

SECTION 00 72 00 – GENERAL CONDITIONS

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GENERAL CONDITIONS

ARTICLE 1 - CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 CONTRACT DOCUMENTS:

The Advertisement for Bid, Information for Bidders, Form of Bid, Owner-Contractor Agreement, Drawings, General Conditions and Special Conditions (if any) and any supplements thereto, Specifications and all Addenda issued prior to and all Modifications issued after execution of the Contract, shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. Any soils, geotechnical or other reports, surveys and analyses which may be made available to the Contractor for review or information under this Contract, are not adopted by reference into, nor are they part of the Contract Documents. A Modification is (1) a written Amendment to the Contract signed by both parties, (2) a written Change Order signed by both parties (3) a written Field Order or A/E/CM's Supplemental Instructions, 4) a Unilateral Change Order or Construction Change Directive issued by the Owner. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light upon the interpretation of the provisions to which they refer.

1.1.2 CONTRACT:

The Contract Documents form the Contract. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or changed only by a Modification. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner, or any agent, consultant, or independent contractor employed by the Owner and any Subcontractor, Sub-subcontractor, supplier or vendor of the Contractor, but the Owner shall be entitled to performance of all obligations intended for its benefit, and to enforcement thereof.

1.1.3 WORK:

The term "Work" as used herein refers to work at the site of the project, is that normally done at the location of the project and includes all plant, labor, materials, supplies, equipment, and other facilities and things necessary or proper for or incidental to the carrying out and completion of this contract. The term "Work" shall be construed to include material suitably stored and protected.

1.1.4 PROJECT:

The Project is the total construction of which the Work performed under Contract Documents may be the whole or a part.

1.1.5 FURNISH, INSTALL, PROVIDE:

The terms "Furnish" or "Install" or "Provide", unless specifically limited in context, mean: furnishing and incorporating a specified item, product or material in the work, including all necessary labor, materials, and equipment to perform the work required, ready for use.

1.1.6 EXTRA WORK:

The term "Extra Work" as used herein, refers to and includes work required by the Owner, which, in the judgment of the Owner and A/E/CM, involves changes in or additions to that required by the drawings, specifications and addenda in their present form.

1.1.7 NOTICE TO PROCEED:

The written notice to the Contractor indicating the date of commencement of the Work. The date of commencement of the Work shall be the date of the Owner-Contractor Agreement unless a different date is stated in a Notice to Proceed issued by the Owner. Owner may, at its option, and prior to issuance of a Notice to Proceed, issue a Limited Notice to Proceed for any portion of the Work.

1.1.8 NOTICE:

The term "Notice" as used herein shall mean and include written notice. Written notice shall be deemed to have been duly served when delivered by U. S. Postal Service or commercial carriers to or at the last known business address of the person, firm or corporation for whom intended, or to the Contractor, or its duly authorized agent, representative or officer. Written notices may also be delivered via email.

1.1.9 MISCELLANEOUS WORDS OR TERMS:

1.1.9.1 Whenever they refer to the work or its performance, "Directed", "Required", "Permitted", "Ordered", "Designated", "Prescribed", and words of like import shall mean the direction, requirements, permission, order, designation or prescription of the Owner or A/E/CM, and "Approved", "Acceptable", "Satisfactory", "in the judgment of" and words of like import shall mean approved by or acceptable to or satisfactory to or in the judgment of the Owner or A/E/CM.

1.1.9.2 The words, "shall", "will", or "must" as used in the Contract Documents indicate a requirement that is contractually binding, mandatory and requires strict compliance.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Owner-Contractor Agreement, shall be signed in not less than the number of copies specified in the said Agreement.

1.2.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.3 Anything shown on the drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings shall have the same effect as if shown or

mentioned respectively in both. Technical specifications take priority over general specifications and detail drawings take precedence over general drawings. Special Conditions take precedence over General Conditions. Any conflict or inconsistency in the drawings shall be submitted by the Contractor to the A/E/CM, with a copy to the Owner, whose decision thereon shall be conclusive. In case of conflict or inconsistency between the drawings and the specifications, the specifications shall govern.

- 1.2.4 Should any work or material be required which is not denoted in the drawings and specifications either directly or indirectly, but which is, nevertheless, necessary for the proper carrying out of the intent thereof, it is understood and agreed that the same is implied and required and that the Contractor shall perform such work and furnish such materials as fully as if they were completely delineated and prescribed. For patent or obvious discrepancies, the Contractor shall have a duty to bring said discrepancies to the attention of Owner for clarification and approval of modifications, if necessary.
- 1.2.5 The Contractor may be furnished additional instructions and detail drawings to carry out the work included in the Contract. The additional drawings and instructions thus supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as a part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.
- 1.2.6 The drawings and specifications are divided into sections for convenience and clarity only. The Contractor shall not construe this as a division of the work into various subcontractor units. The Contractor may subcontract the Work in such divisions as the Contractor sees fit, and in accordance with Article 5, but the Contractor is ultimately responsible for furnishing all work shown on the drawings and in the specifications.
- 1.2.7 The provisions of this Contract cannot be amended, modified, varied or waived in any respect except by a Modification. The Contractor is hereby given notice that no person has authority to orally waive, or to release the Contractor from any of the Contractor's duties or obligations under or arising out of this Contract. Any waiver, approval or consent granted by Modification to the Contractor shall be limited to those matters specifically and expressly stated thereby to be waived, approved or consented to and shall not relieve the Contractor of the obligation to obtain any future waiver, approval or consent.

1.3 OWNERSHIP AND USE OF DOCUMENTS

- 1.3.1 All Drawings, Specifications, and memoranda relating to the Work are the property of the Owner and are to be used only for the Project.
- 1.3.2 The Contractor shall be furnished the number of sets of drawings and specifications, as set forth in the Owner-Contractor Agreement, free of charge by the Owner for use in construction. Additional sets of drawings and specifications may be obtained by paying printing, mailing, and handling charges.

ARTICLE 2 - ARCHITECT/ENGINEER/CONSTRUCTION MANAGER

2.1 DEFINITIONS

- 2.1.1 The term Architect/Engineer/Construction Manager, hereinafter "A/E/CM" or "Architect", "Engineer", or "Construction Manager (or "CM")" shall mean the consulting firm, or the School Board of Stafford County, Virginia ("School Board", "Owner", "Stafford County Public Schools", or "SCPS") agency, or their duly authorized representative, that is responsible for designing or engineering or administering the work, and performing the activities specified herein. Such firm or agency and its representatives shall act severally within the scope of particular duties entrusted to them, unless otherwise provided for in the Contract.
- 2.1.2 The A/E/CM is/are identified in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The A/E/CM is further described as one of the following:
 - 2.1.2.1 ARCHITECT, a person or other legal entity lawfully licensed to practice architecture in Virginia; or
 - 2.1.2.2 ENGINEER, a person or other legal entity lawfully licensed to practice engineering in Virginia; or
 - 2.1.2.3 CONSTRUCTION MANAGER (or "CM"), a person or other legal entity practicing management and/or inspection of construction in Virginia; or
 - 2.1.2.4 If all or a portion of A/E/CM functions applicable to the Contract are provided by any agency, the Superintendent, or its duly authorized designee.

2.2. ADMINISTRATION OF THE CONTRACT

- 2.2.1 The A/E/CM will provide services as hereinafter generally described.
- 2.2.2 The A/E/CM will advise and consult with the Owner during construction and until the end of the one year guarantee period. The A/E/CM will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise changed by Modification.
- 2.2.3 The A/E/CM will visit the site at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the A/E/CM will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of his on-site observations as an Architect, Engineer or Construction Manager, he will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.
- 2.2.4 The A/E/CM will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The A/E/CM will not be responsible for or have control over the acts or omissions of the Contractor, Subcontractors, or any of their

agents or employees, or any other persons performing any of the Work.

- 2.2.5 The A/E/CM will immediately inform the Owner and Contractor whenever in the reasonable opinion of the A/E/CM any of the Work is proceeding contrary to the requirements of the Contract Documents and will be unacceptable. Failure of the Contractor to take corrective action to make the Work conform to the Contract Documents will subject the Contractor to any and all remedies available to the Owner, including, without limitation, termination pursuant to Article 14 hereof. Such notification by the A/E/CM will not be a cause for the Contractor to claim either delay of the Work or any increase in the Contract Sum.
- 2.2.6 The A/E/CM, the Owner and other governmental representatives shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so that the A/E/CM, the Owner and other governmental representatives may perform their functions under the Contract Documents.
- 2.2.7 Where applicable, based on the A/E/CM's observations and an evaluation of the Contractor's Applications for Payment, the A/E/CM will recommend the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Article 9.
- 2.2.8 The A/E/CM will be an interpreter of the requirements of the Contract Documents. The A/E/CM will render interpretations necessary for the proper execution and progress of the Work, with reasonable promptness and in accordance with any time limit agreed upon. Either party to the Contract may make written request to the A/E/CM for such interpretations. All interpretations of the A/E/CM shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing and/or in the form of drawings.
- 2.2.9 The A/E/CM will have authority to reject work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the work in accordance with Subparagraph 7.7.2 whether or not such Work be then fabricated, installed or completed.
- 2.2.10 The A/E/CM will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data, Samples and Manuals, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The A/E/CM approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 2.2.11 The A/E/CM's acceptance of materials or products on behalf of the Owner shall not bar future rejection of such items if they are subsequently found to be defective or inferior in quality or uniformity to the materials or products specified by the Contract, or if such items are not as represented by the Contractor.
- 2.2.12 When authorized by the Owner, the A/E/CM will prepare Change Orders and will have authority to order minor changes in the Work as provided in Article 12.
- 2.2.13 As required, the A/E/CM will conduct inspections to assist the Owner in determining the dates of Substantial Completion and Final Completion, will receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract and assembled by the Contractor, and will recommend final Certificate for Payment upon compliance with the requirements of Article 9.

- 2.2.14 All claims, disputes, or other matters or questions between the Contractor and Owner or A/E/CM arising out of or relating to Owner's or the A/E/CM's interpretation of the Contract Documents or any other decisions, communications, or actions of the Owner or A/E/CM arising out of or relating to the performance of the Work shall be resolved as set forth in Article 7.4. Prior to submitting any claim to the Superintendent or his authorized designee regarding an interpretation of the Owner or A/E/CM, the matter shall first be submitted to the Department Director identified in the Owner-Contractor Agreement, or his authorized designee, who shall review the matter and render a written interpretation, evaluation or decision, as appropriate, within 30 days of his receipt of the claim, dispute or other matter. If the Department Director or his authorized designee agrees with the Contractor, the matter shall be resolved in accordance with their agreement. If the Department Director or his authorized designee disagrees with the Contractor, the Contractor may then present the matter to the Superintendent or his authorized designee as set forth in Article 7.4.
- 2.2.15 In case of the termination of the employment of the A/E/CM, the Owner shall appoint a new A/E/CM, who shall have the same status under the Contract Documents as the former A/E/CM.
- 2.2.16 Notwithstanding anything to the contrary contained herein, Contractor expressly agrees that A/E/CM has no authority to make any changes in the scope, quantities of work, or to the terms and conditions of the Contract Documents. To the extent the A/E/CM directs the Contractor with regard to any such changes, Contractor assumes sole risk for any costs, expenses and/or damages incurred by Contractor, Owner and any other affected party, for following such direction, unless such direction was approved by SCPS, in writing, in advance of performance of the work associated with the direction by the A/E/CM. Contractor expressly waives any right to claim for additional compensation or additional time for performance of the Work to the extent it fails to comply with the obligations of this Article 2.2.16.
- 2.2.17 With regard to unit price items of the Work identified in the Contract Documents, any individual item of work that, when the quantity is multiplied by the unit price, is in excess of five (5) percent of the Contract Sum upon Contract execution, or if such unit price item has been designed a "Major Item" in the Bidding Documents, the quantity of such unit price items may not be exceeded without the express written approval of the SCPS, which approval must be provided in advance of Contractor's exceeding the unit quantity. Contractor expressly waives its right to claim for any increase in quantity, and any associated compensation, for any unit price quantity changes subject to this Article 2.2.17 unless Contractor seeks (by written notice to SCPS) and receives written approval from SCPS to perform the additional quantity of work. Contractor assumes sole risk, including any additional costs, associated with exceeding the unit quantities identified by this Article 2.2.17 unless the notice required herein has been provided prior to performance of the additional quantities of work.

ARTICLE 3 - OWNER

3.1 DEFINITION

- 3.1.1 The Owner is the School Board of Stafford County, Virginia ("School Board", "Owner", "Stafford County Public Schools", or "SCPS") and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Owner or its authorized representative. The School Division's Superintendent, or authorized designee, is the authorized representative of SCPS for this contract.
- 3.1.2 The Owner will designate a single Owner's representative, with the title of Construction

Manager, who will have the power to act, within the scope of his delegated authority, for and on behalf of the Owner, in accordance with the terms of the Contract.

- 3.1.3 The term "Owner" or "Owner's representative" specifically excludes any and all inspectors having building code or County ordinance responsibilities or jurisdiction under the requirements of the Building Permit and/or Site Permit.

3.2 INFORMATION POSSESSED BY OWNER

- 3.2.1 The Owner will make available for the Contractor's reasonable review, at the Owner's offices or together with the Contract Documents, certain boring logs, geotechnical, soils and other reports, surveys and analyses pertaining to the Contract site of which the Owner is aware and has in its possession. Any boring logs that are provided to the Contractor, are only intended to reflect conditions at the locations of the borings and do not necessarily reflect site conditions at other locations. Owner only warrants the accuracy of the boring logs actually provided to Contractor. Any reports surveys and analyses provided by Owner are for the Contractor's information only, and their accuracy and completeness are not guaranteed or warranted by the Owner or the A/E/CM, and such reports are not adopted by reference into, nor are they part of the Contract Documents.

- 3.2.1.1 Notwithstanding any factual statement, conclusion, or any language or recommendations contained in such reports, the Contractor assumes full responsibility for inspection of the site and for the means and methods of construction that he employs when performing the work. The Owner shall not be liable for any additional work or costs arising as a result of any conclusions reached or assumptions derived by the Contractor from or based upon any such geotechnical, soils and other reports, surveys and analyses which the Owner makes available for the Contractor's information and review.

