

TOWN OF HAYMARKET
STANDARD CONTRACT FOR GOODS, SERVICES, CONSTRUCTION OR INSURANCE

This Contract (the “Contract”) is entered into on and as of its Effective Date by and between the TOWN OF HAYMARKET, a municipal corporation of the Commonwealth of Virginia (hereinafter, “Town”), and _____ (hereinafter “Contractor”)(hereinafter referred to as the “Party”, and collectively as the “Parties), for Goods, Services, Construction and/or Insurance identified herein, on the following terms and conditions:

SOLICITATION TITLE: _____

SOLICITATION NUMBER: _____

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I) FORMATION

A) Conditions Precedent to Formation:

Before any Contract between the Town and the Contractor is effective, the following conditions precedent must be satisfied. Satisfaction of these conditions is the responsibility of the Contractor. If, after performance under the Contract, the Town learns that a condition precedent was not met, the Town may, if permitted by law, ratify the Contract by affirmative recorded vote or may disclaim it, in the sole discretion of the Town.

- 1) Insurance: If the Solicitation requires certain insurance, the Contractor must provide proof of insurance in the amounts required by the Solicitation with an insurance company licensed to do business in the Commonwealth of Virginia.
 - a) Unless the Solicitation states otherwise, the Town shall be made an additional insured on all required policies of insurance.
 - b) No change, cancellation (other than noted below), or non-renewal shall be made in any insurance coverage without a forty-five (45) day written notice to the Town Manager. Notice for cancellation due to nonpayment of premium would be fifteen (15) days. The Contractor shall furnish a new certificate of insurance prior to any change or cancellation date. The failure of the contractor to deliver a new and valid certificate of insurance is grounds for termination of the contract.
 - c) Insurance coverage required hereunder shall be in force throughout the Contract period. Should the contractor fail to provide acceptable evidence of current insurance within ten (10) days of written notice at any time during the contract term, the Town shall have the absolute right to terminate the contract.
 - d) Compliance by the Contractor and any subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor or any subcontractors of their liabilities and obligations under this Contract.

- e) The Town may and will, if requested by Contractor, reasonably accept insurance certificates provided by subcontractors or partners of the Contractor covering risks and hazards relating to work to be performed by such subcontractor and partners, in lieu of insurance certificates provided by Contractor. However, the Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors and any person employed by the Subcontractors.
 - f) If an "ACORD" Insurance Certificate form is used by the Contractor's insurance agent, the words, "endeavor to" and "... but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted.
- 2) Bonds: If the Solicitation requires payment or performance bonds, then bonds with surety satisfactory to the Town attorney shall be submitted to the Contract Administrator for approval.
 - 3) Permits and licenses: If the procurement of the Goods, Services, insurance or Construction that is the subject of this Contract requires possession of any licenses or receipt of any permits other than construction permits, then Contractor shall obtain and maintain those required licenses and permits.
 - 4) Certification of the Contractor: The Contractor must submit the attached Criminal Conviction Certification Form regarding criminal convictions of its employees.
 - 5) Payment of Debts: Contractor must pay all amounts shown as due to the Town on the Town's accounts, even if a dispute exists as to the debt's validity or enforceability.

B) Parties

- 1) The sole parties to this Contract are the Town of Haymarket and the Contractor.
- 2) Neither this Contract, nor any part hereof, may be assigned by the Contractor to any other party without the express written permission of the Town in advance. No assignment without such permission will relieve the Contractor of any responsibility under this Contract.
- 3) There are no intended third party beneficiaries of this Contract, unless it is made available by rider for other governmental entities to use. Making the Contract available to them by rider is the sole extent of the intended third party benefit.
- 4) If this Contract is made available by rider for other governmental entities to use, any contracts formed between the Contractor and such other governmental entities shall be solely between those parties. The Town shall not be a party to any of these Contracts.

C) Authority to Execute

By executing this Contract on behalf of Contractor, the Contractor’s Representative warrants that he or she has full authority to do so.

