - \$1,000,000 Per Occurrence

The Contractor shall purchase and maintain during the life of this Agreement such commercial automobile liability insurance including employer's non-ownership liability and hired car liability insurance to protect Contractor and any Subcontractors performing Work covered by this Agreement from claims for damages, whether such operations be by him or any Subcontractor, or by anyone directly or indirectly employed by either of them.

- 3) Commercial General Liability Including Contractual and Completed Operations.

Limit of Liability - \$1,000,000 Per Occurrence

- 4) Umbrella Liability Including Employers Liability, Commercial Auto Liability and Commercial General Liability.

Limit of Liability - \$5,000,000 Per Occurrence \$5,000,000 Aggregate

5) Builder's Risk Insurance.

The Contractor shall purchase and maintain builder's risk insurance for all new construction. The Contractor shall provide builder's risk coverage on the full insurable value of the Work.

6) **Pollution Coverage, if applicable**

7) **Marine Liability coverage – if applicable**

- B. The Contractor shall be responsible for securing the Work site and shall assume all risk for vandalism or other damage that may occur, to project components, during construction.
- C. The Owner shall be named as an additional insured on the Commercial General Liability per ISO 2010 or equivalent on a primary basis unless the policy language includes the Owner as an additional insured. **The Owner shall also be named as an additional insured under the completed operations hazard.** The Contractor shall obtain a waiver of subrogation from its insurers on Worker's Compensation and All Risk Insurance policies. This requirement may be satisfied by obtaining appropriate endorsements to any master or blanket policy of insurance maintained. Owner's Commercial General Liability shall not contribute in any loss payment insured under the Contractor's Commercial General Liability policy.
- D. Contingent liability and property damage insurance to protect the Owner (or his employees and agents, including the Engineer) shall be provided by endorsements to general liability or property damage policies. All aforesaid policies shall be endorsed to provide that the insurance company shall notify the Owner if policies are to be terminated or altered during the life of the contract.
- E. The General Liability insurance shall carry a contractual liability endorsement covering the hold harmless agreements contained in the Owner standard contract and the certificates filed with the Owner shall show that the contractual liability coverage has been obtained.
- F. Insurance coverage for personal injury and property damage, including insurance on vehicles and equipment, shall be in the same company.
- G. The Contractor shall also be required to submit to the Owner evidence of insurance coverage or self-insurance for all claims arising under the Worker's Compensation Laws of the State of Virginia.
- H. The Contractor shall submit proof that the Owner will receive thirty (30) days' written notice prior to cancellation of the commercial general liability, commercial auto liability, umbrella liability, worker's compensation, and builder's risk insurance policies. Where cancellation is due to non-payment of premium, the Owner will accept written notice that is given at least ten (10) days prior to cancellation of the insurance policy.
- I. **If the project, which the Contractor undertakes may create environmental damage, the Contractor is required to provide insurance against such loss, with the City named as an additional insured.**

5. **Safety Certification Form**

- 5.1 The Contractor shall submit a Safety Certification Form that includes the following information:
- A. The name and phone number of the individual who will be responsible to ensuring all applicable safety procedures are followed and personal protective equipment is used on the project site.
 - B. The name and phone number of the individual who should be contacted in the event of an emergency.
 - C. The Safety Certification Form is included in the **City's eProcurement Portal**.

II. NOTICE OF AWARD (May be as shown or in another format, including digital as presented by the City.)

TO: _____

PROJECT TITLE: _____

The Owner has considered the Bid submitted by you for the above described Work in response to its Invitation for Bids dated _____, 20____, and Instructions to Bidders.

You are hereby notified that your Bid has been accepted for the Work in the amount of \$_____.

You are required by the terms of the Bid Documents to fully execute and return _____ copies of the Agreement along with the required Contractor's Performance Bond, Payment Bond, and Certificates of Insurance within _____ Days from the date of this Notice of Award.

If you fail to execute the Agreement and to furnish said Bonds and Certificate of Insurance within _____ Days from the date of this Notice, said Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Bid as abandoned and as a forfeiture of your Bid Security. The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the Owner. The notice of award shall not be construed as notice to proceed.

Dated this _____ day of _____, 20____.

OWNER

Owner
By: _____
Name
Title: _____

CONTRACTOR

Contractor
By: _____
Name
Title: _____

III. AGREEMENT (Sample)

No.: _____

This AGREEMENT, dated this _____ day of _____, 20____, by and between _____ hereinafter called the Owner; and _____ (a corporation or an unincorporated organization organized and existing under the laws of the State of _____ or, an individual trading under the above name) hereinafter called the Contractor.

WITNESSETH: The Owner and Contractor, for the consideration stated herein, agree as follows:

A. Scope of Work

The Contractor shall perform all required Work and shall provide and furnish all labor, materials, necessary tools, expendable equipment and utility and transportation service and all else required to complete the construction of the _____ project all in strict accordance with the Drawings and Specifications, including any and all Addenda, and in strict compliance with the Contract Documents, the terms of which are incorporated herein by reference.

It is understood and agreed that said labor, materials, tools, equipment and service shall be furnished and said Work performed and completed under the direction and supervision of the Contractor and subject to the approval of the Owner or its authorized representative.

B. Engineer

In the event the Owner, **at any time and in the Owner's sole discretion** should not require the services of the Engineer for any or all parts of the project, the power, duties, and responsibilities conferred hereto to the Engineer shall be construed to be those of the Owner or its authorized representative.

Wherever references are made in these Bid Documents to the Virginia Department of Transportation (VDOT) specifications, unless otherwise noted, references in the VDOT specifications to "State", "Chief Engineer", or "Department", shall be interpreted as referring to the Owner.

C. Guarantee

All materials and equipment, furnished by the Contractor, and all construction involved in this Agreement are hereby guaranteed by the Contractor to be free from defects owing to faulty materials or workmanship for a period of one year after date of **Final** Completion of the Work. All Work that proves defective, by reason of faulty material or workmanship within said period of one year, shall be replaced by the Contractor free of cost to the Owner. These guarantees shall not operate as a waiver of any of the Owner's rights and remedies for default under or breach of the Agreement which rights and remedies may be exercised at any time within the period of any applicable statute of limitations.

D. Contract Price

The Owner shall pay the Contractor as just compensation for the satisfactory performance of the Work, subject to any additions or deductions as provided in the Contract Documents, the unit and/or lump sum price as contained in the Bid Schedule attached hereto.

The Contract Price is _____ (\$ _____) based upon unit and/or lump sum prices extended as herein contained.

No contract which has been approved by the city council, the city manager, or his designee, may be modified or changed by amendment, change order, or any other agreement without the prior approval of the city council, the city manager, or his designee, unless (i) such modifications, in the aggregate, do not increase the amount of the contract by more than twenty-five (25) percent of the original amount of the contract or fifty thousand dollars (\$50,000.00), whichever is greater, (ii) such changes are the result of unforeseen circumstances or changed conditions encountered during the progress of the performance of the contract, and (iii) such changes are directly related to the performance of the purpose of the contract.

E. Payments

The Owner will pay the Contract Price to the Contractor in the manner and at such times as set forth in Section 109 of the Hampton Roads Planning District Commission *Regional Construction Standards*, Sixth Edition, as referenced in Section I. below and as specifically revised for this Project.

F. Time

The undersigned Contractor agrees to commence Work within **10** Days after the date of Notice to Proceed and further agrees to Substantially Complete all Work under this Agreement within _____ Days from the date of the Notice to Proceed and to reach Final Completion of all Work under this Agreement within _____ Days from the date of Substantial Completion.

G. Applicable Law/Compliance

1) Applicable Law

This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters of validity, interpretations, obligations, performance, or otherwise, exclusively by the laws of the Commonwealth of Virginia and the Newport News City Code, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

2) Compliance with all Laws

Contractor shall comply with all federal, state and local statutes, ordinances, and regulations, now in effect or hereafter adopted, in the performance of Work set forth herein. Contractor represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional license and permits necessary for performance of this Agreement prior to the initiation of Work. [If the Contractor is a corporation] Contractor further expressly represents that it is a corporation in good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of the contract. Contractor shall at all times observe all health and safety measures and precautions necessary for the sanitary and safe performance of the contract Work.

3) Venue

Any litigation with respect thereto shall be brought in the courts of the City of Newport News, Virginia, or the United States District Court for the Eastern District of Virginia, Newport News Division.

4) Environmental Considerations

Any cost or expense associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of hazardous substance, including but not limited to, the cost of any clean up activities, removals, remediation, responses, damages, fines, administrative or civil penalties or charges imposed on the Owner, whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the release of any hazardous substances, or any noncompliance with or failure to meet any federal, state or local standards, requirements, laws, statutes, regulations or the law of nuisance by the Contractor (or its agents, officers, employees, subcontractors, consultants, subconsultants, or any other persons, corporations, or legal entities employed, utilized, or retained by the Contractor) in the performance of this Agreement or related activities, shall be paid by the Contractor.

5) Non-Discrimination/Drug-Free Workplace Provisions

(a) Employment discrimination by Contractor shall be prohibited. During the performance of this Agreement, Contractor agrees as follows:

(i) Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification/consideration reasonably necessary to the normal operation of Contractor. Contractor will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act, and the Code of Virginia § 2.2-4311. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Agreement on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(ii) Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that Contractor is an equal opportunity employer.

(iii) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.

(iv) Contractor will include the provisions of the foregoing subsections (i) and (ii), and (iii) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

(b) During the performance of this Agreement, Contractor agrees as follows:

- (i) Contractor will provide a drug-free workplace for Contractor's employees.
- (ii) Contractor will post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- (iii) Contractor will state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace.
- (iv) Contractor will include the provisions of the foregoing subsections (i), (ii) and (iii) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- (v) For the purposes of this section, "Drug-free workplace" means a site for the performance of Work done in connection with a specific contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of the contract."

H. Liquidated Damages

The damage and loss to the Owner resulting from failure of the Contractor to complete the Work within the time specified in this Agreement, plus any extension of time granted, shall be stipulated in Section 108.X, and the Bid form. Damage monies may be withheld on partial and final payment to the Contractor. (See **the** Bid form and Section 108.X for explanation and specified dollar amounts.)

I. Component Parts of the Contract

This Agreement includes all completed components of the Bid (i.e. **Terms and Conditions, Insurance, Bonds, Bid Forms, Technical Specifications, Certifications, Drawings or Plans, Addendums and items referenced in Section 110**) and Contract Documents as defined in Section 101 of the HRPDC *Regional Construction Standards* (Latest Edition indicated in the Invitation For Bids), as revised for this Project all of which are incorporated herein by reference.

J. Binding

This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

K. Changes to the Agreement

No provision of this Agreement shall be changed, amended, modified, waived, or discharged except as agreed to in writing by the Owner and the Contractor.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date written above.

OWNER
City of Newport News

CONTRACTOR

Signature: _____
Name: Cynthia D. Rohlf
Title: City Manager

Signature: _____
Name: _____
Title: President

Address: 2400 Washington Avenue
City, Newport News
State: Virginia
Zip: 23607

Address: _____
City, _____
State: _____
Zip: _____

Contractor's Registration

(If Contractor is a corporation or an
unincorporated organization, attach evidence
of authority to sign)

<small>City Attorney Use Only</small> <u>APPROVED AS TO FORM</u>	
_____ Assistant City Attorney	_____ Date

ATTEST:

By: _____ City Clerk

IV. PERFORMANCE BOND (City Form)

Bond # _____

PERFORMANCE BOND (City Form)

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned _____
_____, as Principal, and
_____, as Surety,
acknowledge ourselves held and firmly bound unto the City of Newport News, Virginia as Oblige, in the amount of _____ dollars, _____ for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

WHEREAS, the said _____
have entered into a contract with the City of Newport News, Virginia for the **Project Name**, **IFB#XX-XXXX-XXXX** which said contract is by reference made a part hereof, is hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall in all respects promptly and faithfully comply with and fulfill all the terms and conditions of said contract, then this obligation shall be void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any change, alteration or addition to the terms of the Contract or extension of time made by the Owner.

Whenever principal shall be, and declared by Oblige to be in default under the Contract, the Surety may promptly remedy the default, or shall promptly

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if

the Obligee elects, upon determination by the Obligee and Surety jointly of the lowest responsive and responsible bidder, arrange for a contract between such bidder and Obligee, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by the Obligee to principal under the Contract and any amendments thereto, less the amount properly paid by Obligee to principal.

It is hereby expressly further understood and agreed that this Bond is also given and made against defective material and workmanship in the said work covered by the said Contract, provided, however, that no suit, action or proceeding, by reason of any defect whatever, shall be brought upon this Bond after one (1) year following (i) final completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty, if the action be for such.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligee named herein or the heirs, executors, administrators or successors of Obligee.

SIGNED AND SEALED this ____ day of _____, 20____.

CONTRACTOR

BY _____
Signature of Authorized
Owner, Partner or Officer

SURETY

BY _____
Attorney In Fact

Attach Original Power of Attorney

<p>City Attorney Use Only</p> <p><u>APPROVED AS TO FORM</u></p> <p>_____ City</p>

V. **PAYMENT BOND** (City Form)

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, _____
_____, as Principal, and
_____, as Surety,
acknowledge ourselves held and firmly bound unto the City of Newport News, Virginia as Obligee in the
amount of _____ Dollars (_____) for the payment of which,
well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors,
administrators, successors and assigns.

WHEREAS, the said _____ have entered into a contract
with the City of Newport News, Virginia, for the **Project Name, IFB#XX-XXXX-XXXX** which
said contract is by reference made a part hereof, as fully and is hereinafter referred to as the Contract.
NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall
promptly make payment to all claimants as hereinafter defined, for all labor and material used or
reasonably required for use in the performance of the Contract, then this obligation shall be void;
otherwise it shall remain in full force and effect, subject, however to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to also include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above-named Principal and Surety hereby jointly and severally agree with the City that every claimant as herein defined, who has not been paid in full before the expiration of a period ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for such sum or sums as may be justly due

claimant, and have execution thereon. The City shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

A. Unless claimant, other than one having a direct contract with the Principal, shall have given written notice of the following: The Principal, the City, and the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished or for whom the work or labor was done or performed.

Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the Principal, City and Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

B. After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this Bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

C. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of

mechanics' liens, which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

SIGNED AND SEALED this _____ day of _____, 20_____.

Contractor

BY _____

ATTEST:

Surety

BY _____

ATTORNEY-IN-FACT

Resident Virginia Agent of Surety
(if original agent is non-resident)

Submit with Power of Attorney

APPROVED AS
TO FORM

City Attorney

VI. NOTICE TO PROCEED (May be as shown or in another format, including digital as presented by the City.)

TO: _____ DATE: _____

PROJECT: _____

You are hereby notified to commence Work in accordance with the Agreement dated _____, 20____, on or before _____, 20____, and you are to substantially complete the Work within _____ Days thereafter and reach Final Completion of the Work within _____ Days thereafter. The date of Final Completion of all Work is therefore _____, 20____.

Liquidated damages as stipulated in the Bid form, in the amount of \$_____ per Day for failure of the Contractor to substantially complete the Work by the date for Substantial Completion and \$_____ per Day for failure to complete the Work by the date for Final Completion, will be assessed by the Owner as stated above or as may be modified by duly executed Change Orders.

OWNER: _____

BY: _____

TITLE: _____

ACCEPTANCE OF NOTICE:

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by:

this the _____ day of

_____, 20 ____

CONTRACTOR: _____

BY: _____

TITLE: _____

VII. NOTICE OF AWARD (City Form)

NEWPORT NEWS GARY SIGHTLER, PURCHASING AGENT

OFFICE OF PURCHASING

2400 Washington Avenue • Newport News, Virginia 23607 • Phone: (757) 926-8721 • Fax: (757) 926-8038



July 31, 2020

NOTICE OF AWARD

COMMODITY:

IN RESPONSE TO: IFB #XX-XXXX-XXXX

CONTRACTOR:

AWARD AMOUNT: \$

This "Notice of Award" a contract to the identified Contractor is hereby published. Records for this procurement are now available for inspection by any bidder that participated on this IFB.

CONTRACT OFFICER:

VIII. ESCROW AGREEMENT (City Form)

**CITY OF NEWPORT NEWS
CONSTRUCTION CONTRACT
ESCROW AGREEMENT**

THIS AGREEMENT, made and entered into this ____ day of _____, 20____,
by, between and among the City of Newport News (City), _____
_____(Contractor),
_____(Name of Bank),
_____(Address of Bank), a trust
company, bank, or savings and loan institution with its principal office located in the
Commonwealth (hereinafter referred to collectively as "Bank") and _____
_____ ("Surety") provides:

I.

The City and the Contractor have entered into a contract with respect to: **Project Name, IFB#XX-XXXX-XXXX**, ("the contract"). This Agreement is pursuant to, but in no way amends or modifies, the contract. Payments made hereunder or the release of funds from escrow shall not be deemed approval or acceptance of performance by the Contractor.

II.

In order to assure full and satisfactory performance by the Contractor of its obligations under the contract, the City is required thereby to retain certain amounts otherwise due the Contractor. The Contractor has, with the approval of the City, elected to have these retained amounts held in escrow by the Bank. This agreement sets forth the terms of the escrow. The Bank shall not be deemed a party to, bound by, or required to inquire into the terms of, the contract or any other instrument or agreement between the City and the Contractor.

III.

The City shall from time to time pursuant to its contract pay to the Bank amounts retained by it under the contract. Except as to amounts actually withdrawn from escrow by the City, the Contractor shall look solely to the Bank for the payment of funds retained under the contract and paid by the City to the Bank.

The risk of loss by diminution of the principal of any funds invested under the terms of this contract shall be solely upon the Contractor.

Funds and securities held by the Bank pursuant to this Escrow Agreement shall not be subject to levy, garnishment, attachment, lien, or other process whatsoever. Contractor agrees not to assign, pledge, discount, sell or otherwise transfer or dispose of his interest in the escrow account or any part thereof, except to the Surety.

IV.

Upon receipt of checks drawn by the City and made payable to it as escrow agent, the Bank shall promptly notify the Contractor, negotiate the same and deposit or invest and reinvest the proceeds in approved securities in accordance with the written instructions of the Contractor. In no event shall the Bank invest the escrowed funds in any security not approved.

V.

The following securities, and none other, are approved securities for all purposes of this Agreement.

1. United States Treasury Bonds, United States Treasury Notes, United States Treasury Certificates of Indebtedness or United States Treasury Bills,
2. Bonds, notes and other evidences of indebtedness unconditionally guaranteed as to the payment of principal and interest by the United States,
3. Bonds or notes of the Commonwealth of Virginia,
4. Bonds of any political subdivision of the Commonwealth of Virginia, if such bonds carried, at the time of purchase by the Bank or deposit by the Contractor, a Standard and Poor's or Moody's Investors Service rating of at least "A", and
5. Certificates of deposit issued by commercial banks located within the Commonwealth, including, but not limited to, those insured by the Bank and its affiliates.
6. Any bonds, notes, or other evidences of indebtedness listed in Sections (1) through (3) may be purchased pursuant to a repurchase agreement with a bank, within or without the Commonwealth of Virginia having a combined capital, surplus and undivided profit of not less than \$25,000,000, provided the obligation of the Bank to repurchase is within the time limitations established for investments as set forth herein. The repurchase agreement shall be considered a purchase of such securities even if title, and/or possession of such securities is not transferred to the Escrow Agent, so long as the repurchase obligation of the Bank is collateralized by the securities themselves, and the securities have on the date of the repurchase agreement a fair market value equal to at least 100% of the amount of the

repurchase obligation of the Bank, and the securities are held by a third party, and segregated from other securities owned by the Bank.

No security is approved hereunder which matures more than five years after the date of its purchase by the Bank or deposit by the Contractor.

VI.

The Contractor may from time to time withdraw the whole or any portion of the escrow funds by depositing with the Bank approved securities in an amount equal to, or in excess of, the amount so withdrawn. Any securities so deposited or withdrawn shall be valued at such time of deposit or withdrawal at the lower of par or market value, the latter as determined by the Bank. Any securities so deposited shall thereupon become a part of the escrowed fund.

Upon receipt of a direction signed by the City Manager, Director of Finance, Director of Engineering, or Director of Public Utilities, the Bank shall pay the principal of the fund, or any specified amount thereof, to the City. Such payment shall be made in cash as soon as is practicable after receipt of the direction.

Upon receipt of a direction signed by the City Manager, Director of Finance, Director of Engineering, or Director of Public Utilities, the Bank shall pay and deliver the principal of the fund, or any specified amount thereof, to the Contractor, in cash or in kind, as may be specified by the Contractor. Such payment and delivery shall be made as soon as is practicable after receipt of the direction.

VII.

For its services hereunder the Bank shall be entitled to a reasonable fee in accordance with its published schedule of fees or as may be agreed upon by the Bank and the Contractor. Such fee and any other costs of administration of this Agreement shall be paid from the income earned upon the escrowed fund and, if such income is not sufficient to pay the same, by the Contractor.

VIII.

The net income earned and received upon the principal of the escrowed fund shall be paid over to the Contractor in quarterly or more frequent installments. Until so paid or applied to pay the Bank's fee or any other costs of administration such income shall be deemed a part of the principal of the fund.

IX.

The Surety undertakes no obligation hereby but joins in this Agreement for the sole purpose of acknowledging that its obligations as surety for the Contractor's performance of the contract are not affected hereby.

WITNESS the following signatures, all as of the day and year first above written.

CITY OF NEWPORT NEWS

BY _____
CITY MANAGER

ATTEST:

CITY CLERK

CONTRACTOR

BY _____
OFFICER, PARTNER OR OWNER

BANK

BY _____
PRESIDENT/VICE-PRESIDENT

SURETY

BY _____
ATTORNEY-IN-FACT

SECTION 104

SCOPE OF WORK

I. INTENT OF AGREEMENT

- 1.1 The intent of the Agreement is to provide for completion of the Work specified therein.
- 1.2 If, during the performance of the Work, the Contractor finds a conflict, error or discrepancy in the Contract Documents, the Contractor shall so report to the Owner in writing at once and before proceeding with the Work affected thereby, except in the case of emergency or public safety, shall obtain a written interpretation or clarification from the Owner however, the Contractor shall not be liable to the Owner for failure to report any conflict, error or discrepancy in the Contract Documents unless the Contractor has actual knowledge thereof or should reasonably have known thereof.

II. AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

- 2.1 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof by a Change or Field Order pursuant to Section 109 II.

III. EXPLORATIONS AND REPORTS

- 3.1 Reference is made to the Special Provisions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by the Owner in preparation of the Contract Documents.
- 3.2 The Contractor shall visit the site of the proposed Work and make such explorations as the Contractor determines to be necessary.

IV. UNDERGROUND FACILITIES

- 4.1 The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to the Owner or Engineer by the owners of such Underground Facilities or by others.
- 4.2 The Owner and Engineer shall not be responsible for the accuracy or completeness of any such information and data. The Contractor shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owner's of such Underground Facilities during construction, for the safety and protection of said facilities, and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Base Bid.
- 4.3 If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which the Contractor could not reasonably have been expected to be aware of, the Contractor shall, promptly after becoming aware thereof and before performing any Work affected thereby, identify and immediately notify the owner of such Underground Facility and give written Notice thereof to that owner and to the Owner. The Owner will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time the Contractor shall be responsible for the safety and protection of any such Underground Facility which is in service or which is to be placed in service. The Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to

the extent that they are attributable to the existence of any Underground Facility in service or which is to be placed in service, which directly and unavoidably impacts the installation of the Work, that was not shown or indicated in the Contract Documents and which the Contractor could not reasonably have been expected to be aware of.

- 4.4 If the existence of an Underground Facility described above unavoidably impacts the installation of the Work, the Contractor shall, to the fullest extent possible, continue the Work on other portions of the site. All delays must be shown by the Contractor to be directly attributable to said unforeseen conditions and limited to the time actually occasioned by such unforeseen conditions, and that the Contractor has prosecuted the other portions of the Work to the fullest extent possible.
- 4.5 The Contractor shall comply with the Underground Utility Damage Prevention Act, Section 56-265.14 through 56-26532, Code of Virginia of 1950, as enacted and amended, and shall be responsible for notifying the owners of utilities and requesting the locating and marking of all underground facilities before beginning any excavation.
- 4.6 The Contractor should be aware that in some instances buried cables, gas lines, sewer lines, and water lines 2-inches and smaller in diameter may have to be excavated by hand and slightly relocated to facilitate construction of the Work under this Agreement. This shall be considered incidental to the Work, and the Contractor will not be eligible for additional compensation.
- 4.7 At points where the Contractor's operations are adjacent to the properties of any utility, including railroads, and damage to which might result in considerable expense, loss, or inconvenience, Work shall not commence until arrangements necessary for the protection thereof have been completed.
- 4.8 The Contractor shall cooperate with owners of utility lines so that removal and adjustment operations may progress in a reasonable manner, duplication of adjustment work may be reduced to a minimum, and services rendered by those parties will not be unnecessarily interrupted.
- 4.9 If any utility service is interrupted as a result of accidental breakage or of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the authority in the restoration of service. If utility service is interrupted, repair work shall be continuous until service is restored. The Contractor shall be responsible for any damage to utilities that are attributable to his neglect or methods of performing the Work.

V. SUBSURFACE CONDITIONS

- 5.1 The Contractor shall promptly, and if possible, before such conditions are disturbed, except in the event of an emergency, notify the Owner by written Notice of:
 - A. subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or
 - B. unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents.
- 5.2 The Owner shall promptly investigate the conditions, and if it is confirmed that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the Work, an equitable adjustment shall be made and the Agreement shall be modified by a Change Order. Any claim of the Contractor for adjustment hereunder shall not be allowed unless the Contractor has given the required written Notice; provided that the Owner may, if the facts so justify, consider and adjust any such claims asserted before the date of final payment.
- 5.3 All required written Notices shall be submitted to the Owner within 20 Days after occurrence of the event giving rise to such claim, or within 20 Days after the claimant recognizes the condition,

whichever is later.

VI. SITE SECURITY

- 6.1 The Contractor shall be responsible for the security and safety of all project facilities including, but not limited to, all equipment, materials, site structures, and construction thereon. All security measures deemed necessary by the Contractor to comply with this requirement shall be at the Contractor's expense at no additional cost to the Owner. The Contractor shall be responsible for all site security until final acceptance of the Work by the Owner.

