

 **AIA**® Document A133™ – 2009 Exhibit A

Guaranteed Maximum Price Amendment

for the following PROJECT:
(Name and address or location)

Construction Management (At-Risk) Services for National Disaster Resilience Ohio Creek Watershed Project)

THE CITY OF NORFOLK, a municipal corporation of the Commonwealth of Virginia,
hereinafter call the "City" or the OWNER:
(Name, legal status and address)

Department of Public Works
810 Union Street, Room 700
Norfolk, Virginia 23510

THE CONSTRUCTION MANAGER:
(Name, legal status and address)
MEB General Contractors, Inc.
4016 Holland Boulevard
Chesapeake, Virginia 23323

ARTICLE A.1

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed, except as provided in the Contract Documents. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed NINETY FIVE MILLION TWO HUNDRED FIFTY-NINE THOUSAND FOUR HUNDRED FIFTY-SEVEN AND 74/100 DOLLARS (\$95,259,457.74), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.

See Attachment 1.

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

See Optional Work Items specified in Attachment 1.

§ A.1.1.4 Construction Contingency and Allowances included in the Guaranteed Maximum Price, if any: *(Identify allowances and state exclusions, if any, from the allowance price)*

Item Price (\$0.00)

See Attachment 1 for any Construction Contingency Allowances Budget included within the GMP.

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

See Attachment 2, "GMP Assumptions and Clarifications".

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of, and Modifications to, the Contract:

Document	Title	Date	Pages
AIA A133	Standard Form of Agreement Between Owner and CM as Constructor (with Exhibits A through J5), as amended	4/16/18	229
Attachment 3 to A133 Ex A	Agreed Modifications to A133 Agreement and A201 General Conditions	12/4/19	2
	Revised Park Scope of Supply	10/18/2019	3

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications: *(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)*

Document Title	Date	# Pages
Project Manual VE	10/11/2019	2103
VB19-266G Ohio Creek Resiliency Project-DRAFT	9/20/2019	9
Flood Break Pedestrian Gate	10/11/2019	9

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings: *(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)*

See Attachment 4, "List of Drawings".

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information: *(List any other documents or information here or refer to an exhibit attached to this Agreement.)*

Technical Data on which the CM is relying in preparing its GMP, Technical Data shall include the Geotechnical Reports, including without limitation the GET Final Geotechnical Report dated October 9, 2019.

ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment: 1,197 calendar days from execution of this Exhibit A.

MEB GENERAL CONTRACTORS, INC.

BY: 

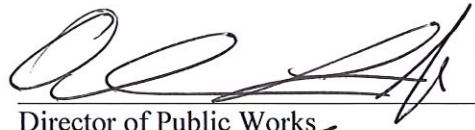
David Ervin

Printed Name


Vice President

Title

Contents approved:


 FOLRB
Director of Public Works


Approved as to form and correctness:


Deputy City Attorney

Attest:

CITY OF NORFOLK


City Clerk

BY: 
City Manager

Certification of Funds

I hereby certify that the money required for this Amendment is in the City Treasury to the credit of the fund, which it is to be drawn and not appropriated for any other purpose.

Account:	2500-41-9230-5580 (FY17)	Amount:	\$39,842,259.71
Account:	2500-41-9231-5580 (FY17)	Amount:	\$ 4,101,502.25
Account:	2500-41-9232-5583 (FY17)	Amount:	\$20,612,971.35
Account:	2500-41-9412-5580 (FY19)	Amount:	\$13,621,413.08
Account:	2500-41-9413-5580 (FY19)	Amount:	\$11,443,468.18
Account:	5200-34-3082-5582 (FY20)	Amount:	\$ 1,882,001.87
Account:	5300-33-4241-5581 (FY20)	Amount:	\$ 3,755,841.30

Contract No: 27305A
E-Builder Project #17011
Vendor Code: VC 0000110369

Christy Sanchez 1/2/20
Director of Finance Date

MW 1/2/2020

LIST OF ATTACHMENTS

1	Itemized Statement of GMP
2	GMP Assumptions & Clarifications dated November 8, 2019.
3	Agreed Modifications to A133 Agreement and A201 General Conditions
4	List of Drawings

**A133 Exhibit A, Attachment 1
GMP Breakdown, Contingency, Allowances and Options**

1. Contract Price Structure.
 - a. A separate Guaranteed Maximum Price (GMP) will be established for each of the NDR Grant funded work, and the non-NDR funded work.
 - b. GMP Breakdown. The Guaranteed Maximum Price for each of the NDR and non-NDR funded work, agreed at the time of the execution of the GMP Amendment to the Contract, is composed of the following cost categories:
 - i. CM Fee;
 - ii. CM General Conditions Fee;
 - iii. CM Insurance and Taxes Fee;
 - iv. The Cost of the Work for Base Contract Work Packages;
 - v. MEB Extended Overhead for delays that have occurred because of constraints of the design;
 - vi. A Construction Contingency and Allowances Budget, which consists of:
 1. Allowances for the cost of construction of work items of indeterminate scope (“Construction Cost Allowances”);
 2. Allowances for Dominion Virginia Power or Dominion Energy (DVP) utility relocation and construction costs (“DVP Allowances”);
 3. Geotechnical Services Allowance; and
 4. The Construction Contingency amount.
 - vii. Optional Work Packages that may be constructed if funds are available to do so, but that are not within the required Base Contract Work.
 - c. NDR and Non-NDR Project Phased Funding.
 - i. At the time of execution of this GMP Amendment, the City has not secured all the funds required for construction of the NDR and Non-NDR Base Contract Work Packages. Additional NDR funds will be required in 2 subsequent phases, Phases 1 and 2A, not later than the dates shown in the Project Phased Funding Table below. Additional Non-NDR Funding will be required in one phase no later than April 1, 2020.
 - ii. The City and Construction Manager agree that the NDR funding planned for Phases 1 and 2A is required for the completion of the NDR Base Contract Work, and the Construction Manager’s obligation to provide the full scope of the planned project is contingent on the provision of these additional funds.
 - iii. If the Phase 1 and 2A funds are not obtained, the Owner and Construction Manager will negotiate a Change Order reducing the Project Scope so as to provide the most advantageous Project features that can be constructed within the available funds.
 - iv. Phases 2B, 3A, and 3B are Optional Work Packages that will be exercised by the City and included within the GMP by Change Order, increasing the GMP.
 - d. Construction Contingency and Allowances Budget.
 - i. A combined Construction Contingency and Allowances Budget has been established within the GMP for the each of the NDR and the non-NDR work.
 - ii. In accordance with §2.2.4 of the Contract, this Construction Contingency and Allowances Budget (“Contingency Budget”) is intended for the joint use of the Owner and Construction Manager to cover unanticipated costs.