D) Incorporation of Documents

The Contract consists of the following documents, which are hereby incorporated by reference and fully made a part of the Contract. This Contract and the incorporated documents describe the subject of the procurement, the particulars of its performance, the process and time for payment, and the rights and remedies of the parties (collectively, “the terms”). In the event of any conflict between the provisions of this contract and applicable Federal, State, and Local Laws, Ordinances and Regulations, the language of any Federal Laws, Ordinances and Regulations shall govern. If an inconsistency exists between the Specifications of the Invitation for Bids (the “IFB”), the General Provisions, Contract, or other included document, or the Purchasing Policies and State Procurement Law, the inconsistency shall be resolved by giving precedence to the following documents in the following order:

- 1) Virginia Public Procurement Act, as amended,
- 2) The Town of Haymarket Code, as amended,
- 3) The Contract
- 4) Addenda, issued prior to receipt of bids
- 5) Contract Technical Specifications
- 6) Contract Special Provisions
- 7) The Plans
- 8) VDOT Supplemental Specifications, Special Provisions, & Special Provision Copied Notes
- 9) 2016 VDOT Road and Bridge Specifications
- 10) 2016 VDOT Road and Bridge Standards

If there was no formal Solicitation, the specifications must be attached to this Contract for it to be valid.

E) Effective Date

The Effective Date of this Contract shall be the last to occur of (1) the date on which the Contractor's Representative signs the Contract, (2) the date on which the Town Manager signs the Contract, and (3) the date that all conditions precedent to formation are satisfied or expressly waived in writing by the Town.

II) PERFORMANCE

A) Notice to Proceed

After execution of the Contract and receipt of any documents required by the Contract Administrator before the Effective Date of this Contract, the Contract Administrator shall send the Contractor notice to proceed with the Contract as of a date convenient to the Town.

B) Contacts

In addition to the Contract Administrator and the Contractor's Representative, the parties may designate additional contacts for exchange of information.

C) Acceptance of Work

Performance of the work and delivery of all Goods shall be conducted and completed in accordance with recognized and customarily accepted industry practices, and shall be considered complete when the services are approved as acceptable by the Contract Administrator. In the event of rejection of any deliverable, the Contractor shall be notified and shall have fourteen (14) calendar days from date of issuance of notification to correct the deficiencies and resubmit the deliverable.

D) Warranty

The Contractor warrants that all Services it performs and all Goods, insurance, and Construction it delivers to the Town will be of good quality and meet the specifications of this Contract and of all Literature supplied by the Contractor as part of the selection process which led to the award of this Contract. "Literature" as used in this provision means any and all brochures, fliers, catalogs, Proposals, web sites, email, or other information, in whatever written form, relating to the quality, utility, economic advantages, or composition of the Goods or Services. This warranty is in addition to, and does not substitute for, the Contractor's warranties of title, against infringement, of

merchantability, and of fitness for particular purpose under Virginia Code §§ 8.2-312, 8.2-314, and 8.2-315, which the parties expressly agree apply to this Contract.

E) Invoices

- 1) Unless otherwise provided in the Solicitation, Contractor will submit all its invoices for payment in the fiscal year in which the Goods, Services, insurance or Construction were provided or within thirty days thereafter. Late invoices are subject to rejection if no appropriated funds are available for their payment.
- 2) The invoice must be in the name of the Contractor unless an assignment has been received and approved by the Town.
- 3) Tasks shall be billed to the Town upon completion. The Town will not be responsible for any cost or expenses of operation of any kind associated with Contractor's provision of services pursuant to this Contract, except as set out herein. Contractor shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services to be rendered hereunder except as set out herein. The Town shall have no obligation to reimburse, pay directly or otherwise satisfy any taxes or other expenses of the Contractor in connection with the performance of its obligations under this Contract except as stated herein. If Contractor is deemed not to be an independent Contractor by any local, state, or federal governmental agency, Contractor agrees to indemnify and hold harmless the Town for any and all fees, costs, and expenses, including, but not limited to, attorneys fees incurred thereby.