VII. CLEAN-UP, DISPOSAL AND RESTORATION

- 7.1 The Contractor shall maintain the site of the project in an orderly and clean condition and shall at intervals of no more than three (3) working days and at its expense, remove and legally dispose of accumulations of rubbish or refuse materials, surplus concrete, mortar and excavated materials not required or suitable for backfill from public and private property and rights-of-way. Washings from concrete mixers or mixing boxes shall not be deposited directly or indirectly in the drainage or sewer system or on paved streets. The Contractor shall keep the site, inclusive of vehicular and pedestrian traffic routes through the site, free of dirt and dust by periodic blading, power brooming, watering or other approved means. Road surfaces adjacent to the Work area shall be cleaned of soil with mechanical brooms or other approved methods at the end of each working day. Road shoulders and driveways shall be stabilized so as to allow traffic flow (including mail and paper delivery vehicles, school buses and emergency vehicles) by the end of each working day.
- 7.2 The Contractor shall confine all equipment, the storage of materials and equipment, and the operations of workmen to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with materials or equipment.
- 7.3 The Contractor shall not load nor permit any part of any structure to be loaded with weights that will endanger the structure, nor shall any part of the Work be subjected to stresses or pressures that will endanger it.
- 7.4 Upon completion and before final acceptance of the Work performed under the Agreement, the Contractor shall remove and legally dispose of all rubbish, surplus or discarded materials, false work, forms, temporary structures, field offices, signs, temporary erosion and siltation control measures, and equipment and machinery, and shall leave the site and ground occupied in connection with the performance of the Work in the conditions existing before the Work was started, to the satisfaction of the Owner.
- 7.5 All waste materials, including but not limited to excavated materials, demolished pavement, arboreal (landscaping) waste and other debris, that are not suitable for Project related purposes (e.g., backfill) or are surplus to the needs of the Project, both as determined by the Owner, shall become the property of the Contractor. The Contractor shall dispose of all such material in accordance with his accepted Disposal Plan, as specified below, at no additional cost to the Owner.
- A. The Contractor shall submit a Disposal Plan for review and acceptance by the Owner prior to performing any Work that might generate waste materials. The plan shall include a complete description of the materials that are expected to be encountered and their proposed disposal site(s). The Contractor may change his Disposal Plan only by written notice to the Owner. The acceptance of a plan and/or any related notice to the Owner must be evidenced by a written response from the Owner.
- B. The Contractor shall insure that all permits related to his disposal operations have been obtained, and the Contractor shall comply with all requirements of those permits. The Contractor shall show evidence that all required permits have been obtained for all disposal

sites by submitting a copy of all such permits to the Owner as part of the Contractor's Disposal Plan.

End of Section

SECTION 105

CONTROL OF WORK

I. REUSE OF CONTRACT DOCUMENTS

- 1.1 Neither the Contractor nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the Owner shall have or acquire any title to or ownership rights in any of the Contract Documents (or copies thereof) prepared by or bearing the seal of the Engineer; and, they shall not reuse any of the Contract Documents on extensions of the Project or any other project without written consent of the Owner and Engineer and specific written verification by the Owner.

II. COPIES OF CONTRACT DOCUMENTS

- 2.1 The Owner will furnish to the Contractor a copy of the Contract Documents for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction, unless a digital version is provided by the Owner.

III. CONTRACT DOCUMENTS

- 3.1 The Contract Documents will govern the Work set forth therein.

In cases of conflicts, Special Provisions shall govern over the *Regional Construction Standards*; Specifications shall govern over Drawings; figure dimensions shall govern over scaled dimensions; and, detailed Drawings shall govern over general Drawings; unless, the interpretation would result in a violation of any law or regulation applicable to the performance of the Work

- 3.2 The Contractor shall, upon discovering any error, omission, or discrepancy in the Contract Documents, immediately notify the Owner.

IV. SHOP DRAWINGS AND SUBMITTALS

- 4.1 The Contractor shall compile a complete and comprehensive schedule of all the submittals anticipated to be made during the progress of the Work. The schedule shall include a list of each type of item for which the Contractor's drawings, Shop Drawings, material affidavits, material samples, certificates, warranties, guarantees, operations and maintenance manuals, testing and adjustment reports, plans, schedules or other types of submittals are required by the Contract Documents.

- 4.2 Prior to each submittal, the Contractor shall carefully review and coordinate all aspects of each item or sample submitted with any other item or sample being submitted and verify that each item and sample adheres in all respects with the requirements of the Contract Documents.

- 4.3 The Contractor shall certify that all materials used in the Work are in complete compliance with all specified provisions. Certification shall not be construed as relieving the Contractor from its responsibility of furnishing satisfactory materials. At the time of each submission, the Contractor shall in writing call the Owner's attention to any deviations that the Shop Drawings or samples may have from the requirements of the Contract Documents. By making a submission for approval, the Contractor shall be deemed to have certified that he has checked the items in the Shop Drawings before submitting them and that he is satisfied that, in their present state, they not only meet the requirements of the Contract Documents, but will present no difficulties in the performance and completion of the Work. The Contractor shall clearly note his approval on the Shop Drawings prior to submission to the Owner. Failure of the Contractor to note his approval will be reason for the Owner to return such submission to the Contractor unchecked.

1. If it appears to the Owner that the Shop Drawings submitted by the Contractor have not been properly checked, even though the Contractor's approval has been noted thereon, Owner may return such submission to the Contractor unchecked.
 2. Markings, written or otherwise, made by the Contractor or by his suppliers or manufacturers must be made on the Submittal in a color other than red. RED is reserved for the exclusive use of the reviewer in marking Submittals.
- 4.4 The Contractor shall submit four (4) copies, plus the number of copies desired to be returned, of Shop Drawings or submittals that are required by Section 105 or the Special Provisions. Each submission shall be accompanied by letter of transmittal in duplicate, listing the contents of the submission and identifying each item by reference to specification section or Drawing. The data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show the Owner the materials and equipment the Contractor proposes to provide. Digital Shop Drawing submittals may be made when acceptable to the Owner and all provisions in this section are satisfied.
- 4.5 The Contractor shall also submit samples to the Owner for review and approval in accordance with the accepted schedule of submittals. Each sample shall be identified clearly as to material, supplier, pertinent data such as catalog numbers and the use for which intended and otherwise as the Owner may require for review. The review of a separate item or sample will not indicate approval of any assembly in which the separate item or sample functions.
- 4.6 The Contractor is responsible for submitting all Shop Drawings and schedules in a timely manner to avoid delaying the Work. The Owner shall within 21 Days after receipt, return Shop Drawings and schedules to the Contractor indicating approval or disapproval.
- 4.7 Review and/or approval of Shop Drawings will be for general conformance with the Contract Documents and shall not relieve the Contractor from the responsibility of furnishing materials and equipment of proper dimension, size, quality, quantity, and all performance characteristics to efficiently perform the requirements and intent of the Contract Documents. Approval shall not be construed as permitting any departure from the Project requirements, authorization of any increase in price, or approval of departures from additional details or instructions previously furnished by the Owner.
- 4.8 Before submitting each Shop Drawing or sample, the Contractor shall have determined and verified:
- a. All field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto;
 - b. All materials with respect to the intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - c. All information relative to the Contractor's sole responsibility in respect of means, methods, techniques, sequences and procedures of construction and safety precautions and progress incident thereto.
- 4.9 Each Shop Drawing and sample submission shall bear a stamp or specific written indication that the Contractor has satisfied Contractor's obligation under the Contract Documents with respect to the Contractor's review and approval of that submission. The Contractor's Shop Drawing stamp shall be as follows (or as otherwise approved by the Owner and Engineer):

<p>(Owner's Name) (Project Name)</p>
--

Shop Drawing No.: _____

Specification Section: _____

With respect to this Shop Drawing or Sample, I have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed or coordinated this Shop Drawing or Sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

_____ *No variation from Contract Documents*

_____ *Variation from Contract Documents as shown*

(Contractor's Name and Address)

By: _____

Date: _____

- 4.10 The Engineer will review and approve or disapprove or return as incomplete Shop Drawings and samples in accordance with the schedule of submittals submissions accepted by the Engineer. The Engineer's review and approval or disapproval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The Contractor shall make corrections required by the Engineer, and shall return the requested number of copies of Shop Drawings and samples for review and approval. The Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Engineer on previous submittals. Upon approval, two marked copies will be returned to the Contractor.
- 4.11 No progress payments will be made to the Contractor until the schedules are submitted to and acceptable to the Engineer. The progress schedule shall be acceptable to the Engineer as being the Contractor's schedule for the orderly progression of the Work to completion within any specified Contract Times, but such acceptance will neither impose on the Engineer responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve the Contractor from the Contractor's full responsibility therefor.
- 4.12 The Engineer will record time required by the Engineer or Engineer's consultants for excessive submittal review occasioned by the Contractor's re-submission, in excess of one re-submission of a required submittal, caused by unverified, unchecked or un-reviewed, incomplete, inaccurate or erroneous, or nonconforming submittals. The Engineer's costs will be an estimated average billing rate for labor plus related expenses and shall be paid by the Contractor upon terms satisfactory to the Owner.
- 4.13 Within ten (10) Days after the Effective Date of the Agreement, the Contractor shall submit to the Engineer for approval a schedule listing the manufacturer of the items of equipment and materials proposed for the construction. Following approval of the schedule, no changes in material or equipment from those listed will be allowed except in unusual or extenuating circumstances. When such circumstances arise, the Contractor shall request, in writing, the Owner's approval of the proposed change, stating the circumstances necessitating such a change. The intent of this schedule is to name the manufacturers of material specified by a product standard and to designate which manufacturer will be used when more than one has been named for an item. The schedule shall not

be interpreted as allowing any change from base Bid items or those substitute items offered with the Bid and accepted in the Agreement.

- 4.14 Submittals shall be made in logical groupings representing all submittals from a technical specification section and/or, where appropriate, related section(s). Shop drawing submissions lacking all required submittals under a technical specification section(s) will be returned without review.
- 4.15 The approval of Shop Drawings shall not relieve the Contractor from the responsibility for proper fittings and construction of the Work nor from furnishing materials and work required by the Contract which may not be indicated on the Shop Drawings when approved.
- 4.16 Where a Shop Drawing or sample is required by the Specifications, and related work is performed prior to the Owner's review and approval of the pertinent submission, such work will be the sole responsibility of the Contractor. Owner shall have the right to inspect any such Work, but failure of Owner to inspect such Work shall not be deemed an acceptance by the Owner.
- 4.17 In proposing alternate materials or construction methods or in requesting Owner determination of alternate materials, submittals must clearly demonstrate that the proposed alternate items clearly meet, in all respects, the requirements of the Contract Documents, design intent of the Project. The burden of proof in all such determinations is up to the Contractor and the Owner's determination is un-reviewable and final. All such proposals count as submittals in determining the cost of additional reviews in accordance with paragraph 4.12.
- 4.18 Manufacturer's Certificates
 - A. The Contractor shall furnish at the time of submitting Shop Drawings the manufacturer's certificates for items of equipment and products in the various sections of these Specifications.
 - B. The manufacturer's warranty and certification submitted for equipment, a product, or component of a product shall indicate that the manufacturer has examined the Contract Documents and the equipment, product or component of a product provided will meet the performance criteria and conforms in all respects to the requirements of the Contract Documents.
 - C. A statement originating from the Contractor, or any of his Subcontractors, suppliers, or any other agent, which merely indicates that a particular item of equipment, product, or component of a product, meets the requirements of the Contract Documents, shall not be considered a certificate. Any such submittal made in this manner will not be approved and the corresponding equipment, product, or component of a product, shall not be approved.

V. RECORD DRAWINGS

- 5.1 The Contractor shall keep one record copy of all Special Provisions, Specifications, Drawings, Addenda, Written Amendments, Change Orders, Shop Drawings, Owner-approved submittals, and samples at the site in good order and annotated to show all changes made during the construction process. These documents shall be available to the Owner for examination and shall be submitted to the Owner upon completion of the Work. As-built information (including dimensions, materials, existing utilities) shall also be included on the Drawings. Progress payments may be withheld for failure to keep neat, accurate and complete record drawings.
- 5.2 The Contractor shall include any field changes, deviations from the Drawings due both to field conditions and Change Orders.
- 5.3 Record information for projects shall include the following as a minimum:

- A. Size, horizontal and vertical location of all existing utilities uncovered during the course of the Work. This shall include telephone cables and conduits, TV cables and conduits, electrical cables and conduits, gas lines, water line, sewer force mains, sanitary sewers, storm sewers and the like.
 - B. Horizontal and vertical location of the water, force main, sanitary and storm sewer installed at ~~every 100-foot station~~ **the cross section stationing on the plans or minimum 100-foot stations, whichever is less**, at interconnections, and at fittings, tees, bends and offsets. The frequency and location of survey shots will match the proposed grade elevations shown on the Drawings.
 - C. Location of lines plugged or capped, blowoffs, and air vents.
 - D. Location of all restraining devices used; for example, thrust blocks, retainer glands, tie rods, etc.
 - E. Location of all valves, ends of all lines and other fittings shall be accurately located by triangulation from two permanent structures, which will be visible on the ground surface.
 - F. Location and size of all taps and service line connections made, including corporation stops (if any) used for testing purposes.
 - G. Size (if greater than ¾"), material, depth and location of both ends of the water service lines are required.
 - H. Rim elevations of manholes and invert elevations of pipes entering and exiting the manhole.
 - I. Size, material, depth and location of sewer laterals including:
 - 1. Measurements taken from the nearest downstream manhole, then measure over perpendicular from that point on the main to the end of the lateral. All measurements are taken from the center of the manhole cover.
 - 2. If lateral comes out of a manhole in a cul-de-sac; triangulation from that manhole will be required.
 - 3. **Measured depth from the finished grade at the end of the lateral.**
 - J. Information required for public storm drain systems:
 - 1. Size, material and location of all storm sewer lines.
 - 2. Elevations shall be provided for all ditch, pipe and structure inverts and rims.
 - 3. **All pipes within the City's ROW, within City easements, or on City property shall be televised, and submitted to the City for review and approval before final acceptance.**
- 5.4 The Record Drawings shall include the following minimum accuracy for survey measurements and field measurements.
- A. Horizontal accuracy:
 - 1. Both surface and subsurface gravity sanitary sewer systems shall be measured in a survey to +/- 1.0 foot at the structure location.

2. Both surface and subsurface pressure systems shall be measured in a survey to +/- 1.0 foot at the structure location.
3. Curb/curb and gutter shall be measured in a survey to +/- 1.0 foot at high points, low points, curb returns, and various other positions following good engineering, construction and surveying practices.
4. Storm Water Management Facilities (SWMF) shall be measured in a survey to +/- 1.0 foot, including the top of bank, bottom of bank, edge of water, pipes, structures, and setback distances to property lines and/or right-of-way lines and any unusual feature of each SWMF.
5. Utility system components including, but not limited to, fire hydrants, meter vaults, meter boxes, water services, corporation stops, fittings, thrust restraint, laterals, cleanouts, valves, blowoff assemblies, air vent assemblies, water sampling stations, etc. shall be measured in a survey to +/- 1.0 foot.
6. Project landscaping shall be measured in a survey to +/- 1.0 foot. Only large significant features, such as trees, will be surveyed. The species and caliper (size) shall be noted. **All Stormwater Management Facility plantings shall be shown on the construction record drawing, and the number and type of plantings labelled.**
7. Street signs and light poles shall be measured in a survey to +/- 1.0 foot.

B. Vertical accuracy:

	Survey Accuracy	Field Measurement
Manhole Rim	+/- 0.01 ft.	
Manhole Invert	+/- 0.01 ft.	
Gravity Sewer Slope	+/- 0.02%	
Valve Depth	+/- 0.1 ft.	
Pressure/vacuum systems	+/-0.05 ft.	
SWMF	+/- 0.01 ft.	
Curb/curb and gutter	+/- 0.01 ft.	
Offset		+/- 1.0 ft.
Lateral Depth		+/- 0.25 ft.

The Contractor shall provide on the record drawings, if applicable, coordinate values (northing's and easting's based on the locality's monumentation) for the following:

Gravity Sewer

- Manholes
- Cleanouts and connections to the main

Force Mains

- Valves and tracer wire boxes
- Air release assemblies
- Horizontal bends 45-degrees (and greater if allowed) and combinations of fittings equaling 45-degrees or greater, spaced no greater than 10-feet of the start of the bends to the bend's terminus
- Offsets (vertical and horizontal)
- Connections (tees and taps)
- Limits of lined pipe

Grinder Pump and Low Pressure Systems

- Grinder pump
- Control panel
- Air release/cleanout assemblies
- Valves
- Connections to force mains (taps, corporation stops, etc.)

Water Systems

- Water meters
- Hydrants
- Valves and tracer wire boxes
- Connections and intersections (taps, etc.)
- Air release assemblies
- Corporation stops/taps to mains
- Offsets (vertical and horizontal)
- End of line blow-off assemblies
- Sample stations

The Contractor shall provide all information on all valves installed as part of the project in the chart provided below and is to be included on the Record Drawings.

Item No.	Data	Valve				
1	Project Name					
2	Date Installed					
3	Branch ID					
4	Station No. (0+00)					
5	Valve No. (IMS); to be provided by Owner					
6	Size (diameter)					
7	Material of Construction (DI, PVC, Brass, etc.)					
8	No. of Turns					
9	Opens (L, R)					
10	Operating Status (NO/NC)					
11	Depth (Elevation from finish grade to operator)					
12	Manufacturer & Model No.					
13	Type *					
14	Casting Date					
15	End Conn. **					
16	Coordinates (northing/easting)					
* FMV = Force Main Valve, ARV = Air Release Valve, FP = Flush Point, FMCV = Force Main Check Valve, WB = Wire Box, NRS = Non Rising Stem, GV = Gate Valve, BFV = Butterfly Valve, BV = Ball Valve, GA = Gear Actuated, H = Horizontal, V = Vertical. NO = Normally Open; NC = Normally Closed ** (MJ x type, Flange x type, Restrained, Glue, Threaded, Other)						

Note: No information required for Check Valves in items 8 – 10.

5.5 Record Drawings shall be provided in two versions: a sealed PDF version and an electronic format acceptable to the Owner

VI. ACCESS TO PROJECT

6.1 The Owner, the Owner's Representatives, the Engineer, testing agencies and governmental agencies with jurisdictional interests shall have access to the Project at all times for their observations, inspecting, and testing. The Contractor shall provide proper and safe conditions for

such access.

VII. SURVEYS AND REFERENCE POINTS

- 7.1 The Owner shall furnish all necessary Drawings showing property lines and/or easements and the location of the Work. The Contractor shall provide a land surveyor licensed in the Commonwealth of Virginia to execute the Work in accordance with the Contract Documents and shall be responsible for the accuracy of this Work.
- 7.2 The Owner has established or will establish such general reference and control points and benchmarks on or about the Project site as will enable the Contractor to proceed with the Work. Prior to issuance of the Notice to Proceed, if the Contractor finds that any previously established reference points have been destroyed or misplaced, the Contractor shall promptly notify the Owner, and the Owner shall replace such general reference points and benchmarks at the Owner's expense.
- 7.3 The Contractor shall protect and preserve the established control points, bench marks and monuments and shall make no changes in locations without the written approval of the Owner. Any of these which may be lost or destroyed or which require shifting because of necessary changes in grades or locations shall, subject to prior approval of the Owner, be replaced and accurately located by the Contractor, at no expense to the Owner.

VIII. WORKING HOURS

- 8.1 Normal working hours shall be **8 a.m. to 5 p.m.**, Monday through Friday, except that Work shall not start any earlier than one-half hour after sunrise or continue beyond one-half hour prior to sunset. If the Contractor desires to perform Work outside the normal working hours, on holidays, or on weekends, the Contractor shall request permission, in writing, **48 hours three (3) working days in advance to allow arrangements to be made.** The Contractor **shall** be charged an inspection fee of **\$75.00 per hour including travel** by the Owner if such Work is approved. Where the Owner specifically directs the Contractor to work outside of normal working hours, no inspection fee will be imposed. The Owner may refuse the Contractor permission to work outside the normal working hours. The Contractor shall make reasonable efforts to avoid undue noise during the night and on weekends, including, but not limited to, fireproof covering necessary to dampen excessive noise from engines or pumps which operate before 7:00 a.m. and after 9:00 p.m., if it is necessary to work at those times.
- 8.2 The Contractor shall designate a representative and furnish a telephone number at which the representative may be contacted at any time after working hours. This representative shall be empowered and authorized to provide such personnel and equipment as may be required to remedy emergency situations that may develop after normal working hours, or on weekends and holidays.
- 8.3 The Contractor shall receive approval of the Owner, in advance, of any Work to be performed on holidays. The Owner reserves the right to deny permission to work on Sundays and/or holidays without cause.
- 8.4 Holidays are as listed below:

New Years' Day	1 st day of January
Dr. Martin Luther King's Birthday	3 rd Monday in January
President's Day Birthday	3 rd Monday in February
Memorial Day	Last Monday in May
Juneteenth Day	July 19- If it falls on Sat. or Sun. preceding Friday observed
Independence Day	4 th day in July
Labor Day	1 st Monday in September
Veteran's Day	11 th day of November
Thanksgiving Day	4 th Thursday in November

Friday after Thanksgiving
Four hours on Christmas Eve
Christmas Day

Friday after 4th Thursday in November
24th day of December
25th day of December

Any other hours as designated or amended by the Newport News City Council.

Except for Christmas Eve and Juneteenth, holidays that occur on a Saturday will be observed on the preceding Friday and holidays that occur on a Sunday will be observed on the following Monday.

The Contractor's attention is called to Section 109-1.6.C.1.d. regarding Owner compensation by the Contractor for overtime Work performed outside normal working hours.

IX. PROJECT COORDINATION

9.1 Coordination with Owner

- A. The Contractor shall coordinate all construction activities with the Owner and shall obtain the Owner's approval as to schedule of Work, permits, temporary Work, and traffic control.
- B. Progress meetings shall be held monthly on a date to be set by the Owner. The Contractor shall be present at all progress meetings. If progress is not made as scheduled, or if the Owner desires to discuss revised progress schedules or the quality of workmanship or other aspects of the Work, additional progress meetings can be required.
- C. The Owner may construct or reconstruct any utility service in the highway or street or grant a permit for the same at any time. The Contractor shall not be entitled to any damages occasioned thereby other than a consideration of an extension of time.
- D. When authorized by the Owner, the Contractor shall allow any person, firm, or corporation to make an opening within the limits of the Project upon presentation of a duly executed permit from the Owner. When directed by the Owner, the Contractor shall satisfactorily repair portions of the Work disturbed by the openings. The necessary Work will be paid for as extra Work in accordance with these specifications and shall be subject to the same conditions as the original Work performed.

9.2 Coordination with Utilities

- A. The Owner and Contractor agree that disruption to public services shall be avoided whenever possible and minimized when it is not avoidable. In cases where the disruption of existing facilities could adversely impact public service delivery, acceptable duration(s) and time(s) of the outages shall be coordinated between the Contractor and Owner, so as to explicitly minimize disruption to public service delivery.
- B. Before the initiation of any excavation, the Contractor shall locate all existing utilities, culverts, and other structures. Work shall be coordinated with affected utility companies. Prior to excavation, the Contractor shall contact MISS UTILITY at (800) 552-7001 and comply with all MISS UTILITY requirements.
- C. All existing utilities, both public and private (including sewer, gas, water, electrical services, etc.), shall be protected and their operation shall be maintained throughout the course of the Work. Any temporary shutdown of an existing service shall be arranged by the Contractor between the Contractor and the responsible agency. The Contractor shall assume full responsibility and defend and hold the Owner harmless from the result of any damage that may occur as a result of the Contractor's activities.

- D. If any utility service is interrupted as a result of accidental breakage or of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the authority in the restoration of service. If utility service is interrupted, repair work shall be continuous until service is restored. The Contractor shall be responsible for any damage to utilities that are attributable to his neglect or methods of performing the Work.
- E. The Owner shall provide Utility companies with copies of the construction plans and or scope of work prior to construction. If requested by the Owner, the Contractor shall provide each affected utility company with a copy of the proposed schedule of progress prior to commencing Work.
- F. Existing facilities (such as water and sewer valves) shall be operated only by the facility owner or under the direct supervision of the facility owner's personnel. The Contractor shall inform the owner at least 48-hours in advance of the need for the operation of existing facilities.
- G. At points where the Contractor's operations are adjacent to the properties of any utility, including railroads, and damage to which might result in considerable expense, loss, or inconvenience, Work shall not commence until arrangements necessary for the protection thereof have been completed.
- H. The Contractor shall cooperate with owners of utilities so that location, removal and adjustment operations may progress in a reasonable manner; duplication of adjustment work may be reduced to a minimum; and, services rendered by those parties will not be unnecessarily interrupted.
- I. The Contractor should be aware that in some instances buried cables, gas lines, water lines, etc., two inches and smaller in diameter may have to be excavated by hand and slightly relocated to facilitate construction of the Work under this contract. This shall be considered incidental to the Work, and shall be performed at no additional cost to the Owner.
- J. Should the location of any pipe or conduit greater than two-inches in diameter, pole, or other structures, above or below the ground be such that in the opinion of the Owner or his representative its removal, realignment, or change will be required due to Work to be performed under this Contract, the removal, realignment, or change will be done as a Change Order, or will be done by the Owner of the obstructions, without cost to the Contractor. The Contractor shall maintain at his own expense the structures until such removal and before and after such realignment or change. The Contractor shall not be entitled to any claim for damages or extra compensation because of the presence of said structure, or because of any delay in the removal or relocation of the same.

X. SUPERVISION

- 10.1 The Contractor shall supervise and direct the Work, and shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor shall employ and maintain on the Project a qualified supervisor who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be the same as if mailed to the business address of the Contractor. The supervisor or a designated representative shall be present on the site at all times as required to perform adequate supervision and coordination of the Work. The Contractor shall notify the Owner in writing prior to any change of supervisor, and receive the Owner's approval for the replacement.
- 10.2 Upon notification to the Contractor, the Owner reserves the right to suspend the Work until such time as a supervisor satisfactory to the Owner is assigned to the project. Contract Time shall not be extended for such suspension nor shall the Contractor be entitled to any additional payment of

any kind whatsoever as a result of such suspended Work.

- 10.3 Any employee of the Contractor or Subcontractor who is deemed unsuitable may be removed from the job site by the Owner, provided that Written Notice and just cause is given to the Contractor. Said employee shall be removed immediately upon receipt of said Notice.