- iii. The costs of certain Allowance Work Packages cannot be accurately estimated at this time and therefore, within the overall Contingency Budget, an allowance has been established for the anticipated construction costs (“Construction Cost Allowance”) and the estimated costs of Dominion Virginia Power utility relocation or installation for that item (“DVP Allowance”), or both.
 - i. The CM shall not exceed the contracted amounts for the Construction Contingency or Allowances Budget without prior written approval from the City. At the conclusion of the Project, the City and CM shall reconcile the final costs of construction including the usage of the Construction Contingency and Allowances Budget. This reconciliation shall be done separately for the NDR and non-NDR funded work on the Project. If the Construction Contingency and Allowances Budget has been consumed by the total of approved cost overruns in the Base Contract Work Packages and approved overruns in the Construction Cost Allowances and DVP Allowances, the City agrees to execute a Change Order to expand the project scope and increase the GMP accordingly so as to reimburse the Construction Manager the amount by which the Cost of the Work for the Work Packages have exceeded the sum of the Cost of the Work for Base Contract Work Packages and the Construction Contingency and Allowances Budget (e.g. the total cost for NDR Items 1 through 10, and non-NDR Items 16-18 as shown on Attachment 1 to Ex A). In no event can the reimbursement or any payment in excess of the Contract amount be made without having a properly executed Change Order.
 - e. Optional Work Packages. In addition to the GMP for the NDR and Non-NDR Work Packages, several Optional Work Packages are priced for the NDR and Non-NDR scope of work. Funding is not yet available for the Optional Work Packages and therefore they are not within the scope of work included in the GMP.
 - i. Each Optional Work Package has a Construction Cost for that Work Package and a date by which the Change Order must be issued directing the CM to proceed with that Work Package without delay to the Project Schedule.
 - ii. The City will work to identify funds for Optional Work Packages and may direct the CM to proceed with an Optional Work Package by Change Order to the Contract as funds are available.
 - iii. In any Change Order directing the CM to proceed with an Optional Work Package, the GMP will be increased by the sum of:
 - 1. The specified construction cost for that Optional Work Package; and
 - 2. An increment in the CM Insurance and Taxes Fee to account for increased premiums chargeable due to the increased contract price.
2. NDR Project Phased Funding.
- a. NDR Funds for the construction of the entire Project are not available at the time of execution of this GMP Amendment, and therefore the Owner and Construction Manager agree to allocate the Project Work to “phases” as shown below, to align the construction of the Project with the anticipated future availability of additional funds. The Construction Manager’s obligation to construct the Work Packages in each Phase is contingent on the Owner’s provision of the additional funds in accordance with the funding schedule shown below.

- b. Within each subsequent Phase, the Owner will certify to the Construction Manager that the required funds for each Phase's Work is available not later than the "Funds Available" date as shown. The Construction Manager agrees to complete construction and invoice the Owner for the Work Packages for each Phase not later than the "Funding Expires" date shown for that Phase.

NDR PROJECT PHASED FUNDING TABLE

Project Funding Phase	Date Funding Available	Date Funding Expires	Work Package or Item Description	Funding Required
NDR Base Contract Work Initial Funds	Immediate	9/30/2022	Base Construction Amt (GMP)	\$93,621,614.57
			Phase 1 & 2A Funding of Base Const Work	(\$4,000,000.00)
NDR Base Contract Funds Immediately Available				\$89,621,614.57
Phase 1	1/30/2020	4/30/2020	Add'l Base Contract Work Funding	\$3,000,000.00
TOTAL PHASE 1 FUNDING				\$3,000,000.00
Phase 2A	7/1/2020	6/30/2021	Add'l Base Contract Work Funding	\$1,000,000.00
TOTAL PHASE 2A FUNDING				\$1,000,000.00
Phase 2B	7/1/2020	none	Final Mill and Overlay (A1)	\$284,601.40
			Green Infrastructure (A3)	\$1,375,916.95
			Oyster Reefs (Concrete Bedding Only) (A4)	\$288,725.52
			Park Signage and Markings (A6)	\$17,731.00
			Six Hoop Basketball Court at School (A9)	\$97,064.56
			Landscaping Maintenance for 1-Year (A10)	\$101,320.00
			Allowances for Optional Work Packages (A13 partial)	\$134,500.00
			TOTAL PHASE 2B FUNDING	
Phase 3A	7/1/2021	6/30/2022	Ballentine Generators & Load banks (A11)	\$849,562.12
			Allowances for Optional Work Packages (A13 partial)	\$150,000.00
TOTAL PHASE 3A FUNDING				\$999,562.12
Phase 3B	7/1/2021	none	Ballentine Underpass Soil Nail Wall (A2)	\$233,630.51
			Athletic Courts (A7)	\$259,379.20
			Playground Equip & Site Amenities (A8)	\$403,861.52
			Park Concrete/Pavers (A5)	\$800,428.00
			Haynes PS Generator & Loadbank (A12)	\$369,398.54
			Allowances for Optional Work Packages (A13 partial)	\$5,781.80
TOTAL PHASE 3B FUNDING				\$2,072,479.57
TOTAL CONSTRUCTION FUNDS (BASE CONTRACT WORK PLUS OPTIONAL WORK PACKAGES)				\$98,993,515.69

GMP Breakdown.