3.3 OWNER-PAID PERMITS AND FEES

- 3.3.1 Unless otherwise specified in the Owner-Contractor Agreement or Special Conditions, the Owner will, if applicable, secure and pay for:
- .1 Sanitary Sewer availability fees/front footage fee and any tap fee for permanent sanitary sewer service;
 - .2 Water availability/water meter/water meter connection fee for permanent water service;
 - .3 Installation charges from related utility company for permanent electrical, telephone, cable TV or gas service;
 - .4 Any easements required; and
 - .5 Virginia Stormwater Management Program (VSMP) Permit. The Contractor will be responsible for the Contractor Certification statement and for implementing and maintaining all required controls related to the VSMP permit.
- 3.3.2. The Contractor's attention is directed to Article 4 describing other permits to be obtained and fees to be paid by the Contractor.
- 3.3.3 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein including, but not limited to, Articles 6, 9 and 11.

3.4 OWNER'S RIGHT TO STOP WORK

- 3.4.1 If the Contractor fails to correct defective Work as required herein or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

3.5 OWNER'S RIGHT TO CARRY OUT THE WORK

- 3.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the A/E/CM's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.
- 3.5.2 Neither the Owner nor the A/E/CM nor their officers, agents, assigns or employees are in any way liable or accountable to the Contractor or his surety for the method by which work performed by the Owner, or at the Owner's direction, or any portion thereof, is accomplished or for price paid therefor. Notwithstanding the Owner's right to carry out a portion of the Work, maintenance and protection of the Work remains the Contractor's and Surety's responsibility as provided for in the Performance Bond and Guarantee of Contractor, pursuant, but not limited, to Articles 4 and 13.

3.6 SUSPENSION OF WORK

- 3.6.1 The Owner shall have the authority to suspend the Work, in whole or in part, for such periods and such reasons as the Owner may deem necessary or desirable, in its sole discretion, including without limitation:
- .1 Unsuitable weather;
 - .2 Other conditions considered unfavorable for the suitable prosecution of the Work; and/or
 - .3 Other conditions considered adverse to the best interests of the Owner.
- 3.6.2 Any such suspension shall be in writing to the Contractor. The Contractor shall obey immediately such orders of the Owner and shall not resume the Work until so ordered in writing by the Owner. No such suspension of the Work shall be the basis of a claim by the Contractor for any increase in the Contract Sum or for any other damages, losses, costs or expenses whatsoever, if the suspension is for a reasonable time, under the circumstances then existing and the cause thereof is beyond the control and is without the fault or negligence of the Owner. The Contractor shall be entitled to a reasonable extension of the Contract Time subject to the provisions of Article 8 herein. Reasonable time as referred to in this article is defined as a period of time that could not result in any significant adverse monetary impact to the Contractor's forces as determined on a case by case basis.

3.6.3 In the event of suspension of Work, the Contractor will and will cause his subcontractors to protect carefully his, and their materials and work against damage or injury from the weather and maintain completed and uncompleted portions of the work as required by the Contract Documents. If, in the opinion of the, A/E/CM, any work or material shall have been damaged or injured by reason of failure on the part of the Contractor or any of his subcontractors to so protect same, such work and materials shall be removed and replaced at the expense of the Contractor.

3.7 USE AND OCCUPANCY PRIOR TO FINAL ACCEPTANCE BY OWNER

3.7.1 The Owner has the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the entire Work or any portions thereof may, or may not, have expired. The taking of possession and use by the Owner shall be in accordance with the provisions regarding Substantial Completion in Article 9. If such prior use delays the Work, the Contractor may submit a request for a time extension in accordance with the requirements of Article 8. The Contractor hereby waives any claims for additional costs, expenses or damages associated with the Owner's prior use and occupancy.

3.8 RIGHT TO AUDIT AND PRESERVATION OF RECORDS

3.8.1 The Contractor shall maintain books, records and accounts of all costs in accordance with generally accepted accounting principles and practices. The Owner or its authorized representative shall have the right to audit the books, records and accounts of the Contractor under any of the following conditions:

- .1 If the Contract is terminated for any reason in accordance with the provisions of these Contract Documents in order to arrive at equitable termination costs;
- .2 In the event of a disagreement between the Contractor and the Owner on the amount due the Contractor under the terms of this Contract;
- .3 To check or substantiate any amounts invoiced or paid which are required to reflect the costs of the Contractor, or the Contractor's efficiency or effectiveness under this Contract or in connection with extras, changes, claims, additions, back charges, or other, as may be provided for in this Contract; and/or
- .4 If it becomes necessary to determine the Owner's rights and the Contractor's obligations under the Contract or to ascertain facts relative to any claim by or against the Contractor which may result in a charge against the Owner.

3.8.2 These provisions for an audit shall give the Owner unlimited access during normal working hours to the Contractor's books and records under the conditions stated above.

3.8.3 Unless otherwise provided by applicable statute, the Contractor, from the effective date of final payment or termination hereunder, shall preserve and make available to the Owner for a period of three (3) years thereafter, at all reasonable times at the office of the Contractor but without direct charge to the Owner, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the Work hereunder, or to the extent approved by the A/E/CM, photographs, micro-photographs, or other authentic reproductions thereof.

- 3.8.4 The Owner will make all payments required of it under this Contract subject to audit, under circumstances stated above, which audit may be performed at the Owner's option, either during the Contract time period or during the above record retention time period. Regardless of authorization, approval or acceptance, signatures or letters which are given by the Owner and are part of the Owner's control systems or are requested by the Contractor, the payments made under this Contract shall not constitute a waiver of the Owner's right to audit, nor shall payments constitute a waiver or agreement by the Owner that it accepts as correct the billings, invoices or other charges on which the payments are based. If the Owner's audit produces a claim against the Contractor, the Owner may pursue all its legal remedies even though it has made all or part of the payments required by this Contract.
- 3.8.5 If any audit by the Owner or the Owner's representative discloses an underpayment by the Owner, the Owner shall have the duty to pay any amounts found by the audit to be owed to the Contractor. If such audit discloses an overpayment, the Contractor shall have the obligation to reimburse the Owner for the amount of the overpayment. The Owner's right to reimbursement from the Contractor of the overpayment and the duty of the Owner and the Contractor to make reimbursements or payments as described in this Article shall not be terminated or waived until the Owner has completed its audit.
- 3.8.6 The Owner's right to audit and the preservation of records shall terminate at the end of three (3) years as stated hereinabove. The Contractor shall include this "Right to Audit and Preservation of Records" clause in all subcontracts issued by him and he shall require same to be inserted by all lower tier Subcontractors in their subcontracts, for any portion of the work. Should Contractor fail to include this clause in any such Contract or lower tier Contract, or otherwise fail to insure the Owner's rights hereunder, Contractor shall be liable to Owner for all cost, expenses and attorney's fees which Owner may have to incur in order to obtain an audit or inspection of or the restoration of records which would have otherwise been available to Owner from said persons under this clause. Such audit may be conducted by the Owner or its authorized representative.

3.9 RIGHT TO REVIEW DOCUMENTS AND OTHER MATERIALS

- 3.9.1 In addition to the rights granted to the Owner under Article 3.8, the Owner shall have the right to review and copy any and all of the Contractor's records pertaining to or relating in any way to this project, including, but not limited to, correspondence, e-mail and/or any other electronic documents of any type or format, memoranda, minutes, reports, intra- and inter-office communications, work papers, estimating sheets, progress reports, job cost reports, forecasts, audio or video recordings, computer disks, films, or any other materials, regardless of physical form or characteristics, which were prepared by or in the possession of, or obtainable by, the Contractor. The Contractor shall make all such documents and records available to the Owner upon ten (10) days written notice to the Contractor of the Owner's intent to review such documents. The Contractor shall include this "Right to Review Documents and Other Materials" clause in all subcontracts issued by him and he shall require same to be inserted by all lower-tier subcontractors in their subcontracts for any portion of the Work. The Contractor hereby waives any right he may have to additional compensation or time extensions in the event he fails or refuses to produce records pertaining to any such claim as requested by the Owner pursuant to this paragraph. In addition, the Owner may withhold all or any portion of any progress payments which may be otherwise due in the event Contractor refuses to comply with his obligations under this subparagraph. The review of documents and other records under this clause may be conducted by the Owner or its authorized representatives.

ARTICLE 4 - CONTRACTOR

4.1 DEFINITION

- 4.1.1 The Contractor is the person or entity identified in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative.
- 4.1.2 This entire Contract is not one of agency by the Contractor for Owner but one in which the Contractor is engaged independently in the business of providing the services and performing the Work herein described as an independent Contractor.

4.2 REVIEW OF CONTRACT DOCUMENTS

- 4.2.1 The Contractor and his Subcontractors shall keep at the site of the Work at least one (1) copy of the drawings and specifications and shall at all times give the A/E/CM, inspectors, as well as representatives of the Owner access thereto. Further, said drawings shall be the approved sets issued to the Contractor by the appropriate County Permit agencies. The Contractor shall perform no portion of the Work at any time without the Contract Documents or, where required, approved Shop Drawings, Product Data, Samples or Manuals for such portion of the Work.

4.3 CONTRACTOR'S REPRESENTATIONS

- 4.3.1 By entering into this Contract with the Owner, the Contractor represents and warrants the following, together with all other representations and warranties in the Contract Documents:
- .1 That he is experienced in and competent to perform the type of work required and to furnish the plant, materials, supplies or equipment to be so performed or furnished by him;
 - .2 That he is financially solvent, able to pay his debts as they mature, and possessed of sufficient working capital to initiate and complete the Work required under the Contract;
 - .3 That he is familiar with all Federal, State, County, municipal and department laws, ordinances, permits, regulations and resolutions which may in any way affect the Work or those employed therein, including but not limited to any special acts relating to the Work or any part thereof;
 4. That such temporary and permanent work required by the Contract Documents which is to be done by him will be satisfactorily constructed and fit for use for its intended purpose and that such construction will not injure any person, or damage any property;
 - .5 That he has carefully examined the Contract Documents and the site of the Work and that from his own investigations, he has satisfied himself and made himself familiar with: (1) the nature and location of the Work, (2) the character, quality and quantity of materials likely to be encountered, including, but not limited to, all structures and obstructions on or at the project site, both natural and man-made; (3) the character of equipment and other facilities needed for the performance of the Work, (4) the general and local conditions including without limitation its climatic conditions, the availability and cost of labor and the availability and cost of materials, tools and equipment; (5) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in the manner required by the Contract Documents;

- .6 That he will fully comply with all requirements of the Contract Documents;
- .7 That he will perform the Work consistent with good workmanship, sound business practice, and in the most expeditious and economical manner consistent with the best interests of the Owner;
- .8 That he will furnish efficient business administration, an experienced superintendent and an adequate supply of workmen, equipment, tools and materials at all times;
- .9 That he will complete the Work within the Contract Time and within Contract Milestones;
- .10 That his Contract price is based upon the materials, systems and equipment required by the Contract Documents, without exception; and
- .11 That he has satisfied himself as to the feasibility and correctness of the Contract Documents for the construction of the Work.
- .12 The Contractor accepts the relationship of trust and confidence established by this Agreement and acknowledges its duty to cooperate with the Owner and the A/E/CM and to exercise the Contractor's best skill and judgment in furthering the best interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; to perform the Work in an expeditious and economical manner consistent with the Owner's best interests; to perform the Work with quality and workmanship consistent with the highest applicable industry standards; and not to take any action stemming from or related to this Agreement that shall be adverse or detrimental to the Owner. Any information provided to the Contractor for the performance of this Contract shall not be used for any other purpose without the written consent of the Assistant Superintendent of Finance and Administration; provided, however, that nothing herein shall be construed to prevent the Contractor from exercising any of the rights granted to it under other specific provisions of the Agreement.

4.4 SUPERVISION AND CONSTRUCTION PROCEDURES

- 4.4.1 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract; subject, however, to the Owner's right to reject means and methods proposed by the Contractor which are unsafe or otherwise not in compliance with the Contract Documents.
- 4.4.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and Sub-subcontractors, suppliers, their agents and employees, and of other persons performing any of the Work and for their compliance with each and every requirement of the Contract Documents, in the same manner as if they were directly employed by the Contractor.
- 4.4.3 The Contractor understands and agrees that he shall not be relieved of his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner or the A/E/CM in their administration of the Contract or by inspections, tests, or approvals required or performed under Article 7 by persons other than the Contractor.
- 4.4.4 Before starting a section of work, the Contractor shall carefully examine all preparatory work

that has been executed to receive his Work to see that it has been completed. He shall check carefully, by whatever means are required, to ensure that his Work and adjacent, related work will finish to proper quality, contours, planes, and levels.

4.4.5 The Contractor understands and agrees that the Owner and A/E/CM will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and they will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner and the A/E/CM will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

4.4.6 The Contractor shall employ no plant, equipment, materials, methods or persons to which the Owner objects and shall remove no portion of the Work or stored materials from the site of the Work.

4.5 LABOR, MATERIALS, AND EQUIPMENT

4.5.1 The Contractor will furnish all plant, labor, materials, supplies, equipment and other facilities and things necessary or proper for or incidental to the Work contemplated by this Contract, as required by and in strict accordance with the applicable Contract Documents and required by and in strict accordance with such changes as are ordered and approved pursuant to the Contract and will perform all other obligations imposed on him by this Contract. Final payment will not be made until the Work is so completed.

4.5.2 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

4.5.3 Work and materials which are necessary in the construction but which are not specifically referred to in the specifications or shown in the drawings but implied by the Contract shall be furnished by the Contractor at his own cost and expense. Such work and materials shall correspond with the general character of the Work as may be determined by the A/E/CM subject to review as provided in Article 2.

4.5.4 The Contractor shall submit to the Owner within thirty (30) calendar days after award of the Contract for the Work, a designation of the Work to be performed by the Contractor with his own forces. The percentage of the Work to be performed under subcontract, shall be calculated by adding the amounts of all subcontracts and dividing this sum by the total amount of the Contract. No portion of the Contract shall be subcontracted or otherwise performed by a party not the Contractor, except with the written consent of the Owner.

4.5.5 The Contractor shall at all times enforce strict discipline, safety and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

4.5.5.1 If any person employed on the Work by the Contractor or any subcontractor shall appear to the Owner to be incompetent or to act in a disorderly or improper manner, such person shall be removed immediately at the request of the Owner, and shall not be reemployed except on written consent of the Owner.

- 4.5.6 No materials or supplies for the Work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage, or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies used by him in the Work.
- 4.5.7 The Contractor shall provide approved sanitary accommodations. All wastes shall be covered, disinfected, incinerated or otherwise disposed of legally.
- 4.5.8 All equipment, apparatus and/or devices of any kind to be incorporated into the Work that are shown or indicated on the drawings or called for in the specifications or required for the completion of the Work shall be entirely satisfactory to the Owner as regards operations, capacity and/or performance. No approval, either written or verbal, of any drawings, descriptive data or samples of such equipment, apparatus, and/or device shall relieve the Contractor of his responsibility to turn over the same in good working order for its intended purpose at the completion of the Work in complete accordance with the Contract Documents. Any equipment, apparatus and/or device not fulfilling these requirements shall be removed and replaced by proper and acceptable equipment, etc., or put in good working order satisfactory to the Owner without additional cost to the Owner. The Contractor will and will cause his subcontractors to protect carefully his, and their materials and work against damage or injury from the weather and maintain completed and uncompleted portions of the work as required by the Contract Documents. If, in the opinion of the, A/E/CM, any work or material shall have been damaged or injured by reason of failure on the part of the Contractor or any of his subcontractors to so protect same, such work and materials shall be removed and replaced at the expense of the Contractor.