XI. UNCOVERING WORK

- 11.1 If any Work has been covered or concealed without the Owner's approval prior to being covered or concealed, the Owner may request to see such Work and it shall be exposed by the Contractor. The Contractor shall pay the cost of opening or uncovering and replacement and shall, in addition, at no cost to the Owner, make the necessary corrections to bring the Work into accord with the Contract Documents.
- 11.2 Uncovering Work shall be at the Contractor's expense unless the Contractor has given the Owner timely notice of the Contractor's intention to cover the same and the Owner has not acted with reasonable promptness in response to such notice.
- 11.3 If the Owner considers it necessary or advisable that covered Work previously approved be re-inspected or tested by others, the Contractor, at the Owner's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the Owner may require, that portion of the Work in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such Work is defective, the Contractor shall bear all the expenses of such uncovering, exposure, observation inspection and testing and of satisfactory reconstruction. If, however, such Work is not found to be defective, the Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time or both directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate Change Order shall be issued.

XII. REMOVAL OF UNACCEPTABLE WORK

- 12.1 All Work that does not conform to the requirements of the Contract Documents shall be unacceptable.
- 12.2 The Contractor shall remove or correct all unacceptable and defective Work or materials. The replacement of Work and materials shall conform to the Contract Documents or be in a manner acceptable to the Owner. The Contractor shall bear all costs of such correction and/or removal and replacement.
- 12.3 Work done contrary to or regardless of the instructions of the Owner, Work done beyond the lines shown or as directed, except as herein provided, or any extra Work done without authority, will be considered unauthorized and will not be paid for under the provisions of the Agreement. Work so done may be ordered removed or replaced at no cost to the Owner.
- 12.4 If the Work is defective, or the Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the Owner may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any surety or other party. If the Contractor does not remedy, remove, or replace the rejected or condemned Work as instructed by the Owner within the time period stated by the Owner but in no case to exceed 30 Days **or a longer period agreed to in writing by the owner and the contractor** after receiving written Notice, such remedy, removal, or replacement may be accomplished by the Owner at the Contractor's expense.

XIII. SUBSTANTIAL COMPLETION

- 13.1 Prior to Final Payment, but following completion of all required tests and inspections, the Contractor may request in writing that the Owner certify that the entire Project or any phase of the Project is Substantially Complete and request the Owner issue a Certificate of Substantial Completion. Within fourteen (14) working days the Owner will conduct an inspection of the Project with the Contractor and either issue a Certificate of Substantial Completion or notify the Contractor in writing of the incomplete items. The Certificate and attachments shall include the following:
- A. A listing of responsibilities for the security, operation, safety, maintenance, utilities and insurance on the substantially completed portion;
 - B. A tentative list of items to be completed or corrected prior to final payment; and,
 - C. The maximum time for items to be completed or corrected prior to final payment.
- 13.2 The Owner shall have the right to exclude the Contractor from the Project or phase of the Work certified to be Substantially Complete; however, the Owner will allow the Contractor reasonable access to complete or correct the Work.

XIV. USE OF COMPLETED PORTIONS

- 14.1 The Owner shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the entire Work or such portions may not have expired, but such taking possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the Work, the Contractor shall be entitled to such extra compensation or extension of time or both as the Owner and the Contractor may agree by a Change Order.

XV. FINAL INSPECTION

- 15.1 Upon receiving written Notice from the Contractor that the entire Work or an agreed upon portion is complete, the Owner will make a final inspection with the Contractor, and will notify the Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. The Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- 15.2 This procedure shall be repeated until all items are corrected to the satisfaction of the Owner. Only written notification to the Contractor from the Owner will constitute final acceptance of any part of the Work under the Agreement.

XVI. CLAIMS

- 16.1 All claims, disputes, demands and other matters in question arising out of or relating to the Agreement or the Contract Documents, except for claims which have been waived by the Contractor's acceptance of final payment, will be addressed in accordance with the provisions of the Virginia Public Procurement Act or **Chapter 2, Article XX, Sections 2-552 through 2-585 of the City Code** and as stated herein; provided, however, the provisions of Section 2.2-4366 of that Act will not be applicable without the separate express written consent of the Owner. **If there is a conflict between the Virginia Public Procurement Act and the City Code, the City Code shall prevail, except as to certain mandated provisions of the Virginia Public Procurement Act.**

Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring

submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

- 16.2 Early or prior knowledge by the Owner of an existing or impending claim for damages could alter the plans, scheduling, or other action of the Owner or result in mitigation or elimination of the effect of the act objected to by the Contractor. Therefore, a written statement describing the act of omission or commission by the Owner or its agents that allegedly caused damage to the Contractor and the nature of the claimed damage shall be submitted to the Owner at the time of occurrence or beginning of the Work upon which the claim and subsequent action are based. If such damage is deemed certain in the opinion of the Contractor to result from his acting on an order from the Owner, he shall immediately take written exception to the order. Submission of a notice of claim as specified shall be mandatory. Failure to submit such notice shall be a conclusive waiver to such claim for damages by the Contractor. An oral notice or statement will not be sufficient nor will a notice or statement after the event.

If the Contractor's claim contains data that cannot be verified by the Owner's records, the data shall be subject to a complete audit by the Owner or its authorized representative if they are to be used as a basis for claim settlement.

If the Contractor wishes to make claim for an increase in the Contract Price or Contract Time, he shall submit all supporting data to the Owner and Engineer within twenty (20) Days from the time of initial occurrence. Failure to submit such data within twenty (20) Days shall be a conclusive waiver to such claim by the Contractor.

- 16.3 All claims, disputes, and other matters relating to or arising out of the Agreement or the Contract Documents pertaining to the performance of the Work and claims in respect to changes in the Contract Price or Contract times shall be submitted to the Owner and Engineer in writing. Written Notice of each such claim, dispute or other matter shall be delivered by the Contractor to the Engineer and the Owner promptly (but in no event later than twenty [20] days) after the start of the occurrence or event giving rise thereto, and written supporting data shall be submitted to the Engineer and the Owner promptly, (but not later than twenty [20] days) after the start of such occurrence or event and monthly thereafter for continuing events unless the Owner and Contractor mutually agree **in writing** to extend the time required to submit the written Notice to allow for the submission of additional accurate data in support of such claim, dispute or other matter. The Owner shall submit any response to the Engineer and the Contractor within twenty (20) days after receipt of the Contractor's last submittal (unless the Owner requests reasonable additional time to evaluate the claim).

The Engineer shall render a non-binding and non-final written recommendation regarding the manner in which to resolve the dispute within twenty (20) days of receipt of the Owner's response. Engineer's written recommendation shall be used to assist the Owner and Contractor towards the expeditious and amicable resolution of their dispute.

Within **thirty (30)** days of the delivery of Engineer's written recommendation, senior representatives of the Owner and the Contractor, having authority to settle the dispute, and the Engineer, shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to exercise their reasonable and good faith efforts to expeditiously resolve the dispute. The Owner's and Contractor's representatives will participate in good faith during the negotiation and will each have authority to approve changes in the Contract Time and Price, if any, **to the extent allowed under Section 2-555.1 of the City Code.**

In the event that the negotiation process specified above is unsuccessful, the Contractor shall submit the claim, in writing, to the Purchasing Agent within ten (10) days after the decision by the Owner's representatives. The Purchasing Agent, or designee will review the claim, complete additional investigation and may schedule a meeting with City personnel and the Contractor to ascertain facts concerning the claim. The Purchasing Agent or designee will render a decision within 90 days of receipt of the claim. If the Contractor is not satisfied with the decision of the Purchasing Agent, the Contractor may invoke the City's Administrative Appeals Procedure which is available for viewing on the Office of Purchasing webpage at www.nnva.gov/purchasing under Vendor Resources. The Contractor may institute legal action or may utilize the Administrative Appeals Procedure, but if the Administrative Appeals Procedure is invoked the procedure shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the City agrees otherwise.

As an alternative to invoking the Administrative Appeals Procedure or instituting legal action, and upon the Owner's request, the parties may participate in non-binding mediation. The parties shall endeavor to agree to a single mediator to mediate the dispute in a session not to exceed one-half day in length, unless extended by the agreement of both parties. If the parties cannot agree on a single mediator, they shall request the chief judge of the local state circuit court to designate a mediator. **The mediation shall be paid by the parties on a pro rata basis.**

The results of successful mediation will be implemented by a Change Order. Should the mediation be unsuccessful, it shall be terminated by written Notice to all involved by the mediator or Owner or Contractor.

- 16.4 In the event that the Owner does not elect mediation or the mediation is unsuccessful, a formal proceeding may then be instituted by either party in a forum of competent jurisdiction within the Owner's locality. The parties' Agreement, Contract Documents, and their performance obligations shall be governed, interpreted and enforced pursuant to the laws, **ordinances**, and regulations of the **City**, and in accordance with the laws of the Commonwealth of Virginia without regard to the conflicts of law principles thereof.

All disputes arising out of or relating to this Agreement, the Contract Documents, or the performance obligations of the parties shall be brought in the **Newport New Circuit Court United States District Court for the Eastern District of Virginia, Newport News Division if federal jurisdiction exists**. The Agreement and the Contract Documents shall be governed by, enforced and interpreted pursuant to the laws of the Commonwealth of Virginia **and the Ordinances of the City of Newport News** without regard to conflicts of law principles.

- 16.5 The Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Owner and the Contractor may otherwise agree in writing.

XVII. ENGINEER'S STATUS

- 17.1 All Work shall be performed under the general observation of the Engineer (if specified in the Special Provisions, otherwise, the Owner shall serve as the Engineer at its discretion). The Contractor shall carry out the Work in accordance with the Contract Documents. The construction means, methods, techniques, sequences of procedures, and safety precautions and programs in connection with the Work shall be at the direction and the responsibility of the Contractor. The Engineer shall have authority to and shall reject any and all Work whenever it is necessary to do so in order to insure the proper execution of the Work in accordance with the Contract Documents. The Engineer shall have no authority to approve or order changes in the Work that alter the terms or conditions of the Agreement. The Owner shall confirm by written Notice within fourteen (14) calendar Days any oral order, direction, requirement or determination.

- 17.2 In case of the termination of the employment of the Engineer, the Owner may appoint a capable and reputable Engineer as a replacement. The status under the Agreement of the Engineer shall be that of the former Engineer.
- 17.3 Approval by the Engineer of any materials, plans, equipment or drawings proposed by the Contractor, shall be construed only to constitute an approval of general design. Such approval shall not relieve the Contractor for any responsibility for the accurate and complete performance of the Work in accordance with Contract Documents, or from any duty, obligation, performance guarantee or other liability imposed upon him by the provisions of the Agreement.

XVIII. DOCUMENTATION OF PRECONSTRUCTION CONDITIONS

- 18.1 The Contractor may be required to accompany the Owner for an on-site review of the project after award, but prior to the pre-construction conference and issuance of the Notice to Proceed. The purpose of the on-site review will be to compile a property report that will list, according to the following categories, the properties affected by construction as determined mutually by the Contractor and the Owner, or his representative.
- A. Unrestrained access to and from residences and business locations. This includes but is not limited to, the following types of scheduled projects:
 - 1. Street repair (non-emergency) or improvement projects.
 - 2. Utilities repair (non-emergency) or improvement projects.
 - 3. Sidewalk repair (non-emergency) or improvement projects.
 - B. Right to enjoy one's residence or business free of disturbing and unusual environmental changes as a result of an Owner-authorized construction project. Examples of such changes are excessive noise, dust, light, as well as unusual working hours and odors. This includes, but is not limited to, projects such as:
 - 1. Drainage repair (non-emergency) or improvement projects.
 - 2. Sewage repair (non-emergency) or improvement projects.
 - C. The right to properly plan for the relocation of one's personal property which must be moved as a result of an Owner-authorized construction project. This includes, but is not limited to, the following:
 - 1. Trees, shrubs, plants and flowers.
 - 2. Play equipment.
 - 3. Portable buildings.
 - 4. Fences (above grade or underground electric pet containment).
 - 5. Automobiles.

The property report is to remain on file with the Owner and the Contractor until project closeout.

XIX. NOTICE TO COMPLY ORDER

See page 105-16. The Notice to Comply Order may be as shown on 105-16 or in another format, including digital as presented by the City

XX. STOP WORK ORDER

See page 105-17. The Notice to Comply Order may be as shown on 105-17 or in another format, including digital as presented by the City.

End of Section

CITY/COUNTY OF _____

NOTICE TO COMPLY

Department of _____

Pursuant to Section _____ of the Code of the
City/County of _____, Virginia, as amended, a City
Manager/County Administrator Designee inspected your site at _____
_____ on _____, 20____ at _____ a.m. / p.m.

The following conditions of noncompliance were noted:

- ☐ SILT FENCE DOWN
- ☐ DISTURBED AREAS NOT STABILIZED
- ☐ SEDIMENT TRAPPING DEVICES NOT INSTALLED PROPERLY
- ☐ TRACKING ON PUBLIC ROAD
- ☐ OTHER: _____

The following corrective measures are needed to bring you into compliance:

- _____
- _____
- _____
- _____

These measures are to be completed before _____, 20____.

Notice ordered by _____, on _____, 20____.

(Designee of City Manager/County Administrator)

Hand Delivered _____ Certified Mail _____

If you have any questions, please call _____.
(Telephone number)

CITY/COUNTY OF _____

STOP WORK ORDER

Permit Number _____

Date _____

Department of _____

Pursuant to Section _____ of the Code of the
City/County of _____, Virginia, as amended, a substantial
Code violation exists at _____. You are
hereby notified that further Work at this location must be

IMMEDIATELY DISCONTINUED

Corrective Measures Required:

Ordered by: _____, on _____, 20____.
(Designee of City Manager/County Administrator)

Notice served to _____, on _____, 20____.

Stop Work Order in Effect Until _____

(Signature)

SECTION 106

CONTROL OF MATERIAL

I. TESTS AND INSPECTIONS

- 1.1 All material and workmanship shall be subject to inspection, examination and test by the Owner at any time during manufacture and/or construction. The Owner shall have the right to reject defective material and workmanship or require their correction.
- 1.2 The Contractor shall provide at its expense the testing and inspection services required by the Contract Documents. The Owner will provide at his expense all inspection and testing services not required by the Contract Documents; provided, however, the Contractor will be responsible for the payment of all failing tests.
- 1.3 The Contractor shall furnish promptly without additional charge all reasonable facilities, labor, and materials, necessary and convenient for making such tests as may be designated in the Contract Documents. The Contractor shall work with the Owner and the Engineer in scheduling and coordinating Owner provided testing or inspection services.
- 1.4 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public body having jurisdiction require any Work (or part thereto) specifically to be inspected, tested, or approved by someone other than the Owner, the Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish the Owner the required certificates of inspection, or approval. The Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the Owner's acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to the Contractor's purchase thereof for incorporation in the Work.
- 1.5 Inspections, tests or approvals by the Owner shall not relieve the Contractor from its obligations to perform the Work in accordance with the requirements of the Contract Documents.
- 1.6 The failure of the Owner to reject or condemn materials and workmanship not conforming to the Contract Documents shall not prevent the Owner from rejecting materials and workmanship found not to be in accordance with the Contract Documents at any time prior to the acceptance of the completed Work, nor shall it be considered as a waiver of any nonconformance with the Contract Documents which may be discovered later, or as preventing the Owner at any time prior to the expiration of the guarantee period or of the expiration of any applicable statutory limitation period for legal actions for Contractor default from recovering damages for work not in accordance with the Contract Documents.

II. LABOR, MATERIALS AND EQUIPMENT

- 2.1 The Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The Contractor shall at all times maintain good discipline and order at the site.
- 2.2 Unless otherwise specified, the Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all facilities and incidentals necessary for the furnishing, performance, testing, start-up, and completion of the Work.
- 2.3 All materials and equipment shall be of good quality and new (manufactured within two [2] years

of the Bid date), except as otherwise provided in the Contract Documents. If required by the Owner, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents.

- 2.4 It shall be the responsibility of the Contractor to legally dispose of all excess material at his expense unless otherwise indicated on the Drawings and/or noted in the Specifications.
- 2.5 No material that is not required for the Work on this Project may be stored on site or within the Project boundaries or on land designated for Project use, unless approved by the Owner in writing prior to placement.

III. WORK BY OWNER

- 3.1 The Owner may perform other work related to the Project at the site by the Owner's own forces, have other work performed by utility owners, or let other direct contracts for Work at the site. If the fact that such other work is to be performed was not noted in the Contract Documents, Written Notice will be given to the Contractor prior to starting any such other work.

End of Section

SECTION 107

LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

I. PERMITS AND REGULATIONS

- 1.1 The Contractor shall procure all permits and licenses pay all charges, fees and taxes and give all notices necessary and incidental to the due and lawful prosecution of the Work except those provided by the Owner, and specified in the Special Provisions.
- 1.2 The Contractor shall be fully responsible for knowledge of and shall abide by each and every law, rule or regulation of all public bodies having political jurisdiction over the Project and in force at the time of the Contract; including, the safety of persons or property and the protection of persons and property from damage, injury or loss. The Contractor shall erect and maintain all necessary safeguards for such safety and protection and hold harmless the Owner and its agents, officers, or employees against any claim for liability arising from or based on any violation, whether by himself, his agents, his employees or subcontractors. If the Contractor observes that the Contract Documents are at variance with any such law, he shall promptly notify the Owner in writing. The Contractor shall execute and file the documents, statements, and affidavits required under any applicable federal or state law or regulation affecting his Bid or Agreement or prosecution of the Work thereunder. The Contractor shall permit examination of any records made subject to such examination by any federal or state law or by regulations promulgated thereunder by any state or federal agency charged with enforcement of such law. The Contractor shall not be entitled to claim any damages for delay occasioned by compliance with such laws. Where such laws are changed during the course of the Agreement, and where such changes create additional costs to the Agreement or affect the time of the Agreement, such changes shall be made effective through Change Orders prepared in accordance with the Contract Documents.
- 1.3 The Contractor shall comply fully with the U.S. Department of Labor Safety and Health Regulation promulgated under the Occupational Safety and Health Act of 1970, as amended, and under Section 107 of the Contract Work Hours and Safety Standards Act, as amended. The Contractor shall also comply fully with the Overhead High Voltage Act as set forth in Chapter 30, Title 59.1 of the Code of Virginia; Subpart P - "Elevations, Trenching and Shoring", of the Virginia Occupational Safety and Health Standards for Construction Industry; the Virginia Confined Space Standard 1910.146 of the Virginia Occupational Safety and Health Standards for General Industry; and the "Underground Utility Damage Prevention Act" as set forth in Chapter 10.3, Title 56 of the Code of Virginia, 1950, as amended. The above listing of safety laws and regulations is for informational purposes and in no way alters or limits Contractor's responsibility to comply with the safety laws of all public bodies having jurisdiction as set forth in Section 107-1.2 above.

II. LAND, EASEMENTS, AND RIGHTS-OF-WAY

- 2.1 Prior to issuance of Notice to Proceed, the Owner shall obtain all land, easements, and rights-of-way necessary for carrying out and for the completion of the work to be performed and pursuant to the Contract Documents, unless otherwise specified herein or otherwise mutually agreed. A land surveyor licensed in the Commonwealth of Virginia must perform the layout. Easements for temporary uses and detours requested by the Contractor and approved by the Owner in lieu of a detour within the right of way or easement area shall be acquired by the Contractor without the Owner being a party to the Agreement.
- 2.2 The Owner shall provide to the Contractor information that delineates and describes the lands owned, rights-of-way, or easements acquired, and permits obtained.
- 2.3 The Contractor shall provide at its own expense and without liability to the Owner any additional

land and access thereto that the Contractor may desire for temporary construction facilities, or for storage of materials. The Contractor shall not use private property in connection with the Work unless prior written permission is obtained from the property owner. A copy of the written permission indicating the name, address, and phone number of the property owner shall be furnished to the Owner. Upon completion of the use of the property, the Contractor shall also furnish the Owner a release signed by the property owner indicating that the property has been satisfactorily restored.

- 2.4 The Contractor shall acquire all necessary and appropriate Permit(s) from the locality, VDOT, or both, for entrance(s) to off-site storage or lay-down yard(s) and shall abide by all conditions required by the Permit. The Contractor shall be solely responsible for all costs incurred in acquiring the Permit and all costs associated with the efforts necessary to comply to Permit requirements.

The Contractor shall utilize the most direct means of access to the Work area and shall not access the Work area through adjacent neighborhoods, parking areas, etc. Any and all damages to adjacent areas resulting from the Contractor's activities shall be the sole responsibility of the contractor and shall be repaired at the Contractor's expense, to the complete satisfaction of the Owner, locality/VDOT, and the affected property owner(s).

III. PROTECTION OF WORK, PROPERTY & PERSONS

- 3.1 The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the Work and other persons who may be affected thereby, all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall provide and maintain all necessary watchmen, barricades, lights, and warning signs, and take all necessary precautions for the protection and safety of the public.
- 3.2 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The Contractor shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection, and shall notify owners of adjacent utilities when prosecution of the Work may affect them. The Contractor shall remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, or anyone for whose acts any of them will be liable.
- 3.3 The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Owner.
- 3.4 In accordance with generally accepted construction practices, and the requirements of OSHA, the Contractor shall be solely and completely responsible for conditions of the Project site. This requirement shall apply continuously and not be limited to normal working hours. The Contractor shall comply with Federal and State safety regulations, at the site of the Work and provide such equipment and medical facilities as necessary to supply first aid service to anyone who may be injured. The Contractor shall promptly report in writing to the Owner all accidents whatsoever arising out of, or in connection with, the performance of the Work whether on, or adjacent to, the site and which caused death, personal injury or property damages, giving full details and statement of witnesses. In addition, if death or serious injuries or serious damages are caused, the accidents shall be reported immediately to both the Engineer and the Owner. If any claim is made by anyone against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the facts, in writing, to the Owner.

- 3.5 Until final acceptance of the Work by the Owner, the Contractor shall have charge and care thereof and shall take every precaution against damage to the Work or to any part thereof by action of the elements or from any other cause whether installed, in storage, or off-site. The Contractor shall rebuild, repair, restore, and make good damage to any portion of the Work occasioned by any of the foregoing causes before final acceptance and shall bear the expense thereof. The Owner may reimburse the Contractor for repair of damage to Work attributable to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor. In case of suspension of work, the Contractor shall be responsible for the Project and shall take such precautions as may be necessary to prevent damage to the Work, provide for erosion and environmental control and drainage control, and erect any necessary temporary structures, signs, or other facilities at his own expense. During the suspension of Work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and soddings furnished under the Contract and shall take adequate precautions to protect new tree growth and other important vegetation against damage.
- 3.6 Emergency traffic such as police, fire and disaster units shall be provided reasonable access to the work area at all times. The Contractor shall coordinate partial or full street closures with all emergency services, such as police, fire and disaster units, and shall bear the responsibility of notification to same of all closures, blockages and re-openings.
- 3.7 The Contractor shall, during the progress of the Work and as directed by the Owner, remove from the Owner's property and from all public and private property and rights-of-way, at its own expense, all temporary structures, rubbish, debris, piles of earth, foreign matter, and waste materials resulting from his operations. The site of the Work shall be restored to the conditions existing before the Work was started, to the satisfaction of the Owner. Lawns, pavements, sidewalks, and other surfaces shall be preserved where practicable, but if damaged, shall be fully restored.
- 3.8 The Owner may take corrective action if the Contractor fails to perform cleanup and restoration in an orderly, continuous, and expeditious manner. The Owner may take corrective action three days after delivery of notice to do so to the Contractor and deduct the cost from any monies due the Contractor.
- 3.9 The Contractor shall preserve property and improvements along the lines of and adjacent to the Work unless their removal or destruction is called for by the Contract Documents. The Contractor shall use suitable precautions to prevent damage to such property.
- 3.10 When the Contractor finds it necessary to enter on private property, he shall secure from the property owner or lessee a written permit for such entry prior to moving thereon. An executed copy of this permit shall be furnished to the Owner.
- 3.11 The Contractor shall be responsible for damage or injury to property during the prosecution of the Work resulting from any act, omission, neglect, or misconduct in the method of executing the Work or attributable to defective Work or materials. This responsibility shall not be released until final acceptance of the Project.
- 3.12 When direct or indirect damage is done to property by or on account of any act, omission, neglect or misconduct in the method of executing the Work or in consequence of the non-execution thereof on the part of the Contractor, the Contractor shall restore such property to a condition substantially equal to that existing before such damage was done by repairing, rebuilding or restoring, as may be directed by the Owner, or making settlement with the property owner. The Contractor shall secure from the property owner a release from any claim against the Owner without additional compensation therefor. A copy of this release shall be furnished to the Owner.
- 3.13 All property boundary markers shown on the Drawings or discovered during the course of construction shall be protected. All property boundary markers disturbed due to construction

activities shall be replaced by the Contractor at no expense to the Owner. Property boundary markers shall be restored by a surveyor licensed in the State of Virginia and all restored property boundary markers shall be shown on the Record Drawings.

- 3.14 The Contractor shall employ a licensed Plumbing Contractor, who shall obtain the necessary permits and shall do all Work on private property in accordance with the International Plumbing Code, latest edition. The Owner will obtain the permission of the property owner to work on private property. No payment will be made for work done on private property until all restoration work is complete to the satisfaction of the Owner and the homeowner.
- 3.15 The Contractor will notify the affected property owners, in writing **10 Days** prior to commencement of Work. "Affected Property Owners" shall be those property owners whose properties are affected by construction on the Project in the following manner: (i) restrained access to and from residences and business locations; (ii) interference with the right to enjoy one's residence or business free of disturbing and unusual environmental changes as a result of the Project, such as excessive noise, dust, light, as well as unusual working hours and odors; and (iii) the relocation of personal property, such as trees, shrubs, plants and flowers, play equipment, portable buildings, fences and automobiles, which must be moved as a result of the Project. Such Notice shall be deemed properly given if mailed by first class, postage prepaid, to the address for the property owners shown in the local tax records.
- 3.16 It shall be the Contractor's paramount responsibility to additionally notify each residence and business that construction adjacent to their property is imminent. This notification will be given and noted no less than 48 hours prior to Work commencing adjacent to the affected property. The Notice from the Contractor shall be written and may be hand delivered to each affected residence and business. A separate Notice shall be delivered each time the entrance to each residence and business will be blocked or inaccessible.
- A. If this Notice is mailed, time is to be allowed such that receipt by the addressee is at least 48 hours prior to Work commencement. Such Notice shall be deemed properly given if mailed by first class, postage prepaid, to the address for the property owners shown in the local tax records. A duplicate copy of each mailed Notice is to be forwarded to the Owner.
- B. If this Notice is hand delivered, a duplicate copy of each Notice is to be forwarded to the Owner indicating the date of delivery and if personal contact was achieved.