Item	Description	Total Cost
1	Infrastructure Work Package	\$33,667,560.90
2	Coastal Protection Work Package	\$12,274,433.66
3	Grandy Village Park Work Package	\$6,744,695.32
4	Ballentine Pump Station Work Package	\$13,634,652.10
5	Haynes Creek Pump Station Work Package	\$6,960,069.52
6	Vertical Turbine Pumps Package	\$1,560,320.00
7	NDR Construction Contingency	\$664,505.00
8	NDR Construction Cost Allowances	\$4,540,419.25
9	NDR Dominion Virginia Power Allowances	\$2,254,700.91
10	Geotechnical Testing/QA Allowance	\$1,000,000.00
11	Insurance & Taxes Fee (1.32% of Lines 1 to 10)	\$1,099,577.91
12	NDR CMAR GC's	\$4,500,000.00
13	NDR CMAR Fee	\$3,150,000.00
14	MEB Extended Overhead (240 Days)	\$1,570,680.00
15	Deduct for Phase 1 and 2A Funding	-\$4,000,000.00
16	NDR GMP (Sum of 1 - 15)	\$89,621,614.57
17	Non-NDR Utility Cost	\$3,961,779.01
18	Non-NDR Construction Contingency	\$315,000.00
19	Non-NDR Construction Cost Allowances	\$448,688.00
20	Insurance & Taxes Fee (1.32% of Lines 17 to 19)	\$62,376.16
21	Non-NDR GC's Fee	\$500,000.00
22	Non-NDR CMAR Fee	\$350,000.00
23	MEB Extended Overhead (240 Days)	with Line 14
24	Non-NDR Utility GMP (Sum of 17- 23)	\$5,637,843.17
25	Total GMP (Sum of 16 & 24)	\$95,259,457.74

Construction Cost and DVP Allowances

NDR Allowance Work Item		Construction Cost Allowance [A]	DVP Allowance [B]	Total Allowances [A] + [B]
C1	Vertical Lineshaft Pumps	\$50,000.00		\$50,000.00
C2	Infrastructure Work Package	\$1,893,537.25	\$1,960,716.61	\$3,854,253.86
C3	Grandy Village Park Work Package	\$90,575.00	\$174,140.10	\$264,715.10
C4	Coastal Protection Work Package	\$2,232,270.00	\$15,860.00	\$2,248,130.00
C5	Ballentine Pump Station Work Package	\$145,510.00	\$2,440.00	\$147,950.00
C6	Haynes Creek Pump Station Work Package	\$48,527.00	\$101,544.20	\$150,071.20
C7	Force Majeure Provisions For Complete Construction Items	\$0.00		
C8	Speight Marshall Francis Design Fee After GMP	\$80,000.00		\$80,000.00
C9	NDR Construction Cost and DVP Allowances Total	\$4,540,419.25 (On Line 8 Above)	\$2,254,700.91 (On Line 9 above)	\$6,795,120.16
Non- NDR Allowance Work Item		Construction Cost Allowance [A]	DVP Allowance [B]	Total Allowances [A] + [B]
D1	Infrastructure Work Package	\$398,688.00		\$398,688.00
D2	Coastal Protection Work Package	\$50,000.00		\$50,000.00
D3	Non-NDR Construction Cost and DVP Allowances Total	\$448,688.00 (On Line 19 Above)	\$0.00	\$448,688.00

NDR OPTIONAL WORK PACKAGES			NTP Required Date	Funding Phase
<u>Phase 1 and 2 A Funding</u>				
BF1	Phase 1 Funding for Base Contract Work	\$3,000,000.00	1/30/2020	1
BF2	Phase 2A Funding for Base Contract Work	\$1,000,000.00	7/1/2020	2A
	Additional Funding for Base Contract Work	\$4,000,000.00		
<u>Infrastructure Optional Work Packages</u>				
A1	Final Mill/Overlay of Entire Neighborhood	\$284,601.40	6/1/2021	2B
A2	Ballentine Underpass (Soil Nail Wall)	\$233,630.51	1/1/2021	3B
A3	Green Infrastructure	\$1,375,916.95	1/1/2021	2B
	Infrastructure Optional Work Packages Total	\$1,894,148.86		
<u>Coastal Protection Optional Work Packages</u>				
A4	Oyster Reefs (Concrete Bedding Only)	\$288,725.52	1/1/2021	2B
	Coastal Protection Optional Work Packages Total	\$288,725.52		
<u>Grandy Village Park Optional Work Packages</u>				
A5	Park Concrete/Pavers	\$800,428.00	6/1/2021	3B
A6	Park Signage & Markings	\$17,731.00	6/1/2021	2B
A7	Athletic Courts	\$259,379.20	6/1/2021	3B
A8	Playground EQ & Site Amenities	\$403,861.52	6/1/2021	3B
A9	Six Hoop Basketball Court at School	\$97,064.56	6/1/2021	2B
A10	Landscaping Maintenance for 1-year	\$101,320.00	6/1/2021	2B
	Grandy Village Park Optional Work Packages Total	\$1,679,784.28		
<u>Ballentine PS Optional Work Packages</u>				
A11	Generator & Load Bank	\$849,562.12	1/1/2021	3A
<u>Haynes Creek PS Optional Work Packages</u>				
A12	Generator & Load Bank	\$369,398.54	1/1/2021	3B
<u>Construction Contingency for Optional Work Packages</u>				
A13	Allowances for Optional Work Packages	\$290,281.80	1/1/2021	2B/3A/3B
	NDR Optional Work Packages Total	\$9,371,901.12	includes 1.32%	for tax & insurance
Non-NDR OPTIONAL WORK PACKAGES				
	Ballentine Potable Water Line	\$780,092.06	4/1/2020	

	Norchester 20" Potable Water Line	\$678,058.77	4/1/2020	
	Chesterfield Potable Water and Sanitary Sewer	\$472,047.85	4/1/2020	
	Non-NDR Optional Work Packages Total	\$1,905,022.00		
	<u>Summary</u>			
	NDR GMP (Sum of 1 – 15)	\$89,621,614.57		
	Non-NDR Utility GMP (Sum of 17- 23)	\$5,637,843.17		
	NDR Optional Work Packages Total	\$9,371,901.12		
	Non-NDR Optional Work Packages Total	\$1,930,198.68		
	Total Project Cost with Optional Work Packages	\$106,561,557.54		