F) Payment

- 1) In return for the goods, services, construction and/or insurance that are the subject of this Contract, and subject to paragraph III)D) of this Contract relating to "Non-appropriation of Funds," the Town shall compensate the Contractor within thirty (30) days after receipt of proper invoice for the amount of payment due or thirty (30) days after receipt of the goods or services, whichever is later.
- 2) Within seven days after receipt of amounts paid to the Contractor by the Town for satisfactorily completed performance, the prime contractor agrees to:
 - a) Pay the subcontractor for the proportionate share of the total payment received from the Town attributable to the work performed by the subcontractor under that contract; or
 - b) Notify the Town and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

If the Contractor after having received payment from the Town fails to pay each subcontractor its proportionate share of the total payment, the Contractor shall be obligated to pay interest to each subcontractor on all amounts that remain unpaid after the seven days following receipt by the Contractor of payment from the Town except for amounts properly withheld as allowed under Section 3)b).

- 3) Unless otherwise provided under the terms of this Contract or by statute, interest shall accrue at a rate of one percent per month against the Contractor on any unpaid amounts owed to each subcontractor.
- 4) 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 with respect to each lower-tier subcontractor.
- 5) A Contractor that is an individual must provide his or her social security number and a Contractor that is any form of business entity must provide its federal employer identification number to the Contract Administrator before payment can be made.

III) TERM AND TERMINATION

A) Base Term and Extensions

- 1) The base term for this Contract shall be for the period identified in the Solicitation or other specification.
- 2) This Contract may be extended as provided in the Solicitation or by change order or amendment. If this is a fixed price contract, however, no extension may increase the price by more than twenty-five percent of the amount of the Contract or \$50,000, whichever is greater, without a recorded affirmative vote of the Town Council. The Town may extend the term of this Contract for services to allow completion of work undertaken but not completed under its original term.

B) Termination for Default

- 1) Either party may terminate this Contract, without further obligation, upon the default of the other party.
- 2) With the exception of an emergency endangering life, safety, or the operation of the Town government, a default will only exist after the party claiming a default shall have provided notice and an opportunity to cure the default to the other party as follows:
 - a) A written 10 day business Notice of Default shall be given setting forth the grounds for default and the steps demanded to cure the default.

- b) If the party receiving the Notice of Default fails to cure the default before the end of the 10 business day period then that party shall be in default under the terms of the Contract and the non-defaulting party shall have the right to terminate the Contract by sending a written Notice of Termination to the defaulting party.

C) Termination for Convenience

- 1) The Town may terminate this Contract or any work or delivery required hereunder from time-to-time either in whole or in part, whenever the Contract Administrator, with the concurrence of the Town Manager, determines that such termination is in the best interest of the Town.
- 2) Termination may occur in whole or as to any discrete part of the Contract. A partial termination shall set forth the portions of the Contract which are terminated.
- 3) The effective date of the termination shall be three days after issuance of a Notice of Termination signed by the Contract Administrator and Town Manager and its mailing or delivery to the Contractor, or any later date specifically set forth in the Notice of Termination.

D) Termination for Non-Appropriation

- 1) If funds are not appropriated for purposes of this Contract for any succeeding fiscal year subsequent to the one in which this Contract is entered into, then the Town may terminate this Contract upon thirty (30) days written notice to the Contractor. The notice shall set forth the grounds for termination and its effective date.
- 2) If the Town terminates for non-appropriation, the Town shall be liable only for payments due through the effective date of termination.
- 3) Until the effective date of the termination, the Contractor shall continue to perform its duties under the Contract and is not excused from performance related to any portion of the Contract.