4.6 WARRANTY

- 4.6.1 The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all workmanship will be of first class quality, free from faults and defects and in conformance with the Contract Documents and all other warranties and guaranties specified therein. Where no standard is specified for such workmanship or materials, they shall be the best of their respective kinds. All Work not conforming to these requirements, including products not properly approved and authorized, may be considered defective.

If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 13.

- 4.6.2 The Work included in this Contract is heretofore specified. The Contractor will be required to complete the Work specified and to provide all items needed for construction of the project, complete and in good order.

4.7 CONTRACTOR-PAID TAXES, PERMITS, FEES AND NOTICES

- 4.7.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.
- 4.7.2 Except as provided in Article 3, the Contractor will be responsible for obtaining and paying for all other fees, permits and licenses necessary for the proper execution of the work, including but not limited to:

- .1 Plumbing, Electrical, Mechanical, Fire Marshall Permits, and inspections;
- .2 Temporary water and meter, temporary electrical and telephone installations and temporary utility usage;
- .3 Temporary security lighting;
- .4 All other permits necessary in order to perform the Work shall be secured by the Contractor and fees necessary in order to perform the Work shall be paid by him as part of this Contract at no additional cost to the Owner.
- .5 Any fees for Fire Marshall shop drawing review and/or inspections in excess of that paid by the Owner to obtain the building permit, shall be the Contractor's responsibility. These fees include but are not limited to sprinkler systems, fire alarm systems, and fire pump systems.

4.7.3 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, permits, resolutions and lawful orders of any public authority bearing on the performance of the Work; including but not limited to OSHA, Title 40.1 Chapter 3 of the Code of Virginia, and Title VII of the Civil Rights Act of 1964, as amended. All safety violations shall be corrected immediately upon receipt of notice of violation.

4.8 COMPLIANCE

4.8.1 All demolition and excavation shall comply with the rules and regulations for the prevention of accidents as issued by the Department of Labor and Industry of the Commonwealth of Virginia.

4.8.2 The Contractor shall comply with all applicable laws, statutes, codes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Work, the Project and the Site;

4.8.3 If the Contractor (or any person in contract with the Contractor relating to the subject project) knew, or should have known, using a normal, professional standard of care, that an error, inconsistency, omission, ambiguity, discrepancy, conflict or variance exists in the Contract Documents, or between the Contract Documents and any of the codes, specifications and standards set forth in 4.8.2 herein, the Contractor has the obligation to seek a clarification thereof from the Owner prior to the time the Work is performed which is affected by such error, inconsistency, omission, ambiguity, discrepancy, conflict or variance. The Contractor shall not be liable for damages relating thereto, if he has met this obligation. The Owner will welcome such a clarification request and, if deemed necessary by the Owner, the Owner will issue a written instruction clarifying the matter in question. Should the Contractor fail to seek such a clarification thereof immediately upon the discovery of the need therefore, prior to the time the said Work is performed, the Contractor thereby assumes all risk of loss related to such error, inconsistency, ambiguity, discrepancy, conflict or variance which the Contractor (and any person in contract with Contractor relating to the subject project) knew or should have known existed prior to the time the Work was performed.

4.8.4 Any material or operation specified by reference to publications, published specifications of a Manufacturer, a Society, an Association, a Code, or other published Standard, shall comply with the requirements of the referenced document which is current on the date of receipt of bids. If the Contractor observes that any of the Contract Documents are at variance therewith in any

respect, he shall promptly notify the A/E/CM in writing, with a copy to the Owner. The A/E/CM will make such judgements as are necessary and notify the Contractor prior to the performance of the work.

- 4.8.5 If the Contractor performs any Work contrary to such laws, ordinances, permits, rules, regulations and resolutions, he shall assume full responsibility therefor and shall bear all costs attributable thereto.
- 4.8.6 The Contractor is responsible for locating all underground utilities and structures such as water, oil and gas mains, water and gas services, storm and sanitary sewers and telephone and electric conduits which may be encountered during the construction operation. He shall dig test holes to determine the position of the underground structures. The Contractor shall pay the cost of digging test holes and likewise he shall pay the cost of the services of the representatives of the owners of such utilities for locating the said utilities. The cost of determining the location of any and all utilities is to be included in the bid price. The Owner shall pay the owners of such utilities for fees or charges for relocation of gas, electric, telephone, cable or other lines and/or services indicated to be relocated by others.
- 4.8.7 The Contractor shall have Miss Utility locate all utilities on the site which are within the area of the work. If utilities are marked which are not shown on the plans, the Contractor shall immediately notify the Owner and the A/E/CM of such finding. The Owner and A/E/CM shall provide a direction to the Contractor within a reasonable period of time if additional work is required as a result of the finding.
- 4.9 ALLOWANCES
- 4.9.1 The Bid Form (Section 00 20 00) will contain provisions for allowances, if such is applicable to this Contract.
- 4.10 SUPERINTENDENT
- 4.10.1 The Contractor shall employ a competent and experienced Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall have full authority to represent the Contractor and all communications given to the Superintendent shall be as binding as if given to the Contractor.
- 4.10.2 It is understood that such Superintendent shall be acceptable to the Owner and shall be one who will continue in that capacity for duration of this project, unless he ceases to be on the Contractor's payroll. If the Superintendent ceases to be employed by the Contractor, a new qualified Superintendent acceptable to the Owner shall be promptly assigned to the project to ensure continuity and execution of the Work. Unless approved in writing by the Owner, the Superintendent shall not be employed on any other project during the performance of this Contract. The Superintendent shall be on site at all times when any work is being performed. Owner shall have the right to stop work on the Project in the event any Work is being performed at the Project site in the absence of the Superintendent. In the event of such a work stoppage, no Work shall re-commence until Contractor's Superintendent returns to the Project site. Contractor shall have no claim for any additional costs or delay for any work stoppage pursuant to this Article 4.10.2.

4.11 CONSTRUCTION SCHEDULE

- 4.11.1 The Contractor shall within fifteen (15) days after issuance of the Notice to Proceed, prepare and submit to the A/E/CM and Owner for review, acceptance and/or approval, a practicable and feasible Construction Schedule showing the method by which the Contractor will comply with Contract Milestones and Completion date requirements as set forth in the Owner-Contractor Agreement. The schedule shall show in detail how the Contractor plans to execute and coordinate the Work. The Contractor shall use this schedule in the planning, scheduling, direction, coordination and execution of the Work. The Construction Schedule shall encompass all of the work of all trades necessary for construction of the project and shall be sufficiently complete and comprehensive to enable progress to be monitored on a day-to-day basis. The Owner and A/E/CM shall be provided with three (3) copies of all schedules, updates and reports or sorts required herein which shall be suitable for reproduction by the Owner.
- 4.11.2 It is the sole responsibility of the Contractor to prepare, maintain, update, revise and utilize the Construction Schedule as outlined in this Paragraph. The schedule shall be the sole overall Construction Schedule utilized by the Contractor in managing this project, provided, however, that Contractor may at its option employ and utilize other schedules based upon and consistent with the Construction Schedule. In general, it is the intent of this Paragraph to allow the Contractor to choose its own means, methods and construction procedures consistent with good practice and the Contract Documents.
- 4.11.3 If the Contractor should submit a schedule or express an intention to complete the Work earlier than any required Milestone or Completion date, the Owner shall not be liable to the Contractor for any costs or delay should the Contractor be unable to complete the Work before such Milestone or Completion date. The duties, obligations and warranties of the Owner to the Contractor shall be consistent with and applicable only to the completion of the Work on the Milestone and completion dates required in the Owner-Contractor Agreement.
- 4.11.4 Acceptance or Approval by the Owner of the Construction Schedule is advisory only and shall not relieve the Contractor of the responsibility for accomplishing the Work within each and every required Milestone and Completion date. Omissions and errors in the approved Construction Schedule shall not excuse performance which is not in compliance with the Contract. Acceptance or Approval by the Owner in no way makes the Owner an insurer of the Construction Schedule's success or liable for time or cost overruns flowing from its shortcomings. The Owner hereby disclaims any obligation or liability by reason of Owner approval of the Construction Schedule.
- 4.11.4.1 Unless otherwise authorized by Owner in its sole discretion, a condition precedent to Contractor's ability to receive its first progress payment under the Contract is the submission of the Construction Schedule and acceptance and/or approval by the Owner, which acceptance and/or approval shall not unreasonably be withheld.
- 4.11.5 Contractor shall consult with and obtain information from principal Subcontractors necessary in preparation of the schedules, updates and revisions required herein. Contractor shall provide each principal Subcontractor with copies of the Construction Schedule and any revisions or updates affecting a Subcontractor's work. Contractor shall hold appropriate progress meetings with Subcontractors and shall direct and coordinate the work of Subcontractors consistent with and as required herein. Owner shall have the right to attend Subcontractor progress meetings but shall not be required to participate in such meetings or provide information to Subcontractors, except through the Contractor. Contractor shall keep up-to-date minutes of Subcontractor progress meetings and shall provide same to Owner. The Contractor shall ensure that each Subcontractor, Sub-subcontractor or supplier acknowledges and accepts the

requirements of the Construction Schedule relating to their part of the Work.

- 4.11.6 If Contractor's Construction Schedule indicates that Owner or a separate Contractor is to perform an activity by a specific date, or within a certain duration, Owner or any separate Contractor shall not be bound to said date or duration unless Owner expressly and specifically agrees in writing to same; the Owner's overall review and approval or acceptance of the schedule does not constitute an agreement to specific dates or durations for activities of the Owner or any separate contractor.
- 4.11.7 The Contractor's Superintendent shall maintain at the job site, an approved Construction Schedule, indicating actual monthly progress for those portions of the project on which work has been or is being performed.
- 4.11.8 If an extension or contraction of any Milestone or Completion Date is authorized by any Change Order, the Contractor shall revise his Construction Schedule, Milestone and Completion Dates accordingly.
- 4.11.9 If, in the opinion of the Owner, the Construction Schedule does not accurately reflect the actual progress and sequence of the Contractor's performance of the Work, the Contractor shall revise the Construction Schedule, upon the Owner's request, and submit a revised Construction Schedule that accurately represents the progress and sequence of the Contractor's performance of the Work.
- 4.11.10 Owner shall have the right to approve or disapprove any scheduling consultant that may be selected or retained by Contractor.
- 4.11.11 Contractor covenants and guarantees that Contractor will not:
- .1 Misrepresent to Owner its planning and scheduling of the Work;
 - .2 Utilize schedules materially different from those made available to the Owner or any Subcontractors for the direction, execution and coordination of the Work, or which are not feasible or realistic;
 - .3 Prepare schedules, updates, revisions or reports which do not accurately reflect Contractor's actual intent or Contractor's reasonable and actual expectations as to:
 - (a) The sequences of activities,
 - (b) The duration of activities,
 - (c) The responsibility for activities,
 - (d) Resource availability,
 - (e) Labor availability or efficiency,
 - (f) Expected weather conditions,
 - (g) The value associated with the activity,
 - (h) The percentage complete of any activity,
 - (i) Completion of any item of work or activity,

- (j) Project completion,
- (k) Delays, slippages, or problems encountered or expected,
- (l) Subcontractor requests for time extension, or delay claims of subcontractors, and
- (m) If applicable, the float time available.

4.11.12 Contractor's failure to substantially comply with the foregoing covenant and guarantee of Paragraph 4.11.11 shall be a substantial and material breach of contract which will permit Owner to terminate Contractor for default, or withhold payments under the Contract Documents, and shall entitle Owner to the damages afforded for misrepresentation or fraud by these Contract Documents or applicable law.

4.11.13 Should Contractor fail to substantially comply with the provisions of the Contract Documents relating to scheduling and execution of the Work by the overall project schedule, Owner shall have the right, at its option, to retain the services of scheduling consultants or experts (including attorneys if necessary in the opinion of the Owner) to prepare schedules, reports, updates and revisions of the schedule in accordance with the Contract Documents and to review and analyze same, in order to allow Owner and A/E/CM to evaluate the program of the Work by Contractor, to determine whether Contractor is substantially complying with the Contract Documents, and to direct such action of the part of the Contractor, as permitted by the Contract Documents, as required to ensure, under the Owner's schedule prepared hereunder, that Contractor will complete the Work within the Contract Time. All costs and expenses and fees incurred by Owner in preparing the schedule hereunder shall be back-charged to Contractor via a deductive change order. If Contractor fails to substantially comply with the scheduling and execution of the work requirements of the Contract Documents, Contractor hereby agrees, in such instance, to comply with such Owner-prepared schedules, if any, or directions, and activity sequences and durations as Owner may reasonably require, without additional cost to the Owner (subject only to cost adjustments for such changes in the Work as Owner may direct), to ensure completion within the Contract Time.

4.11.14 The Construction Schedule shall be utilized by Owner, A/E/CM and Contractor for submission, review and approval of monthly Payment Request. The schedule must be updated by Contractor monthly with each progress payment application and submitted to the Owner and A/E/CM for review with the progress payment application. Owner shall not be required to process and review Contractor's Application for Payment if Contractor has failed or refused to provide the scheduling update information required herein.

4.11.15 The type of schedule to be utilized on this project, along with its particular elements, shall be as specified in the Division 1 of Technical Specifications.

4.12 RESPONSIBILITY FOR COMPLETION

4.12.1 The Contractor shall furnish such manpower, materials, facilities and equipment and shall work such hours, including night shifts, overtime operations and Sundays and holidays, as may be necessary to ensure the performance of the Work within the Milestone and Completion dates specified in the Owner-Contractor Agreement. If it becomes apparent to the Owner that the Work will not be Completed within required Milestone or Completion dates, the Contractor agrees that it will assume full responsibility to take some or all of the following actions, at no additional cost to the Owner, in order to ensure, in the opinion of the Owner, that the Contractor

will comply with all Milestone and Completion date requirements:

- .1 Increase manpower, materials, crafts, equipment and facilities;
- .2 Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing; and
- .3 Reschedule activities to achieve maximum practical concurrency of accomplishment of activities.