Attachment 2 to A133, Exhibit A Ohio Creek Watershed Resiliency Project GMP Assumptions & Clarifications December 11, 2019

General

- 1) The following documents have not been provided by Arcadis or the City of Norfolk prior to generation of the GMP:
 - a. Lead and Asbestos reporting for structures to be demolished.
 - b. Phase II Testing reports for soil and water contamination
 - c. Scope of work for the Owner's 3rd Party Inspection Firm

The Owner and MEB agree to review and adjust the GMP as necessary to account for unforeseen requirements and conditions when these documents have been provided.
- 2) The specifications reference providing a Professional Engineer registered in the State of VA to oversee field engineering. MEB takes exception to this requirement, and no costs have been included in the GMP for this requirement. If the City requires the PE to perform this role, the GMP will be increased to account for the costs of such PE services.
- 3) MEB assumes the existing roads are suitable for the construction traffic and loads. The GMP does not include provisions for road repairs beyond what is included in the contract documents.
- 4) -MEB intends to install deep foundations and structures before installing wick drains, followed by placing embankment fill and surcharge last to induce settlement. Changes in this sequence of work will result additional cost and time beyond that which is included in this GMP and schedule, and the GMP and schedule will be adjusted accordingly. No sequence of work is provided in the contract documents.
- 5) Pay applications shall be reviewed and either approved or rejected by the City within 7 days from submission by MEB. Payment will be made to MEB within 30 days of the original invoice submission date.
- 6) MEB's GMP does not include any cost for any City of Norfolk issued permits. At the time of bid it is unclear to MEB and our subcontractors if Norfolk's various permitting offices will charge for permit fees. If the City of Norfolk charges MEB or our subcontractors any permit fees, the cost of the permit fees will be deducted from the Allowance. MEB and our subcontractors will apply for all required permits.
- 7) MEB will provide Geotechnical Services and inspections, City to provide all other third-party testing. MEB's GMP includes an allowance for Geotechnical Services. MEB will maintain a record of all geotechnical fees. Should the allowance be exceeded, the additional costs will be paid for out of the Construction Cost Allowance Budget.

- 8) MEB takes exception to certain professional requirements that are above and beyond industry standards such as:
- a. The use of a professional land surveyor for layout.
 - b. AISC certified steel fabricator.
 - c. Certified Industrial Hygienist to prepare/supervise the creation of MEB's site-specific health and safety plan.
 - d. ACI-certified concrete flatwork finisher for curb/gutter, sidewalks and driveway aprons.
 - e. The specifications require video inspection of sanitary sewer only. MEB's GMP does not include video inspection of any other storm drainage or water lines.
 - f. Plant Material from nurseries will be certified to not include invasive species (i.e. fire ants, etc)
 - g. The use of a registered professional engineer or land surveyor for the following activities (provided these activities are not required by state law to be conducted by a licensed professional and the contractor assumes liability for such work):
 - i. For spill prevention and controls and countermeasures plan preparation
 - ii. Field engineering, surveying and layout
 - iii. Dewatering System
 - iv. Soil nail design. Design provided by Arcadis.

If such services are required by the City, the GMP will be adjusted to account for the costs of such services.

Schedule

- 1) MEB's GMP is based on being provided 1197 calendar days to complete the work from the notice to proceed, NTP. Substantial Completion date shall be August 15th, 2022, Final completion 1197 days from NTP.
- 2) If unforeseen conditions, including but not limited to excessive undercut, demucking, excessive settlement following wick drain installation, unforeseen utilities, hazardous materials, additional pile length, additional wick drain length, existing submerged conflicts, onsite soil amending, contaminated soils, and contaminated water are encountered and impact the critical path of the project schedule, additional time and extended overhead will be granted by the City of Norfolk in addition to compensation for additional work required to overcome the unforeseen condition, and the GMP adjusted accordingly. MEB's schedule includes no allowance for time associated with unforeseen conditions.
- 3) If schedule impacts occur through no fault of MEB, MEB assumes that the City of Norfolk will provide a time extension and replacement construction funding for completion of the project should HUD funding become unavailable.

- 4) Typical weather days are included in the project schedule based on the National Oceanic and Atmospheric Administration historical averages using a nominal 30-year, greater than 0.1-inch amount parameter. Weather Days beyond the historical average will be added to the contract construction duration.
- 5) Work hours and days are 7 days a week from sunrise to sunset per City of Norfolk Right of Ways. Night work may be necessary for certain outages and work areas.
- 6) Settlement of fill materials will have no impact on the project schedule beyond the durations identified in the plans and specifications.
- 7) Land Acquisition will not delay the start of construction. Any delay in land acquisition will result in a schedule extension.
- 8) Plan review and permit approvals have no impact on the project.
- 9) Submittals to be reviewed within 15 working days. Engineer and Owner shall conduct a thorough and complete review during the initial submission. Resubmittals shall serve to answer questions and comments raised during the initial submittal review. Resubmittals shall be reviewed within 15 working days. There shall be no third rounds of submittal reviews unless the Supplier or Subcontractor has failed to answer adequately the questions and comments raised in the initial submission.
- 10) Requests for information (RFIs) shall be responded to within 15 working days.
- 11) The environmental impact study acceptance will have no impact on the project.
- 12) MEB assumes that other construction projects and activities within the limits of construction will have no impact on the completion of the project. These other projects include:
 - a. Water & Sewer Replacement on East/West Streets by City of Norfolk Utilities
 - b. Completion of NRHA Housing Project at Grandy Village
- 13) MEB assumes that property owners will vacate properties acquired by the City of Norfolk without impacting the construction schedule.
- 14) The “final billing” deadline is interpreted as “substantial completion” for all work. Punchlist work may continue beyond the final billing deadline with payment for completed punchlist work paid via retainage held by the City.
- 15) The project requirements and schedule do not include any work restrictions related to activities at Chesterfield Academy.

Franchise Utility Relocations

1. The schedule assumes all utility relocations are completed by franchise utility companies prior to adjacent Resiliency Work starting. Any delays in such utility relocations will result in a

schedule extension. MEB will work with franchise utility companies in a pragmatic and productive manner.