IV. ENVIRONMENTAL STIPULATIONS

- 4.1 Any cost associated with violations of the law including, but not limited to, remediation, cleanup cost, fines, administrative or civil penalties or charges, and third party claims imposed on the Owner by any regulatory agency or by any third party as a result of the Contractor's noncompliance with federal, state, or local environmental laws and regulations or nuisance statutes by the Contractor or by Subcontractors, consultants, sub-consultants, or any other persons, corporations or legal entities retained by the Contractor for this Agreement, shall be paid by the Contractor.

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

- 4.2 Pollution:

- A. Water

The Contractor must comply with Section 531 – Contaminated Groundwater Management, and shall exercise every reasonable precaution throughout the duration of the project to prevent pollution of rivers, streams, and impoundments. Pollutants such as chemicals,

fuels, lubricants, bitumens, raw sewage, paints, sedimentation, and other harmful material shall not be discharged into or alongside rivers, streams, or impoundments or into channels leading to them.

Construction discharge water shall be filtered to remove deleterious materials prior to discharge into state waters. During specified spawning seasons, discharges and construction activities in spawning areas of state waters shall be restricted so as not to disturb or inhibit aquatic species that are indigenous to the waters. Neither water nor other effluence shall be discharged onto wetlands or breeding or nesting areas of migratory waterfowl. When used extensively in wetlands, heavy equipment shall be placed on mats. Temporary construction fills and mats in wetlands and flood plains shall be constructed of approved non-erodible materials and shall be removed by the Contractor to natural ground when the Owner so directs.

If the Contractor dumps, discharges, or spills any oil or chemical that reaches or has the potential to reach a waterway, he shall immediately notify all appropriate jurisdictional state and federal agencies and shall take immediate actions to contain, remove, and properly dispose of the oil or chemical.

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

1. All waste materials, including but not limited to excavated materials, demolished pavement, arboreal (landscaping) waste and other debris, that are not suitable for project related purposes (e.g. backfill) or are surplus to the needs of the project, both as determined by the Owner, shall become the property of the Contractor. The Contractor shall legally dispose of all such material in accordance with his accepted Disposal Plan at no additional cost to the Owner.
2. The Contractor shall submit a Disposal Plan for review and acceptance by the Owner prior to performing any Work that might generate waste materials. The plan shall include a complete description of the materials that are expected to be encountered and their proposed disposal site(s). The Contractor may change his Disposal Plan only by written notice to the Owner. The acceptance of a plan and/or any related notice to the Owner must be evidenced by a written response from the Owner.
3. The Contractor shall insure that all permits related to his disposal operations have been obtained, and the Contractor shall comply with all requirements of those permits. The Contractor shall show evidence that all required permits have been obtained for all disposal sites by submitting a copy of all such permits to the Owner as part of the Contractor's Disposal Plan.

Construction operations in rivers, streams, or impoundments shall be restricted to those areas where channel changes are shown on the plans and to those that shall be entered for the construction of structures. Rivers, streams, and impoundments shall be cleared of false-work, piling, debris, or other obstructions placed therein or caused by construction operations.

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

If it is necessary to relocate an existing stream or drainage facility temporarily to facilitate construction, the Contractor shall design and provide temporary channels or culverts of

adequate size to carry the normal flow of the stream or drainage facility. The Contractor shall submit a temporary relocation design to the Owner for review and acceptance in sufficient time to allow for discussion and correction prior to beginning the work the design covers. Costs for the temporary relocation of the stream or drainage facility shall be included in the Contract Price for the related pipe or box culvert.

When a live watercourse must be crossed by construction vehicles more than twice in any six month period, a temporary vehicular stream crossing constructed of non-erodible material shall be provided.

Contractor shall comply with all provisions of the latest edition of the Virginia Erosion and Sedimentation Control Handbook.

B. Air

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

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

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

Emission standards for asbestos incorporated in the EPA's National Emission Standards for Hazardous Air Pollutants apply to the demolition or renovation of any institutional, commercial, or industrial building, structure, facility, installation, or portion thereof that contains friable asbestos.

C. Noise

The Contractor's operations shall be performed so that exterior noise levels measured during a noise-sensitive operation shall not be more than 80 decibels within 100 feet from the point of origin or within ten (10) feet of a noise-sensitive facility. Noise-sensitive facility is any facility for which lowered noise levels are essential if the facility is to serve its intended purpose. Such facilities include, but are not limited to, those associated with residences, hospitals, nursing homes, churches, schools, libraries, parks and recreational areas.

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

The Owner may prohibit or restrict to certain portions of the project any work that produces objectionable noise between 9 P.M. and 7 A.M. If other hours are established by local ordinance, the local ordinance shall govern.

Equipment shall in no way be altered so as to result in noise levels that are greater than those produced by the original equipment.

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

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

D. Forest Fires

The Contractor shall take all reasonable precautions to prevent and suppress forest fires in any area involved in construction operations or occupied by him as a result of such operations. The Contractor shall cooperate with the proper authorities of the state and federal governments in reporting, preventing, and suppressing forest fires. Labor, tools, or equipment furnished by the Contractor upon the order of any forest official issued under authority granted the official by law shall not be considered a part of the Contract. For fires originating by no fault of the Contractor, the Contractor may negotiate with the proper forest official for compensation for such labor, tools, or equipment.

4.3 Archeological, Paleontological, and Rare Mineralogical Findings:

In the event of the discovery of prehistoric ruins, Indian or early settler sites, burial grounds, skeletal remains, relics, artifacts, fossils, stone tools, meteorites, or other articles of archeological, paleontological, or rare mineralogical interest during the prosecution of work, the Contractor shall act immediately to suspend work at the site of the discovery and notify the Owner. The Owner will immediately notify the proper state authority charged with the responsibility of investigating and evaluating such finds. The Contractor shall cooperate and, upon request by the Owner, assist in protecting, mapping, and removing the findings. Findings shall become the property of the Owner unless they are located on federal lands, in which event they shall become the property of the U.S. government.

When such work delays the progress of the Work, the Owner will give consideration to adjustments in the Contract Time limit. However, no adjustment in Contract Price nor Time will be allowed for delays that do not exceed 2 working days from the time the Contractor is notified to stop work.

4.4 Siltation and Erosion Control/Erosion & Sediment Bond:

Each Bidder shall submit a letter of certification from their surety that an Erosion and Sediment Control Surety Bond in the amount indicated in **the** Invitation for Bids, will be issued if the Bidder is awarded the contract. Excavation shall be done in such a manner that there are no violations of the State of Virginia "Erosion and Sediment Control Handbook."

V. TEMPORARY FACILITIES

5.1 The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of employees as may be necessary to comply with the requirements of any governing body and regulatory agency having jurisdiction.

5.2 The Contractor shall pay for and furnish temporary facilities (such as light, power, and water) complete with connecting piping, wiring, lamps, and similar equipment as necessary. The Contractor shall install, maintain, and remove temporary facilities upon completion of the Work. The Contractor shall obtain all permits and bear all costs in connection with temporary facilities at no expense to the Owner. The use of temporary facilities shall be in compliance with the requirements of the facility owner.

- 5.3 The Contractor shall provide at least one self-contained single-occupant toilet unit of the chemical, or aerated recirculation type, properly vented and fully enclosed with a glass fiber reinforced polyester shell or similar nonabsorbent material. Unit shall be emptied and serviced regularly.

VI. EMERGENCIES

- 6.1 In emergencies affecting the safety of persons, or the Work, or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Owner, shall act to prevent threatened damage, injury or loss. The Contractor shall give the Owner prompt Written Notice of any significant changes in the Work or deviations from the Contract Documents caused thereby. Any compensation, claimed by the Contractor on account of emergency work, shall be determined by agreement between the Owner and the Contractor, and a Change Order shall be issued to document the changes.

VII. WARRANTY AND GUARANTEE

- 7.1 The Contractor shall warrant and guarantee to the Owner that all Work is in accordance with the Contract Documents and is not defective. Prompt notice of all defects shall be given to the Contractor. The Contractor shall promptly correct all defective Work performed and replace defective materials or items found deficient during the final inspection, in a manner satisfactory and at no additional cost to the Owner for a period of one (1) year following the date of **Final Completion**; provided, however, if the local ordinances or code regarding warranties and guarantees, or if any provision in the local ordinances or code regarding the timing of performance or defect bonds conflicts with such one (1) year period, the local ordinance or code shall control. This warranty and guarantee shall not operate as a waiver of any of the rights and remedies of the Owner for default under or breach of the Agreement which rights and remedies may be exercised at any time within the period of any applicable statute of limitations.
- 7.2 Where defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this Article, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year after such corrections or removal and replacement has been satisfactorily completed. Repetitive malfunction of an equipment or product item shall be cause for replacement and an extension of the correction period to a date one (1) year following acceptable replacement. A repetitive malfunction shall be defined as the third failure of an equipment or product item following original acceptance.
- 7.3 If the Contractor does not promptly correct the defective Work or replace defective materials, the Owner may have the defective Work corrected or the rejected Work removed and replaced, and all costs of such removal and replacement shall be paid by the Contractor.
- 7.4 Certain equipment or items may be required in the Contract Documents to be warranted for periods longer than one year.
- 7.5 In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Contract Documents or by Change Order.

VIII. OPENING SECTIONS OF PROJECTS TO TRAFFIC

- 8.1 When specified in the Contract or when directed by the Owner, certain sections of the Work may be opened to traffic.
- 8.2 On any section of the Work opened by order of the Owner where the Contract Documents do not provide for traffic to be carried through the Work and the Contractor has not been dilatory in prosecuting the Work, the Contractor will not be required to assume any expense entailed in maintaining the road for traffic **unless the problem is caused by inadequate or defective work**

by the Contractor. Such expense will be borne by the Owner or will be compensated for by Change Order. Repair of slides and repair of damage attributable to traffic will be compensated for by Change Order. The cost of all other repairs shall be borne by the Contractor.

- 8.3 On any section of the Work opened by the order of the Owner where the Contract Documents do not provide for traffic to be carried through the Work, any additional cost for the completion of other items of Work that are occasioned because of the changed working conditions will be compensated by Change Order.

If the Contractor is dilatory in completing the Work, he shall not be relieved of the responsibility for maintenance during the period the section is opened to traffic prior to final acceptance. Any expense resulting from the opening of such portions under these circumstances, except for slides, shall be borne by the Contractor. The Contractor shall conduct the remainder of the construction operations so as to cause the least obstruction to traffic.

IX. NO WAIVER OF LEGAL RIGHTS

- 9.1 The Owner shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after final acceptance of the Work and payment therefor from showing (1) the true amount and character of the Work performed and materials furnished by the Contractor, (2) that any such measurement, estimate, or certificate is untrue or incorrectly made, or (3) that the Work or materials do not conform with the provisions of the Contract. The Owner shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate, and payment in accordance therewith, from recovering from the Contractor or his surety, or both, such damage as it may sustain by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the Owner or any representative of the Owner, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possession taken by the Owner shall operate as a waiver of any portion of the Contract or of any power herein reserved or of any right to damages. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach. The Owner reserves all rights, privileges, immunities and defenses available to it at law.

X. SMALL, WOMEN-OWNED MINORITY AND SERVICE DISABLED VETERAN-OWNED BUSINESS REQUIREMENTS

- 10.1 **The City of Newport News desires to facilitate the establishment, preservation, and strengthening of small businesses and businesses owned by women, minority individuals and service disabled veterans and to encourage their participation in the City's procurement activities. The City of Newport News encourages these firms to compete and encourages non-minority firms to provide for the participation of small businesses and businesses owned by women, minority individuals and service disabled veterans through partnerships, joint ventures, subcontracts, and other contractual opportunities. Bidders may be requested to complete the SMB, WBE, MBE and SDV Business Requirements form and submit it with the bid.**

XI. AVAILABILITY OF FUNDS

- 11.1 **A contract shall be deemed in force only to the extent of appropriations available to each department for the purchase of such goods and/or services. The City's extended obligations on contracts that include funding through successive fiscal periods shall be contingent upon actual appropriations for the successive periods (additional years).**

XII. CONFLICT

- 12.1 In the event of a conflict between the contract documents, including the terms and conditions and the terms of a purchase order or related document issued by the Office of Purchasing, the contract documents shall control.**

XIII. MANDATORY USE OF CITY FORMS

- 13.1 Failure to submit a bid on the official city form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the City reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the City may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.**

XIV. RIGHTS UNDER ANTITRUST LAWS

- 14.1 The Bidder assigns to the City any and all rights that it may have under the antitrust laws of the United States and the Commonwealth of Virginia in any way arising from or pertaining to the bid. This provision is remedial in nature and is to be liberally construed by any court in favor of the City.**

XV. INDEPENDENT CONTRACTOR

- 15.1 The Contractor and any employees, agents, or other persons or entities acting on behalf of the Contractor shall act in an independent capacity and not as officers, employees, or agents of the City.**

XVI. SEVERABILITY

- 16.1 If any provision of the Contract resulting from this Invitation for Bids or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this contract, or the application of such provision to persons or circumstances other than those which it is invalid or unenforceable, shall not be affected, and each provision of this contract shall be valid and enforced to the full extent permitted by law.**

End of Section

SECTION 108

PROSECUTION AND PROGRESS OF WORK

I. PATENT FEES AND ROYALTIES

- 1.1 The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of the Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents.
- 1.2 To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless the Owner, the Engineer, the Engineer's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

II. TAXES

- 2.1 The Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by the Contractor in accordance with the Laws and Regulations of the Project that are applicable during the performance of the Work. (The Contractor may apply to the Virginia Department of Environmental Quality for tax exempt status for certain wastewater products.)

III. NOTICE TO PROCEED

- 3.1 Written Notice to Proceed will be given after the Agreement has been executed and the required Bid Security and insurances have been filed with and approved by the Owner.
- 3.2 The Contractor shall notify the Owner and all other governing bodies having jurisdiction, of the time and location that Work will begin at least 48 hours prior to beginning Work.

IV. PRE-CONSTRUCTION CONFERENCE

- 4.1 Within ten (10) Days of the Effective Date of the Agreement, a conference attended by the Contractor, the Owner, and others as appropriate will be held to discuss the Project, and to discuss procedures relating to Shop Drawings, submittals, Applications for Payment, and other Project issues, and to establish a working relationship among the parties as to the Work.

V. CONSTRUCTION PROGRESS SCHEDULE

- 5.1 Within ten (10) Days after the Effective Date of the Agreement, the Contractor shall submit a written schedule to the Owner showing the proposed order of Work and indicating the time required for completion of major items of Work. This schedule shall take into account the passage or handling of traffic with the least practicable interference and the orderly, timely and efficient prosecution of the Work. The schedule will be used as an indication of the sequence of the major construction operations and as a check on the progress of the Work.
 - A. A construction schedule in the form of a critical path shall be submitted to the Owner as part of the submittal process prior to beginning construction and shall be updated when duration or sequencing changes.

- B. Upon receipt of an approved "Work Schedule", the Contractor shall submit to the Owner, within 10 days,
1. An estimated payment schedule by each month of project duration.
 2. A composite curve to show the estimated value of Work completed and stored materials less specified retainage.
 3. Key months when work will be 50, 80, 90, and 100 percent complete shall be established.
 4. Identification when facilities will be fully operational.
- C. During the course of Work, the Contractor shall update with new composite curves at key months or whenever variation is expected to be more than plus or minus 10 percent. The original or previous composite curves shall be retained as dashed curves on all updates.
- D. The Owner reserves the right to audit all reports and schedules. For cost-reimbursement contracts, change orders issued for fixed priced contracts or other contracts in excess of \$30,000, which include the provisions of services, the Contractor shall retain all books, records and other documents relative to this contract for five (5) years after final payment or until audited by the Owner or designee, whichever is sooner. The Owner and its authorized agents shall have full access to and the right to examine and duplicate any of said materials during said period.
- 5.2 The Contractor shall update the progress schedule monthly to reflect any schedule changes required to complete the remaining Work in accordance with the requirements of the Contract Documents. The updated schedule shall be submitted to the Owner for acceptance with the monthly application for progress payment; no payment will be made if the updated schedule is not submitted. All proposed adjustments in the progress schedule shall generally conform to the progress schedule then in effect and will comply with any provisions of the general requirements applicable thereto. **The contractor shall submit daily field reports using the City's project management system.**

VI. SUBCONTRACTS

- 6.1 Except as otherwise noted, contract Work, the cost of which is at least fifty percent (50%) of the total Contract Price shall be performed by the Contractor's own organization.
- 6.2 No part of the Work shall be transferred or subcontracted without prior written consent of the Owner, and no such consent or approval shall release the Contractor from any obligations to the Owner or persons employed by the Subcontractors, or to those supplying materials to the Subcontractors.
- 6.3 The Contractor agrees that it is as fully responsible to the Owner for the acts and omissions of its Subcontractors and persons either directly or indirectly employed by the Subcontractors as it is for the acts or omissions of persons directly employed.
- 6.4 Nothing contained in the Agreement shall create any contractual relation between any Subcontractor and the Owner.

VII. COMMENCEMENT AND PROSECUTION OF WORK

- 7.1 The Contractor shall commence Work within ten (10) Days of the date specified in the Notice to Proceed. Time being of the essence of this Project, the Contractor shall prosecute the Work diligently, using such means and methods of construction as will secure its full completion within the time period specified in the Agreement. No Work shall be done at the site prior to the date

specified in the Notice to Proceed.

- 7.2 The Contractor shall proceed with the Work at such rate of progress to insure full completion within the Contract Time. It is expressly understood and agreed, by and between the Contractor and the Owner, that the Contract Time for the completion of the Work as specified in the Agreement is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the Project.
- 7.3 The Contract Time will commence on the date indicated in the Notice to Proceed.
- 7.4 Once the Contractor has commenced Work, it shall be prosecuted continuously and to the fullest extent possible except for interruptions caused by delays authorized or ordered by the Owner by a Change Order or by weather.

Contractor agrees that it will make no claim for increased Contract Price or extended Contract Time arising from delay except by request for a Change Order as set forth below. The Contract Time may be extended and/or Contract Price may be increased by Change Order if the Owner determines that:

- A. the Contractor is delayed in the progress of Work by any act or omission of the Owner or the Engineer, or by any separate contractor employed by the Owner, or by strikes, lockouts, fire, adverse weather conditions not reasonably anticipated, or acts of nature;
 - B. such delay affects the overall completion of the Work;
 - C. the Contractor gives written Notice to the Owner within 48 hours of the start of the occurrence, stating the cause of the potential delay and estimate of the possible Contract Time extension involved; and
 - D. the Contractor gives written Notice to the Owner of any actual Contract Time extension and/or Contract Price increase requested as a result of the aforementioned occurrences within 10 days after the delay has been remedied.
- 7.5 Gifts, gratuities, or favors shall not be given or offered by the Contractor to personnel of the Owner.
 - 7.6 The Contractor shall not employ any personnel of the Owner or the Engineer for any services without the prior written consent of the Owner.
 - 7.7 Workers shall have sufficient skill and experience to perform properly the Work assigned to them. Workers engaged in special or skilled Work shall have sufficient experience in such Work and in the operation of equipment required to perform it properly and satisfactorily. Any person employed by the Contractor or any Subcontractor who, in the opinion of the Owner, does not perform his Work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Owner, be removed forthwith by the Contractor or Subcontractor employing the person and shall not be employed again on any portion of the Work without the approval of the Owner.
 - 7.8 Equipment shall be of sufficient size and in such mechanical condition as to meet the requirements of the Work and produce a satisfactory quality of Work. Equipment and the Contractor's methods and means shall be such that no damage to the roadway, adjacent property, or other highways will result from its use. The Owner may order the removal and require replacement of unsatisfactory equipment.

VIII. SUSPENSION OF WORK

- 8.1 The Owner may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than 90 Days or such further time as agreed upon by the Contractor, by Written

Notice to the Contractor. Such Notice shall specify the date on which Work shall be resumed and the Contractor shall resume the Work on the date so specified. The Contractor will be allowed an increase in the Contract Price (**Only if the Contractor can prove that the delay resulted in increased costs**) or an extension of the Contract Time, or both, directly attributable to any suspension if the Contractor makes a **valid** claim in accordance with the Contract Documents, except that no such increase or extension shall be allowed if the suspension was due to a failure by the Contractor to perform the Work in accordance with the Agreement.

- 8.2 The Owner may decline to approve or, because of subsequently discovered evidence, nullify the whole or part of any Application for Payment to such extent as may be necessary to protect the Owner from loss on account of:
- A. Defective Work not remedied;
 - B. Claims filed or reasonable evidence indicating probable filing of claims against the Contractor;
 - C. Failure of the Contractor to make payments properly to subcontractors or for materials or labor;
 - D. A reasonable doubt that the Contract can be completed for the balance then unpaid;
 - E. Failure to maintain (each month) the record set of drawings and specifications, or a failure to provide the Owner record drawings and specifications within 30 calendar days from the date of the Certificate of Substantial Completion;
 - F. Failure to periodically remove and dispose of accumulated debris, rubbish, and discarded/damaged materials;
 - G. Persistent failure to carry out the Work in accordance with the Contract Documents;
 - H. A reasonable doubt that the Work will be completed within the Contract Time.
- 8.3 When the above grounds are resolved to the satisfaction of the Owner, payment shall be made for amounts withheld therefore.

IX. TERMINATION OF AGREEMENT

9.1 Termination for the Convenience of the Owner

The performance of Work under this Agreement may be terminated by the Owner in accordance with this section in whole, or in part(s), whenever the Owner shall determine that such termination is in the best interest of the Owner. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of Work under the Agreement is terminated, and the date upon which such termination becomes effective.

After receipt of a notice of termination, and except as otherwise directed by the Owner, the Contractor shall:

- A. Stop Work under the Agreement on the date and to the extent specified in the notice of termination.
- B. Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under the Agreement that is not terminated.
- C. Terminate all orders and subcontracts to the extent that they relate to the performance of

the Work terminated by the notice of termination.

- D. Assign to the Owner, and as directed by the Owner, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated. The Owner shall have the right and discretion to settle or pay any and all claims arising out of the termination of such orders and subcontracts.
- E. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner. This approval or ratification will be final for all purposes of this section.
- F. Transfer title and deliver to the Owner, as directed by the Owner, the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other materials produced as a part of or acquired in connection with the performance of the Work terminated by the notice of termination, and the completed or partially completed plans, drawings, information and other property which, if the Agreement has been completed, would have been required to be furnished to the Owner.
- G. Use his best efforts to sell as directed or authorized by the Owner, property of the type referred to in Paragraph F above; provided, however, that the Contractor shall not be required to extend credit to any purchaser. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under this Agreement or shall otherwise be credited to the Contract price or cost of the Work covered by this Agreement or paid in such manner as directed by the Owner. The Contractor may acquire any such property under the conditions prescribed and at a price or prices approved by the Owner.
- H. Complete performance of that Work which was not terminated by the Owner.
- I. Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Contractor and in which the Owner has, or may acquire, an interest.
- J. Within 30 Days after the receipt of the Notice of termination, the Contractor may submit a list to the Owner for approval, certified as to quantity and quality of any or all items of, inventory not previously disposed of, exclusive of items, the disposition of which has been directed or authorized by the Owner, and may request the Owner to remove such approved items or enter into a storage agreement covering the same. Not later than 15 Days thereafter, the Owner will accept title to such approved items and remove them or enter into a storage agreement covering same. The list submitted shall be subject to final verification by the Owner upon removal of the items, or if the items were stored within 45 Days from the date of submission of the list. Any necessary adjustment to correct the list as submitted shall be made prior to final settlement.
- K. Within 30 Days after receipt of the notice of termination, the Contractor shall submit to the Owner his termination claim. Such claim shall be submitted in writing. Upon failure of the Contractor to submit its termination claim within the time allowed, the Owner may, at its discretion, reject such termination claim. Such termination claim shall include the cost of the following:
 - 1. The cost of supplies accepted by the Owner and not previously paid for by the Owner, appropriately adjusted for any saving of freight or other charges.
 - 2. The cost incurred in the performance of the Work terminated, including Initial cost and preparatory expense allocable thereto, but exclusive of any cost attributable to supplies paid or to be paid for by the Owner.

3. The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders which are properly chargeable to the terminated portion of the Agreement, exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by Subcontractors or vendors prior to the effective date of notice of termination and previously paid for by the Owner.
4. A reasonable amount of profit or commission, which will be determined based on the Project's specific overhead and expense data at the rate computed in the original Contract Price or, at the discretion of the Owner, as determined by an audit. The cost of the audit will be borne by the Contractor.
5. Cost of reasonable storage, transportation and other costs incurred in connection with the protection or disposition of property allocable to this termination portion of the Agreement.
6. The total sum to be paid to the Contractor shall not exceed the Contract Price as reduced by the amount of payments previously made and its further reduced by the Contract Price of Work not terminated. Said total sum shall also be reduced by the reasonable value, as determined by the Owner, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Owner or to a buyer.

9.2 Termination with Cause/Default

In the event that the Contractor shall for any reason or through any cause be in default of the terms of this Agreement, the Owner may give the Contractor written Notice of such default by certified mail/return receipt requested at the address set forth herein.

Unless otherwise provided, Contractor shall have ten (10) Days from the date such notice is mailed in which to cure the default. Upon failure of the Contractor to cure the default, the Owner may immediately cancel and terminate this Agreement as of the mailing date of the default notice.

Upon termination, the Contractor shall withdraw its personnel and equipment, cease performance of any further Work under this Agreement, and turn over to the Owner any Work in process for which payment has been made.

In the event of violations of law, safety or health standards and regulations, this Agreement may be immediately canceled and terminated by the Owner and provisions herein with respect to opportunity to cure default shall not be applicable.

9.3 Contractor's Right to Terminate the Agreement

Should the Work be stopped for a period of 90 Days or more, through no fault of the Contractor, or should the Owner fail to pay the Contractor any payment within a reasonable length of time after said payment shall become due, the Contractor may, upon seven (7) Days written notice to the Owner, stop Work, or terminate the Agreement and recover from the Owner payment for all Work executed, plus any loss actually sustained, plus reasonable profit and damage; provided, however, the total recovery from Owner shall not exceed the Contract Price.

X. LIQUIDATED DAMAGES

- 10.1 It is mutually understood and agreed by and between the Contractor and Owner that in the execution of the Work, time is an essential element of the Agreement, and it is important that the Work proceed vigorously to completion.
- 10.2 The Owner has the right to deduct any liquidated damages from any money in the Owner's hands, otherwise due, or to become due, to the Contractor, and to sue for and recover any additional

compensation for damages for non-performance of the Work or failure to complete the Work within the Contract Time.