4.12.2 If the actions taken by the Contractor are not satisfactory, the Owner may direct the Contractor to take any and all actions necessary to ensure completion within the required Milestone and Completion dates, without additional cost to the Owner. In such event, the Contractor shall continue to assume responsibility for his performance and for completion within the required dates.

4.12.3 If, in the opinion of the Owner, the actions taken by the Contractor pursuant to this Article or the progress or sequence of Work are not accurately reflected on the Construction Schedule, the Contractor shall revise such schedule to accurately reflect the actual progress and sequence of Work.

4.12.4 Failure of the Contractor to substantially comply with the requirements of this Article may be considered grounds for a determination by the Owner, pursuant to Article 14, that the Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified.

4.12.5 The Owner may, at its sole discretion and for any reason, including when it is apparent to the A/E/CM or Owner that the Work will not be completed within the required Milestone or Completion dates, require the Contractor to accelerate the Schedule of Performance by providing overtime, Saturday, Sunday and/or holiday work and/or by having all or any Subcontractors designated by the Owner provide overtime, Saturday, Sunday, and/or holiday work. In the event that the Owner requires overtime, Saturday, Sunday or holiday work by the Contractor's or his Subcontractor's own forces, and such requirement is not related in any way to the Contractor's apparent inability to comply with Milestone and Completion date requirements, the Owner shall reimburse the Contractor for the direct cost to the Contractor of the premium time for all labor utilized by the Contractor in such overtime, Saturday, Sunday or holiday work (but not for the straight time costs of such labor), together with any Social Security and State or Federal unemployment insurance taxes in connection with such premium time. However, no jobsite or home office overhead supervision costs, commissions, profit or other costs and expenses shall be payable in connection therewith.

4.12.6 This provision does not eliminate the Contractor's responsibility to comply with all County noise ordinances, all VDOT permit requirements and all other applicable laws, regulations, rules, ordinances, resolutions, and permit requirements.

4.13 DOCUMENTS AND SAMPLES AT THE SITE

4.13.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data, Samples and Manuals. These shall be available to the A/E/CM. These shall be delivered to the Owner upon completion of the Work.

4.13.2 The Owner may, at its option, furnish electronic contract documents at the beginning of the Contract. These are to be returned to the A/E/CM prior to final payment, with the as-built information drawn on. During the course of the construction, they are available to the Contractor for general reproduction purposes.

4.14 SHOP DRAWINGS, PRODUCT DATA, SAMPLES AND MANUALS

4.14.1 SHOP DRAWINGS are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.14.2 PRODUCT DATA are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

4.14.3 SAMPLES are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

4.14.4 MANUALS are manufacturer's installation, start-up, operating, maintenance and repair instructions, together with parts lists, pictures, sketches and diagrams which set forth the manufacturer's requirements, for the benefit of the Contractor and the Owner.

4.14.5 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the Work of the Owner or any separate contractor, all Shop Drawings, Product Data, Samples and Manuals required by the Contract Documents.

4.14.5.1 Unless otherwise directed in writing, the Contractor shall submit not less than eight (8) copies of each Shop Drawing or Product Data to the A/E/CM and one (1) copy to the Owner. The Owner will return four (4) copies of each approved submittal directly to the Contractor.

4.14.5.2 Where the Contract calls for the submittal of manufacturer's data to the A/E/CM for information only, such submittals shall be made before the commencement of any portion of the Work requiring such submission.

4.14.6 By approving and submitting Shop Drawings, Product Data, Samples and Manuals, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

4.14.6.1 Parts and details not fully indicated on the contract drawings shall be detailed by the Contractor in accordance with standard engineering practice. Dimensions on the contract drawings, as well as detailed drawings themselves are subject in every case to measurements of existing, adjacent, incorporated and completed work, which shall be taken by the Contractor before undertaking any work dependent on such data.

4.14.7 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner or A/E/CM's approval of Shop Drawings, Product Data, Samples or Manuals under Article 2 unless the Contractor has specifically informed the Owner and A/E/CM in writing of such deviation at the time of submission and the Owner has given

written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, Samples or Manuals by the A/E/CM's approval thereof.

- 4.14.8 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Owner or A/E/CM on previous submittals.
- 4.14.8.1 No portion of the Work requiring submission of Shop Drawings, Product Data, Samples shall commence until the submittal has been approved by the Owner and A/E/CM as provided in Article 2. All such portions of the Work shall be in accordance with approved submittals.
- 4.14.9 For substances that are proposed for use in the project that may be hazardous to human health, the Contractor shall submit to the A/E/CM, for information only, information on precautions for safety using these substances, including certification of registration by the Contractor with authorities under the respective Virginia and Federal Toxic Substances Control Acts.
- 4.14.10 Unless otherwise modified by the Owner in writing, the Contractor shall label or stamp and number all Shop Drawings, Product Data, Samples or Manuals as hereinafter prescribed. Such label or stamp shall be permanently affixed to each shop drawing, sample or manual without the use of staples or clips and shall be acceptable to Owner.
- 4.14.10.1 In order to indicate that the submittals have been Reviewed and Approved by the Contractor as to conformance to the Contract Documents, the Contractor shall have made and shall use labels and/or a rubber stamp which shall materially conform to the following sample:

Submittal No. _____

For Contract No. _____, Project No. _____

Contractor: _____

REVIEWED and APPROVED for Conformance with the Contract Documents

By: _____ Date _____
(Signature)

References: _____

Drawing Sheet No's.: _____ Specification Section No.: _____

- 4.14.10.2 The Contractor shall utilize a ten (10) character submittal identification numbering system in the following manner:
- .1 The first character shall be a D or S or M, which represents Shop/Working Drawing and other Product Data (D); Sample (S) or Operating/Maintenance Manual (M).
 - .2 The next five (5) digits shall be the applicable Specification Section Number.
 - .3 The next three (3) digits shall be the numbers 001-999 to sequentially number each separate item or drawing submitted under each specific Section number.

- .4 The last character shall be a letter, A-Z, indicating the submission or resubmission of the same drawing, i.e., A=1st submission, B=2nd submission, C=3rd submission, etc. A typical submittal number would be as follows:

D-03300-008-B

D Shop Drawing

03300 - Specification Section for Concrete

008 - The eighth different submittal under this specification.

B - The second submission (1st resubmission) of that particular drawing.

- 4.14.11 The Contractor shall submit a copy of each submittal for shop drawings, product data, samples or manuals to the Owner simultaneously with the Contractor's submission of said drawings, data, samples or manual packages to the A/E/CM.

- 4.14.12 The Contractor will be responsible for all submittal, shop drawing, and product sample review costs incurred by the A/E/CM once a submittal, shop drawing, or product sample has been rejected twice by the A/E/CM.

4.15 EQUAL AND SUBSTITUTE PRODUCTS:

- 4.15.1 The term "Product" as used herein refers to materials, equipment, supplies, articles, fixtures, devices, types of construction, methods of construction or products, as appropriate.

- 4.15.2 All products furnished shall, whenever specified and otherwise wherever practicable, be the standard products of recognized, reputable manufacturers. Unless otherwise provided in the Contract Documents, the naming of a certain brand, make, manufacturer or article, device, product, material, fixture or type of construction shall convey the general style, type, character and standard of quality of the article desired and shall not be construed as limiting competition. The Contractor may request approval of the Owner to use another brand, make, manufacturer, article, device, product, material, fixture, form or type of construction which the Contractor judges to be equal to that specified. An item shall not be considered by the Owner for approval as equal to the item so named or described unless (1) it is at least equal in quality, durability, appearance, strength, and design; (2) it will perform at least equally the specific function imposed by the general design for the work being contracted for or the material being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the specifications. Approval shall be at the sole discretion of the Owner and will be based upon considerations of quality, workmanship, economy of operation, suitability for the purpose intended, and acceptability for use on the project. Any such approval must be in writing to be effective and the decision of the Owner shall be final.

- 4.15.3 If the Contractor elects to use an equal product previously approved by an Addendum during bidding, and the Contractor (as a Bidder) did not provide the "Contractor Request For Equal and/or Substitute Product and Contractor's Representations" form prior to the opening of bids, he shall comply with the requirements of paragraph 4.15.5. However, it is not necessary to submit the data required in 4.15.4.

- 4.15.4 To obtain such approval of equal products other than those specified in Contract Documents, and not previously approved during the bidding, the Contractor's request for approval of any equal product shall include the following, as requested:

- .1 Complete data substantiating compliance of the proposed equal product with the

Contract Documents;

- .2 Accurate cost data on proposed equal product in comparison with product or method specified;
- .3 Product identification including manufacturer's name, address, and phone number;
- .4 Manufacturer's literature showing complete product description, performance and test data, and all reference standards;
- .5 Samples and colors in the case of articles or products;
- .6 Name and address of similar projects on which the product was used and date of installation;
- .7 For construction methods, include a detailed description for the proposed method and drawings illustrating same; and
- .8 All directions, specifications, and recommendations by manufacturers for installation, handling, storing, adjustment, and operation.

4.15.5 The Contractor shall also submit with his request for approval a signed statement which shall include all of the following representations by the Contractor, namely that:

- .1 He has investigated the proposed equal product and determined that it is equal or better in all respects to that specified and that it fully complies with all requirements of the Contract Documents;
- .2 He will meet all contract obligations with regard to this equal product;
- .3 He will coordinate installation of accepted equal products into the work, making all such changes and any required schedule adjustments, at no additional cost to the Owner, as may be required for the Work to be complete in all respects;
- .4 He waives all claims for additional costs and additional time related to equal products. He also agrees to hold the Owner harmless from claims for extra costs and time incurred by Subcontractors and suppliers, and that he will be responsible for all additional services or redesign costs which may have to be performed by the A/E/CM, and for changes or extra work that may, at some later date, be determined to be necessary in order for the Work to function in the manner intended in the Contract Documents;
- .5 He will provide the same warranty and guarantee, and perform any work required in accordance therewith, for the equal product that is applicable to the specified item for which the equal product is requested;
- .6 Material will be installed, handled, stored, adjusted, tested, and operated in accordance with the manufacturers' recommendation and as specified in the Contract Documents;
- .7 In all cases new materials will be used unless this provision is waived by notice from the Owner or unless otherwise specified in the Contract Documents;
- .8 All material and workmanship will be in every respect, in accordance with that which in the opinion of the Owner, is in conformity with approved modern practice; and

- .9 He has provided accurate cost data on the proposed equal product in comparison with the product or method specified, if applicable.

4.15.6 The Owner may require tests of all products proposed as equal products so submitted to establish quality standards, at the Contractor's expense. After approval of an equal product, if it is determined that the Contractor submitted defective information or data regarding the equal product upon which Owner's approval was based, and that unexpected or unanticipated redesign or rework of the project will be required in order to accommodate the equal product, or that the item will not perform or function as well as the specified item for which equal product was requested, the Contractor will be required to furnish the original specified item or request approval to use another equal product; the Contractor shall pay all costs, expenses or damages associated with or related to the unacceptability of such an equal product and the resultant utilization of another item and no time extension shall be granted for any delays associated with or related to such an equal product.

4.15.7 If an equal product is approved, no change in brand or make will be permitted unless satisfactory, written evidence is presented to and approved by the Owner that the manufacturer cannot make scheduled delivery of the approved item. Equal products will not be considered for approval by the Owner if:

- .1 The proposed equal product is indicated or implied on the Contractor's shop drawing or product data submittals and has not been formally submitted for approval by the Contractor in accordance with the above-stated requirements; or
- .2 Acceptance of the proposed equal product will require substantial design revisions to the Contract Documents or is otherwise not acceptable to the Owner.

4.15.8 Except as otherwise provided for by the provisions of any applicable laws, the Contractor shall not have any right of appeal from the decision of the Owner disapproving any products submitted if the Contractor fails to obtain the approval for an equal product under this Article.

4.15.9 If the Contractor proposes a product which the Owner determines is not equal to the product named in Contract Documents but which the Owner nevertheless is willing to accept, Contractor shall provide upon request by the Owner an itemized comparison of the proposed substitution with the product specified and the cost differential which shall be credited to the Owner in a Change Order issued in accordance with Article 12.

4.16 USE OF SITE

4.16.1 The Contractor shall confine his operations at the site to areas permitted by law, ordinances, permits, easements, right-of-way agreements and the Contract Documents. The Contractor shall not unreasonably encumber the site, in the opinion of the Owner, with any materials, equipment or trailers nor shall he block the entrances or otherwise prevent reasonable access to the site, other working and parking areas, completed portions of the Work and/or properties, storage areas, areas of other facilities that are adjacent to the worksite. If the Contractor fails or refuses to move said material, equipment or trailers within 24 hours of notification by the Owner to so do, the Owner shall have the right, without further notice, to remove, at the Contractor's expense, any material, equipment and/or trailers which the Owner deems are in violation of this paragraph.

4.17 CUTTING AND PATCHING OF WORK

- 4.17.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work and to make its several parts fit properly and in accordance with the Contract Documents.
- 4.17.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor his consent to cutting or otherwise altering the Work. The Owner shall not be required to accept Work with a cut, splice, or patch when such cut, splice or patch is not generally accepted practice for the particular work involved or is otherwise unworkmanlike in the opinion of the Owner.

4.18 RIGHT TO PUBLISH

- 4.18.1 The Contractor agrees that he will not publish, cause to be published, or otherwise disseminate any information of whatever nature relating to the Work being performed under this Contract, except as may be approved by the Owner in writing.

4.19 SITE CLEAN UP

- 4.19.1 The Contractor at all times shall keep the Project site free from accumulation of waste materials or rubbish caused by his operations. Before final payment is made, the Contractor shall remove all of his waste materials, rubbish, scrap materials, debris, tools, construction equipment, machinery, surplus materials, falsework, temporary structures, including foundations thereof and plant of any description, from the Project site and put the site in a neat, clean, orderly condition.
- 4.19.2 If the Contractor fails to clean up, as required herein, at any time during the performance of the Work or at the completion of the Work, the Owner may do so as provided herein and the cost thereof shall be back charged to the Contractor.

4.20 PATENTS, ROYALTIES, ETC.

- 4.20.1 The Contractor guarantees to save harmless the Owner, its officers, agents, servants and employees from liability of any kind or nature, including cost, expense and attorney's fees on account of suits and claims of any kind for violation or infringement of any letters patent or patent rights by the Contractor, or by anyone directly or indirectly employed by him, or by reason of the use of any art, process, method, machine, manufacture, or composition of matter patented or unpatented in the performance of this Contract in violation or infringement of any letter or rights. The Contractor agrees to pay all royalties, fees, licenses, etc. required in respect of the work or any part thereof as part of his obligations hereunder without any additional compensation.