2. Dominion Virginia Power (DVP), Verizon, Cox Communications, and Virginia Natural Gas have not completed the design or cost analysis for all relocations at the time of generation of the GMP. MEB's GMP contains a contingency for the DVP costs. Should the cost exceed the contingency, MEB will not be responsible for the difference in the contingency and actual costs, and the GMP will be adjusted to account for all costs above the contingency.
3. Neither DVP nor Arcadis provided a design for the streetlight conduit design. MEB's GMP is based on a layout generated by MEB. Should the final design for the ductbank generate a cost difference, the City of Norfolk will be responsible for any added cost, and the GMP adjusted accordingly. Final design to be provided by Arcadis. These locations include:
 - i. Kimball Terrace from Campostella to Majestic
 - ii. Kimball Loop
 - iii. Kimball Terrace from the rec center to the existing Grandy Village Residents
 - iv. Marlboro Ave
 - v. I-264 underpass
4. MEB's GMP includes no cost allowance for Virginia Natural Gas, Verizon and Cox Communications infrastructure modifications or relocations of any kind.
5. If VNG rejects the current design of lightweight fill and foam inner core at the high-pressure gas lines at Reach C, the City of Norfolk will be responsible for any added cost. VNG has approved the design of the lightweight fill.

Scope Clarifications

- 1) Due to the lack of subsurface investigation at the Ballentine Ave/I-264 underpass, MEB is providing the soil nailing per the Arcadis designed drawings and specifications and provides no guarantee of the performance or lack thereof of the retaining system specified.
- 2) MEB takes exception to note #1 on sheet S-236. Ground penetrating radar does not read deep enough to locate the battered piles and due to overhead restrictions, test pits are not feasible. MEB will provide soil nails at the 10'-6" length specified on the Arcadis drawings.
- 3) MEB's GMP includes guardrails that meet the VDOT standards instead of the guardrail specified by Arcadis.
- 4) The existing Ohio Creek bridge demolition subcontractor will remove the existing bridge abutments to the mean low tide elevation. Once demolition is completed, the creek crossing will be lined with rip rap per the contract drawings. Due to the lack of information regarding the existing timber pile

supported culvert, MEB excludes any work associated with the removal of timber piles or the existing culvert located underneath the existing bridge. MEB has not been made aware of any special permitting requirements that would restrict or prohibit demolition of the existing Ohio Creek bridge. All work shall be completed with waterway flows remaining active. No cofferdams will be implemented for bridge demolition.

- 5) MEB's GMP includes 12 months of maintenance of the landscaping. The warranty is a two (2) year extended warranty for all plantings. The City of Norfolk will be responsible for proper maintenance of proposed landscaping from the end of the twelve-month maintenance period provided by the Subcontractor through the end of the two (2) year extended warranty period. The City of Norfolk shall maintain landscaping for the second year of the warranty period. Failure to provide proper maintenance during the extended warranty period will render replacement of any dead plants during the extended warranty period null and void.

Contingency Allowance Items

The Project Contingency Allowance is a mutually agreed upon amount of money that will be utilized by both MEB and the Owner for items for which either party incurs additional cost. MEB will maintain accounting of the utilized allowances throughout construction. Should additional costs exceed the total contingency allowance for the project, the City of Norfolk will be responsible for the additional costs. The list of items included in the contingency is not to be considered complete and is based on the information available to MEB at this time. Project Contingency Allowance for Owner and CMAR risk items is included in the GMP. Should any portion of the Contingency Allowance not be utilized, it will not be paid to the contractor.

Value Engineering Concepts Incorporated into Revised GMP

The sketches and proposals detailed below and attached herein are cost savings concepts presented by MEB. MEB in no way accepts or assumes responsibility for the use of these concepts or how these concepts may or may not affect the performance of the Arcadis designed pumps or pump stations.

1. Landscaping – MEB has provided a revised landscaping schedule based upon planting spacing provided by RPOS along with alternative sizing suggestions by Winn Nursery that have been accepted by the City of Norfolk. Please see the attached schedule for quantity and spacing of landscaping. These quantities are included with the GMP. Additional quantities and/or plant sizing will be at an extra cost.
2. Infrastructure Package –
 - a. The existing Ohio Creek bridge will be demolished from land via excavators with concrete breaker attachments to the lowest achievable elevation without the use of cofferdams or underwater divers. If a deeper elevation is desired resulting in the use of cofferdams or underwater divers, it will be at an additional cost to the City.

- b. All handrail designed as CableRail has been substituted to galvanized two (2) rail handrail.
- c. All proposed lighting at the Ballentine Ave/I-264 underpass to be deleted in its entirety.
- d. All work on the east side of the Ballentine Ave/I-264 underpass to be deleted in its entirety.
- e. The extruded aluminum panels at the Ballentine Ave/I-264 underpass to be deleted in its entirety.
- f. All educational signage and kiosks have been deleted from the project.
- g. The custom gate and handrail at the Haynes Creek gatewell structure has been modified to galvanized two (2) rail handrail.
- h. The two (2) each level indicators at the gatewell structure have been deleted.
- i. Pavers located along Ballentine Blvd at intersecting cross streets have been deleted and replace with concrete sidewalk per the City standards.
- j. Reduce top of berm to EL 11.70 at Reach "D".
- k. Delete pressure washing of existing columns and pavement at the Ballentine Ave/ I-264 underpass.
- l. Precast gatewell and wing walls instead of cast in place.
- m. The Ohio Creek arch bridge to be modified as follows:
 - i. Provide precast, prestressed concrete piles in lieu of steel HP piles per the preliminary/draft G.E.T. geotechnical report.
 - ii. Batter the outer row of piles to mitigate reaction forces on the bridge foundation.
 - iii. Add four (4) each piles per Speight Marshall Francis' direction.
- n. The Haynes Creek Culverts design modifications:
 - i. Delete all piles north of the T-walls per the preliminary/draft G.E.T. geotechnical report.
 - ii. Undercut the foundation north of the T-walls by three (3) feet. Utilize geotextile fabric, geogrid and lightweight fill (50-60pcf) to backfill to culvert subgrade.
 - iii. Piles to remain at south side of culverts in vicinity of T-wall per the preliminary/draft G.E.T. geotechnical report.
 - iv. Provide precast, prestressed concrete piles in lieu of steel HP piles per the preliminary/draft G.E.T. geotechnical report.