10.3 The assessment of liquidated damages for failure to complete the Work within the Contract Time shall not constitute a waiver of the Owner's right to collect any additional damages that the Owner may sustain by failure of the Contractor to carry out the terms of the Agreement.

10.4 In the event of delay in the completion of the Work as specified beyond the Completion Date as adjusted by Change Orders, it would be difficult to determine the exact amount of the loss or damages suffered by the Owner due to delays in completion of the Agreement. Therefore, for every -Day of delay past Completion Date of this Agreement as adjusted by Change Orders, the Contractor and the Contractor's Surety will be liable to the Owner, as liquidated damages for delay and not as a penalty, in the sum designated in Bid Form, and in paragraph H of the Agreement between Contractor and Owner as set forth in Section 103, for each and every calendar Day the Contractor shall be in default, as follows:

A. If Substantial Completion has not been achieved by the scheduled Substantial Completion date, the Substantial Completion liquidated damages shall accrue each Day until Substantial Completion is achieved.

B. If Substantial Completion has been achieved but Final Completion has not been achieved by the Final Completion date, Final Completion liquidated damages shall accrue each Day until Final Completion is achieved.

C. Deleted

D. The scheduled Final Completion date shall not be extended, in any case, solely because Substantial Completion was not achieved by the scheduled Substantial Completion date.

E. This paragraph will not apply to delays in completion of the Work due to acts of God, acts of the Public Enemy, acts of the Government (in either its sovereign or contractual capacity), fires, floods, strikes, or unusually severe weather, provided, that the Contractor shall, within five (5) Days from the end of the month in which such delay occurred, notify the Owner in writing of the causes of delay and the facts relating thereto; and, provided that such delay occurs prior to the Substantial Completion date or, if Substantial Completion has been achieved, such delay occurs prior to the Final Completion date. Failure to provide such notice shall preclude the Contractor from claiming that delays resulted from the acts of God, acts of the Public Enemy, acts of the Government (in either its sovereign or contractual capacity), fires, floods, strikes, or unusually severe weather.

F. Nothing in the above clause shall be interpreted as limiting in any way, the Owner's right to proceed against the Contractor for additional damages or losses. Liquidated damages are for delay only and are in addition to any other rights available to the Owner by contract or law. To the fullest extent permitted by Laws and Regulations, the Contractor shall waive any defense as to the validity of such liquidated damages as set forth herein on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

10.5 Weather shall be considered "unusually severe", only if a weather condition (or any combination of weather conditions) prevents the Contractor from working 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 work days 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

- 10.6 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 Owner 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 Owner's determination shall be final and binding upon the parties.
- 10.7 The Work shall be considered complete when the following criteria have been met; all items of the Work have been constructed, inspected and accepted by the Owner and further that all punch list items have been corrected and the Owner has issued a letter of acceptance.

XI. SEPARATE CONTRACTS BY OWNER

- a. The Owner reserves the right to award other contracts in connection with the Project, the work under which may proceed simultaneously with the execution of this Agreement. The Contractor shall afford other separate Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and the Contractor shall take all reasonable action to coordinate its Work with theirs. If the work performed by the separate Contractor is defective or so performed as to prevent the Contractor from performing the Work, the Contractor shall immediately notify the Owner upon discovering such conditions. Upon receiving notification, the Owner shall **undertake an investigations to determine if evident supports the Contractor's claim and** take such appropriate steps as are necessary to allow the Contractor to perform Work under the Agreement, and appropriate extensions of time and change orders will be given to the Contractor, pursuant to the Agreement, to compensate for any delays and extra costs caused by separate Contractor's performance.

XII. INDEMNIFICATION

- 12.1 To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless the Owner, the Engineer, the Engineer's Consultants and officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including, but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, **and/or** (ii) is caused in whole or in part by any negligent act, errors, omissions, recklessness, or intentionally wrongful conduct of the Contractor, any Subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by a person or entity indemnified hereunder. This paragraph shall not require indemnification for a particular claim, cost, loss, or damage to the extent caused by or resulting solely from the negligence of the Owner, its agents, or employees.
- 12.2 In any and all claims against the Owner or any of the Owner's consultants, agents, officers, directors, or employees by any employee (or the survivor or personal representative of such employee) of the Contractor, any Subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any such Subcontractor, supplier or other person or organization under workers'

compensation acts, disability benefit acts or other employee benefit acts.

- 12.3 The indemnification obligations of the Contractor shall not extend to the damages caused by the Owner and the Owner's consultants, officers, directors, employees or agents resulting from the negligent preparation or approval of, Drawings, or Specifications.

End of Section

SECTION 109

MEASUREMENT AND PAYMENT

I. MEASUREMENT AND PAYMENT PROCEDURES

1.1 General

- A. Measurement will be made on the basis of completion of the Work in accordance with the Contract Documents and the appropriate specification section.
- B. Measurement of quantities will be made by the Contractor in the presence of the Owner. The methods of measurement and computations used in determination of quantities of materials furnished and installed shall be those generally recognized as conforming to good engineering practice.
- C. The term "Complete in Place" will mean that the item of Work shall be furnished and installed in accordance with the Contract Documents complete with all appurtenances necessary for the item to be used for its intended function. Testing and acceptable results shall be included.
- D. Linear foot and vertical foot measurements shall be measured along the horizontal plane of the ground or paved surface.
- E. Area computations shall be made on the surface. Pay measurements for area computations will not exceed plan dimensions as shown on the Drawings, unless otherwise approved by the Owner in writing.
- F. No payment will be made for length, width, or depth, in excess of that shown on the Drawings or specified in the Specifications for any construction, unless otherwise approved by the Owner in writing.
- G. The term "Each" when used as an item of payment will mean complete payment for the Work described in the Contract Documents.
- H. The word "Lump Sum" when used as an item of payment will mean complete payment for Work described in the item, including all materials, labor, and equipment necessary to complete the Work in accordance with the Contract Documents.
- I. Quantities will be measured and paid for in accordance with one of the following methods, and as specified on the Bid form

1.2 Incidental Items

- A. There are numerous incidental items of Work that are required to complete the Project. While these items may not be specifically mentioned or illustrated by the Contract Documents and there may be no specific pay items listed for them, the Contractor will be required to perform those incidental tasks that can be anticipated through inspection of the Contract Documents, inspection of the construction area, and experience in this class of construction.
- B. Items considered incidental Work shall not be measured for payment or paid for as such unless specified as unit price by items on the Bid form. These items and their costs shall be included in the unit prices or lump sum Bid for the pay items unless Bid separately. Incidental items include but are not limited to the following:
 - 1. Allaying dust and mud
 - 2. Clearing and grubbing
 - 3. Construction entrances

4. Contaminated groundwater management
5. Daily cleanup
6. Drainage feature restoration including culvert end-walls, swales, and paved swales
7. Excavation and dewatering
8. Final surface restoration
9. Fittings and Restrained Joints
10. Furnishing, hauling, placing, manipulating, and compacting material
11. Location of existing utilities
12. Material royalties
13. Minor relocation of buried cables, water lines, sewer lines, or similar utility lines 2 inches and smaller in diameter
14. Offsite disposal of excess excavated, surplus and remnant excavated materials
15. On-site manufacturer or representative services
16. Pavement marking
17. Permits, unless provided by the Owner
18. Protection of existing utilities and other facilities
19. Removal and replacement of existing signs, fences, mail boxes, and similar existing improvements
20. Shoulder tie-in to restored pavement
21. Site restoration and cleanup
22. Site security
23. Stakeout and surveying
24. Traffic control
25. Top soil and seeding
26. Record Drawings
27. **Dewatering**
28. **By-pass Pumping**

1.3 Schedule of Values for Lump Sum Bid Items

- A. Within fourteen (14) Days after the Effective Date of the Agreement, the Contractor shall submit a schedule of values for all of the Work which shall include quantities and prices of items aggregating the Contract Price and shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices shall include an appropriate amount of overhead and profit applicable to each item of Work.
- B. The Owner shall review the schedule and shall respond in writing to the Contractor within ten (10) Days either approving or disapproving the schedule. If the schedule of values is disapproved, the Contractor shall resubmit the schedule with revised value or additional substantiating data and the Owner shall either approve or disapprove the revised schedule within ten (10) Days. No payments shall be processed or approved until the schedule of values is approved by the Owner.
- C. The Contractor shall include Erosion and Sedimentation Maintenance Line Item in the Schedule of Values.

1.4 Application for Progress Payment by Contractor

- A. Unless otherwise provided in this Section, the Owner shall make monthly progress payments to the Contractor on the basis of a duly certified and approved Application for Payment for Work performed **in digital or other format as presented by the City** during the preceding calendar month as approved by the Owner.

- B. At least ten (10) Days before each partial progress payment (but not more often than once a month), the Contractor shall submit to the Owner an Application for Payment filled out and signed by the Contractor for the Work completed during the period covered by the partial progress payment estimate and supported by such data as is required by the Contract Documents.
- C. The schedule of values for lump sum items established as provided in Section 109-1.3 shall serve as the basis for progress payments and shall be incorporated into a form of Application for Payment acceptable to the Owner.
- D. Up to date Record Drawings, as described in Section 105.V, shall be submitted with monthly invoices.

1.5 Payment for Material on Hand

If payment is requested on the basis of materials and equipment not incorporated in the Work, but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall be accompanied by a bill of sale, invoice or other instrument documenting that the materials and equipment are free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance, all of which will be satisfactory to the Owner. The Owner, at its sole discretion, may not pay for stored materials without prejudice and without cause.

1.6 Review of Applications for Progress Payments

- A. The Owner shall, within ten (10) Days after receipt of each Application for Payment, make such investigations as deemed necessary to verify the accuracy of the Application for Payment and either accept the application as accurate and suitable for payment or return the Application to the Contractor indicating in writing the Owner's reasons for refusing payment. If payment is refused, the Contractor shall make the necessary corrections and resubmit the Application and the Owner shall have an additional ten (10) Days after receipt of the corrected Application for Payment from the Contractor to determine whether this Application is accurate and suitable for payment.
- B. The Owner shall, within 30 Days after acceptance of the Application for Payment, make payment to the Contractor. The Owner may refuse to make payment of the full amount because claims have been made against the Owner on account of the Contractor's performance or furnishing of the Work, or because Liens **or claims against the bonds posted by the contractor** have been filed in connection with the Work, or because there are other claims entitling the Owner to a set-off against the payment. The Owner shall give the Contractor immediate written Notice stating the reasons for its failure to make payment.
- C. The Owner may also refuse to make payment of the full amount because there are other items entitling the Owner to retain set-offs from the amount recommended, including but not limited to:
 - 1. Owner compensation to the Engineer for actual costs for extra personnel hours for labor plus expenses because of the following Contractor caused events:
 - a. Witnessing re-testing of corrected or replaced defective Work.
 - b. Return visits to manufacturing facilities to witness factory testing or re-testing.
 - c. Evaluation of proposed substitutes and in making changes to Contract Documents occasioned thereby.
 - d. Overtime worked by the Contractor necessitating the Engineer, Resident Project Representative (and support staff, if any), to work overtime.
 - 2. Liability for liquidated damages incurred by the Contractor as set forth in the

Agreement.

3. Loss to Owner caused by Contractor acts or omissions including, but not limited to:
 - a. Defective Work not remedied;
 - b. Claims filed or reasonable evidence indicating probable filing of claims against the Contractor;
 - c. Failure of the Contractor to make payments properly to subcontractors or for materials or labor;
 - d. A reasonable doubt that the Project can be completed for the balance then unpaid;
 - e. Failure to maintain (each month) the record set of Drawings and Specifications. Failure to provide the Owner with record Drawings and Specifications within thirty (30) calendar Days from the date of the Substantial Completion;
 - f. Failure to periodically remove and dispose of accumulated debris, rubbish, and discarded/damaged materials;
 - g. Persistent failure to carry out the Work in accordance with the Contract Documents;
 - h. A reasonable doubt that the Work will be completed within the Contract Time.
4. Failure of the Contractor to submit an updated progress schedule or other required supporting documentation (if requested by the Owner) to the Owner with the monthly application for progress payment.

1.7 Retained Funds

- A. The Owner shall retain **five percent (5%)** of the total amount of each partial progress payment to assure faithful performance of the Agreement by the Contractor. The Owner will release all retainage upon Final Payment **unless there are outstanding claims of the Owner against the Contractor.**
- B. Pursuant to and in accordance with **Sections 2.566 and 2.566.1 of the City Code**, the Contractor may exercise the option to use the escrow account utilization procedure with respect to retained funds. The Contractor may do so by indicating its preference for this procedure in the appropriate space provided on the Bid.
 1. Should this option be selected, the Contractor shall execute the Escrow Agreement and shall submit same to the Owner in the manner prescribed by law. If the Escrow Agreement form is not submitted as noted, the Contractor shall forfeit such rights to the use of the escrow account utilization procedure.
 2. In order to have retained funds paid to an escrow account, the Escrow Agreement shall be executed by the Contractor, the escrow agent, and the surety, and shall be submitted by the Contractor to the Owner for approval by the Owner's attorney. The Contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth of Virginia. The Escrow Agreement shall contain the complete address of the escrow agent and surety, and the executed Escrow Agreement will be authority for the Owner to make payment of retained funds to the Escrow Agent. After approving the Escrow Agreement, the Owner shall pay to the escrow agent the funds retained as provided herein except that funds retained for lack of progress or other deficiencies on the part of the Contractor shall not be paid to the

Escrow Agent. The Escrow Agent may, in accordance with the terms of the Escrow Agreement, invest the funds paid into the escrow account and pay earnings on such investments to the Contractor or release the funds to the Contractor provided that such funds are fully secured by approved securities.

3. Retained funds invested and securities held as collateral for retainage may be released only as and when directed by the Owner. When the Final Payment is paid, the Owner shall direct to the Contractor monies due as determined by the Owner. The Owner reserves the right to recall retained funds and to release retained funds to the surety upon receipt of written request from the Contractor or in the event of default.
4. The escrow account procedure shall apply to any contract for the sum of Two Hundred Thousand Dollars (\$200,000), or more, for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines, and pumping stations.

1.8 Conditions of Payment to Contractor

- A. All material and Work covered by partial progress payments shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the safety and protection of all materials and Work upon which payments have been made or the restoration or replacement of any damaged or stolen Work or property or as a waiver of the right of the Owner to require the fulfillment of all the terms of the Agreement
- B. Prior to Substantial Completion, the Owner, with the concurrence of the Contractor, may use any completed or substantially completed portions of the Work. Such use shall not constitute an acceptance of such portions of the Work.
- C. The Owner shall have the right to enter the premises for the purpose of doing work not covered by the Contract Documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the Work, or the restoration of any damaged Work except such as may be caused by agents or employees of the Owner.
- D. The Contractor shall indemnify and save the Owner or the Owner's agents harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, tools and all supplies, incurred in the furtherance of the performance of the Work. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the Contractor fails to do so the Owner may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of the Contract Documents but in no event shall the provisions of this Section be construed to impose any obligations upon the Owner to either Contractor, the Surety, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Owner shall be considered as a payment made under the Contract Documents by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.
- E. The Contractor shall take one of the two following actions within seven (7) Days after receipt of amounts paid to the Contractor by the Owner for Work performed by the Subcontractor under the Agreement:
 1. Pay to the Subcontractor the proportionate share of the total payment received attributable to the Work performed by the Subcontractor under the Agreement; or

2. Notify the Owner and Subcontractor, in writing, of his intention to withhold all or a part of the Subcontractor's payment with the reason for nonpayment.
- F. All contracts awarded by the Contractor to a Subcontractor for any portion of the Work shall include:
1. An interest clause that obligates the Contractor to pay interest to the Subcontractor on all amounts owed by the Contractor that remain unpaid after seven (7) Days following receipt by the Contractor of payment from the Owner for Work performed by the Subcontractor under that contract, except for amounts withheld as allowed.
 2. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."
 3. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, limited liability companies and corporations to provide their federal employer identification numbers.
- G. The Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to include or otherwise be subject to the same payment and interest requirements as specified in Section 1.7 above, with respect to each lower-tier Subcontractor.
- H. A Contractor's obligation to pay an interest charge to a Subcontractor pursuant to the payment clause in this section may not be construed to be an obligation of the Owner. A contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

1.9 Final Payment

After the Contractor has completed all corrective Work as determined by a final inspection to the satisfaction of the Owner and has delivered all maintenance and operations manuals, schedules, guarantees, bonds, certificates of inspection, and other documents as required by the Contract Documents, the Contractor may make application for final payment following the procedure for partial progress payments. Within thirty (30) Days after approval, the Owner shall pay to the Contractor the amount stated, less all prior payments and advances to or for the account of the Contractor **and any amounts due under pending claims by the Owner against the Contractor**. All prior estimates and payments including those relating to extra Work shall be subject to correction by this payment, which is called the Final Payment. The Contractor's obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any progress or Final Payment by the Owner nor the issuance of a Certificate of Substantial Completion, nor any payment by Owner to Contractor under the Contract Documents, nor any use or occupancy of the Project or any part thereof by Owner, nor any act of acceptance by Owner nor any failure to do so, nor any correction of defective Work by Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

1.10 Acceptance of Final Payment Constitutes Release

The acceptance by the Contractor of the Final Payment shall be and operate as a release to the Owner of all claims and of all liability to the Contractor for all things done or furnished in connection with this Work excepting the Contractor's claims for interest upon Final Payment, should this payment be improperly delayed. No payment, final or otherwise, or partial or entire use or occupancy of the Work by the Owner, shall constitute an acceptance of any Work or materials not in accordance with the Contract Documents, nor shall the same relieve the Contractor of responsibility for faulty materials or workmanship or operate to release the Contractor or his Surety from any obligation under the Contract, the Performance Bond and Payment Bond.

1.11 Assignments

Neither party to the Agreement shall sell, transfer, assign or otherwise dispose of the whole or any parts of the Agreement or of the right, title or interest therein without the prior written consent of the other, nor shall the Contractor assign any monies due or to become due hereunder, without the previous written consent of the Owner.

1.12 Payment Affidavit

The Owner, before making any payment, including the final payment, if it is deemed that such procedure necessary to protect his interests, may require the Contractor to furnish an **Unconditional Waiver and Release Upon Final Payment 109-12 X**. from all subcontractors and material suppliers used in conjunction with this Contract that each has been paid in full, or in the alternative, an affidavit that so far as he has knowledge or information, all payments have been made and that there is no basis under which a claim against the payment bond could be filed. However, the Owner may make payments in part or in full to the Contractor without requiring the affidavits, and the payments so made shall not impair the obligations of any Surety or Sureties on any bond or bonds furnished under this Contract.

1.13 **The Owner, before making any payment, including the final payment, if it is deemed that such procedure necessary to protect his interests, may require the Contractor to furnish an Affidavit of Payment of Claims 109-12 V.**

II. CHANGE ORDERS AND FIELD ORDERS

2.1 The Owner may at any time, as the need arises, order changes within the scope of the Work without invalidating the Agreement. If such changes increase or decrease the amount due under the Contract Documents, or in the time required for performance of the Work, an equitable adjustment shall be authorized by Change Order **in digital or other format as presented by the City**.

2.2 The Contract Price and Contract Time may be changed only by a Change Order, approved by the Owner prior to the performance of the Work by the Contractor or granted by the Owner upon written Notice by Contractor submitted in accordance with Section 104-5.2 and 5.3 or Section 105-16.2. The value of any Work covered by a Change Order or of any claim for increase or decrease in the Contract Price or Contract Time shall be established in accordance with the following methods in the order of precedence listed below:

- A. Established contract unit prices;
- B. An agreed lump sum or unit price established by direct negotiation between the Contractor and the Owner; or,
- C. In the event that any changes in the Work are not settled under A. and B. above, the Contract Price shall be adjusted in accordance with the following:
 - 1. In any case such change involves extra Work which is performed by the Contractor, the Contract Price shall be increased by (a) the direct cost of such Work, as mutually agreed upon or otherwise as determined in accordance with the Contract Documents, and (b) ten percent (10%) of the amount of (a) to cover Contractor's additional job (field and home office) overhead, and (c) five percent (5%) of the sum of (a) and (b) to cover Contractor's additional job profit.
 - 2. In any case such change involves extra Work which is performed by a Subcontractor, the Contract Price shall be increased by (a) the amount paid by the Contractor to the Subcontractor for such extra Work, and (b) seven and one-half percent (7-1/2%) of the amount paid to the Subcontractor to cover the Contractor's additional job (field and home office) overhead and (c) five percent (5%) of the sum of (a) and (b) to cover Contractor's additional job profit. On Work performed by the Subcontractor, the Subcontractor shall be allowed overhead and profit in accordance with paragraph C (1)

above.

3. In the case of either subparagraph 1 or 2 above, the Contract Price shall also be increased by the corresponding increase in the cost of the Contractor's performance bond.
- 2.3 It is the Contractor's responsibility to notify his Surety of any change affecting the general scope of the Work or change in the Contract Price and/or Contract Time so that the amount of the applicable Bonds shall be adjusted accordingly. The Contractor shall furnish proof of such adjustment to the Owner.
- 2.4 Whenever changes, alterations, additions, omissions, or revisions are called for by the Owner for which the necessary Drawings and details have been completed and submitted to the Contractor, or when changes, alterations, additions or omissions are clearly given in writing to the Contractor, the Contractor is to submit an itemized statement of quantities and prices incidental to such revisions, changes, additions and omissions.
- 2.5 The Owner may at any time order minor changes within the scope of Work by issuing a Field Order. The Contractor shall proceed with the performance of any changes in the Work so ordered by the Owner unless the Contractor believes that such Field Order entitles the Contractor to a change in Contract Price or Time or both, in which event the Contractor shall give the Owner written Notice thereof within seven (7) Days after the receipt of the ordered change. The Contractor shall not execute such changes pending the receipt of an executed Change Order or further instruction from the Owner. The Owner shall respond to such written Notice from Contractor within twenty-one (21) days after receipt of all supporting data from Contractor in accordance with Section 105.16.2
- 2.6 If any item in the Agreement is determined to be unnecessary for the proper completion of the Work contracted, the Owner may, upon written Notice to the Contractor, eliminate such item from the Agreement. Payment will not be made for such item except that the Contractor shall be compensated for the actual cost of any Work performed for the installation of such item and the net cost of materials purchased, including freight and tax costs, as evidenced by invoice. No additional compensation will be made for overhead or anticipated profit.
- 2.7 The Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time due to any condition or alleged condition if:
 - A. The Contractor knew of the existence of such conditions at the time the Contractor made a final commitment to the Owner in respect of Contract Price and Contract Time by the submission of a Bid; or
 - B. The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Contract Documents to be conducted by or for the Contractor prior to the Contractor making such final commitment; or
 - C. The Contractor failed to give the written Notice within the time and as required by Section 104-5.2 and 5.3, Section 105-16.2 or Section 108.7.4.

III. CHANGE ORDER

(May be as shown or in another format, including digital as presented by the City.)

No. _____

DATE OF ISSUANCE _____ EFFECTIVE DATE _____

OWNER _____

CONTRACTOR _____

Contract _____

PROJECT _____

OWNER'S Contract No. _____ ENGINEER'S Contract No. _____

ENGINEER _____

You are directed to make the following changes in the Contract Documents:

Description:

Reason for Change Order:

Attachments: (List documents supporting change)

CHANGE IN CONTRACT PRICE:
Original Contract Price \$ _____
Net Increase (Decrease) from previous Change Orders No. _____ to _____: \$ _____
Contract Price prior to this Change Order: \$ _____
Net increase (decrease) of this Change Order: \$ _____
Contract Price with all approved Change Orders: \$ _____

CHANGE IN CONTRACT TIMES:
Original Contract Times: Final Completion: _____ (Days or dates)
Net change from previous Change Orders No. _____ to No. _____ Final Completion: _____ (Days)
Contract Times prior to this Change Order: Final Completion: _____ (Days or dates)
Net increase (decrease) of this Change Order: Final Completion: _____ (Days)
Contract Times with all approved Change Orders: Final Completion: _____ (Days or dates)

RECOMMENDED:

APPROVED:

ACCEPTED:

By: _____
ENGINEER(Authorized Signature)

By: _____
OWNER(Authorized Signature)

By: _____
CONTRACTOR(Authorized Signature)

Date: _____

Date: _____

Date: _____

IV. APPLICATION FOR PAYMENT (May be as shown or in another format, including digital as presented by the City.)

PROJECT SUMMARY

Date: _____ Contractor's Name: _____
Project Name: _____ Project Number: _____

Original Contract Amount: \$ _____
Original Contract Time: _____ Days
Adjusted Contract Amount (by approved Change Orders): \$ _____
Adjusted Contract Time (by approved Change Orders): _____ Days
Adjusted Contract Completion Date: _____

STATUS OF WORK PERFORMED

Total Value of Original Work Performed to Date: \$ _____
Total Value of Change Order Work Performed to Date (with attachment): \$ _____
Total Value of All Work Performed to Date: \$ _____
Value of Materials Stored (Attach Statement): \$ _____
Less _____ % Retained by Owner: \$ _____
Net Amount Earned on Contract to Date: \$ _____
Fewer Amounts of Previous Payments Approved: \$ _____

BALANCE DUE THIS PAYMENT: \$ _____

Value of Work Remaining to be Completed: \$ _____
Percentage Complete to Date (Value/Time): _____ % _____ %

CERTIFICATION OF CONTRACTOR

I certify to the best of my knowledge and belief that all items and amounts on the face of the attached estimate and invoice and this Application for Payment are correct; that all Work has been performed and/or material supplied in full accordance with the terms and conditions of the Contract Documents, including all duly authorized deviations, substitutions, alterations, additions and/or deletions; that the foregoing is a true and correct statement of the Contract Price up to and including the last day of the period covered by this estimate and Application for Payment; that no part of the "BALANCE DUE THIS PAYMENT" has been received; that all previous Progress Payments received on this Agreement have been applied by the undersigned to discharge in full all obligations of the undersigned incurred in connection with the Work covered by prior applications for payment under this Agreement; and that all materials and equipment incorporated in said payment or otherwise listed in or covered by this Application for Payment are free and clear of all liens, claims, security interest and encumbrances.