4.21 INDEMNIFICATION

- 4.21.1 It is hereby mutually covenanted and agreed that the relation of the Contractor to the work to be

performed by him under this Contract shall be that of an independent contractor and that as such he will be responsible for all damages, loss or injury, including death, to persons or property that may arise or be incurred in or during the conduct and progress of said work as the result of any action, omission or operation under the Contract or in connection with the Work, whether such action, omission or operation is attributable to the Contractor, and Subcontractor, any material supplier, or anyone directly or indirectly employed by any of them. The Contractor shall make good any damages that may occur in consequence of the Work or any part of it. The Contractor shall assume all liability, loss and responsibility of whatsoever nature by reason of his neglect or violation of any Federal, State, County or local laws, regulations or ordinances.

- 4.21.2 To the fullest extent permitted by law, the Contractor shall waive and release claims against and shall indemnify, hold harmless and defend the Owner and A/E/CM, their employees, agents, servants and representatives from and against any and all claims, suits, demands, actions, costs (including attorney's fees) and damages which may be asserted against the Owner and/or A/E/CM on account of any such damages or injuries, including death, arising out of or resulting from the negligent performance of the Work by Contractor or the failure to perform the Work by Contractor, including jurisdictional labor disputes or other labor troubles that may occur during the performance of the Work.
- 4.21.3 The indemnification obligations under this Article shall not be affected in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under worker's or workman's compensation acts, disability benefit acts or other employee benefit acts.
- 4.21.4 The obligations of the Contractor under this Article 4.21 shall not extend to the liability of the A/E/CM, his agents or employees, arising out of; (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the A/E/CM, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.
- 4.21.5 The obligations of the Contractor under this Article 4.21 shall not extend to the proportion of damages, loss or injury, including death, to persons or property that may arise or be incurred as the result of any action, omission or operation of the Owner, A/E/CM, Separate Contractor(s), their employees, agents, servants, and/or representatives.

4.22 NON-DISCRIMINATION IN EMPLOYMENT

- 4.22.1 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 religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor and the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause in accordance with the requirements of Virginia Code § [2.2-4311](#), as amended;
 - .2 The Contractor will also include the provisions of Virginia Code Section 2.2-4311 in every subcontract or purchase order over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

4.23 CONTRACT SECURITY

- 4.23.1 The Successful Bidder shall deliver to the Owner three (3) originals of a Performance Bond and a separate Labor and Material Payment Bond in a form acceptable to the Owner and each in an amount required by the Contract Documents in Section A, Information for Bidders, as security for the faithful performance of the Contract, and the payment of all persons performing labor and furnishing materials in connection with this Contract. The cost of such bonds shall be included in the Contractor's Bid. The amount of the Performance and Payment Bonds shall be increased to the same extent the Contract Sum is increased due to modifications. The form of bonds shall be acceptable to the Owner and the surety shall be such surety company or companies as are acceptable to the Owner and as are authorized to transact business in the Commonwealth of Virginia.
- 4.23.2 Unless otherwise required in the Contract Documents, the Contractor may at his option require such Subcontractor to furnish a Labor and Material Payment Bond with surety thereon. If such bonds are provided, the Contractor shall ensure that the surety corporation providing the bond for the Subcontractor, is licensed to do business in Virginia.
- 4.23.3 The Contractor shall ensure that all sureties providing bonds for the Project will give written notice to the Owner, at least thirty (30) days prior to the expiration or termination of the bond(s).
- 4.23.4 If, at any time, any surety or sureties becomes insolvent or is determined by the Owner to be unable to adequately secure the interest of the Owner, the Contractor shall within (30) days after notice from the Owner to do so, substitute an acceptable bond(s) in such form and sum and signed by such other sureties as may be satisfactory to the Owner. The premiums on such bond(s) shall be paid by the Contractor.

4.24 DRUG-FREE WORK PLACE

- 4.25.1 During the performance of a 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 advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (4) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this Article, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this Article, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

4.25 FELONS/SEX OFFENDERS

- 4.25.1 Pursuant to Code of Virginia §22.1-296.1.C., Contractor certifies that it, any of its employees, any of its subcontractors or consultants, and any of their employees who will have direct

contact with any SCPS students have not been convicted of a felony or any offence involving sexual molestation or physical or sexual abuse or rape of a child. Contractor shall promptly report to the Owner any changes that would make this certification no longer accurate.

4.26 FINANCIAL CLAIMS AND LIENS

- 4.26.1 **Notification Regarding Liens:** The General Contractor shall immediately notify SCPS and A/E/CM, both orally and in writing, of the nature and details of any mechanics' liens, construction liens, builder's trust fund claims, or claims of any type made by anyone against SCPS, the A/E/CM, the General Contractor or any subcontractor or supplier of any of them or against the Project whether or not such claims arise from the Work.
- 4.26.2 **Discharge of Liens:** The General Contractor shall take all action necessary to obtain the prompt discharge of any liens or claims filed against the Project. If any lien or claim filed against the Project is not discharged and released by the claimant, the General Contractor shall, within a reasonable period of time, but in no event more than fourteen (14) calendar days after request and at its own cost, promptly obtain discharge and release of such lien or claim by filing the appropriate bond. If the General Contractor fails to have any such lien or claim discharged and released, or fails to file the appropriate bond, SCPS shall have the right to pay all sums necessary to obtain such a discharge and release, and the General Contractor shall bear and be liable to SCPS for all expenses incurred by SCPS in so doing, including, without limitation, reasonable attorney's fees.

ARTICLE 5 - SUBCONTRACTORS

5.1 DEFINITIONS

- 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform or supply any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term Subcontractor does not include any separate contractor or his Subcontractors.
- 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform or supply any of the Work at the site. The term Sub-subcontractor is referred to throughout the Contractor Documents as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof.
- 5.1.3 The A/E/CM or Owner will not deal directly with any Subcontractor or Sub-subcontractor or materials supplier. Unless otherwise authorized, communication by the A/E/CM or Owner will be made only through the Contractor. Subcontractor, Sub-subcontractors or material suppliers shall route requests for information or clarification through the Contractor to the A/E/CM, with a copy to the Owner.

5.2 AWARD OF SUBCONTRACT AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- 5.2.1 The Contractor shall submit to the Owner with a copy to the A/E/CM or Owner prior to the award of any subcontract for work under this contract and within thirty (30) calendar days of the award of this contract, or within such other period as the Owner may agree to in writing, the names and addresses, business and emergency phone numbers of the Subcontractors or supplier

that he proposes to employ under this contract, Subcontractors Qualification Submittal, if required in accordance with Article 5.4, as well as such other information as may be requested by the Owner. The Contractor shall ensure that all proposed subcontractors and suppliers 1) have the necessary skill, integrity, safety record, past experience and financial resources to perform the work in accordance to contract documents, and 2) meet specific qualification requirements as noted in contract documents, if any.

- 5.2.2 The proposed subcontractor or suppliers may be determined to be "not qualified" and rejected in accordance with Article 5.4. If the Owner finds that the proposed subcontractor or supplier is not qualified, the contractor will be notified promptly in writing. Contractor shall not enter into a contract with any Subcontractor or supplier that has been rejected by the Owner.
- 5.2.3 The Contractor shall make no substitution for any subcontractor, person or entity previously submitted and approved without specific written approval of the Owner of such substitution.

5.3 SUBCONTRACTUAL RELATIONS

- 5.3.1 The Contractor shall notify the Owner and A/E/CM in writing of the names of all subcontractors proposed for the principal parts of the Work and of such others as the Owner or A/E/CM may direct. Where the specifications establish qualifications or criteria for subcontractors, manufacturers, or individuals performing Work on the Project, the Contractor shall be responsible for ascertaining that those proposed meet the criteria or qualifications. Neither the Owner nor the A/E/CM shall direct the Contractor to contract with any particular Subcontractor or Supplier unless provided in the specifications or any other Contract Document.
- 5.3.2 The Owner may, in its sole discretion, furnish to any Subcontractor, if practicable, the amounts of payments made to the Contractor and any other documentation submitted by the Contractor which would tend to show what amounts are due and payable by the Contractor to a Subcontractor.
- 5.3.3 The Contractor shall be fully responsible to the Owner for all acts and omissions of his agents and employees and all succeeding tiers of Subcontractors and Suppliers performing or furnishing any of the Work. Nothing in the Contract Documents shall create any contractual relationship between Owner or A/E/CM and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of Owner or A/E/CM to pay for or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization, except as may otherwise be required by law.
- 5.3.4 The Contractor shall be fully responsible for his invitees at the Project site and for those of his Subcontractors, Suppliers, and their employees, including any acts or omissions of such invitees.
- 5.3.5 The Contractor agrees that he alone is responsible for all dealings with his Subcontractors and Suppliers, and their subcontractors, employees and invitees, including, but not limited to, the Subcontractors' or Suppliers' claims, demands, actions, disputes and similar matters unless specifically provided otherwise by the Contract or by statute.
- 5.3.6 By an appropriate written agreement the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents assumes toward the Owner and the

A/E/CM. Said agreement shall preserve and protect the rights of the Owner and the A/E/CM under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractor's. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of all of the Contract Documents, and identify to the Subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractor's. Each subcontract agreement shall insure that all appropriate provisions of the Contract Documents are complied with by the Subcontractor.

- 5.3.7 The provisions herein regarding Subcontractor approvals shall in no way affect the liability of the Contractor to Owner regarding performance of all obligations by or payment of Subcontractors. Approval to subcontract and of any given Subcontractor shall not to any degree relieve the Contractor of his obligation to perform or have performed to the full satisfaction of the Owner all of the work required by this Contract.

5.4 QUALIFICATION SUBMITTALS

- 5.4.1 Specific qualification submittals may be required of Subcontractors, installers and suppliers for certain critical items of the Work. Required qualification submittals are set forth in detail in the Technical Specifications and shall be collected and submitted by the Contractor to the A/E/CM with copies to the Owner. All qualification information required of a Subcontractor, installer, or supplier for a particular item of Work shall be contained in a separate, complete submittal. The Contractor shall submit the required qualification information within thirty (30) calendar days of the award of this contract, or within such other period as the Owner may agree to in writing.
- 5.4.2 The Owner may reject any proposed Subcontractor, installer or supplier, or any qualification submittals related thereto, for the following reasons:
- .1 The Contractor's failure to submit requested information within the specified time; or
 - .2 The Contractor's failure to provide all of the requested information; or
 - .3 The Contractor's submission of a Subcontractor, installer or supplier, or qualifications thereof, that do not meet the qualification requirements outlined in the Technical Specifications, as determined by the Owner.
- 5.4.3 Should the Owner reject any proposed Subcontractor, installer or supplier in accordance with Article 5.4.2, the Contractor shall submit another firm for approval by the Owner at no additional cost to the Owner.

ARTICLE 6 - WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

- 6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the

site under these or similar Conditions of the Contract.

- 6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.2 MUTUAL RESPONSIBILITY

- 6.2.1 The Contractor shall afford other contractors and the Owner reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and shall properly connect and coordinate the Work with such other work. The Contractor shall coordinate his Work with the Owners and other contractors to store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the Work as will not unduly interfere with the progress of the Work or the work of any other contractors.
 - 6.2.1.1 If the execution or result of any part of the Work depends upon any work of the Owner or of any separate contractor, the Contractor shall, prior to proceeding with the Work, inspect and promptly report to the Owner in writing any apparent discrepancies or defects in such work of the Owner or of any separate contractor that render it unsuitable for the proper execution or result of any part of the Work.
 - 6.2.1.2 Failure of the Contractor to so inspect and report shall constitute an acceptance of the Owner's or separate contractor's work as fit and proper to receive the Work, except as to defects which may develop in the Owner's or separate contractor's work after completion of the Work and which the Contractor could not have discovered by its inspection prior to completion of the Work.
- 6.2.2 Should the Contractor cause damage to the work or property of the Owner or of any separate contractor on the Project, or to other work on the Site, or delay or interfere with the Owner's work on ongoing operations or facilities or adjacent facilities or said separate contractor's work, the Contractor shall be liable for the same; and, in the case of another contractor, the Contractor shall attempt to settle said claim with such other contractor prior to such other contractor's institution of litigation or other proceedings against the Contractor.
 - 6.2.2.1 If such separate contractor sues the Owner on account of any damage, delay or interference caused or alleged to have been so caused by the Contractor, the Owner shall notify the Contractor, who shall defend the Owner in such proceedings at the Contractor's expense. If any judgment or award is entered against the Owner, the Contractor shall satisfy the same and shall reimburse the Owner for all damages, expenses, attorneys' fees and other costs which the Owner incurs as a result thereof.
- 6.2.3 Should Contractor have a dispute with a separate contractor with whom the Owner has contracted regarding damage to the Work or the property of Contractor or to the Work or property of said separate contractor or with regard to any delays or interferences which either Contractor or said separate contractor has caused to the performance of the other's Work, Contractor agrees to attempt to settle such dispute directly with said separate contractor. If such dispute cannot be settled, Contractor agrees to arbitrate such dispute directly with said separate contractor in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in force. Contractor agrees that the Owner shall not be a party to any such arbitration and that in no event shall the Contractor seek to recover from the Owner, and the Contractor hereby represents to the Owner, that it will not seek to recover from it any damages, costs, expenses (including, but not limited to, attorney's fees) or loss of profit incurred

by the Contractor as a result of any damage to the Work or property of the Contractor or any delay or interference caused or allegedly caused by any separate contractor and not caused by the acts or omissions of the Owner, its agents or employees or which arise from or out of (or due to) causes not within the control of the Owner, its agents or employees.

6.3 OWNER'S RIGHT TO CLEAN UP

- 6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up, as required by Article 4, the Owner may clean up and charge the cost thereof to the Contractor responsible in an amount that the Owner deems fair and reasonable.

ARTICLE 7 - MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

- 7.1.1 The provisions of this contract shall be interpreted in accordance with the laws of Virginia and in accordance with the laws, ordinances, regulations, permits and resolutions of Stafford County.

7.2 PROVISIONS REQUIRED BY LAW DEEMED INSERTED

- 7.2.1 Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein and if through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

7.3 SUCCESSORS AND ASSIGNS

- 7.3.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder, without the previous written consent of the Owner and the Contractor's Surety.
- 7.3.1.1 In the event the Contractor desires to make an assignment of all or part of the Contract or any monies due or to become due hereunder, the Contractor shall file a copy of consent of surety, together with a copy of the assignment to the Owner and A/E/CM. In the event the Contractor assigns all or any part of the monies due or to become due under this Contract, the instrument of assignment shall state that the right of assignees in and to any monies due to or to become due to Contractor shall be subject to prior liens and claims of all persons, firms and corporations that provided labor services or furnished material and equipment during the performance of the Work. The rights of assignees shall further be subject to the payment of any liens, claims, or amounts due to Federal or State governments.