E) Claims Upon Termination

- 1) Upon receipt of a Notice of Termination, the Contractor shall:
 - a) Cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice of Termination;

- b) Place no further orders with any subcontractors except as may be necessary to perform any portion of the Contract not subject to the Notice of Termination (i.e. in the case of partial termination);
 - c) Terminate all subcontractors except to the extent necessary to complete work which was not subject to the Notice of Termination (i.e., in the case of partial termination);
 - d) Settle on reasonable terms, and all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Contract Administrator; and
 - e) Use its best efforts to mitigate any damages which may be sustained by the Contractor or any of its subcontractors as a consequence of termination under this clause.
- 2) After complying with the foregoing provisions, the Contractor shall submit a termination claim within thirty days unless an extension is granted by the Contract Administrator. This termination claim shall document all amounts due under this provision.
- a) Upon receipt of the Contractor's termination claim, the Contract Administrator, with the approval of the Town Manager, shall pay from the Town's budget the reasonable costs of termination, including a reasonable amount for profit on services delivered or completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the goods or services not delivered, or those goods or services not provided. The calculation of the amount to be paid to the Contractor shall be documented and made a part of the Contract file.
 - b) If the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this clause, the Contract Administrator shall pay the Contractor from the Town's budget the amounts determined as follows, without duplicating any amount which may have already been paid under the preceding paragraph of this clause:
 - i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:
 - Cost of the goods delivered or work performed; and
 - The reasonable cost of settling and paying any claims as provided above; and
 - The profit amount derived from Contractor's completed and delivered work as determined by the Contract Administrator to be fair and reasonable .
 - ii) The total sum to be paid shall not exceed the Contract price, as reduced by the

amount of payments otherwise made, and as further reduced by the Contract price of goods or services not terminated.

- c) If the Contractor is not satisfied with any payments which the Contract Administrator determines to be due under this provision, the Contractor may make a claim in accordance with paragraph V)C)1), Submission of Disputes.
- 3) The Contractor shall include similar provisions for termination in any subcontractors and shall require subcontractors to make reasonable efforts to mitigate damages if the Contract is terminated. Failure to include such provisions shall bar the Contractor from any recovery from the Town whatsoever for loss or damage sustained by a subcontractor as a consequence of termination.

IV) STATUTORY REQUIREMENTS

A) Employment Discrimination

In all contracts, regardless of contract amount, the Contractor will abide by the provisions of the Americans with Disabilities Act, and will require each sub-contractor to do so. If this Contract is for a consideration in excess of Ten Thousand Dollars (\$10,000.00), then during the performance of this Contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- 3) Notices, advertisements, and solicitations placed in accordance with Federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- 4) The Contractor will include the provisions of this Contract section in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor.

B) Ethics

The provisions contained in Chapter 43, Article 6, Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act, as set forth in the 1950 Code of Virginia, as amended, apply to this contract. The provisions of Article 6 of Chapter 43 supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia Conflict of Interest Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia Conflict of Interests Act.

C) Drug-Free Workplace

During the performance of this contract the contractor agrees to:

- 1) Provide a drug-free workplace for the Contractor's employees.
- 2) 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 the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 3) State in all solicitations or advertisement for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace.
- 4) Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00, or so that the provisions will be binding upon each subcontractor.

D) Faith-Based Organizations

The Town of Haymarket in procuring goods and services, or in making disbursements pursuant to this section, shall not discriminate against a faith-based organization on the basis of the organization's religious character or impose conditions that restrict the religious character of the faith-based organization, except funds provided for expenditure pursuant to contracts with public bodies shall not be spent on religious worship, instruction, or proselytizing, or impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursement.

E) Foreign And Domestic Businesses Authorized to Transact Business in the Commonwealth

- 1) A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall obtain and maintain authorization to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law.
- 2) A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of this contract. Notwithstanding any other provision of this Contract, the Town may void any contract with a business entity if the business entity fails to remain in compliance with this provision.

F) Immigration Reform and Control Act of 1986

The Contractor also affirmatively states that it does not currently and shall not during the performance of this Contract knowingly employ an unauthorized alien as defined by the Federal Immigration Reform and Control Act of 1986.