APPROVALS

This Application for Payment has been checked, verified and approved for payment by:

Contractor	By	Title	Date
Resident Project Rep.	By	Title	Date
Engineer	By	Title	Date
Owner	By	Title	Date

V. AFFIDAVIT OF PAYMENT OF CLAIMS (May be as shown or in another format, including digital as presented by the City.)

BY: _____ (Contractor)

THIS DAY _____ personally appeared before me, _____, a Notary Public in and for the City/County/State of Virginia, and being by me first duly sworn states that all Subcontractors and suppliers of labor and materials have been paid all sums due them to date for Work performed or materials furnished in the performance of the Agreement between:

(Owner)

and _____ (Contractor)

dated _____, 20____, for the construction of _____

_____ or arrangements have been made by the Contractor satisfactory to such Subcontractors and suppliers with respect to the payments of such sums as may be due them by the Contractor.

CONTRACTOR

BY: _____

TITLE: _____

DATE: _____

Subscribed and sworn to before me this
_____ day of _____, 20____.

My commission expires on the
_____ day of _____, 20____.

NOTARY PUBLIC

SEAL OF CONTRACTOR

NOTARY SEAL

VI. CERTIFICATE OF SUBSTANTIAL COMPLETION (May be as shown or in another format, including digital as presented by the City.)

Project Description: _____ Project No _____

Other: _____
Location: _____ Completion Date: _____

Contract Date: _____
Contract For: _____ Contractor: _____
Owner: _____

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

TO WIT: The Owner and Contractor are hereby advised that the Work to which this certificate applies has been inspected by authorized representatives of the Owner, Contractor, and Engineer, and that all Work is hereby declared to be substantially complete in accordance with the Contract Documents on:

Date of Substantial Completion

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive and the failure to include an item in it does not alter the responsibility of the CONTRACTOR to complete all items of the Work in accordance with the Contract Documents. When this certificate applies to a specified part of the Work, the items in this tentative list shall be completed or corrected by the CONTRACTOR within _____ Days of the above date of substantial completion. The date of substantial completion is the date which all guarantees and warranties begin, except as follows:

This certificate is issued, accepted, and acknowledged by:

_____ Engineer	_____ By	_____ Title	_____ Date
_____ Contractor	_____ By	_____ Title	_____ Date
_____ Owner	_____ By	_____ Title	_____ Date

VII. STATEMENT OF SURETY COMPANY (May be as shown or in another format, including digital as presented by the City.)

IN ACCORDANCE with the provisions of the AGREEMENT dated_____, 20____,

BETWEEN _____
(OWNER)

AND _____
(CONTRACTOR)

THE _____
(SURETY)

SURETY on the Material and Labor Payment BOND of:

(CONTRACTOR)

after a careful examination of the books and records of said CONTRACTOR or after receipt of an affidavit from CONTRACTOR, which examination of affidavit satisfies SURETY that all claims for labor and materials have been satisfactorily settled, hereby approves of the final payment to the said _____, CONTRACTOR, and by these presents witnesseth that payment to the CONTRACTOR of the final estimates shall not relieve SURETY of any of its obligations to

(OWNER)

as set forth in the said SURETY COMPANY'S BOND.

IN WITNESS WHEREOF, said SURETY has hereunto set its hand and seal this _____ day of _____, 20____.

ATTEST:

(SEAL) _____ BY _____
PRESIDENT

NOTE: This statement, if executed by any person other than the President or Vice President of the Company, shall be accompanied by a certificate of even date showing authority conferred upon the person so signing to execute such instruments on behalf of the Company represented.

VIII. CONTRACTOR'S RELEASE (May be as shown or in another format, including digital as presented by the City.)

KNOW ALL MEN BY THESE PRESENTS THAT:

(Contractor) of _____ County/City and
State of _____ does hereby acknowledge that ~~he has received this day~~ **this final payment** from the

(Owner) ~~the sum of One Dollar (\$1.00) and other valuable consideration~~
~~in full satisfaction and payment of all sums of money owing, payable and belonging to~~ **be just and true for**
work performed under the contract/purchase order # _____, and that such constitutes full
and final payment.

(Contractor) Dated _____, 20__.

NOW, THEREFORE, the said _____ (Contractor) (for myself, my heirs, executors and administrators; for itself, its successors and assigns) do by these presents remise, release, quitclaim and forever discharge the said _____, Owner, its successors and assigns, of and from all claims and demands arising from or in connection with the said Agreement dated _____, 20__, and of and from all, and all manner of action and actions, cause and causes of action and actions, suits, debts, dues, duties, sum and sums of money accounts, reckonings, bonds, bills, specialties, covenants, contracts, agreements, promises, variances, damages, judgements, extents, executions, claims and demand, whatsoever in law or equity, or otherwise which against the said _____, Owner, its successors and assigns ever had, now have, or which (I, my heirs, executors, or administrators; it, its successors and assigns) hereafter can, shall or may have, for upon or by reason for any matter, cause or thing whatsoever, from the beginning of the world to the date of these presents.

IN WITNESS WHEREOF _____ (Contractor) has caused these presents to be
duly executed this _____ day of _____, 20__.

Signed, Sealed and Delivered
in the Presence of:

CONTRACTOR _____
(SEAL)

BY: _____
Name

Title

ATTEST:

SECRETARY

**IX. MANHOLE/STRUCTURE PROTECTIVE COATING POST INSTALLATION
CERTIFICATION (May be as shown or in another format, including digital as presented by the
City.)**

(Submit prior to Substantial Completion)

Project Name _____
Owner _____
Contractor _____
Agreement No. _____

Applicator _____ Company Name: _____ Address: _____ _____ Telephone: _____	<p>I certify that the coating system identified below was installed in conformance with the manufacturer's recommendations at the conditions listed below.</p> _____
--	--

This applicator is certified by _____, Coatings Manufacturer, located at _____ (Address)	
and approved in the proper application of the specified coating system. The materials and workmanship for Type B (80 mil) coatings systems are warranted for a period of five (5) years from the date of Substantial Completion of the project.	
_____ Coatings Manufacturer Authorized Representative/Title	_____ Date

Coating System: _____
 (Use Separate Form For Each Coating System Applied)

Date Applied	Manhole/ Structure Number	Actual Substrate Conditions			Ambient Air Conditions		Min/Max Recoat (Hrs/Hrs)	Dry Film Thickness	
		CSP Rating	Temp. (°F)	Moisture (Yes/No)	Temp. (°F)	Humidity (%)		(Avg)	(Min)

X. UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT
(NOTE: FOR USE OF SUB-SUBS, SUPPLIERS, AND VENDORS OF SUBCONTRACTOR)

The undersigned mechanic and/or materialman has been employed by _____ to furnish _____ (describe material and/or labor for the construction of improvements known as _____ (title of the project) which is located in the City of Newport News, which is owned by the City of Newport News, and more particularly described as follows:

(Describe the property upon which the improvements were made by using either a metes and bounds description, the land lot district, block and lot number, or street address of the project.)

Upon receipt of the sum of \$ _____, the undersigned hereby certifies and warrants that it has provided all work required by the Subcontract as a condition of final payment and the undersigned waives and releases any and all claims against or any right against any labor and/or material payment bond it has upon the foregoing described property, including any claims for changes to the Work which were not detailed by Subcontractor in a change order request as of the date of this document and which were based on improvements actually provided by the undersigned through the date of this document.

Given under hand and seal this _____ day of _____, _____.

*Company Name: _____

By: Its Authorized Representative

_____(Seal)

Name: _____

Title: _____

STATE OF _____
CITY/COUNTY OF _____, TO WIT:

Sworn to and subscribed before me this the _____ day of _____, 20____

Notary Public

My Commission expires: _____
Registration No. _____

XI. INDEPENDENT WAIVER BASED ON PRIOR PAYMENTS:

Independent of its executions of a waiver of claim **against the bond**, the undersigned further acknowledges receipt of payment(s) to date for the project in the amount of (\$ _____) from subcontractor and/or contractor for labor employed in and/or materials furnished, and, therefore waives and releases any and all claims or damages it has against contractor and/or contractor's surety, except for those that are expressly reserved and detailed as follows:

The undersigned further represents that all employees, laborers, materialmen, and subcontractors employed by the undersigned in connection with the projects have been fully paid and that no obligations, legal, equitable, or otherwise, are owed by the undersigned in connection with the project. With respect to these representations and warranties, the undersigned does hereby agree to indemnify and hold harmless contractor, its payment and performance surety, if any, owner and any others whom a claim may be asserted from any and all claims, damages, losses, expenses, and the like incurred on the project that are covered by this representation. If contractor has to defend any claim resulting from lack of payment by the undersigned to a suppliers, laborer, materialmen, and/or subcontractor, any or all expenses incurred by contractor including legal fees, court or arbitration cost, will be the responsibility of the undersigned.

This final waiver and release does hereby waive, release and relinquish any and all claims, acts, events, circumstance, constructive or actual delays, accelerations, extra work, disruptions, interferences and the like which have occurred, or may be claimed to have occurred, prior to the effective date hereof, expecting only any claims currently unresolved for which written notice has been provided to contractor as follows:

Given Under Hand and _____ **DAY** _____ **20**
Seal This _____ **OF** _____

(Corporate Seal)

(Company Name)

Sworn to and subscribed before me

This The ____ Day of _____, 20__.

(Company Address)

Notary Public

(Company Telephone)

MY COMMISSION
EXPIRES:

(Officer Signature)

(Print Name)

End of Section

SECTION 110

SPECIAL PROVISIONS

I. SCOPE OF WORK

See Section 7.1 of the IFB.

II. CONSTRUCTION DRAWINGS and OTHER DOCUMENTS

Plans are the property of the Owner and shall not be used for any purposes other than those specified in these Contract Documents.

See Section 7.2 of the IFB.

III. HAMPTON ROADS PLANNING DISTRICT COMMISSION REGIONAL CONSTRUCTION STANDARDS

Prior to construction, the Contractor is required to obtain a copy of the Hampton Roads Planning District Commission Regional Construction Standards, Sixth Edition), from the Hampton Roads Planning District Commission located in Chesapeake, Virginia. Note: This document contains modifications, additions, or deletions modified by the Owner or by Special Provision to the HRPDC Regional Construction Standards are hereby incorporated into the contract documents.

IV. NEWPORT NEWS CITY CODE REFERENCES

Certain sections of these Contract Documents contain references to the Newport News City Code, Article XX. Office of Purchasing.

V. MODIFICATIONS TO REGIONAL CONSTRUCTION STANDARDS

Certain sections of these Contract Documents contain references to the Newport News City Code, Article XX. Office of Purchasing.

(DIVISION 1)

(As listed in pages 110-2 through 110-28).

(Divisions 2-8)

(As listed in Pages 110-29 through 110-36).

**MODIFICATIONS TO REGIONAL CONSTRUCTION STANDARDS
(Division 1)**

Section	Title	Page	Subsection	Modification
101	General Definitions	101-1	1.3	Application for Payment- The form provided in the Contract Documents which is to be used by the Contractor in requesting progress and final payments and which is to include such supporting documentation as is required by the Contract Documents The Contractor shall use the City's Project and Contract Management System (Projectmates) for the electronic submission of invoices and change orders. Submissions for payment shall be based on the pricing contained in the contract documents.
101	General Definitions	101-1	1.4	Bid - The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
101	General Definitions	101-1	1.5	Bid Documents – The entire invitation for bid issued by the City Documentation issued prior to the bid date, including documentation accompanying the Bid (Drawings, Project Specifications, HRPDC Regional Construction Standards, Addenda, and Special Provisions) and any other Post-Bid documentation incorporated by the City submitted prior to the Notice of Award.
101	General Definitions	101-1	1.7	Bonds - Performance and Labor and Material Payment Bonds furnished by the Contractor and the Contractor's surety in accordance with the Contract Documents. The Contractor's surety shall be licensed in the Commonwealth of Virginia.
101	General Definitions	101-1	1.8	Bid Security - Bid Bonds and other instruments of surety, furnished by the Contractor or the Contractor's surety in accordance with the Contract Documents. The Contractor's surety shall be licensed in the Commonwealth of Virginia.
101	General Definitions	101-2	1.25	Laws and Regulations - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction. The contractor shall keep fully informed of all federal, state and local laws, ordinances and regulations that in any manner affect the conduct of the work. The contractor shall at all times observe and comply with all such laws, ordinances and regulations.
101	General Definitions	101-2	1.28	Notice - All written notices, demands, instructions, claims, approvals, and disapprovals required to obtain compliance with the Contract Documents. The City's primary communications shall be through email for routine correspondence; however, more formal communications will sent via email and U.S. Postal Service. Any written notice by either party to the Agreement shall be sufficiently given if delivered to or at the last known business address of the person, firm or corporation constituting the party to the

**MODIFICATIONS TO REGIONAL CONSTRUCTION STANDARDS
(Division 1)**

Section	Title	Page	Subsection	Modification
				Agreement, or to his, their, or its authorized agent, representative or officer, or when enclosed in a postage envelope addressed to such last known business address and deposited in a United States mailbox. Notice shall be deemed received the day the email is sent or within 3 business days of U.S. Mail Service postmark date. The email date shall have precedence over the U.S. Mail date.
101	General Definitions	101-3	1.30	<i>Owner</i> - The public body or authority, corporation, association, firm or person with whom the Contractor has entered into the Agreement and for whom the Work is to be provided. The “Owner” and the “City” are synonymous; References to “Owner” shall be construed to mean “The City of Newport News”.
101	General Definitions	101-3	1.31	<i>Owner's Representative</i> - The person, firm or corporation named by the Owner to act as the Owner's agent. The Owner's Representative is an authorized City employee.
101	General Definitions	101-3	1.36	<i>Responsible Bidder</i> - A person or firm who, in the sole opinion of the Owner, has the capability in all respects, to fully perform the contractual requirements as well as the moral and business integrity and reliability to assure good faith performance. A person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance and who has been prequalified, if required.
101	General Definitions	101-3	1.37	<i>Responsive Bidder</i> - A person or firm who has submitted a bid that conforms in all material respects to the Bid Documents. A person who has submitted a bid which conforms in all material respects to the invitation for bid.
101	General Definitions	101-3	1.44	<i>Specifications</i> - Any description of the physical or functional characteristics or of the nature of a good, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a good, service or construction item for delivery. Includes those portions of the Contract Documents or HRPDC <i>Regional Construction Standards</i> consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
102	Invitation for Bids	102		City of Newport News shall use its own form. (Delete this page, moved information to the cover page and next page.)
102	Short Form	102		City of Newport News shall use its own form. . (Delete this page, moved information to the cover page and next page.)
102	Bid Documents	102-1	1.3	The Special Provisions for this Project as set forth in Section 110 were prepared by

**MODIFICATIONS TO REGIONAL CONSTRUCTION STANDARDS
(Division 1)**

Section	Title	Page	Subsection	Modification
				_____ and are dated _____ . Additional Special Provisions for this Project appear as modifications to the Owner or by HRPDC <i>Regional Construction Standards</i> by strike-through, deletions and bold type for additions in Sections 100 through 109.
102	Bid Documents	102-1	1.4	The Drawings for this Project, prepared by _____ and dated _____, are defined as follows:— (Insert Listing or Description of Project Drawings)
102	Examination of Contract Documents and Project Site	102-1	2.	Examination of Bid Contract Documents and Project Site
102	Interpretations and Addenda	102-1	3.1	<p>No oral explanation in regard to the meaning of the Bid Contract Documents will be made, and no oral instructions will be given before the award of the Work. Discrepancies, omissions or doubts as to the meaning of the Bid Contract Documents shall be communicated in writing to the Owner for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them before the submission of their Bids. Any interpretation made will be in the form of an addendum to the Bid Contract Documents, which will be forwarded to all known Bidders, and its receipt shall be acknowledged on the Bid form. All questions shall be received no later than 7 days prior to the date for opening of Bids. Questions regarding this Invitation for Bids (IFB) must be received prior to the date and time posted on the cover page.</p> <p>Changes or supplemental instructions to this Invitation for Bids will be posted online with this solicitation. It is the Bidder's responsibility to check for addenda prior to the bid due date and time to ensure that all addenda are received.</p> <p>The City posts all solicitations and related addenda on eVA, _____ Virginia's _____ eProcurement _____ Portal (www.eva.virginia.gov). A direct link to City of Newport News solicitations is located at www.nnva.gov/691 or from the Office of Purchasing webpage (www.nnva.gov/purchasing) by selecting Solicitations from the left side bar.</p>
102	Interpretations and Addenda	102-2	3.2	Addenda may also be issued to modify the Bid Contract Documents.
102	Bid Security	102-2	4.1	Each bid shall be accompanied by a Bidder's bond issued by a company authorized and licensed to transact business

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				as surety in the Commonwealth of Virginia, a certified check, or cash escrow, in an amount equal to not less than five (5) percent of the total amount of the bid, made payable to the City of Newport News Virginia. Upon approval of the Owner's attorney, in accordance with Section 2.2-4338, Code of Virginia, 1950, as amended, and with Section Sec. 2-565.3. of the Code of the City/County of Newport News, Virginia , as amended, a Bidder may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds for the amount required for the Bid Security. The Bid Security shall be accompanied by a certified copy of the power of attorney for the surety attorney-in-fact. Said bid security shall be left with the Owner, subject to the conditions specified herein, as a guarantee of good faith on the part of the Bidder that if the bid is accepted, the Bidder shall execute the contract. If a certified check is offered as guarantee, it shall be made payable to the City of Newport News .
102	Bid Security	102.2	4.2	The Bid Security shall be returned to all except the three (3) lowest Bidders within ten (10) days after the date of Bid opening. The Bid Security will be returned to the three (3) lowest Bidders within five (5) days Letters of credit, cash escrow or certified checks will be returned after the execution of a Final Agreement and Performance and Payment Bonds and Certificates of Insurance have been approved by the Owner. None of the three (3) lowest Bids shall be deemed rejected, notwithstanding acceptance of one of the Bids, until the Agreement has been executed by both the Owner and the Successful Bidder.
102	Liquidated Damages	102-2	5.1	Provisions for liquidated damages are set forth in Section 108-X and in the City's eProcurement Portal. Section 102 II (Bid form).
102	Preparation of Bid	102-2	6.1	All blanks on the Bid form shall be completed. in ink or type.
102	Preparation of Bid	102-3	6.5	The Bid shall contain an acknowledgment of receipt of all Addenda. (the numbers of which shall be filled in on the Bid form).
102	Preparation of Bid	102-3	6.6	The address, telephone number, and e-mail address and fax number for communications regarding the Bid shall be provided.

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102	Preparation of Bid	102-3	6.8	A City of Newport News Ordinance requires all contractors performing work in the City of Newport News to have a Newport News Business License. The Business License must be obtained prior to award of contract. All Bids shall be balanced. Such items as profit and general overhead expenses shall be distributed uniformly over all pay items. Other expenses such as labor, materials, engineering, supervision, etc. shall be distributed uniformly among those pay items to which these expenses pertain. Any bid which the City considers unbalanced may be rejected if it cannot be resolved to the City's satisfaction during discussions.
102	Additive Bids	102-4	10.1	Additive bid items are those in addition to the base Bid items. Bidders shall submit additive Bids on all items as shown on the Bid form. Award shall be based on the lowest responsive and responsible Bid for base Bid plus all additive bid items listed and in accordance with any criteria in the Special Provisions.
102	Alternate Bids	102-4	10.2	Alternate bid items are those where more than one type of improvement may be considered for a portion or all of the Work due to the character of the improvement and uncertainties which may be encountered during construction. If alternate Bids are requested for a portion of or all of the Work, Bidders shall submit alternate Bids for all alternate(s) the Bidder or its Subcontractor is qualified to perform. Award shall be based on the lowest responsive and responsible Bid for the base Bid plus the amount added or deleted for the alternate bid items selected by the Owner and in accordance with any criteria in the Special Provisions. The alternates selected shall be at the sole discretion and in the best interests of the Owner.
102	Submission of Bids	102-4	11.1	Bids shall be submitted in the City's eProcurement Portal at the time and place indicated in the Invitation for Bids and shall be sealed, marked with the Project title and name and address of the Bidder, and accompanied by the bid guarantee and other required documents. The Bid may not be changed by markings on the envelope. Only the amounts indicated on the Bid form will be considered in determining the final Bid amount.

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102	Submission of Bids	102-4	11.2	It will be the responsibility of Bidder to see that its Bid is submitted to the Owner by the specified time and date. There will be no exceptions. Date of postmark will not be considered. Phone or telegraphic bids (including FAX) will not be accepted. If City Hall is closed for business at the time and date the bid is due Bidders are responsible for submitting the bid; however, the bids will not be opened until the next business day.
102	Submission of Bids	102-4	11.3	When a license is required, the Bidder shall include in its Bid over the Bidder's signature the following notation: "VIRGINIA LICENSED CONTRACTOR NO. ____" (Ref. Title 2.2, Chapter 43, and Title 54.1, Chapter 11, Code of Virginia).
102	Submission of Bids	102-4 & 102-5	11.4	When a license is not so required and a person who is not the holder of a License enters a Bid, such person shall include in its Bid over the Bidder's signature the following notation: "LICENSING NOT REQUIRED UNDER VIRGINIA STATE CODE."
102	Submission of Bids	102-5	11.5	The Bidder shall complete and submit the Debarment Certification section form. A copy of the form is included in Section 102, V at the end of this Section.
102	Submission of Bids	102-5	11.6	The Bidder shall complete and submit the Certificate of Compliance with Immigration Laws and Regulations form. A copy of the form is included in Section 102, VI in this section.
102	Submission of Bids	102-5	11.7	The Bidder shall complete and submit the Non Collusion Affidavit form. A copy of the form is included in Section 102, II.K in this section.
102	Submission of Bids	102-5	11.8	The Bidder shall complete and submit a Bid Surety/Bid Bond: A bidder's bond or certified check in the amount of five percent (5%) of the amount bid shall accompany any bid in excess of \$100,000.00 for the bid to be acceptable. The original copy of the certified check must be delivered to the Office of Purchasing. A copy of the bidder's form is included by attachment.

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102	Receipt and Opening of Bids	102-5	12.1	Bids will be opened publicly at the time and place and under the conditions stated in the Invitation for Bids. The Owner's Representative whose duty it is to open Bids will decide when the specified time has arrived. The official time and date used in the receipt of the Bids is that time and date electronically stamped by the Owner's eProcurement Portal when the Bid is submitted. Date/time stamps marked after the designated time and date of receipt will not be considered. Bids cannot be submitted after the due date and time. No responsibility will be attached to any such person for the premature opening of a Bid not properly addressed and identified. It is the responsibility of the Bidder to assure that the Bid is delivered to the designated place of receipt prior to the time set for the receipt of Bids.
102	Withdrawal of Bids	102-5	14.1	Withdrawal of Bids filed with the Owner may be made only by a representative of the firm submitting the Bid, who shall appear in person prior to the deadline designated in the advertisement for receipt of Bids. Such representative shall furnish satisfactory identification and proof that they are authorized to withdraw the Bid. Telephone, e mail, or facsimile notices will not be considered. Additions and/or deletions marked on the outside of the Bid envelope will not be considered. Bidder may withdraw their bid prior to the due date and time by selecting "Unsubmit Proposal" in the City's eProcurement Portal.
102	Withdrawal of Bids	102-5	14.2	In accordance with Section 2.2 4330(A)(i) of the Code of Virginia, as amended, if the Bid price was substantially lower than the other Bids solely to a mistake therein, provided the Bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents, and materials used in the preparation of the Bid sought to be withdrawn and provided further the Bidder shall give notice in writing of his claim of right to withdraw within two (2) business days after the Bid opening, then the Bid may be withdrawn. The Bidder shall, within the following two (2) business days provide the subjective data required in this section to satisfy the Owner's representative that the grounds for such withdrawal do exist. A bidder for a public construction contract, other than a contract for construction or maintenance of public

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				highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The bidder shall give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein. The work papers, documents, and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of section 2-557.2(f) of the Code of the City of Newport News.
102	Withdrawal of Bids	102-6	14.7	<p>If withdrawal of any Bid is denied, the Bidder shall be notified in writing stating the reasons for this decision. Any Bidder who desires to appeal a decision denying withdrawal of Bid shall, as sole remedy, institute legal action provided by Section 2.2 4358 and Section 2.2 4364(B), Code of Virginia, 1950, as amended.</p> <p>The purchasing agent shall notify the bidder in writing within five (5) business days of his decision regarding the bidder's request to withdraw its bid. If the purchasing agent denies the withdrawal of a bid under the provisions of this section, he shall state in such notice the reasons for his decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the purchasing agent shall return all work papers and copies thereof that have been submitted by the bidder.</p>
102	Evaluations of Bids	102-6	15.1	<p>In evaluating Bids, the City shall evaluate per City Code the Owner shall consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, unit and lump sum prices, and additive/alternate bid items if requested in the Bid form.</p>

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				<p>Sec. 2-563. - Award of contract to lowest, responsive, responsible bidder.</p> <p>The purchasing agent shall award contracts governed by this division to the lowest responsive, responsible bidder. When the terms and conditions for multiple awards are provided in the invitation for bids, awards may be made to more than one (1) bidder. In determining the lowest responsive, responsible bidder, in addition to price, the agent shall consider:</p> <ol style="list-style-type: none"> (1) The ability, capacity and skill of the bidder to perform the contract or provide the service required. (2) Whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay or interference. (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder. (4) The quality of performance of previous contracts or service. (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service. (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service. (7) The quality, availability and adaptability of the supplies or contractual services to the particular use required. (8) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract. (9) The number and scope of conditions attached to the bid.
102	Evaluation of Bids	102-7	15.5	<p>Unless all Bids are canceled or rejected, the Owner reserves the right granted by Section 2- 563.2 of the Code of the City of Newport News 2.2-4318 of the Code of Virginia as amended, to negotiate with the lowest responsive, responsible Bidder to obtain a Contract Price within the funds budgeted for the construction project. Negotiations with the lowest Bidder may include both modification of the Contract Price and the Scope of Work/Specifications to be performed. The Owner shall initiate such negotiations by Written Notice</p>

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				to with the lowest responsible, responsive Bidder that its Bid exceeds the available funds and that the Owner wishes to negotiate a lower Contract Price. The Owner and the lowest responsive, responsible Bidder shall agree to the times, places, and manner of negotiations.
102	Evaluation of Bids	102-7	15.7	The Owner reserves the right to waive minor informalities as defined in the Code of the City of Newport News Section 2-564 (b) Virginia Code Section 2.2-4301 in the Bid, to reject any/or all Bids, to award any Bid in whole or in part, and to award the Bid considered to be in the best interest of the Owner.
102	Qualifications of Bidders and Subcontracts	102-7	16.1	Questions from The Contractor's Questionnaire is are included in the City's eProcurement Portal Bid Documents and shall be returned with submittal . This information will assist the Owner in investigations and determination of the Contractor's qualifications to perform the Work.
102	Qualifications of Bidders and Subcontracts	102-8	16.3	The apparent low Bidder shall, submit to the Owner a list of all Subcontractors who will be performing Work on the Agreement at such time and date directed by the Owner . Such list shall be accompanied by an experience statement with pertinent information as to similar projects and other evidence of experience and qualification for each such Subcontractor, person and organization. If the Owner, after due investigation, has reasonable objection to any proposed Subcontractor, other person or organization, the Owner may, before giving the Notice of Award, request the apparent low Bidder to submit an acceptable substitute without an increase in Bid price. If the apparent low Bidder declines to make any such substitution, the contract shall not be awarded to such Bidder, but his declining to make any such substitution will not constitute grounds for sacrificing his Bid Security. For any Subcontractors, other person or organization so listed and to whom Owner does not make written objection prior to the giving of the Notice of Award, it will be deemed the Owner has no objection.
102	Qualifications of Bidders and Subcontracts	102-8	16.4	By submitting their Bid, Bidders certify that they are not now debarred by the Federal Government or by the Commonwealth of Virginia or by any other state, or by any town, city, or county, from submitting Bids on contracts for construction covered by this solicitation , nor are they an agent of any person or entity that is now so debarred.
102	Qualifications of Bidders	102-8	16.5	If the Bidder is organized as a stock or nonstock corporation, a limited liability company, a business trust, or a limited partnership, or is registered as a registered limited liability

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	and Subcontracts			partnership, the Bidder must be authorized to transact business in the Commonwealth as a domestic or foreign entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law. The Bidder shall include the identification number issued by the State Corporation Commission on the Bid form or describe why the Bidder is not required to be so authorized. Any Bidder failing to do so shall not be awarded the Contract unless the Owner issues a waiver of this requirement and administrative policies and procedures are established by the locality. If the Bidder allows its existence to lapse, or its certificate of authority or registration to transact business in the Commonwealth of Virginia to expire, or be revoked or cancelled, such will be deemed as an act of default enabling the Owner to all remedies for default, including but not limited to revocation of this Agreement.
102	Sham or Collusive Bids	102-8	17.2	The provisions contained in Sections 2-2-4367 through 2-2-4377, Code of Virginia, as amended, Sec. 2-580 through Sec. 2-584, City Code , shall be applicable to all contracts solicited or entered into by Owner. By <u>submitting their Bids</u> , all Bidders certify that their Bids are made without collusion or fraud, and that they have not offered or received any kickbacks or inducements from any other Bidder, Supplier, manufacturer or subcontractor in connection with their Bid, and they have not conferred with any public employee having official responsibility for this procurement transaction, any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
102	Immigration Reform and Control Act of 1986	102-9	19.1	By submitting their bid proposal , Bidders/ offerors certify that they do not, and will not during the performance of this contract, employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.
102	Immigration Reform and Control Act of 1986	109-9	19.2	All Bidders must submit a completed Certification of Compliance with Immigration Laws and Regulations form (See Section 102.VI) with their Bid.
102	Bid Form	102-10	II.	Form customized for the City of Newport News.
102	Bid Bond	102-16	III.	City of Newport News Form
102	Questionnaire	102-18	IV.	The following questions shall be answered in full and returned with the bid failure to submit may result in a determination of non-responsive.