7.4 CONTRACT CLAIMS AND DISPUTES:

- 7.4.1 The Owner handles contractual disputes in accordance with Va. Code § 2.2-4363.
- 7.4.2 Subsequent to a final decision rendered in writing as described in Article 2.2.14, all claims, disputes or other matters or questions between the Contractor and the Owner or A/E/CM arising out of or relating to the performance of the Work or any termination hereunder shall be decided by the Superintendent, or his designated representative. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after receipt of final payment; however, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or at the beginning of the work upon which the claim is based.
- 7.4.3 No written decision denying a claim or addressing issues related to the claim shall be considered a denial of the claim unless the written decision is signed by the Superintendent or his designee. The contractor may not institute legal action prior to receipt of the final written decision on the claim unless the public body fails to render a decision within 90 days of submission of the claim. Failure of the public body to render a decision within 90 days shall not result in the contractor being awarded the relief claimed or in any other relief or penalty. The sole remedy for the public body's failure to render a decision within 90 days shall be the contractor's right to institute immediate legal action.
- 7.4.4 A contractor may not institute legal action as provided in § [2.2-4364](#) prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified in the contract. A failure of the public body to render a final decision within the time provided shall be deemed a final decision denying the claim by the public body.
- 7.4.5 The decision of the public body shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the public body by invoking administrative procedures meeting the standards of § [2.2-4365](#), if available, or in the alternative by instituting legal action as provided in § [2.2-4364](#).

7.5 ATTORNEYS' FEES AND OTHER EXPENSES

- 7.5.1 On account of the public monies being administered by the Owner to fund this Contract, the Contractor hereby agrees that he will not submit, assert, litigate or otherwise pursue any claims that are without substantial justification. In the event that the Contractor's claim, or any separate item of a claim, is without substantial justification, the Contractor shall be liable to the Owner and shall pay it for the percentage of all costs and expenses incurred by the Owner in investigating, analyzing, negotiating, appealing, and litigating the claim which percentage shall be equal to the percentage of the Contractor's total claim which is determined to be without substantial justification. A claim without substantial justification is defined as a claim submitted to the Owner without reasonable proof.
- 7.5.2 If the Contractor breaches the obligation stated in 7.5.1 above or any other obligation under the Contract Documents, the Contractor shall reimburse the Owner for all costs and expenses incurred by the Owner relating to such breach, including but not limited to attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional A/E/CM expenses and any other consultant costs.
- 7.5.3 If the Owner prevails in a claim brought against the Contractor, including but not limited to, claims for fraud or misrepresentation, overpayment, defective work, delay damages, and recovery of termination expenses, the Contractor shall reimburse the Owner for all costs and

expenses incurred by the Owner relating to such claim, including but not limited to attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional A/E/CM expenses and any other consultant costs.

7.6 RIGHTS AND REMEDIES

- 7.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law, not inconsistent with the Contract Documents.
- 7.6.2 No action or failure to act by the Owner, A/E/CM or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
- 7.6.3 Contractor agrees that he can be adequately compensated by money damages for any breach of this Contract which may be committed by the Owner and hereby agrees that, no default, act, or omission of the Owner or the A/E/CM, except for failure to make payments as required by the Contract Documents, shall constitute a material breach of the Contract entitling Contractor to cancel or rescind the provisions of this Contract or (unless the Owner shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. Contractor hereby waives any and all rights and remedies to which he might otherwise be or become entitled, saving only its right to money damages.

7.7 TESTS

- 7.7.1 If the Contract Documents, laws, ordinances, rules, regulations, permits, resolutions or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Owner timely notice of its readiness so that the Owner or the A/E/CM or other representatives of the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs normally chargeable to Contractor of such inspections, tests or approvals conducted by public authorities.
- 7.7.2 All materials and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, examination or test by the Owner, A/E/CM, and other representatives of the Owner, at any and all times during the manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. Special, full-sized and performance tests shall be as described in the specifications. Without additional charge, the Contractor shall furnish promptly all reasonable facilities, labor and materials necessary to make tests safe and convenient.
- 7.7.3 The selection of bureaus, laboratories and/or agencies for the inspection and tests of supplies, materials or equipment shall be subject to the approval of the Owner. Satisfactory documentary evidence, including but not limited to certificates of inspection and certified test reports, that the material has passed the required inspection and tests must be furnished to the Owner by the Contractor prior to the incorporation of the materials in the Work or at such times as to allow for appropriate action by the Owner.
- 7.7.4 Inspection or testing performed exclusively for the Contractor's convenience shall be the sole responsibility of the Contractor. Tests required by Contractor's or Subcontractor's error, omission or non-compliance with the Contract Documents, shall be paid for by the Contractor.

- 7.7.5 It is specifically understood and agreed that an inspection and approval of the materials by the Owner shall not in any way subject the Owner to pay for the said materials or any portion thereof, even though incorporated in the Work, if said materials shall in fact turn out to be unfit to be used in the Work, nor shall such inspection be considered as any waiver of objection to the Work on account of the unsoundness or imperfection of the material used.

ARTICLE 8 - CONTRACT TIME

8.1 DEFINITION

- 8.1.1 Unless otherwise provided, the Contract Time is the period of time specified in the Owner-Contractor Agreement for Substantial Completion or Final Completion as may be required of the Work as defined herein, including authorized adjustments thereto. The Contractor shall complete his Work within the Contract Time.
- 8.1.2 The date of commencement of the Work is the date established in a Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established by Modification.
- 8.1.2.1 The Contractor shall not commence work or store materials or equipment on site until written Notice to Proceed is issued or until the Contractor otherwise receives the Owner's written consent. The contractor shall commence work no later than ten (10) days after date of the Notice to Proceed.
- 8.1.3 The date of Substantial Completion of the Work or designated portion thereof is the date recommended by the A/E/CM and determined by Owner when: (1) construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the Work or designated portion thereof for the use for which it is intended; and (2) the Contractor has satisfied all other requirements for Substantial Completion which may be set forth in the Contract Documents.
- 8.1.4 The date of Final Completion of the Work is the date determined by the Owner when the Work is totally complete, to include punch list work, in accordance with the Contract Documents and the Owner may fully occupy and utilize the Work for the use for which it is intended.
- 8.1.5 The term day as used in the Contract Documents shall mean calendar days unless otherwise specifically designated.

8.2 PROGRESS AND COMPLETION

- 8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.
- 8.2.2 The Contractor shall begin the Work on the date of commencement as defined herein. He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial and Final Completion as required by the Contract Documents.

8.3 CLAIMS FOR TIME EXTENSIONS

- 8.3.1 The time during which the Contractor is delayed in the performance of the Work, by the acts or omissions of the Owner, the A/E/CM or their employees or agents, acts of God, unusually severe and abnormal climatic conditions, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotions or freight embargoes, or other conditions beyond the Contractor's control and which the Contractor could not reasonably have foreseen and provided against, shall be added to the time for completion of the Work (i.e., the Contract Time) stated in the Agreement; provided, however, that no claim by the Contractor for an extension of time for delays will be considered unless made in compliance with the requirements of this Article and other provisions of the Contract Documents.
- 8.3.2 Contractor hereby expressly waives any claims against the Owner for an adjustment of the Contract Sum on account of any indirect or direct damages, costs or expenses of any nature which the Contractor, its Subcontractors, or Sub-subcontractor's or any other person may incur as a result of: (1) any delays, reasonable or unreasonable, foreseeable or unforeseeable which are either not caused by the acts or omissions of the Owner, its agents or employees or which arise from or out of (or due to) causes not within the control of the Owner, its agents or employees; or (2) any reasonable delay regardless of its cause; it being understood and agreed that the Contractor's sole and exclusive remedy in any such events shall be an extension of the Contract Time, but only as determined in accordance with the provisions of the Contract Documents.
- 8.3.2.1 If Contractor sustains an unreasonable delay which is beyond his control and not the result of a Change in the Work under Article 12, the Contractor shall be entitled to an increase in the Contract Sum for the reasonable additional costs incurred by the Contractor solely as a direct result of such unreasonable delay, plus additional Fee. Contractor shall not be entitled to recover any other home office overhead or indirect expenses, including any "unabsorbed" home office overhead expenses, unless it can demonstrate that: a) the Contractor was forced to standby and could not progress the Work as a result of the unreasonable delay and b) the Contractor was unable to take on other revenue producing contracts to absorb its home office overhead during the period of unreasonable delay. Contractor shall provide an itemized accounting of all costs claimed under this Article which costs shall be subject to audit in accordance with Article 3.8 and approval by Owner .
- 8.3.3 The burden of proof to substantiate claim for an extension of the Contract Time shall rest with the Contractor, including evidence that the cause was beyond his control. It shall be deemed that the Contractor has control over the supply of labor, materials, equipment, methods and techniques of construction and over the Subcontractors and suppliers, unless otherwise specified in the Contract Documents.
- 8.3.4 In the event of Changes in the Work, any consideration by the Owner for a time extension will be made no later than when the Change Order is prepared or within such other longer periods as the Owner may agree in writing to allow.
- 8.3.5 No time extensions will be granted as a result of the Contractor's improper or unreasonable scheduling or for the Contractor's failure to have Shop Drawings, Product Data, Samples or Manuals submitted in ample time for review under a reasonable and agreed upon schedule.
- 8.3.6 Delays by Subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated herein.
- 8.3.7 The Contractor acknowledges and agrees that actual delays due to changes, suspension of work or excusable delays, in activities which according to the schedule do not affect the Contract Time will not be considered to have any effect upon the Contract Time and therefore will not be

the basis for a time extension.

- 8.3.8 The Contractor acknowledges and agrees that time extensions will be granted only to the extent that: (1) excusable delays exceed the available flexibility in the Contractor's schedule; and (2) Contractor can demonstrate that such excusable delay actually caused, or will cause, delay to the Contractor's schedule that will extend the Contract Time.
- 8.3.9 With respect to Suspensions of Work under Paragraph 3.6 herein, the Contractor shall be entitled to an extension of the Contract Time not to exceed the length of time that the Work was suspended (unless as determined under this Article and the other requirements of the Contract Documents that a further extension is justified and warranted) if the claim is submitted in accordance with the requirements of this Article, and if the suspension is not due to any acts or omissions of the Contractor, any Subcontractor or Sub-subcontractor or any other person or organization for whose acts or omission the Contractor may be liable. The Contractor's claim will be evaluated in accordance with the terms of this Article.
- 8.3.10 The Contractor shall not be entitled to any extension of time for delays resulting from any conditions or other causes unless he shall have given written notice to the Owner, within seven (7) calendar days following the commencement of each such condition or cause, describing the occurrence, the activities impacted and the probable duration of the delay. The Contractor's complete claim submittal for a time extension shall be submitted no later than twenty (20) calendar days after cessation of the delay or within such other longer period as the Owner may agree in writing to allow.
- 8.3.11 No such extension of time shall be deemed a waiver by the Owner of his right to terminate the Contract for abandonment or delay by the Contractor as herein provided or to relieve the Contractor from full responsibility for performance of his obligations hereunder.
- 8.3.12 The Contractor shall be liable to the Owner and shall pay it for a percentage of all costs incurred by the Owner in investigating, analyzing, negotiating, resolving any claim for costs or damages due to the alleged delaying of the Contractor in the performance of the Work, which percentage shall be equal to the percentage of the Contractor's total delay claim which is determined to be false or to have no basis in law or in fact.

8.4 CHANGE ORDER WORK

- 8.4.1 The Contractor shall make every reasonable effort to perform Change Order work within the Contract Time and in such manner as to have minimum delaying effects on all remaining work to be performed under the contract. If, however, the Change Order work results in an unavoidable increase in the time required to complete the project, an extension of the Contract Time may be granted to the Contractor for the Change Order work. The Contractor's request therefore shall be determined in accordance with the provisions of Article 8.3 herein and as follows:
- .1 If the time required for performance of the Change Order work has an unavoidable direct delaying effect on the primary sequence of work activities remaining after rescheduling (e.g., the critical path in CPM type scheduling), the overall contract time may be extended by the minimum number of days required for the Change Order work as mutually agreed upon by the Owner and the Contractor;
 - .2 If the time required for performance of the Change Order work does not have an unavoidable direct delaying effect on the primary sequence of work activities but is

ordered by the Owner at a time such that insufficient Contract Time remains for completion of the Change Order work (and any limited number of contingent work activities), the Contract Time may be extended by the minimum number of days required for the Change Order work as mutually agreed upon by the Owner and the Contractor but only for the Change Order work and contingent activities, all other unaffected work shall be performed within the Contract Time;

- .3 Failure of the Owner and the Contractor to agree on a Contract Time extension as specified in .1 and .2 above shall not relieve the Contractor from proceeding with and performing the Change Order work promptly, as well as in such manner as to have minimal delaying effects on all remaining work to be performed under the Contract.

8.5 LIQUIDATED DAMAGES FOR DELAY

8.5.1 The damages incurred by the Owner due to the Contractor's failure to complete the Work within required Milestone dates and the Contract Time, including any extensions thereof, shall be in the amount set forth in the Owner-Contractor Agreement, for each consecutive day beyond the Milestone dates or the Contract Time (Sundays and all holidays included) for which the Contractor shall fail to complete the Work.

8.5.2 The amount of liquidated damages stipulated to in this Contract is neither a penalty nor a forfeiture and such liquidated damages shall be the sole category of damages recoverable by the Owner against the Contractor if the Owner is unable to use the Work for its fully intended purposes due to a delay in Substantial Completion of the Project or any interim Contract milestones.

8.6 TIME EXTENSIONS FOR WEATHER

8.6.1 The Contract Time will not be extended due to inclement weather conditions which are normal to the general locality of Work site. The time for performance of this Contract includes an allowance for work days (based on a 5 day work week) which, according to historical data, may not be suitable for construction work.

- .1 The following is the schedule of monthly anticipated normal inclement weather work days for the project location and will constitute the base line for monthly weather time extension evaluations.

ANTICIPATED NORMAL INCLEMENT WEATHER WORK-DAYS INCLUDED IN THE CONTRACT TIME OF PERFORMANCE											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
6	6	7	7	8	7	7	6	6	5	6	6

8.6.2 The Contractor, in his planning and scheduling of the Work as required by the Contract Documents, shall allow for the normal inclement weather for the locality of the Work site. If the Contractor believes that the Progress of the Work has been adversely affected and that it will directly result in a failure to meet a Contract Milestone date or Completion within the Contract Time, by weather conditions above and beyond the amount normally expected, he shall submit a written request to the Owner with a copy to the AE for an Extension of Time, pursuant to Paragraph 8.3. Such request for Time Extension must clearly demonstrate that the adverse weather conditions were more severe than allowed in Article 8.6.1.1, and that weather

conditions actually caused a delay beyond Contractor's control and prevented work on critical path activities. Time Extension request must also include detailed reports documenting adverse weather conditions and resulting impact on critical path of the schedule. Weather report indicating daily precipitation less than 0.10 inch or "traces of rain" will not be considered as justification of inclement weather condition.