- v. Replace cast in place box culverts with 42" reinforced concrete pipe.
Utilize pipe cradles at pile cap locations.

3. Coastal Protection Package –

- a. The precast concrete fishing pier has been substituted as follows:
 - i. An 8'-0" wide treated wood pier with curb and two (2) rail handrail. Shape of pier will be a "T" with 12'-0" by 50'-0" dimensions. 30 ft deep piles will be provided across marsh with cross bracing and 40 ft deep piles in the river.
 - ii. Fishing pier shall be designed to the following standards. More stringent standards shall require additional funds provided by the City:
 - 1. Designed for fifty (50) year storm
 - 2. Designed for 100psf loading
- b. 2" thick oyster reefs will be deleted. Only the concrete bedding will be provided as shown on the drawings. (Per ERP not necessary to provide oyster spat, natural recruitment will occur.)
- c. Sedgewick Storm Outfall - Remove all piles and pile caps. Provide restrained joint ductile iron pipe and a ductile iron wall pipe cast in the precast gate structure wall on the outlet side of the structure only. Inlet side of the gate structure to have annular space grouted between pipe and structure. Level indicators and tideflex valve to be deleted at the precast concrete gate structure. Gate to be manual in lieu of electrically actuated.
- d. Norchester Storm Outfall – This outfall to be deleted in its entirety from the scope of the project. All stormwater flows along Chesterfield Ave and the southern portion of Norchester Ave to be directed to the Ballentine Pump Station.
- e. Ballentine Storm Outfall –Level indicators and tideflex valve to be deleted. Gate to be manual in lieu of electrically actuated.
- f. Ballentine Pump Station Outfall – All piles and pile caps to be deleted in their entirety on the 60" outfall. 60" outfall to be 100% restrained joint ductile iron pipe. Piles to remain at common outfall headwall for 60" and 42" pipes. 60" ductile iron wall pipe to be cast in the concrete headwall.
- g. Only one (1) portable gate operator to be provided.
- h. Reduce top of berm to EL 11.70.

4. Grandy Village Park Package –

- a. The park is to be provided per the attached “red-lined” drawings and “Revised Park Scope of Supply” document (see attachments).

5. Haynes Creek Pump Station Package –

- a. The following items have been modified and/or substituted from the Arcadis provided design and specifications:
 - iv. Delete water/leak test requirement of structure.
 - v. Delete piles and pile caps in their entirety, including weir box/inlet structures, discharge piping, transformer pads and retaining walls.
 - vi. Delete discharge piping concrete thrust block. All discharge piping to be 100% restrained joint.
 - vii. Provide concrete, structural steel framing and masonry per the revised Speight Marshall Francis design.
 - viii. Provide an 8” gravel surface at all locations from Westminster Ave and south in the pump station footprint. No asphalt to be provided.
 - ix. Delete one (1) level indicator at wetwell. One (1) level indicator to remain along with floats operating on an independent back-up control panel.
 - x. Delete all pole mounted lighting.
 - xi. Maintenance platforms located within the wetwell shall be constructed of aluminum in lieu of concrete. Design of these structures shall be by the fabricator.
 - xii. All fabricated structural steel stairways shall consist of stairs (risers/treads), two rail galvanized handrail and a landing at the top of the stairs connecting to the entrance way to the building. Any connecting platforms from one doorway to another shall be deleted.
 - xiii. Above grade structure shall be constructed of split-face masonry units from a local supplier. The City of Norfolk shall select colors and patterns from the supplier’s standard offering. All cells shall be fully grouted or filled with expanding foam insulation.
 - xiv. The overhead coiling door shall be deleted from the scope of supply in its entirety.
 - xv. Door H11C located at the electrical room shall be deleted from the scope of supply in its entirety.
 - xvi. All educational signage shall be deleted from the scope of supply.

- xiv. Exposed electrical conduit shall be galvanized in lieu of the specified PVC coated.
- xv. Only one pump shall require factory NPSH testing. Only one of the project's VFD's shall be shipped to the factory to be used for testing. All settings shall be recorded during NPSH testing and the other three VFD's shall be set to the same settings in the field.
- xvi. Discharge piping shall be provided per the attached MEB sketch. All structural steel, concrete-filled pipe supports shall be deleted along with thrust blocks and subsurface concrete pipe cradles. MEB will provide a concrete pipe cradle above grade with footer to support check and plug valves. All other areas around the exposed discharge pipe will be covered with 8" of stone.
- xvii. The pile supported cast in place concrete retaining wall shall be substituted as shown on the attached MEB sketch. Proposed design includes a six (6)" wire mesh reinforced mud mat. 3'x3'x3' stone filled gabion baskets will be placed on the mud mat in a pyramid shape to serve as the retaining wall.
- xviii. The weir box structure shall be deleted in its entirety. The influent structures that will supply water to the pumps shall consist of two (2) precast concrete structures located within the Haynes creek bed. Structures will be provided with a continuous four-sided adjustable weir and an HDPE trash rack similar to that which is used on VDOT SWM structures. Reference the attached MEB sketch of the proposed influent structures for the pump station.
- xix. All handrail designed as CableRail at the weir box has been substituted to galvanized two (2) rail handrail.
- xx. All soffit overhangs shall be deleted. Roof line shall terminate at face of building.
- xxi. All items with "zinc" finish shall be provided with industry standard finishes. Color selection shall be by the City of Norfolk from the Supplier's standard offerings.
- xxii. The switchgear configuration will combine SWBD1 & SWBD2 and change from Main-Tie-Main PLC transfer to now have 1 Utility Main Breaker (manually operated) with internally bussed Eaton ATS and feeder breakers (Distribution Section).