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102	Questionnaire	102-18	IV.	<p>Is business a Small Business, Women-Owned and Minority-Owned (SWAM) firm? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If you are a SWAM firm please indicate type(s) below: Small Business <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Minority-Owned <input type="checkbox"/> Service Disabled Veteran (SDV) <input type="checkbox"/> Disadvantaged Business Enterprise (DBE) Federal Designation <input type="checkbox"/> Certification by (SBSD, Other U.S. State Entity, Local Government, etc.): attach certificate if available.</p>
102	Questionnaire	102-20	IV.	<p>In the spaces below, state the anticipated dollars that you intend to subcontract to each business type if a contract is awarded to your firm. (If you do not intend to sub-contract any work to others, even if you are a SWAM business enterprise, put zeros in the spaces below).</p> <p style="text-align: center;"><u>Company Name:</u></p> <p>Total Small Business \$ _____</p> <p>Total Woman-Owned \$ _____</p> <p>Total Minority-Owned \$ _____</p> <p>Total SDV Dollars \$ _____</p> <p>Total DBE Dollars \$ _____</p> <p>RESOURCES For your reference a link to the Virginia Department of Supplier Diversity (SBSD) SWAM Directory is provided here: https://www.sbsd.virginia.gov/directory/ Other Resources National Minority Supplier Development Council www.nmsdc.org Carolina-Virginia Minority Supplier Diversity www.cvmsdc.org Small Business Administration www.sba.gov <i>Offerors and potential subcontractors are encouraged to communicate and collaborate using the B2B Connect through the B2B Connect tab on the solicitation webpage on eVA. This a tool to aid in establishing prime and subcontractor relationships.</i></p>
102	Certification of Compliance with Immigration Laws and Regulations	102-25	Paragraph 2.	<p>Accordingly this certification shall be completed and attached to all contracts and agreements for goods and services made by the City of Newport News or any of its boards and commissions. Failure to attach a completed certification shall render the contract or agreement void. This certification is hereby incorporated into the contract documents.</p>

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102	Safety Certification Form	102-27	VII.	May be as shown or in another format, including digital as presented by the City.
103	Notice of Award	103-1	1.1	The Owner reserves the right to waive any minor informalities, to reject any and all Bids in whole or in part, and may advertise for new Bids if, in its judgment, the best interests of the Owner will be served.
103	Notice of Award	103-1	1.2	At the time of the issuance of the Notice of Award, the Owner shall publicly post an announcement of the award on/at the (name of site, bid board, newspaper, etc.) A Notice of Award will be posted with the original solicitation on eVA, Virginia's the City's eProcurement Portal (www.eva.virginia.gov https://secure.procurenow.com/login). A direct link to City of Newport News solicitations and related awards on eVA City's eProcurement Portal is located at www.nnva.gov/691 or from the Office of Purchasing webpage (www.nnva.gov/purchasing) by selecting <i>Solicitations</i> from the left side bar.
103	Signing of Agreement	103-1	2.1	When the Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by 4 original copies a copy of the Agreement, with all other written Contract Documents attached. Within 7 10 Days thereafter the Contractor shall sign and deliver all the original copies of the Agreement and attached documents to the Owner with the required Bonds Bid Security , Certificate of Insurance and Safety Certification Form. Within 30 Days thereafter the Owner shall deliver one fully signed copy to the Contractor. Please note that the City uses DocuSign to obtain signatures on contracts/agreements. The individual who signed the bid or an authorized signature authority will receive an email requesting electronic signature on the contract.
103	Insurances Requirements	103-2	4.2 A. 1.	Alternate Employer Endorsement
103	Insurances Requirements	103-3	4.2 A. 6.	Pollution coverage
103	Insurances Requirements	103-3	4.2 A. 7.	Marine Liability coverage
103	Insurances Requirements	103-3	4.2 C	The Owner shall be named as an additional insured on the Commercial General Liability per ISO 2010 or equivalent on a primary basis unless the policy language includes the Owner as an additional insured. The Owner shall also be named as an additional insured under the completed

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				operations hazard. The Contractor shall obtain a waiver of subrogation from its insurers on Worker's Compensation and All Risk Insurance policies. This requirement may be satisfied by obtaining appropriate endorsements to any master or blanket policy of insurance maintained. Owner's Commercial General Liability shall not contribute in any loss payment insured under the Contractor's Commercial General Liability policy.
103	Insurances Requirements	103-3	4.2 I.	If the project, which the Contractor undertakes may create environmental damage, the Contractor is required to provide insurance against such loss, with the City named as an additional insured.
103	Safety Certification Form	103-4	5.1 C.	The Safety Certification Form is included in the City's eProcurement Portal Section 102.VII.
103	Notice of Award	103-5	II.	City of Newport News Form - May be as shown or in another format, including digital as presented by the City.
103	Agreement	103-6	III.B.	This Project has been designed by _____ who is hereinafter called the Engineer and who is to act as the Owner's Representative, assume all duties and responsibilities, and have the rights and authority assigned to the Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents. In the event the Owner, at any time and in the Owner's sole discretion should not require the services of the Engineer for any or all parts of the project, the power, duties, and responsibilities conferred hereto to the Engineer shall be construed to be those of the Owner or its authorized representative.
103	Agreement	103-6	III. C.	All materials and equipment, furnished by the Contractor, and all construction involved in this Agreement are hereby guaranteed by the Contractor to be free from defects owing to faulty materials or workmanship for a period of one year after date of Substantial Final Completion of the Work. All Work that proves defective, by reason of faulty material or workmanship within said period of one year, shall be replaced by the Contractor free of cost to the Owner. These guarantees shall not operate as a waiver of any of the Owner's rights and remedies for default under or breach of the Agreement which rights and remedies may be exercised at any time within the period of any applicable statute of limitations.
103	Agreement	103-6	III. D.	The Owner shall pay the Contractor as just compensation for the satisfactory performance of the Work, subject to any

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				<p>additions or deductions as provided in the Contract Documents, the unit and/or lump sum price as contained in the Bid Schedule attached hereto.</p> <p>The Contract Price is (\$ _____) based upon unit and/or lump sum prices extended as herein contained.</p> <p>Change Orders that individually or in aggregate increase the Contract Price by more than 25% of the above stated Contract Price must be approved by the locality's governing body prior to the performance of the Work by the Contractor. No contract which has been approved by the city council, the city manager, or his designee, may be modified or changed by amendment, change order, or any other agreement without the prior approval of the city council, the city manager, or his designee, unless (i) such modifications, in the aggregate, do not increase the amount of the contract by more than twenty-five (25) percent of the original amount of the contract or fifty thousand dollars (\$50,000.00), whichever is greater, (ii) such changes are the result of unforeseen circumstances or changed conditions encountered during the progress of the performance of the contract, and (iii) such changes are directly related to the performance of the purpose of the contract.</p>
103	Agreement	103-9	H.	<p>The damage and loss to the Owner resulting from failure of the Contractor to complete the Work within the time specified in this Agreement, plus any extension of time granted, shall be stipulated in Section 108.X, and the Section 102.H, Bid form. Damage monies may be withheld on partial and final payment to the Contractor. (See the Section 102.H Bid form and Section 108.X for explanation and specified dollar amounts.)</p>
103	Agreement	103.10		<p>IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date written above. first above written in 2 (two) counterparts each of which shall for all purposes be deemed an original.</p>
103	Performance Bond	103-11	IV.	<p>Delete -Performance Bond City of Newport News Performance Bond.</p>
103	Payment Bond	103-14	V.	<p>Delete -Payment Bond City of Newport News Labor and Materials Bond</p>
103	Notice to Proceed	103-18	VI.	<p>May be as shown or in another format, including digital as presented by the City.</p>
103	Escrow Agreement	103-20	VIII.	<p>Delete -Escrow Agreement City of Newport News Escrow Agreement.</p>
105	Record Drawings	105-5	5.3 B.	<p>Horizontal and vertical location of the water, force main, sanitary and storm sewer installed at every 100-foot station</p>

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				the cross section stationing on the plans or minimum 100-foot stations, whichever is less , at interconnections, and at fittings, tees, bends and offsets. The frequency and location of survey shots will match the proposed grade elevations shown on the Drawings.
105	Record Drawings	105-5	V. 5.3 J.	3. All pipes within the City's ROW, within City easements, or on City property shall be televised, and submitted to the City for review and approval before final acceptance.
105	Record Drawings	105-6	V 5.4 A.6	6. All Stormwater Management Facility plantings shall be shown on the construction record drawing, and the number and type of plantings labelled.
105	Working Hours	105-8	VIII. 8.1	Normal working hours shall be 8 a.m. to 5 p.m. , Monday through Friday, except that Work shall not start any earlier than one-half hour after sunrise or continue beyond one-half hour prior to sunset. If the Contractor desires to perform Work outside the normal working hours, on holidays, or on weekends, the Contractor shall request permission, in writing, 48 hours three (3) working days in advance to allow arrangements to be made. The Contractor shall be charged an inspection fee of \$75.00 per hour including travel by the Owner if such Work is approved. Where the Owner specifically directs the Contractor to work outside of normal working hours, no inspection fee will be imposed. The Owner may refuse the Contractor permission to work outside the normal working hours. The Contractor shall make reasonable efforts to avoid undue noise during the night and on weekends, including, but not limited to, fireproof covering necessary to dampen excessive noise from engines or pumps which operate before 7:00 a.m. and after 9:00 p.m., if it is necessary to work at those times.
105	Removal of unacceptable work	105-11	XII. 12.4	If the Work is defective, or the Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the Owner may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any surety or other party. If the Contractor does not remedy, remove, or replace the rejected or condemned Work as instructed by the Owner within the time period stated by the Owner but in no case to exceed 30 Days or a longer period agreed to in writing by the

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				owner and the contractor after receiving written Notice, such remedy, removal, or replacement may be accomplished by the Owner at the Contractor's expense.
105	Claims	105-12	XVI. 16.1	All claims, disputes, demands and other matters in question arising out of or relating to the Agreement or the Contract Documents, except for claims which have been waived by the Contractor's acceptance of final payment, will be addressed in accordance with the provisions of the Virginia Public Procurement Act or Chapter 2, Article XX, Sections 2-552 through 2-585 of the City Code and as stated herein; provided, however, the provisions of Section 2.2-4366 of that Act will not be applicable without the separate express written consent of the Owner. If there is a conflict between the Virginia Public Procurement Act and the City Code, the City Code shall prevail.
105	Claims	105-13	XVI. 16.3	<p>All claims, disputes, and other matters relating to or arising out of the Agreement or the Contract Documents pertaining to the performance of the Work and claims in respect to changes in the Contract Price or Contract times shall be submitted to the Owner and Engineer in writing. Written Notice of each such claim, dispute or other matter shall be delivered by the Contractor to the Engineer and the Owner promptly (but in no event later than twenty (20) days) after the start of the occurrence or event giving rise thereto, and written supporting data shall be submitted to the Engineer and the Owner promptly, (but not later than twenty (20) days) after the start of such occurrence or event and monthly thereafter for continuing events unless the Owner and Contractor mutually agree in writing to extend the time required to submit the written Notice to allow for the submission of additional accurate data in support of such claim, dispute or other matter. The Owner shall submit any response to the Engineer and the Contractor within twenty (20) days after receipt of the Contractor's last submittal (unless the Owner requests reasonable additional time to evaluate the claim).</p> <p>The Engineer shall render a non-binding and non-final written recommendation regarding the manner in which to resolve the dispute within twenty (20) days of receipt of the Owner's response. Engineer's written recommendation shall be used to assist the Owner and Contractor towards the expeditious and amicable resolution of their dispute.</p> <p>Within ten (10) twenty (20) days of the delivery of Engineer's written recommendation, senior representatives of the Owner and the Contractor, having authority to settle</p>

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				<p>the dispute, and the Engineer, shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to exercise their reasonable and good faith efforts to expeditiously resolve the dispute. The Owner's and Contractor's representatives will participate in good faith during the negotiation and will each have authority to approve changes in the Contract Time and Price, if any, to the extent allowed under the City's Procurement Ordinances.</p> <p>In the event a mutually acceptable agreement cannot be reached through negotiation within twenty (20) days of the delivery of Engineer's written recommendation, (or mutually agreeable longer period), or if either party will not meet within ten (10) days of the delivery of said written recommendation, the Owner or Contractor may declare, by written Notice, delivered to the other party and to the Engineer, that the negotiation was unsuccessful. If Owner chooses non-binding mediation, it shall be a condition precedent to the institution of any further administrative, legal or equitable proceedings by either party.</p> <p>In the event that the negotiation process specified above is unsuccessful, the Contractor may proceed by invoking the administrative procedures identified in Section 2-577 through 2-577.2 of the City Code and the City Administrative Appeals Procedure both of which are available for viewing on the Office of Purchasing webpage at www.nnva.gov/purchasing under Vendor Resources. Should the Contractor invoke the administrative procedures, the process must be exhausted prior entering into non-binding mediation or instituting legal action.</p> <p>In the event that the negotiation process is unsuccessful Should the Administrative Appeals Procedure be exhausted and prior to instituting legal action in accordance with City Code and upon the Owner's request that the parties participate in non-binding mediation, the parties shall endeavor to agree to a single mediator to mediate the dispute in a session not to exceed one-half day in length, unless extended by the agreement of both parties. If the parties cannot agree on a single mediator, they shall request the chief judge of the local state circuit court to designate a mediator. Unless the parties mutually agree otherwise, the mediation shall occur within ten (10) days of the mediator's selection. The mediation shall be paid by</p>

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				<p>the parties on a pro rata basis. The costs of the mediation shall be paid by the parties on a pro rata basis.</p> <p>The results of successful mediation will be implemented by a Change Order. Should the mediation be unsuccessful, it shall be terminated by written Notice to all involved by the mediator or Owner or Contractor.</p>
105	Claims	105-13 &14	XVI. 16.4	<p>In the event that the Owner does not elect mediation or the mediation is unsuccessful, a formal proceeding may then be instituted by either party in a forum of competent jurisdiction within the Owner's locality. The parties' Agreement, Contract Documents, and their performance obligations shall be governed, interpreted and enforced pursuant to the laws, ordinances, and regulations of the Owner's locality City, and in accordance with the laws of the Commonwealth of Virginia without regard to the conflicts of law principles thereof.</p> <p>All disputes arising out of or relating to this Agreement, the Contract Documents, or the performance obligations of the parties shall be brought in the Newport News Circuit Court Circuit Court or federal Court in Virginia United States District Court for the Eastern District of Virginia, Newport News Division if federal jurisdiction exists having jurisdiction over the location where the Work will be or has been performed. The Agreement and the Contract Documents shall be governed by, enforced and interpreted pursuant to the laws of the Commonwealth of Virginia and the Ordinances of the City of Newport News without regard to conflicts of law principles.</p>
105	Notice to Comply	105-15	XIX.	The Notice to Comply Order may be as shown on 105-16 or in another format, including digital as presented by the City.
105	Stop Work Order	105-15	XX.	The Notice to Comply Order may be as shown on 105-17 or in another format, including digital as presented by the City.
107	Protection of Work, Property & Persons	107-4	III. 3.15	<p>The Contractor will notify the affected property owners, in writing 10 Days prior to commencement of Work. "Affected Property Owners" shall be those property owners whose properties are affected by construction on the Project in the following manner: (i) restrained access to and from residences and business locations; (ii) interference with the right to enjoy one's residence or business free of disturbing and unusual environmental changes as a result of the Project, such as excessive noise, dust, light, as well as unusual working hours and odors; and (iii) the relocation of</p>

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				personal property, such as trees, shrubs, plants and flowers, play equipment, portable buildings, fences and automobiles, which must be moved as a result of the Project. Such Notice shall be deemed properly given if mailed by first class, postage prepaid, to the address for the property owners shown in the local tax records.
107	Environmental Stipulations	107-7	IV. 4.4	Siltation and Erosion Control/Erosion & Sediment Bond: Each Bidder shall submit a letter of certification from their surety that an Erosion and Sediment Control Surety Bond in the amount indicated in Section 102 the Invitation for Bids, will be issued if the Bidder is awarded the contract. Excavation shall be done in such a manner that there are no violations of the State of Virginia "Erosion and Sediment Control Handbook."
107	Warranty and Guarantee	107-8	VII. 7.1	The Contractor shall warrant and guarantee to the Owner that all Work is in accordance with the Contract Documents and is not defective. Prompt notice of all defects shall be given to the Contractor. The Contractor shall promptly correct all defective Work performed and replace defective materials or items found deficient during the final inspection, in a manner satisfactory and at no additional cost to the Owner for a period of one (1) year following the date of Substantial Final Completion; provided, however, if the local ordinances or code regarding warranties and guarantees, or if any provision in the local ordinances or code regarding the timing of performance or defect bonds conflicts with such one (1) year period, the local ordinance or code shall control. This warranty and guarantee shall not operate as a waiver of any of the rights and remedies of the Owner for default under or breach of the Agreement which rights and remedies may be exercised at any time within the period of any applicable statute of limitations.
107	Opening Sections of Projects to Traffic	107-8	VIII 8.2	On any section of the Work opened by order of the Owner where the Contract Documents do not provide for traffic to be carried through the Work and the Contractor has not been dilatory in prosecuting the Work, the Contractor will not be required to assume any expense entailed in maintaining the road for traffic unless the problem is caused by inadequate or defective work by the Contractor . Such expense will be borne by the Owner or will be compensated for by Change Order. Repair of slides and repair of damage attributable to traffic will be compensated for by Change Order. The cost of all other repairs shall be borne by the Contractor.

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107	SMALL, WOMEN- OWNED MINORITY AND SERVICE DISABLED VETERAN- OWNED BUSINESS REQUIREME NTS	107-9	X. 10.1	The City of Newport News desires to facilitate the establishment, preservation, and strengthening of small businesses and businesses owned by women, minority individuals and service disabled veterans and to encourage their participation in the City's procurement activities. The City of Newport News encourages these firms to compete and encourages non-minority firms to provide for the participation of small businesses and businesses owned by women, minority individuals and service disabled veterans through partnerships, joint ventures, subcontracts, and other contractual opportunities. Bidders may be requested to complete the SMB, WBE, MBE and SDV Business Requirements form and submit it with the bid.
107	Availability of Funds	107-9	XI. 11.1	A contract shall be deemed in force only to the extent of appropriations available to each department for the purchase of such goods and/or services. The City's extended obligations on contracts that include funding through successive fiscal periods shall be contingent upon actual appropriations for the successive periods (additional years).
107	Conflict	107-9	XII. 12.1	In the event of a conflict between the contract documents, including the terms and conditions and the terms of a purchase order or related document issued by the Office of Purchasing, the contract documents shall control.
107	Mandatory Use of City Forms	107-10	XIII. 13.1	Failure to submit a bid on the official city form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the City reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the City may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
107	RIGHTS UNDER ANTITRUST LAWS	107-10	XIV. 14.1	The Bidder assigns to the City any and all rights that it may have under the antitrust laws of the United States and the Commonwealth of Virginia in any way arising from or pertaining to the bid. This provision is remedial in nature and is to be liberally construed by any court in favor of the City.
107	INDEPENDENT CONTRACTOR	107-10	XV. 15.1	The Contractor and any employees, agents, or other persons or entities acting on behalf of the Contractor

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				shall act in an independent capacity and not as officers, employees, or agents of the City.
107	SEVERABILITY	107-10	XVI. 16.1	If any provision of the Contract resulting from this Invitation for Bids or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this contract, or the application of such provision to persons or circumstances other than those which it is invalid or unenforceable, shall not be affected, and each provision of this contract shall be valid and enforced to the full extent permitted by law.
108	Construction Progress Schedule	108-2	VI 5.2	The Contractor shall update the progress schedule monthly to reflect any schedule changes required to complete the remaining Work in accordance with the requirements of the Contract Documents. The updated schedule shall be submitted to the Owner for acceptance with the monthly application for progress payment; no payment will be made if the updated schedule is not submitted. All proposed adjustments in the progress schedule shall generally conform to the progress schedule then in effect and will comply with any provisions of the general requirements applicable thereto. The contractor shall submit daily field reports using the City's project management system.
108	Suspension of Work	108-3	VIII 8.1	The Owner may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than 90 Days or such further time as agreed upon by the Contractor, by Written Notice to the Contractor. Such Notice shall specify the date on which Work shall be resumed and the Contractor shall resume the Work on the date so specified. The Contractor will be allowed an increase in the Contract Price (Only if the Contractor can prove that the delay resulted in increased costs) or an extension of the Contract Time, or both, directly attributable to any suspension if the Contractor makes a valid claim in accordance with the Contract Documents, except that no such increase or extension shall be allowed if the suspension was due to a failure by the Contractor to perform the Work in accordance with the Agreement.
108	Liquidated Damages	108-7	10.4	In the event of delay in the completion of the Work as specified beyond the Completion Date as adjusted by Change Orders, it would be difficult to determine the exact amount of the loss or damages suffered by the Owner due to delays in completion of the Agreement. Therefore, for every -Day of delay past Completion Date of this Agreement as adjusted by Change Orders, the Contractor and the Contractor's Surety will be liable to the Owner, as liquidated damages for delay and not as a penalty, in the sum

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				designated in Section 102 , H. Bid Form, and in paragraph H of the Agreement between Contractor and Owner as set forth in Section 103, for each and every calendar Day the Contractor shall be in default, as follows:
108	Liquidated Damages	108-7	X. 10.4 C.	If Substantial Completion is not achieved by the time of Final Completion then liquidated damages for both Substantial and Final Completion shall run concurrently until Substantial Completion is achieved.
108	Separate Contracts by Owner	108-8	XI. 11.1	The Owner reserves the right to award other contracts in connection with the Project, the work under which may proceed simultaneously with the execution of this Agreement. The Contractor shall afford other separate Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and the Contractor shall take all reasonable action to coordinate its Work with theirs. If the work performed by the separate Contractor is defective or so performed as to prevent the Contractor from performing the Work, the Contractor shall immediately notify the Owner upon discovering such conditions. Upon receiving notification, the Owner shall undertake an investigations to determine if evidence supports the Contractor's claim and take such appropriate steps as are necessary to allow the Contractor to perform Work under the Agreement, and appropriate extensions of time and change orders will be given to the Contractor, pursuant to the Agreement, to compensate for any delays and extra costs caused by separate Contractor's performance.
108	Indemnification	108-8	XIII 12.1	To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless the Owner, the Engineer, the Engineer's Consultants and officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including, but not limited to all fees and charges of Engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and/or (ii) is caused in whole or in part by any negligent act, errors, omissions, recklessness, or intentionally wrongful conduct of the Contractor, any Subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or

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				furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by a person or entity indemnified hereunder. This paragraph shall not require indemnification for a particular claim, cost, loss, or damage to the extent caused by or resulting solely from the negligence of the Owner, its agents, or employees.
109	Incidental Items	109-2	1.2 B.	27. Dewatering 28. By-pass Pumping
109	Application for Progress Payment by Contractor	109.2	1.4 A.	Unless otherwise provided in this Section, the Owner shall make monthly progress payments to the Contractor on the basis of a duly certified and approved Application for Payment for Work performed in digital or other format as presented by the City during the preceding calendar month as approved by the Owner.
109	Review of Applications for Progress Payments	109-3	1.6 B.	The Owner shall, within 30 Days after acceptance of the Application for Payment, make payment to the Contractor. The Owner may refuse to make payment of the full amount because claims have been made against the Owner on account of the Contractor's performance or furnishing of the Work, or because Liens or claims against the bonds posted by the contractor have been filed in connection with the Work, or because there are other claims entitling the Owner to a set-off against the payment. The Owner shall give the Contractor immediate written Notice stating the reasons for its failure to make payment.
109	Retained Funds	109.4	1.7 A.	The Owner shall retain five percent (5%) of the total amount of each partial progress payment to assure faithful performance of the Agreement by the Contractor. The Owner will release all retainage upon Final Payment unless there are outstanding claims of the Owner against the Contractor.
109	Retained Funds	109.4	1.7 B.	Pursuant to and in accordance with Sections 2.556 and 2.566.1 of the City Code 2.2-4334 of the Code of Virginia, the Contractor may exercise the option to use the escrow account utilization procedure with respect to retained funds. The Contractor may do so by indicating its preference for this procedure in the appropriate space provided on the Bid form.