V) DISPUTES

A) Governing Law

This Contract is governed by the law of the Commonwealth of Virginia, including but not limited to the Virginia Public Procurement Act (VPPA), Sections 2.2-4300 et seq. of the Code of Virginia (1950), as amended but only to the extent that any such law is mandatorily applied to towns with a population of less than 3,500. This Contract is also governed by the applicable Town Policies. In performing its work under this Contract, the Contractor shall comply with all applicable federal, state, and local laws, ordinances, and regulations. In the event of any conflict between the provision of this contract and applicable Federal, State and Local Laws, Ordinances and Regulations, the language of any Federal Laws, Ordinances and Regulations shall govern.

B) Hold Harmless

- 1) To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Town and its officers, agents, employees, community representatives, volunteers or others working on behalf of the Town from any and all claims, judgments, suits, losses, damages, payments, costs, fines and/or fees levied against the Owner and expenses of every nature and description, including attorney's fees, arising out of, connected or associated with or resulting from the lack of

performance or the negligent performance of work as described in this Contract, Contract Documents or any agreement that results from this Contract. Further, if the Contractor subcontracts for work, it will require in its subcontracts that each subcontractor indemnify, defend, and hold harmless the Town and its officers, agents, employees and community representatives, from any and all claims and losses accruing or resulting from the negligent performance of work as described in any agreement that results from this Contract.

- 2) To the fullest extent permitted by law, the Contractor shall also indemnify, defend, and hold harmless the Town and its officers, agents, employees, community representatives, volunteers or others working on behalf of the Town against all costs, including reasonable attorney's fees, arising from liens encumbering the Town's Property filed by subcontractors, sub-subcontractors, material suppliers, and all other persons and entities acting for and under the Contractor, and the Contractor shall immediately discharge or bond such liens off.
- 3) Virginia is a Dillon Rule state. Unless specifically permitted by statute, indemnification or any attempt to have the Town hold others harmless is invalid and unenforceable as an impermissible waiver of the Town's sovereign immunity which may create potential future debt in violation of Virginia Constitutional and statutory requirements. The Town cannot waive its sovereign immunity.

C) Conditions Precedent to Pursuit of Legal Remedies

Before the Contractor may exercise any legal remedy it may have in relation to rights arising out of this Contract, it must comply fully and strictly with each of the applicable conditions below. Failure to comply fully and strictly with an applicable condition precedent bars the Contractor from exercising any legal remedies it may otherwise have in relation to this Contract unless it complies with the condition precedent or the Town knowingly and intentionally waives the condition precedent.

- 1) Submission of Disputes: A Contractor must submit any dispute arising out of this Contract to the Town for adjustment. In doing so, it shall provide all relevant evidence that bears on the Town's liability for the amount claimed or responsibility to grant any non-monetary relief requested. Claims are forever barred unless (a) written notice of the Contractor's intention to file a claim is given at the time of the occurrence or beginning of the work upon which the claim is based and (b) the claim and all relevant evidence that bears on the claim is submitted to the Town within sixty (60) days of receipt of final payment.
- 2) Disputes by the Contractor with respect to this Contract shall be decided within fifteen (15) days from submission by the Town Manager's designee, who shall reduce his/her decision to writing, and mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and binding unless within five (5) days from the date of such decision the Contractor mails or otherwise furnishes the Town

Manager a written appeal. The Town Manager shall consider the appeal and render his or her written decision within seventy (70) days. The decision of the Town Manager shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or as not supported by any evidence. Pending a final determination of the claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the Town Manager's designee or the Town Manager, as the case may be.

- 3) The Town does not have administrative procedures under Virginia Code § 2.2-4365

D) Venue

Any action brought under this Contract must be brought in the applicable state courts for Prince William County and shall not be removed to the Federal Court system.

E) Limitations on Actions

Any action brought under this Contract, except an action for breach of warranty, shall be brought within the shorter of the statutory limitations period and the period of three years from the date of final payment without any tolling of this statutory limitations period for any reason whatsoever.