6. Ballentine Pump Station Package –

- a. The following items have been modified from the Arcadis provided design and specifications:

- i. Delete low flow submersible pumps, associated piping, instrumentation, electrical/VFDs, and concrete wetwells and valve vaults associated with the low flow pumps in their entirety.
- ii. Delete grating platform in its entirety at entrance to office and electrical area. Provide separate, individual steps with landings and galvanized two rail handrail at both entrance ways.
- iii. Delete water/leak test requirement of structure.
- iv. Delete piles and pile caps in their entirety including at the transformer pad and generator.
- v. 8" stone base to be provided within the fenced area of the pump station. All vehicular areas outside of the fence to be asphalt.
- vi. Delete one (1) level indicator. One (1) level indicator to remain along with floats operating on an independent back-up control panel.
- vii. Delete masonry fencing, concrete footers, coping and custom metal fabricated gates. Eight (8) foot tall ornamental aluminum fencing to be provided with two (2) manual vehicular gates and one (1) manual pedestrian gate.
- viii. The overhead coiling door shall be deleted from the scope of supply in its entirety.
- ix. Maintenance platforms located within the wetwell shall be constructed of aluminum in lieu of concrete. Design of these structures shall be by the fabricator.
- x. Exposed electrical conduit shall be galvanized in lieu of the specified PVC coated.
- xi. Only one pump shall require factory NPSH testing. Only one of the project's VFD's shall be shipped to the factory to be used for testing. All settings shall be recorded during NPSH testing and the other three VFD's shall be set to the same settings in the field.
- xii. All electric motor operated actuators shall be deleted from pump discharge plug valves. All plug valves shall be provided with a manual handwheel operator.
- xiii. All stop logs shall be deleted from the scope of supply.
- xiv. Kiosks and educational signage shall be deleted from the scope of supply.
- xv. All items with "zinc" finish shall be provided with industry standard finishes. Color selection shall be by the City of Norfolk from the Supplier's standard offerings.

- xvi. Both travelling bar screens shall be deleted from the scope of supply. Static screens shall be provided similar to the Arcadis design provided at the original weir box structure at the Haynes Creek Pump Station. See attached MEB sketch for details.
- xxiii. The pump discharge valve vault shall be deleted in its entirety. Pump discharge piping shall be provided per the attached MEB sketches. All pump discharge piping shall be buried and 100% restrained joint piping (MJ or TR Flex). Check valves and plug valves shall be located in precast concrete valve vaults. Hatches for the precast valve vaults shall be flush with pavers. Pavers will not be placed on top of valve hatches. Pressure relief valves shall be located in City standard vaults/boxes rated for pedestrian traffic. All piles and pile caps associated with the 60" pump discharge shall be deleted in their entirety.
- xxiv. Pavers pattern shall be redesigned to incorporate machine laying to the maximum extent possible. All pavers shall be precast concrete. Pattern will consist of one block approximately 36" wide of machine laid pavers followed by two (2) rows of hand laid pavers of a different color. The pattern will repeat.
- xxv. Provide concrete, masonry and structural steel framing per the revised Speight Marshall Francis design.
- xxvi. Delete perimeter accent lighting

- xxvii. The switchgear configuration will be changed from a 3200-amp switchboard with main-tie-main and 4 feeder breakers to now be 3000-amp switchboard with main breaker, internal ATS, and 2 feeder breakers.

Agreed Modifications to A133 Agreement and A201 General Conditions

The City of Norfolk, Virginia (“Owner” or “City”), and MEB General Contractors, Inc. (referred to in the Contract Documents variously as “Contractor,” “Construction Manager,” “CM,” or “MEB”), agree to the following modifications of the A133 “Standard Form of Agreement between Owner and Construction Manager at Risk” (the “A133 Agreement”), and the A201 “General Conditions of the Contract for Construction” (the “A201 General Conditions”) for the Ohio Creek Watershed Project:

1. The following provisions of the A133 Agreement shall be modified as stated below:

a. Existing §2.3.1.2 shall be deleted and replaced with the following provision:

§ 2.3.1.2 Upon Owner’s providing sufficient funds for the required scope of work, Construction Manager shall complete construction of the work in accordance with the Contract Documents and shall provide the Construction Phase Scope of Services indicated in Attachment 13 of the RFP. The Construction Phase shall commence upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal or the Owner’s issuance of a Notice to Proceed, whichever occurs earlier.

a. Existing §2.3.2.2 shall be deleted and replaced with the following replacement provision:

§ 2.3.2.2 CM Self-Performed Work Packages. The CM shall be eligible to perform work of specific trades or sub-components of the Work on the Project, in lieu of subcontracting. Should the CM elect to do so, it shall submit a proposal to the Owner. The CM’s proposed price, whether lump sum or unit priced as specified in the solicitation for subcontractor bids, shall be inclusive of all markups for overhead and profit on the work specified in the work package solicitation. The Owner shall review any subcontractor bids for such work, and the CM’s bid. In the event that the CM is determined to be the bidder that is in the best interest of the Owner on such work, the Owner shall approve the CM to self-perform such work as a “Self-Performed Work Package.” The CM shall administer such Self-Performed Work Package(s) in the same manner as subcontracted work, and shall separately identify and account for the costs of Self-Performed Work Package(s) in its applications for payments in the same manner as done for subcontracted work.

b. Existing §6.12 shall be deleted and replaced with the following replacement provisions:

§6.12 Notwithstanding any other provision of this Agreement, for purposes of computing the Cost of Construction on which the 10% limitation on Construction Manager’s self-performed work is calculated, the aggregate of the following costs shall constitute the Project Cost of Construction:

- (1) The Fee paid to the Construction Manager for Preconstruction Phase Services paid in accordance with §4.1;*
- (2) The Construction Manager’s Fee paid in accordance with §5.1.1; and*
- (3) The Cost of the Work calculated in accordance with Article 6, including §§6.1 through 6.7.*

§6.13 Notwithstanding any other provision of this Agreement, for purposes of computing the 10% limitation on Construction Manager’s self-performed work, the following costs shall be considered “self-performed costs of construction”:

- (1) Direct labor costs as defined in §6.2.1;*
- (2) MEB markup for overhead and profit on the costs of self-performed work as provided in §6.3.2; and*
- (3) MEB markup for overhead and profit on subcontracts.*

Any purchase of equipment or materials that is procured through competition shall not be considered part of the CM’s cost of self-performed work.