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109	Final Payment	109-6	1.9	After the Contractor has completed all corrective Work as determined by a final inspection to the satisfaction of the Owner and has delivered all maintenance and operations manuals, schedules, guarantees, bonds, certificates of inspection, and other documents as required by the Contract Documents, the Contractor may make application for final payment following the procedure for partial progress payments. Within thirty (30) Days after approval, the Owner shall pay to the Contractor the amount stated, less all prior payments and advances to or for the account of the Contractor and any amounts due under pending claims by the Owner against the Contractor. All prior estimates and payments including those relating to extra Work shall be subject to correction by this payment, which is called the Final Payment. The Contractor's obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any progress or Final Payment by the Owner nor the issuance of a Certificate of Substantial Completion, nor any payment by Owner to Contractor under the Contract Documents, nor any use or occupancy of the Project or any part thereof by Owner, nor any act of acceptance by Owner nor any failure to do so, nor any correction of defective Work by Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.
109	Payment Affidavit	109-7	1.12	The Owner, before making any payment, including the final payment, if it is deemed that such procedure necessary to protect his interests, may require the Contractor to furnish an affidavit Unconditional Waiver and Release Upon Final Payment 109-17 X. from all subcontractors and material suppliers used in conjunction with this Contract that each has been paid in full, or in the alternative, an affidavit that so far as he has knowledge or information, all payments have been made and that there is no basis under which a claim against the payment bond could be filed. However, the Owner may make payments in part or in full to the Contractor without requiring the affidavits, and the payments so made shall not impair the obligations of any Surety or Sureties on any bond or bonds furnished under this Contract.
109	Payment Affidavit	109-7	1.13	The Owner, before making any payment, including the final payment, if it is deemed that such procedure necessary to protect his interests, may require the Contractor to furnish an Affidavit of Payment of Claims 109-11 V.

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109	Change Orders and Field Orders	109-7	2.1	The Owner may at any time, as the need arises, order changes within the scope of the Work without invalidating the Agreement. If such changes increase or decrease the amount due under the Contract Documents, or in the time required for performance of the Work, an equitable adjustment shall be authorized by Change Order in digital or other format as presented by the City.
109	Change Orders and Field Orders	109-7	2.2 C.2	In any case such change involves extra Work which is performed by a Subcontractor, the Contract Price shall be increased by (a) the amount paid by the Contractor to the Subcontractor for such extra Work, and (b) seven and one-half percent (7-1/2%) of the amount paid to the Subcontractor to cover the Contractor's additional job (field and home office) overhead and (c) five percent (5%) of the sum of (a) and (b) to cover Contractor's additional job profit. On Work performed by the Subcontractor, the Subcontractor shall be allowed overhead and profit in accordance with paragraph C (1) above.
109	Change Orders and Field Orders	109-7	2.2 C.3	In the case of either subparagraph 1 or 2 above, the Contract Price shall also be increased by the corresponding increase in the cost of the Contractor's performance bond.
109	Change Orders	109-9	III.	May be as shown or in another format, including digital as presented by the City.
109	Application for Payment	109-10	IV.	May be as shown or in another format, including digital as presented by the City.
109	Affidavit of Payment of Claims	109-11	V.	May be as shown or in another format, including digital as presented by the City.
109	Certificate of Substantial Completion	109-12	VI.	May be as shown or in another format, including digital as presented by the City.
109	Statement of Surety Company	109-13	VII.	May be as shown or in another format, including digital as presented by the City.
109	Contractor's Release	109-14	VIII.	May be as shown or in another format, including digital as presented by the City.
109	Contractor's Release	109-14	IV.	KNOW ALL MEN BY THESE PRESENTS THAT: <u> (Contractor) </u> of <u> </u> County/City and State of <u> </u> does hereby acknowledge that he has received this day this final payment from the <u> (Owner) </u> the sum of One Dollar (\$1.00) and other valuable consideration in full satisfaction and payment of all sums of money owing, payable and belonging to be just and true for work performed under

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				the contract/purchase order # ____, and that such constitutes full and final payment. (Contractor) Dated __, 20__.
109	Manhole/ Structure Protective Post Installation	109-15-16	IX.	May be as shown or in another format, including digital as presented by the City.
109	Unconditional Waiver and Release upon Final Payment	109-17-25 109-17	X.	Deleted – Standard Bid Items and Units Added- Unconditional Waiver and Release upon Final Payment
109	Independent Waiver Based on Prior Payments	109-18	XI.	Added- Independent Waiver Based on Prior Payments

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200	Products and Materials	200-13	V. Products - 5.10 Sanitary Force Main Systems - B.2.b.	Deleted
200	Products and Materials	200-16	V. Products - 5.10 Sanitary Force Main Systems - C.	Add: 11. To be used only for directional drill applications that is approved by the Director of Engineering.
200	Products and Materials	200-17	V. Products - 5.10 Sanitary Force Main Systems - D.	Add: 11. To be used only for directional drill applications that is approved by the Director of Engineering.
200	Products and Materials	200-24	V. Products - 5.11 Sanitary Gravity Sewer Systems - A.3.	Revise: 3.DI pipe for Gravity Sewer Systems shall be minimum thickness Class 52 and shall be a minimum pressure class 350 psi ...”
200	Products and Materials	200-25	V. Products - 5.11 Sanitary Gravity Sewer Systems - B.3.	Revise: 3. PVC pipe sizes 4-inched through 15-inches in diameter shall conform to ASTM D3034 SDR 26
200	Products and Materials	200-25	V. Products - 5.11 Sanitary Gravity Sewer Systems - C.	Deleted
200	Products and Materials	200-37	V. Products - 5.17 Topsoil - B.	Replace Second Sentence with: “It shall consist of natural, friable, loamy soil without admixtures of subsoil or other foreign materials and shall be free from stumps, roots, hard lumps, stiff clays, stones, noxious weeds, brush, or other litter
200	Products and Materials	200-58	5.21.1.F Manhole Rehabilitation using Cementitious Products	Add: b. (1), Infiltration Control Mix shall be Permacast Dry, Permacast Plug or approved equal.
200	Products and Materials	200-58	5.21.1.F Manhole Rehabilitation using Cementitious Products	Add: c.(1).a. Grouting Mix shall be Permacast Plug, Permacast Patch, or approved equal.
200	Products and Materials	200-59	5.21.1.F Manhole Rehabilitation using Cementitious Products	Add: d. (2).a. High Performance Mix shall be MS-10,000 or approved equal.
200	Products and Materials	200-59	5.21.1.F Manhole Rehabilitation using Cementitious Products	Add: d. (2).b. High Performance Mix shall include ConShield admixture.
301	Clearing & Grubbing	301-5	III. Measurement for Payment	Delete: Section III Measurement for Payment
302	Drainage Structures	302-5	Add: 2.1.. Storm water Sewer Pipe Rehabilitation By Cured-In-Place Method	ADD: a. No work shall be performed by the Contractor except in the presence of the Owner’s inspection personnel, unless otherwise approved. Prior to initiation of the Work the Contractor shall submit one set of CDs/DVDs with logs from each of the pre-installation television inspections performed. b Storm sewer cleaning shall be as specified in “Section 810 – Sewer Line Cleaning” of the Hampton Roads Planning District

				<p>Commission Regional Construction Standards, (HRPDC Regional Construction Standards), latest edition.</p> <p>c. Television inspection shall be as specified in “Section 811 – Television Inspection” of the HRPDC Regional Construction Standards, latest edition.</p> <p>d. Bypass pumping shall be as specified in “Section 812 – Bypass Pumping” of the HRPDC Regional Construction Standards, latest edition.</p> <p>e. Pipe rehabilitation by cured-in-place pipe method shall be as specified in “Section 813 – Pipe Rehabilitation by Cured-in-Place Method” of the HRPDC Regional Construction Standards, latest edition,</p>
302	Drainage Structures	302-7	III. Measurement for Payment	Delete: Section III Measurement for Payment
303	Earthwork	303-4	II. Execution - 2.1 Roadway Earthwork - J.	Add: Select material shall be Type 1 with a minimum CBR of 20 as specified in the <u>VDOT Road & Bridge Specifications</u> .
303	Earthwork	303-11	II. Execution - 2.2 Trenching, Backfilling, and Compacting - E.1.	Add: Initial backfill shall be select material Type 1 with a minimum CBR of 20 as specified in the <u>VDOT Road & Bridge Specifications</u> to a depth of 12” above the pipe.
303	Earthwork	303-11	II. Execution - 2.2 Trenching, Backfilling, and Compacting - E.2.	Revise: “2. Pipe shall be bedded in accordance with the drawings. Bedding materials shall be Compacted Granulated material (Gravel- Max size ¾”) VDOT No. 57 stone. Crushed Concrete is acceptable when approved by the Director of Engineering.
303	Earthwork	303-11	II. Execution - 2.2 Trenching, Backfilling, and Compacting - E.3.	Add: Select material shall be sandy soils Type II and Type III as specified in the <u>VDOT Road & Bridge Specifications</u> .
303	Earthwork	303 13-19	III. Measurement for Payment	Delete: Section III Measurement for Payment
305	Subgrade and Shoulders	305 1-2	III. Measurement for Payment	Delete: Section III Measurement for Payment
309	Aggregate Base Course	309 2-3	III. Measurement for Payment	Delete: Section III Measurement for Payment
310	Tack and Prime Coat	310 3-4	III. Measurement for Payment	Delete: Section III Measurement for Payment
313	Asphalt Surface Treatment	313-4	III. Measurement for Payment	Delete: Section III Measurement for Payment
315	Asphalt Concrete Pavement	315 4-5	III. Measurement for Payment	Delete: Section III Measurement for Payment
317	Pavement Patching	317-2	II Execution, 2.1 General	<p>ADD:</p> <p>F. Local Streets Pavement Restoration:</p> <p>1. Patching for Small Excavations (2’ x 2’ or smaller) and General Excavations (no dimension greater than 20’):</p> <p>a. Sawcut pavement edge to undisturbed base stone a minimum of 1’ on all sides outside of excavation.</p> <p>b. Extend asphalt cutback to gutter pan or curb if within 2’ of</p>

				<p>gutter pan or curb from sawcut line.</p> <p>c. Extend asphalt cutback to full lane width if excavation disturbs more than 50% of lane width.</p> <p>d. Two excavations located within 40' longitudinally from one another in a lane; three excavations within 200' and within a lane; or 4 excavations within 200' in more than one lane will be considered as one combined restoration and milled and paved from 3' prior to the edge of excavation to 3' beyond the edge of excavation in direction of travel or intersection to intersection whichever is greater. The outside edges of one combined restoration shall be parallel to the curb line or edge of lane line for the entire length of the combined restoration and shall maintain a consistent distance between outside edges.</p> <p>e. Lane width to be determined by the inspector</p> <p>2. Restoration for Trenches (any dimension greater than 20'):</p> <p>a. Patch is not permitted for Trenches.</p> <p>b. Mill and pave a minimum of 3' in travel directions (3' prior to the edge of trench and 3' beyond the edge of trench) and 3' perpendicular to travel directions, measured from the edge of the excavation.</p> <p>c. Mill and pave full road width if excavation disturbs more than 50% of full road width.</p> <p>d. Mill and pave full lane width if excavation disturbs more than 50% of full lane width.</p> <p>e. For any excavation that disturbs more than 30% of an intersection, the Department may require the restoration limits to be larger than the work area to insure a smooth, rideable surface. The restoration limits will be confirmed by the engineer or inspector.</p> <p>f. Two excavations located within 40' longitudinally from one another in a lane; three excavations within 200' and within a lane; or 4 excavations within 200' in more than one lane will be considered as one combined trench and milled and paved from 3' prior to the edge of excavation to 3' beyond the edge of excavation in direction of travel or intersection to intersection whichever is greater. The outside edges of one combined trench shall be parallel to the curb line or edge of lane line for the entire length of the combined trench and shall maintain a consistent distance between outside edges.</p> <p>g. Lane width to be determined by the inspector</p> <p>G. Arterials and Collector Streets Pavement Restoration:</p>
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				<p>a. Any excavation in any lane requires milling and paving the entire lane width. Any paving restoration protruding into an adjacent lane will require the milling and paving of the full entire width of the affected lane</p> <p>b. Mill and pave a minimum of 3' beyond the edges of excavation in travel directions measured from the excavation edge for the full entire width of the affected lane.</p> <p>c. Two excavations located within 40' longitudinally from one another in a lane; three excavations within 200' and within a lane; or 4 excavations within 200' in more than one lane will be considered as one excavation and milled and paved from 3' prior to the edge excavation to 3' beyond the edge of excavation in direction of travel or intersection to intersection whichever is greater.</p> <p>d. Lane width to be determined by the inspector</p> <p>H. Special Rules for restoration of pavement cut(s) installed within 4 years of roadway construction/ reconstruction.</p> <p>1. Cuts are generally prohibited, but may be allowed with mill and pave restoration as described below:</p> <p>2. Mill and pave a minimum of 25' (25' beyond the edges of excavation) in travel directions measured from the excavation edge for the full entire width of the affected lane.</p> <p>3. Any paving restoration protruding into an adjacent lane will require milling and paving of the full entire width of the affected lane.</p> <p>3. Lane width to be determined by the inspector</p> <p>I. Cores (6" diameter approximately)</p> <p>1. Corings may be epoxyed back into the core hole if material is in good condition.</p> <p>J. Pavement Markings</p> <p>1. All pavement markings must be restored in accordance with section 704.</p> <p>2. Permanent Markings shall be restored within 3 days of final surface installation.</p> <p>3. Temporary markings shall be installed within 24 hours of placing base surface (if opened to traffic) and final surface.</p>
317	Pavement Patching	317-3	III. Measurement for Payment	Delete: Section III.A thru E

406	Reinforcing Steel	406-2	III. Measurement for Payment	Delete: Section III Measurement for Payment
414	Riprap	414-3	III. Measurement for Payment	Delete: Section III Measurement for Payment
501	Underdrains	501 1-2	III. Measurement for Payment	Delete: Section III Measurement for Payment
502	Concrete Items	502-1	1. General -1.1	Delete: “composite detectable warning surface.” Replace with: “concrete pavers with detectable warning surface”.
502	Concrete Items	502-9-10	II. Curb Cut Ramp 1-9	Replace: “...warning surface tile..” with “...warning surface paver...”
502	Concrete Items	502 10-13	III. Measurement for Payment	Delete: Section III Measurement for Payment
505	Guardrail and Steel Median Barriers	505 2-3	III. Measurement for Payment	Delete: Section III Measurement for Payment
507	Fences	507 1-2	III. Measurement for Payment	Delete: Section III Measurement for Payment
510	Relocating or Modifying Existing Miscellaneous Items	510-2	II. Execution - 2.3 Signs	Add: "Reinstalled signs shall be installed to the current Owner's specifications and inspected by the Owner's Traffic Operations staff prior to final inspection."
510	Relocating or Modifying Existing Miscellaneous Items	510-2	II. Execution - 2.4 Mailboxes and Newspaper Boxes	Add: "Mailboxes and newspaper boxes that are to be located within the clear zone as defined by the AASHTO shall be of a breakaway design as determined by the National Cooperative Highway Research Program Report 350, <i>Recommended Procedures for the Safety Performance Evaluation of Highway Features</i> ."
510	Relocating or Modifying Existing Miscellaneous Items	510 2-3	III. Measurement for Payment	Delete: Section III Measurement for Payment
511	Allaying Dust	511 1-2	III. Measurement for Payment	Delete: Section III Measurement for Payment
512	Maintaining Traffic	512-1	<i>Entire Section</i>	Define: It is to be understood that every mention of the <i>Virginia Work Area Protection Manual</i> is to be interpreted as, the Virginia Work Area Protection Manual along with the City of Newport News Supplement to the Virginia Work Area Protection Manual.
512	Maintaining Traffic	512 2-6	III. Measurement for Payment	Delete: Section III Measurement for Payment
513	Mobilization	513-1	III. Measurement for Payment	Delete: Section III Measurement for Payment
515	Planning or Milling Pavement	515-4	III. Measurement for Payment	Delete: Section III Measurement for Payment

521	Pavers	521-1	General-II.1	Delete Second Sentence: "For composite detectable warning surface panels, refer to section 502". Newport News has deleted composite detectable warning surface panels and requires concrete pavers with detectable warning surface.
521	Pavers	521-12	III. Measurement for Payment	Delete: Section III Measurement for Payment
530	Abandonment of Existing Pipelines and Structures	530 4-6	III. Measurement for Payment	Delete: Section III Measurement for Payment
531	Contaminated Groundwater Management	531-3	I. III. Measurement for Payment	Delete: Section III Measurement for Payment
602	Topsoil	602-2	III. Measurement for Payment	Delete: Section III Measurement for Payment
603	Seeding	603-5	III. Measurement for Payment	Delete: Section III Measurement for Payment
604	Sodding	604-2	III. Measurement for Payment	Delete: Section III Measurement for Payment
605	Planting	605 4-5	III. Measurement for Payment	Delete: Section III Measurement for Payment
606	Rolled Erosion Control Products (RECP)	606-2	III. Measurement for Payment	Delete: Section III Measurement for Payment
608	Mowing	608 1-2	III. Measurement for Payment	Delete: Section III Measurement for Payment
700	Traffic Control Devices	700-1	I. General - 1.2 Materials - I.4. (bullet 1)	Delete and Replace with: " • 110 MPH design wind speed shall be used in the designs. The alternate method for wind pressures provided in Appendix C shall not be used."
700	Traffic Control Devices	700-1	I. General - 1.2 Materials - I.4. (bullet 2)	Deleted
700	Traffic Control Devices	700 2-4	III. Measurement for Payment	Delete: Section III Measurement for Payment

700	Traffic Control Devices	700-2	II. Execution - F.	<p>Replace: ADD: Modified Sections of VDOT Road and Bridge Specifications</p> <p>VDOT Road and Bridge Specifications, Section 700.03 – General Requirements, (b) Lighting Structures: Lighting Structures shall be of a one-piece or sectional single unit, tubular form, and shall be round or multisided, unless otherwise specified in the contract documents. Multisided poles shall have at least eight sides. Pole shafts shall have a removable cap fastened by at least three screws.</p> <p>1. High Mast Lighting Structures (Lengths of 55 feet or greater) shall be galvanized steel and shall have at least the minimum number and diameter of anchor bolts specified in the Standard Drawings. Aluminum structures shall not be allowed. Washers are required above and below the base plate.</p> <p>2. Conventional Lighting Structures (Lengths less than 55 feet) shall be galvanized steel or aluminum, unless otherwise specified in the contract documents. Poles requiring a foundation and shall have at least the minimum number and diameter of anchor bolts specified in the Standard Drawings.</p>
				<p>VDOT Road and Bridge Specifications, Section 700.03 – General Requirements, (c) Signal Poles and Mast Arms: Signal Poles and Mast Arms shall be galvanized steel, unless otherwise specified in the contract documents, of a one-piece or sectional single unit, tubular form, and shall be round or multisided. Multisided poles shall have at least eight sides. Pole shafts and mast arms shall have a removable cap fastened by at least three screws. If field adjusting of mast arm length is required, the end cap shall snugly fit the arm after adjustment.</p> <p>VDOT Road and Bridge Specifications, Section 700.03 – General Requirements, (d) Luminaire arms: Luminaire arms shall be manufactured of the same material (aluminum or galvanized steel) as the supporting structure.</p> <p>VDOT Road and Bridge Specifications, Section 700.03 – General Requirements, (e) Camera Poles: Camera Poles for the support of ITS equipment shall be galvanized steel of a one-piece or sectional single unit, tubular form, and shall be round or multisided, unless otherwise specified in the contract documents. Multisided poles shall have at least eight sides. They shall have at least four anchor bolts. Foundations for overhead sign structures shall be spread footings unless inadequate soil conditions require deep foundation systems, i.e., drilled piers, driven piles. Drilled foundations may be permitted except for single-pole structures, i.e., overhead single-pole-in-end forms, cantilever, or butterfly. <u>Signal pole foundations shall be drilled unless otherwise shown on the plans, contract documents or as approved in writing by the Owner.</u></p>
704	Pavement Markings and Markers	704 1-2	III. Measurement for Payment	Delete: Section III Measurement for Payment
801	Water Distribution Systems	801 19-25	III. Measurement for Payment	Delete: Section III Measurement for Payment

802	Sanitary Gravity Sewer Systems	802-5	II. Execution - 2.2 Pipe Installation - C.	Add: 11. Pipe Connection. A DFW/HPI non-shear coupling, Mission Flex Seal ARC Coupling, or approved equal shall be used between transitions of pipe materials and connections to existing pipe.
802	Sanitary Gravity Sewer Systems	802-15	III. Measurement for Payment - A.	Add: 4. Pipe bedding shall be Type III, minimum, for all ductile iron sanitary sewer pipes. Pipe bedding shall be Type IV, minimum, for all plastic sanitary pipe.. Bedding shall be compacted granulated material (Gravel-Max size ¾”) #57 Stone. Crushed Concrete is acceptable when approved by the Director of Engineering.
802	Sanitary Gravity Sewer Systems	802-15	III. Measurement for Payment - A.	Add: 5. Special Water Main Crossing. Measurement and payment shall be at the unit price per linear foot installed for each section of ductile iron sewer pipe installed and field measured in accordance with the detail shown on the plans.”
802	Sanitary Gravity Sewer Systems	802-16	III. Measurement for Payment - B.	Add: 3. Pipe bedding shall be Type III, minimum, for all ductile iron sanitary sewer pipes. Pipe bedding shall be Type IV, minimum, for all plastic sanitary sewer pipe. Pipe bedding shall be compacted granulated (gravel- max size ¾”) #57. Crushed Concrete is acceptable when approved by the City.”
802	Sanitary Gravity Sewer Systems	802-16	III. Measurement for Payment - B.	Add: 4. Payment for sewer laterals to include demolition, removal and disposal of existing laterals.
802	Sanitary Gravity Sewer Systems	802-18	III. Measurement for Payment - C.	Add: 6. Manholes. The unit price shall also include ConShield additive to be used in the concrete mix as per the manufacturer’s recommendations on all concrete manhole sections and use of a geotextile fabric under the stone base. No manhole steps to be used.
802	Sanitary Gravity Sewer Systems	802-19	III. Measurement for Payment	Add: J. Connections to Proposed Manhole from Existing Pipe, Complete-in-Place. Connections to proposed manholes will be paid for each connection installed and satisfactorily tested. Payment will include materials, excavation, backfilling, dewatering, testing, and all other work incidental to the connection to the proposed manholes in accordance with the detail shown on the plans.
803	Sanitary Force Main Systems	803 15-18	III. Measurement for Payment	Delete: Section III Measurement for Payment
804	Boring and Jacking	804-4	III. Measurement for Payment	Delete: Section III Measurement for Payment
805	Separation of Water Mains and Sewers	805-2	III. Measurement for Payment	Delete: Section III Measurement for Payment
806	Horizontal and Directional Drilling	806 10-11	III. Measurement for Payment	Delete: Section III Measurement for Payment
810	Sewer Line Cleaning	810 7-8	III. Measurement for Payment	Delete: Section III Measurement for Payment
811	Television Inspection	811 7-8	III. Measurement for Payment	Delete: Section III Measurement for Payment

812	Bypass Pumping	812 4-5	III. Measurement for Payment	Delete: Section III Measurement for Payment
813	Pipe Rehabilitation by Cured-In-Place Pipe Method	813 14-15	III. Measurement for Payment	Delete: Section III Measurement for Payment
815	Pipe Bursting	815-9	III. Measurement for Payment	Delete: Section III Measurement for Payment
816	Sewer Pipe Joint Testing	816-7	III. Measurement for Payment	Delete: Section III Measurement for Payment
817	Chemical Grouting	817 9-10	III. Measurement for Payment	Delete: Section III Measurement for Payment
818	Point Repair by Excavation	818 3-4	III. Measurement for Payment	Delete: Section III Measurement for Payment
819	Insitu Structural Point Repair	819-3	III. Measurement for Payment	Delete: Section III Measurement for Payment
820	Insitu Point Repair by Sectional Lining	820-3	III. Measurement for Payment	Delete: Section III Measurement for Payment
821	Sanitary Sewer Service Reconnections	821-3	II. Execution - 2.2 Installation - B.4.	Deleted
821	Sanitary Sewer Service Reconnections	821-4	II. Execution - 2.2 Installation - B.5	Deleted
821	Sanitary Sewer Service Reconnections	821-5	II. Execution - 2.2 Installation - B.6	Add: g. The same qualified lining contractor that performed the CIPP lining shall perform all Inserta Tee work.
821	Sanitary Sewer Service Reconnections	821 6-7	III. Measurement for Payment	Delete: Section III Measurement for Payment
822	Manhole Rehabilitation	822-12	II. Execution	Renumber: 2.7 FINAL ACCEPTANCE to 2.8 FINAL ACCEPTANCE
822	Manhole Rehabilitation	822-12	II. Execution	Replace 2.7 with: 2.7 STAINLESS STEEL INSERTS, For new and existing sanitary manholes inserts shall be Parson's vented stainless steel manhole inserts. Inserts for existing manholes shall be field measured for proper size and installed under existing dust cover, if applicable. The standard manhole frame sizes ranges from 21" to 26 ¾" OD.
822	Manhole Rehabilitation	822-12	III. Measurement for Payment	Add: C. Payment shall be made at the unit price bid of each. Parson's vented stainless steel manhole inserts installed and field verified. Included in the cost is the following: 1. Measuring of existing cover. 2. Removal/replacement of existing manhole and dust cover. 3. Installation of vented stainless steel manhole insert under dust cover, if applicable. Traffic control required to perform the required work.
823	Sliplining	823 8-9	III. Measurement for Payment	Delete: Section III Measurement for Payment