F) Waiver of Jury Trial

In any action brought under this Contract, the parties expressly waive their right to trial by jury and agree to submit all questions of fact to the judge as trier of fact.

VI) MISCELLANEOUS

A) Definitions

Capitalized terms that are defined in the VPPA, Town Policy, or the Town's Solicitation have the same meanings in this Contract as are given in that law, policy, or Solicitation. Capitalized terms not defined in those sources but used in this Contract have the following meanings, unless the context clearly requires otherwise. Undefined terms have their common meanings appropriate to their context.

- 1) "Contract Administrator" means the person designated by the Town to administer the Contract for the Town. The initial Contract Administrator is

_____ but the Town may designate a new Contract Administrator by notice to the Contractor.

- 2) "Contractor's Representative" means the person who is responsible for the performance obligation of the Contractor under this Contract. The initial Contractor's Representative is _____ but the Contractor may designate a new Contractor's Representative by notice to the Town.
- 3) "Drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
- 4) "Notice of Default" means a notice sent to the other party's designee (Contract Administrator for the Town, Contractor's Representative for the Contractor) setting forth the facts showing that party to be in default under the Contract.
- 5) "Notice of Termination" means a notice sent to the other party's designee (Contract Administrator for the Town, Contractor's Representative for the Contractor) informing that party of the termination of the Contract as of a particular date.
- 6) "Solicitation" means the Invitation to Bid, Request for Proposal, or small purchase procedure request for quotes or bids which led to the formation of this Contract.
- 7) "Town" means the Town of Haymarket, Virginia, or the Town's designee assigned responsibility for this Contract.

B) Time of the Essence

Time shall be of the essence to this Contract, except where it is herein specifically provided to the contrary.

- 1) If the Contractor at any time finds that the schedule will not be met for any reason, the Contractor shall immediately provide written notice to the Town setting forth all facts and circumstances related to the delay.
- 2) Where the Contractor is prevented from completing any part of the Work within the Contract Period due to abnormal weather conditions, the Contract Period will be extended in an amount calculated as stated in Paragraph VI)B)5) below if a Claim is made therefor in writing and provided to the Town within the time frame and in the manner prescribed and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension of the Contract Period under the Contract Documents.

- 3) Contractor acknowledges and agrees that adjustments in the Contract Period will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by Contractor; (ii) could not be limited or avoided by the Contractor's timely notice to the Town of the delay or reasonable likelihood that a delay will occur; and (iii) is of a duration not less than one day. Such an adjustment of time shall be Contractor's sole and exclusive remedy for the delays described in this Section.
- 4) Actual adverse weather delay days must prevent work on critical activities outdoors for fifty percent (50%) or more of Contractor's scheduled workday in order to be counted. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. Where Contractor is prevented from completing any part of the Work within the Contract Period due to abnormal weather conditions, the Contract Period will be extended in an amount equal to the time lost due to such delay if a Claim is made therefore as provided herein. Abnormal weather conditions occur only if the total number of actual adverse weather days exceeds the standard for that month as shown in the following table:

Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
7	7	8	7	8	7	8	8	6	6	6	6

- 5) Upon commencement of on-site activities and continuing throughout construction, Contractor shall record daily the occurrence of adverse weather and resultant impact to normally scheduled work and within 30 days of the last day of any month (hereinafter referred to as the "Reporting Month"), Contractor shall submit a written adverse weather report, including copies of Contractor's daily weather reports and applicable climatological data from the National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location, unless the Town allows, in writing, an additional period of time for the submission of said report. Notwithstanding any other provisions, failure to submit the required written report within the time specified above shall be deemed to be and shall constitute a waiver by Contractor of any and all claims for delay due to adverse weather conditions occurring during said Reporting Month.
- 6) The Town shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.
- 7) The Contractor further agrees that the Town will be substantially damaged in amounts that will be difficult or impossible to determine if a delay occurs. Therefore, the parties have agreed on sums which the parties agree are reasonable as liquidated damages for such delay. If Contractor fails to meet the completion deadlines specified