- 2. The following provisions of the A201 General Conditions shall be modified as stated below:
 - a. Para. 15.2,1 shall be modified by addition the following sentence at the end of this paragraph:

The failure of the Owner to render a final decision on a Claim submitted by the Contractor within 60 days of its submission by Contractor shall be deemed to be a denial of such Claim, and the Contractor may thereafter proceed in accordance with the dispute resolution provisions of this Contract, and the law, as if such Claim had been denied by Owner.

These modifications to the A133 Agreement and the A201 General Conditions are agreed this ____ day of December, 2019.

<hr/>	<hr/>
OWNER (Signature)	CONSTRUCTION MANAGER (Signature)
<hr/>	David Ervin, Vice President
(Printed Name and Title)	(Printed Name and Title)

List of Drawings

In accordance with §A.1.1.8 of Ex. A to the Contract, the GMP for the Project is based on the following drawings:

A.1.1.8 Number	Drawings Title	Date	Pages
	1-GEN 10-11-19	10/11/2019	12
	2-INS 10-11-19 VE	10/11/2019	6
	3-CIVIL1 10-11-19_C-001 to C-237	10/11/2019	77
	3-CIVIL2 10-11-19_C-300 to C-361 VE	10/11/2019	54
	3-CIVIL3 10-11-19_C-370 to C-461	10/11/2019	80
	3-CIVIL4 10-11-19_C-468 to C-555 VE	10/11/2019	107
	3-CIVIL5 10-11-19_C-560 to C-694 VE	10/11/2019	78
	3-CIVIL6 10-11-19_C-700 to C-756 VE	10/11/2019	47
	3-CIVIL7 10-11-19_C-800 to C-956 VE	10/11/2019	49
	4-LANDSCAPE 10-11-19 VE	10/11/2019	81
	5-STRUCT 11-18-19 VE	10/11/2019	133
	6-ARCH 10-11-19 VE	10/11/2019	35
	7-PLUMB 10-11-19	10/11/2019	7
	8-MECH 10-11-19 VE	10/11/2019	23
	9-HVAC 10-11-19	10/11/2019	11
	10-ELEC 10-11-19 VE	10/11/2019	50



Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Payment Bond

CONTRACTOR:

(Name, legal status and address)

MEB General Contractors, Inc.
4016 Holland Blvd.
Chesapeake, VA 23323

OWNER:

(Name, legal status and address)

The City of Norfolk
810 Union Street
Norfolk, VA 23510

SURETY:

(Name, legal status and principal place of business)

Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02116
Mailing Address for Notices
Liberty Mutual Insurance Company
Attention: Surety Claims Department
1001 4th Avenue, Suite 1700
Seattle, WA 98154

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT

Date: December 11, 2019

Amount: \$ 95,259,457.74 Ninety Five Million Two Hundred Fifty Nine Thousand Four Hundred Fifty Seven Dollars and 74/100

Description:

(Name and location)

Construction Management (At-Risk) Services for National Disaster Resilience Ohio Creek Watershed Project - Contract No. 27305A

BOND

Date: December 13, 2019

(Not earlier than Construction Contract Date)

Amount: \$ 95,259,457.74 Ninety Five Million Two Hundred Fifty Nine Thousand Four Hundred Fifty Seven Dollars and 74/100

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

MEB General Contractors, Inc.

Signature: _____

Name and Title: George B. Clarke, III
President

SURETY

Company: (Corporate Seal)

Liberty Mutual Insurance Company

Signature: _____

Name and Title: Terri K. Strawhand
Attorney-in-Fact



(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Hampton Roads Bonding
1080 Laskin Road, Suite 204
Virginia Beach, VA 23451
757-491-1100
S-2149/AS 8/10

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)



§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____ *(Corporate Seal)*

SURETY

Company: _____ *(Corporate Seal)*

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees. To confirm the validity of this Power of Attorney call 610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



Liberty Mutual.

SURETY

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Terri K. Strawhand of the city of Virginia Beach, state of VA its true and lawful attorney-in-fact, with full power and authority hereby conferred to sign, execute and acknowledge the following surety bond:

Principal Name: MEB General Contractors, Inc.

Obligee Name: The City of Norfolk

Surety Bond Number: 017238632

Bond Amount: See Bond Form

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 12th day of December, 2018.



The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 12th day of December, 2018, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company do hereby certify that this power of attorney executed by said Companies is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 13th day of December, 2019.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary



Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Performance Bond

CONTRACTOR:

(Name, legal status and address)

MEB General Contractors, Inc.
4016 Holland Blvd.
Chesapeake, VA 23323

OWNER:

(Name, legal status and address)

The City of Norfolk
810 Union Street
Norfolk, VA 23510

SURETY:

(Name, legal status and principal place of business)

Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02116

Mailing Address for Notices

Liberty Mutual Insurance Company
Attention: Surety Claims Department
1001 4th Avenue, Suite 1700
Seattle, WA 98154

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT

Date: December 11, 2019

Amount: \$ 95,259,457.74

Ninety Five Million Two Hundred Fifty Nine Thousand Four Hundred Fifty Seven Dollars and 74/100

Description:

(Name and location)

Construction Management (At-Risk) Services for National Disaster Resilience Ohio Creek Watershed Project - Contract No. 27305A

BOND

Date: December 13, 2019

(Not earlier than Construction Contract Date)

Amount: \$ \$95,259,457.74

Ninety Five Million Two Hundred Fifty Nine Thousand Four Hundred Fifty Seven Dollars and 74/100

Modifications to this Bond:

None

See Section 16

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

MEB General Contractors, Inc.

Signature:

Name: George B. Clarke, IV
and Title: President

SURETY

Company: *(Corporate Seal)*

Liberty Mutual Insurance Company

Signature:

Name: Terri K. Strawhand
and Title: Attorney-in-Fact



(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Hampton Roads Bonding
1080 Laskin Road, Suite 204
Virginia Beach, VA 23451

757-491-1100

S-1852/AS 8/10



OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

SURETY

Company: _____
(Corporate Seal)

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address