- 8.6.3 Such request shall be evaluated by the Owner in accordance with the provisions of the Contract Documents and shall include a comparison of actual weather statistics compiled by the Owner for the time of year, locality of the particular Work site with the days claimed by the Contractor and the anticipated normal inclement weather as stated in subparagraph 8.6.1 and impact on critical path of the schedule. The normal inclement weather expected has been included in the designated Contract time for completion. The decision of the Owner shall be final.
- 8.6.4 The Contractor shall not be entitled to any money damages whatsoever for any delays resulting from inclement weather, whether normal or abnormal, foreseeable or unforeseeable. The Contractor and Owner stipulate and agree that for delays due to weather as determined in 8.6.3, the Contractor's sole relief is a time extension granted in accordance with this Article 8.6.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

- 9.1.1 The Contract Sum is stated in the Owner-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents. The Contract Sum includes, but is not limited to, the Contractor's profit and general overhead and all costs and expenses of any nature whatsoever (including without limitation taxes, labor and materials), foreseen or unforeseen, and any increases in said costs and expenses, foreseen or unforeseen, incurred by the Contractor in connection with the performance of the Work, all of which costs and expenses shall be borne solely by the Contractor, except as otherwise provided for in the Contract. The Contractor agrees to assume all increases in costs of any nature whatsoever that may develop during the performance of the Work, except as otherwise provided for in the Contract.

9.2 SCHEDULE OF VALUES

- 9.2.1 For Lump Sum Price Contracts, before the first Application for Payment, the Contractor shall submit to the Owner and A/E/CM, in conjunction with the construction schedule specified in Article 4, a schedule of values allocated to the various portions of the Work, prepared on payment forms provided by the Owner and supported by such data to substantiate its accuracy as the Owner may require. The schedule of values will have line items of sufficient detail to clearly permit payment for individual items of work during each phase of construction. The schedule of values is to include a separate and distinct line item for each of the following; project schedule and monthly updates, O&M manuals, as-built Site Plan, Project Record as-built drawings, and other items noted in Special Conditions. These items are to be budgeted into the base bid, they are not an allowance. The amount of each of these line items shall be as stated in the Special Conditions. If not stated in the Special Conditions they shall be in an amount acceptable to the Owner. This schedule of values, unless rejected by the Owner, shall be used as a basis for the Contractor's Applications for Payment.
- 9.2.2 For Unit Price contracts, the Contractor shall utilize the payment request form provided by the Owner, wherein the schedule of values shall correspond with the individual unit price bid items.

When so requested by the Owner, the Contractor shall provide a more detailed cost breakdown of the unit price items.

- 9.2.3 If approved by the Owner, Contractor may include in his schedule of value a line item for "mobilization" which shall include a reasonable amount for mobilization for the Contractor and his Subcontractors. The Contractor shall not front-end load his schedule of values.

9.3 APPLICATION FOR PAYMENT

- 9.3.1 The Contractor shall submit to the A/E/CM four (4) originally executed, itemized Applications for Payment (and one (1) copy to the Owner) on or before the day of each month designated in Article 6 of the Owner-Contractor Agreement. The Application for Payment shall indicate in complete detail all labor and material incorporated in the Work during the month prior to submission, and supported by such data substantiating the Contractor's payment request as the Owner may require. The Contractor shall also certify that due and payable amounts and bills have been paid by the Contractor for work for which previous Certificates of Payment were issued and payments received from the Owner.
- 9.3.2 Payment may be made for the value of materials, which are to be incorporated into the finished Work, and which are delivered to and suitably stored and protected on the Work site. The Contractor shall provide releases or paid invoices from the Seller to establish, to the Owner's satisfaction, that the Owner has title to said material. Stored materials shall be in addition to the Work completed and shall be subject to the same retainage provisions as the completed Work. Material once paid for by the Owner becomes the property of the Owner and may not be removed from the Work site without the Owner's written permission.
- 9.3.2.1 Unless otherwise provided for in the Contract Documents, no payment will be made for any materials stored off or away from the Work site.
- 9.3.3 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation into the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.
- 9.3.4 The Contractor's Application for Payment shall provide that the payment request attests that all Work for which the request is made has been completed in full according to the drawings, specifications and other terms of the Contract Documents. By submitting his Application for Payment, the Contractor also represents that he has no knowledge that any Subcontractor or suppliers have not been fully and timely paid and that, insofar as he knows, the only outstanding items for payment with respect to the Contract are those to be paid from the funds for which Application is being made.

9.4 CERTIFICATES FOR PAYMENT

- 9.4.1 Within seven (7) calendar days after A/E/CM's receipt of the Contractor's Application for Payment, the A/E/CM will recommend to the Owner such amount as the A/E/CM determines is

properly due, with his reasons for withholding or adjusting a Certificate as provided in Paragraph 9.6, if any.

- 9.4.2 After the Certificate for Payment is recommended by the A/E/CM, the Owner will review it and make any changes deemed necessary by the Owner's Representative. The recommendation of the Certificate for Payment by the A/E/CM does not waive or limit the Owners right to reduce the amount of the payment due to the Contractor as determined to be appropriate by the Owner.
- 9.4.3 The recommendation of a Certificate for Payment will constitute a representation by the A/E/CM to the Owner, based on his observations at the site as provided in Article 2 hereof and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief: (1) the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial or Final Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that (2) the Contractor is entitled to payment in the amount certified. However, by recommending a Certificate for Payment, the A/E/CM shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

9.5 PROGRESS PAYMENTS

- 9.5.1 For any individual payment to the Contractor, after receipt of the Certificate of Payment from the A/E/CM based upon the Owner's approval or adjustment of said Certificate pursuant to Article 9.4, the Owner shall make payment to Contractor in accordance with the requirements of the Virginia Public Procurement Act. The Contractor shall be paid the amount approved or adjusted by the Owner, less 5% retainage which is being held to assure faithful performance; provided however, that said retainage is not applicable to Time and Material Change Orders.
- 9.5.1.2 In relation to punch list or other uncompleted work and in lieu of a portion of the above specified five percent 5% retainage, the Owner may, at its sole discretion, elect to retain fixed amounts directly relating to the various items of uncompleted Work. All amounts withheld shall be included in the Final Payment.
- 9.5.2 The Contractor shall, within seven (7) days after receiving payment from the Owner, do one of the following:
1. Pay all Subcontractors for the proportionate share of the total payment received from the Owner for work performed by each Subcontractor under the contract; or
 2. Notify the Owner and Subcontractor(s), in writing, of his intention to withhold all or part of the Subcontractor's payment with the reason for nonpayment.
- 9.5.3 The Contractor shall make payment to Subcontractors as heretofore specified. Each payment shall reflect the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work.
- 9.5.4 The Contractor shall provide the Owner with his social security number, if an individual and

their federal identification number if a corporation, partnership, or proprietorship.

- 9.5.5 The Contractor shall be obligated to pay unpaid Subcontractors interest on payments which are not made in accordance with this Article 9.5. The rate of interest shall be the legal prevailing rate at the time of nonpayment. The Contractor shall, by an appropriate agreement with each Subcontractor require each Subcontractor to make payments to his sub-subcontractors according to all the same requirements as provided in this Article 9.5.
- 9.5.6 The Owner may, upon written request, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Owner on account of Work done by such Subcontractor.
- 9.5.7 Neither the Owner nor the A/E/CM shall have any obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by law.
- 9.5.8 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.6 PAYMENTS WITHHELD

- 9.6.1 The Owner may withhold the payment in whole or in part, if necessary to reasonably protect the Owner. If the A/E/CM is unable to make representations as provided in subparagraph 9.4.3 and to recommend payment in the amount of the application, he will notify the Owner as provided in subparagraph 9.4.1. If the Contractor and the Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which he is able to make representations with respect to payment due for work performed. The Owner may also decline to certify or make payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or any part of any Certificate for Payment previously issued.
- 9.6.2 The Owner may withhold from the Contractor so much of any approved payment due him as may in the judgment of the Owner be necessary:
- .1 To protect the Owner from loss due to defective work not remedied;
 - .2 To protect the Owner upon notice of the filing in court or in an arbitration proceeding as may be required in any third party contract, of verified claims of any persons supplying labor or materials for the Work, or other verified third party claims;
 - .3 To protect the Owner upon reasonable evidence that the Work will not be completed for the unpaid balance of the Contract Sum;
 - .4 To protect the Owner upon reasonable evidence that the Work will not be completed within the Contract Time, or any Contract Milestones as established by this Contract; or
 - .5 To protect the Owner upon the Contractor's failure to properly schedule and coordinate the work in accordance with or as required by the Contract Documents, or failure to provide progress charts, revisions, updates or other scheduling data as required by the Contract Documents, or upon the Contractor's failure to provide as-built drawings as required herein, or upon Contractor's failure to otherwise substantially or materially comply with the Contract Documents.

9.6.3 The Contractor shall, concurrent with his submission of the Construction Schedule, submit a practicable and realistic payment schedule showing the dates on which the Contractor will submit each and every Application for Payment and the amount he expects to receive for each and every monthly progress payment. If during the performance of the Work, the Contractor expects to receive an amount for a monthly progress payment larger than that indicated on the payment schedule; the Contractor shall notify the Owner at least thirty (30) days in advance of that payment so that the necessary allocation of funds can be processed. In the event the Contractor fails to submit a practicable and realistic payment schedule, the Contractor's Application for Payment shall be honored only to the extent that the Work is actually performed.

9.7 FAILURE OF PAYMENT

If the Owner does not make payment to the Contractor within the twenty-four (24) calendar days after receipt of the Contractor's Application for Payment by the A/E/CM through no fault of Contractor, and the Owner otherwise not being entitled under the Contract Documents or applicable law to withhold payment, then the Contractor may, upon seven (7) additional days' written notice to the Owner and the A/E/CM, stop the Work until payment of the amount owing has been received. In such event, the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order as provided herein.

9.8 SUBSTANTIAL COMPLETION AND GUARANTEE BOND

9.8.1 Unless otherwise specified in Article 9.9, when the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Article 8, the Contractor shall request in writing that the A/E/CM and the Owner perform a Substantial Completion inspection. Prior to such inspection the Contractor shall complete to the Owner's satisfaction all Prerequisites to Substantial Completion as required in the Contract Documents.

9.8.2 The Owner shall determine whether the project is substantially complete and shall compile a punch list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.8.3 When the Owner on the basis of his inspection determines that the Work or a designated portion thereof is substantially complete, the A/E/CM will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion and shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.8.4 The Contractor shall have thirty (30) calendar days from the Date of Substantial Completion to complete all items on the punch list to the satisfaction of the Owner. The Owner shall have the option to correct or otherwise resolve any and all punch list items not completed by the Contractor within thirty (30) calendar days from the Date of Substantial Completion by utilizing its own forces or by hiring others. The cost of such correction or resolution of remaining punch list items by the Owner or others shall be deducted from the final payment to the Contractor.

- 9.8.5 Guarantees and warranties required by the Contract Documents shall commence on the Date of Substantial or Final Completion of the Work, or designated portion thereof, unless otherwise provided in the Certificate of Substantial or Final Completion, or the Contract Documents. Provided, however, that if Contractor does not complete certain punch list items within this time period, specified in 9.8.4, all warranties and guarantees for such incomplete Punch List items shall become effective upon issuance of final payment for the project.
- 9.8.5.1 The Contractor shall guarantee for a term of one (1) year from the date of Substantial and/or Final Completion, as appropriate, (unless otherwise provided for in the Certificate(s) of Substantial or Final Completion or the Contract Documents): (1) the quality and stability of all materials equipment and Work; (2) all the Work against defects in materials, equipment or workmanship; and (3) all shrinkage, settlement or other faults of any kind which are attributable to defective materials or workmanship. The Contractor shall provide the Owner with a written extended warranty for any equipment, system, system component, or any other component of the Work that has not been shown to perform to the full satisfaction of the Owner and that has been the subject of repeated service calls during the one (1) year guarantee term. Such extended warranty shall be for a minimum of one hundred twenty calendar days (120) days or such other length of time as deemed acceptable to the Owner. The Contractor shall remedy at his own expense, when so notified in writing to do so by the Owner, and to the satisfaction of the Owner, the Work or any part thereof that does not conform to any of the warranties and guaranties described in the Contract Documents.
- 9.8.5.2 In order to make good the guarantee as herein required, the Contractor shall deposit with the Owner, before Final Payment or release of retainage, a Guarantee Bond(s) issued by a surety licensed to do business in Virginia and otherwise acceptable to the Owner, for the faithful performance of the guarantee. Said Bond(s) shall be for a period of one (1) year, in accordance with the Certificate(s) of Substantial or Final Completion and in the amount of five percent (5%) of the final gross value of the Contract.
- 9.8.5.3 The Contractor shall start repairs during the guarantee period, within five (5) working days after the receipt of notice from the Owner and if the Contractor shall fail to start such repairs within the said five (5) working days, the Owner may employ such other person or persons as it may deem proper to make such repairs and pay the expenses thereof out of any sum retained by it, provided nothing herein contained shall limit the liability of the Contractor or his surety to the Owner for non-performance of the Contractor's obligations at any time. Contractor shall start repairs immediately when such repairs are required for the operation of the facility or for the safety of its occupants.
- 9.8.6 The issuance of the Certificate of Substantial Completion does not indicate final acceptance of the project by the Owner, and the Contractor is not relieved of any responsibility for the project except as specifically stated in the Certificate of Substantial Completion.
- 9.8.7 Upon Substantial Completion of the Work, or designated portion thereof, and upon application by the Contractor and certification by the A/E/CM, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.
- 9.8.8 Should the Owner determine that the Work or a designated portion thereof is not substantially complete, he shall provide the Contractor a written notice stating why the project or designated portion is not substantially complete. The Contractor shall expeditiously complete the Work and shall re-request in writing that the Owner perform a substantial completion inspection.