in this Contract, as it may be extended under this section of the Contract or as set forth in any agreed written extension, then Contractor shall, in place of actual damages, pay to the Town as fixed, agreed, and liquidated damages, and not as a penalty, for each calendar day of delay the sum of Six Hundred and 00/100 Dollars (\$600.00). It is further understood and agreed that the payment of the liquidated damages is in lieu of actual damages for such occurrences. Contractor hereby voluntarily and intelligently waives any and all defenses as to the validity of any liquidated damages stated in this Contract as they may appear on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages. Alternatively, in Town's sole discretion, if performance is so delayed, the Town may terminate this Contract in whole or in part and in that event, the Contractor shall be liable for fixed, agreed and liquidated damages accruing until the time the Town may reasonably obtain performance of similar services. The liquidated damages shall be in addition to any increased costs incurred by the Town in completing the work and shall be paid to the Town upon demand.

Contractor shall not be entitled to an adjustment in Contract Price or Contract Period for delays within the control of Contractor. Delays attributable to and within the control of a subcontractor or supplier shall be deemed to be delays within the control of the Contractor.

C) Integration Clause; Modifications to the Contract

- 1) This Contract, including its incorporated documents, contains the whole agreement between the parties as to its subject, and no prior or contemporaneous communications, representations, or agreements, written or verbal, may alter, add to, or contradict any provision in it. There are no promises, terms, conditions, or obligations related to the subject of this Contract other than those contained herein.
- 2) All modifications and changes to the Contract shall be in writing and signed by the party to be charged, or its authorized representative.
- 3) The Contract Administrator, with the concurrence of the Town Manager, shall have the authority to order changes in this Contract, which affect the cost or time of performance. Such changes shall be ordered in a writing signed by the Parties to this Contract and specifically designated to be a "Change Order."
 - a) Such orders shall be limited to reasonable changes in the supplies, services to be performed or the time of performance; provided that the Contractor shall not be excused from performance under the changed Contract by failure to agree to such changes, and it is the express purpose of this provision to permit unilateral changes in the Contract subject to the conditions and limitations herein.
 - b) Contractor need not perform any work described in any Change Order unless it has received a written certification from the Town that there are funds budgeted and appropriated sufficient to cover the cost of such changes.

- c) The Contractor shall make a demand for payment for completed changed work within 30 days of completion of Change Order, unless such time period is extended in writing, or unless the Contract Administrator requires submission of a cost proposal prior to the initiation of any changed work or services.
- d) No claim for changes made by Change Order shall be considered if made after final payment in accordance with the Contract.

D) Examination of Records

- 1) The Contractor agrees that the Town or any duly authorized representative of the Town may have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Contract. This right shall expire on the third anniversary of the issuance of final payment under this Contract.
- 2) The Contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the Town or any duly authorized representative may have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of such subcontractor involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. This right expires on the third anniversary of the issuance of final payment to the subcontractor.

E) Assignment of Rights

- 1) Antitrust: By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Town all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Town under said contract.
- 2) Warranty: By entering into a Contract, the Contractor conveys, sells, assigns and transfers to the Town all warranties related to Goods provided to the Town under this Contract.

IN TESTIMONY WHEREOF, the Town of Haymarket, Virginia has caused its name to be hereunto subscribed by _____, its _____, pursuant to authority heretofore duly granted by the Town Council of the Town of Haymarket; and

Contractor has caused its name to be hereunto subscribed by Contractor's Representative, and (if a Corporation) has caused its corporate seal to be duly affixed and attested by the person authorized to do so, signifying that it intends to be bound by this Contract.

TOWN OF HAYMARKET
By:

CONTRACTOR
By:

Authorized Official

Contractor's Representative

Print Name and Title

Print Name and Title