9.9 FINAL COMPLETION AND FINAL PAYMENT

- 9.9.1 For all projects that may be so designated by the Owner, a Certificate of Final Completion shall be issued by the A/E/CM prior to final payment. At the Owner's sole option, this Final Completion Certificate may operate in lieu of a Certificate of Substantial Completion. The Contractor, prior to application for Final Payment and within the time specified for completion of the Work, shall complete all Work, to include punch list items and provide operating manuals and as-built data, for the Work, as completed and in place. Said Certificate of Final Completion shall be issued, even if a Certificate of Substantial Completion has been issued previously and temporary authority to operate the Work has been granted.
- 9.9.1.1 The Certificate of Final Completion shall certify that all Work has been totally completed in accordance with Contract Documents and is fully ready for use by the Owner.
- 9.9.2 For all projects where Substantial Completion Certificates have been issued for various portions of the Work, at differing times, the Contractor shall request and the Owner shall, prior to final payment, issue a Certificate of Final Completion which certifies that all required Work, including punch list items, has been completed in accordance with the Contract Documents.
- 9.9.3 Neither the final payment nor any remaining retainage shall become due until the Contractor submits to the Owner and obtains Owner's approval for the following:
- .1 An Application for Payment for all remaining monies due under the Contract.
 - .2 Consent of surety, if any, to final payment, unless otherwise waived by the Owner;
 - .3 If required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish waiver of claims satisfactory to the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such claim. If any such claim remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such claim, including all costs and reasonable attorneys' fees;
 - .4 Approved as-built drawings, operation and maintenance manuals and other project close-out submittals, as required by the Contract Documents;
 - .5 Construction releases as required by the Contract Documents from each property owner on whose property an easement for construction of this project has been obtained by the Owner, such release to be in the forms to be provided by the Owner. This release is for the purpose of releasing the Owner and the Contractor from liability, claims, and damages arising from construction operations on or adjacent to the easement and includes proper restoration of the property after construction. It shall be the Contractor's sole responsibility to obtain all such releases and furnish them to the Owner; and
 - .6 A written certification that:
 - .1 The Contractor has reviewed the requirements of the Contract Documents,
 - .2 The Work has been inspected by the Contractor for compliance with all requirements of the Contract Documents,

- .3 Pursuant to this inspection, the Contractor certifies and represents that the Work complies in all respects with the requirements of the Contract Documents,
- .4 The Contractor further certifies and represents that all equipment and systems have been installed in accordance with the Contract Documents and have been tested in accordance with specification requirements and are operational, and
- .5 The Contractor hereby certifies and represents that the Work including all punch list items are complete in all respects and ready for final inspection.

9.9.4 Subsequent to receipt of the documents required in subparagraph 9.9.3 and upon receipt of a final Application for Payment, the A/E/CM will verify whether the Work is acceptable under the Contract Documents and whether the Contract has been fully performed. If so, the A/E/CM will promptly issue a final Certificate for Payment and, if required, a Final Certificate of Completion stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance designated in the final Certificate for Payment is due and payable. The A/E/CM's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in subparagraph 9.9.3 have been fulfilled. Payment shall be made in full to the Contractor within thirty (30) calendar days of the date of the A/E/CM's final Certificate of Payment provided that the requirements of Article 9 have been fulfilled.

9.9.5 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the A/E/CM so confirms, the Owner shall, upon application by the Contractor and certification by the A/E/CM, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished in accordance with the Contract Documents, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the A/E/CM prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.9.6 The making of Final Payment shall constitute a waiver of all claims by the Owner, except those arising from:

- .1 Unsettled claims;
- .2 Faulty, defective, or non-conforming Work discovered or appearing after Substantial or Final Completion;
- .3 Failure of the Work to comply with the requirements of the Contract Documents;
- .4 Terms of any warranties or guarantees required by the Contract Documents; or
- .5 Fraud or bad faith committed by the Contractor or any subcontractor or supplier during performance of work but discovered by Owner after Final Payment.

9.9.7 The acceptance of Final Payment shall constitute a waiver of all claims by the Contractor, except those previously made in writing and so identified by the Contractor, as unsettled at the

time of the final Application for Payment. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this Contract or the Performance or the Guarantee Bonds.

ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

- 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work in accordance to OSHA regulations and standards and Contract requirements. The requirement applies continuously throughout the Contract performance, until Final Payment is made, and is not limited to regular working hours.

10.2 SAFETY OF PERSONS AND PROPERTY

- 10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
- .1 All employees on the Work and all other persons who may be affected thereby;
 - .2 All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractor's. Machinery, and equipment shall have proper guards in place and all hazards shall be eliminated in accordance with the latest safety provisions of the OSHA Construction Industry Regulations 29 CFR, Parts 1910 and 1926, to the extent that such provisions are not in contravention of applicable law; and
 - .3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
 - .4 Contractor is solely responsible to inspect, survey, and assess the worksite and identify the existence of all permit-required confined spaces and non-permit confined spaces and comply with applicable OSHA regulations and standards. Contractor's site assessment shall begin upon the initiation of Work and continue throughout the duration of the Work. Contractor shall comply with the Virginia Occupational Safety and Health (VOSH) Standard, 16 VAC 25-140, Confined Space Standard for the Construction Industry, and 29 C.F.R. 1910.146 to the extent it is more protective of Contractor's employees and subcontractors' employees.
- 10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, permits, resolutions and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.
- 10.2.2.1 The Contractor shall at all times safely guard the Owner's property from injury or losses in connection with the Contract. He shall at all times safely guard and protect his own work and adjacent property as provided by law and the Contract Documents, from damage. All passageways, guard fences, lights and other facilities required for protection by local authorities or local conditions must be provided and maintained.
- 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users

of adjacent utilities.

- 10.2.4 The use of explosive or other hazardous materials or equipment necessary for the execution of the Work is contingent upon approval of the Owner. If such operations are approved, the Contractor shall obtain all necessary permits and approvals from appropriate authorities having jurisdiction and shall carry out such operations in strict accordance with all current federal, state, and County ordinances and regulations. The Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel. Explosives are not to be stored on site.
- 10.2.5 The Contractor is responsible for the proper packing, shipping, handling and storage (including but not limited to shipment or storage at the proper temperature and humidity) of materials to be incorporated in the Work, so as to insure the preservation of the quality and fitness of the material for proper installation and incorporation in the Work, as required by the Contract Documents. For example, but not by way of limitation, Contractor shall, when necessary, place material on wooden platforms or other hard and clean surfaces and not on the ground and/or place such material under cover or in any appropriate shelter or facility. Stored materials or equipment shall be located so as to facilitate proper inspection. Material and equipment which is delivered crated shall remain crated until ready for installation. Lawns, grass plots or other private property shall not be used for storage purposes without the written permission of the owner or lessee unless otherwise within the terms of the easements obtained by the Owner.
- 10.2.6 In the event of any indirect or direct damage to public or private property referred to in Paragraphs 10.2.1.2 and 10.2.1.3, caused in whole or in part by an act, omission or negligence on the part of the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, the Contractor shall at his own expense and cost promptly remedy and restore such property to a condition equal or better to that which existed before such damage was done. The Contractor shall perform such restoration by underpinning, repairing, rebuilding, replanting, or otherwise restoring as may be required or directed by the Owner, or shall make good such damage in a satisfactory and acceptable manner. In case of failure on the part of the Contractor to promptly restore such property or make good such damage, the Owner may, upon two (2) calendar days written notice, proceed to repair, rebuild or otherwise restore such property as may be necessary and the cost thereof, or a sum sufficient in the judgment of the Owner to reimburse the owners of property so damaged, will be deducted from any monies due or to become due the Contractor under the Contract.
- 10.2.7 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents and the protection of material, equipment and other property. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner.
- 10.2.8 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger the safety of any portion of the Work.
- 10.2.9 The Contractor shall give notice in writing at least forty-eight (48) hours before breaking ground, to all persons, Public Utility Companies, owners of property having structures or improvements in proximity to site of the Work, superintendents, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise, who may be affected by the Contractor's operation, in order that they may remove any obstruction for which they are responsible and have representative on site to see that their property is properly protected. Such notice does not relieve the Contractor of responsibility for any damages, claims, or defense or indemnification of all actions against

Owner and A/E/CM resulting from performance of such work in connection with or arising out of Contract.

- 10.2.10 The Contractor shall protect all utilities encountered while performing its work, whether indicated on the Contract Drawings or not. The Contractor shall maintain utilities in service until moved or abandoned. The Contractor shall exercise due care when excavating around utilities and shall restore any damaged utilities to the same condition or better as existed prior to starting the Work, at no cost to the Owner. The Contractor shall maintain operating utilities or other services, even if they are shown to be abandoned on the Contract Drawings, in service until new facilities are provided, tested and ready for use.
- 10.2.11 The Contractor shall return all improvements on or about the site and adjacent property which are not shown to be altered, removed or otherwise changed to conditions which existed prior to starting work.
- 10.2.12 The Contractor shall protect the Work, including but not limited to, the site, stored materials and equipment, excavations, and excavated or stockpiled soil or other material, intended for use in the Work, and shall take all necessary precautions to prevent or minimize damage to same or detrimental effect upon his performance or that of his subcontractors, caused by or due to rain, snow, ice, run-off, floods, temperature, wind, dust, sand and flying debris; for example, but not by way of limitation, Contractor shall, when necessary, utilize temporary dikes, channels, dewatering systems, or pumping to carry-off divert or drain water, and shall as necessary tie-down or otherwise secure the Work and employ appropriate covers and screens. In addition to any and all other requirements for stored materials identified in the Contract Documents, and when requested by Owner, Contractor shall, with respect to stored materials, provide adequate assurances to Owner that said materials are properly segregated, appropriately labelled for the Project, and are stored and protected from any damage, theft or misuse. Such assurances may include, but are not limited to, photographic evidence, fencing, video surveillance, wrapping, and any other protective measures.

10.3 OBLIGATION OF CONTRACTOR TO ACT IN AN EMERGENCY

- 10.3.1 In case of an emergency which threatens immediate loss or damage to property and/or safety of life, the Contractor shall act, at his discretion and risk, to prevent threatened loss, damage, injury or death. The Contractor shall notify the Owner of the situation and all actions taken immediately thereafter. If, in the opinion of the Contractor, immediate action is not required, the Contractor shall notify the Owner of the emergency situation and proceed in accordance with the Owner's instructions. Provided, however, if any loss, damage, injury or death occurs that could have been prevented by the Contractor's prompt and immediate action, the Contractor shall be fully liable for all costs, damages, claims, actions, suits, attorney's fees and all other expenses arising therefrom or relating thereto.
- 10.3.2 Prior to commencing his work and at all times during the performance of the Work, the Contractor shall provide the Owner two, twenty-four hour (24) emergency phone numbers where his representatives can be contacted.

ARTICLE 11 - INSURANCE

11.1 CONTRACTOR'S INSURANCE REQUIREMENTS FOR CONTRACTS \$1 MILLION OR GREATER IN VALUE

11.1.1 The Contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract.

11.1.2 The contractor shall, during the continuance of all work under the Contract provide the following:

- .1 Maintain statutory Workers' compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
- .2 The Contractor agrees to maintain Commercial General Liability insurance in the amount of \$5,000,000 per occurrence/aggregate, to protect the Contractor, its Subcontractors, and the interest of the SCPS, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required.
- .3 The Contractor agrees to maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$5,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.

.4 BUILDER'S RISK POLICY:

The Contractor shall provide Builder's Risk and Fire and Extended Coverage insurance to protect SCPS and Contractor and Subcontractors against loss caused by the perils insured in the amount of 100% of the insurable value of the Contract less the value of that portion of the Work which has been accepted as substantially complete. Such insurable value shall reflect any increases to the contract amount through Change Orders. Policy to be in Builder's Risk Completed Value forms, including the following:

1. Policies shall be written to include the names of contractors and SCPS and the words "as their interest may appear";

2. all insurance shall be in effect on or before the date when construction work is to commence; and
3. all insurance shall be maintained in full force and effect until the substantial completion of the Work or any portions thereof.
- .5 Liability insurance may be arranged by Commercial General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- .6 Contractor agrees to maintain Environmental Impairment Liability including sudden and accidental pollution and in transit coverage as well as coverage for storage at site.
- .7 Liability Insurance "Claims Made" basis:

If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

1. Agree to provide certificates of insurance evidencing the above coverages for a period of two years after final payment for the Contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's or Subcontractor's work under this Contract, or
2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- .8 The Contractor shall purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the SCPS, the Contractor and Subcontractors.
- .9 Rating Requirements:
 1. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
 2. European markets including those based in London, and the domestic surplus lines market that operate on a non-admitted basis are exempt from this requirement provided that the Contractor's broker can provide financial data to establish that a market's policyholder surpluses are equal to or exceed the surpluses that correspond to Best's A:VI Rating.
- .10 Hold-harmless and Indemnification:

The Contractor hereby agrees to indemnify and hold harmless the School Board of Stafford County, Virginia, its officers, agents and all employees and volunteers, from any and all claims for bodily injury, personal injury, and/or property damage, including cost of investigation, all expenses of litigation, including reasonable attorney fees, and the cost of appeals arising out of any claims or suits which result from errors, omissions, or negligent acts of the Contractor, his Subcontractors and their agents and employees.

- .11 The Contractor will provide an original, signed Certificate of Insurance and such endorsements as prescribed herein.
 - .12 The Contractor will secure and maintain all insurance certificates of its Subcontractors which shall be made available to the SCPS on demand.
 - .13 The Contractor will provide on demand certified copies of all insurance coverages related to the Contract within ten (10) business days of demand by the SCPS. These certified copies will be sent to the SCPS from the Contractor's insurance agent or representative.
- 11.1.3 No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five (45) day written notice to the SCPS. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
 - 11.1.4 Compliance by the Contractor and all Subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all Subcontractors of their liabilities provisions of the Contract.
 - 11.1.5 Contractual and other Liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the SCPS from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the Subcontractors.
 - 11.1.6 Nothing contained in the specifications shall be construed as creating any contractual relationship between any Subcontractor and SCPS. The Contractor shall be as fully responsible to the SCPS for the acts and omissions of the Subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
 - 11.1.7 Precaution shall be exercised at all times for the protection of persons (including employees) and property.
 - 11.1.8 The Contractor and all Subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.
 - 11.1.9 Any loss insured under subparagraph 11.1.2.4 is to be adjusted with SCPS and made payable to SCPS as trustee for the requirements of any applicable mortgagee clause. The Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to his Sub-subcontractors in similar manner.
 - 11.1.10 When SCPS finds it necessary to occupy or use a portion or portions of the work prior to substantial completion thereof, such occupancy shall commence with a mutual agreement between the SCPS and Contractor. The insurance company or companies providing the property insurance recognize this contingency and shall provide evidence of such endorsement prior to commencement of work. This insurance shall not be canceled or lapsed for the unoccupied part of the building on account of such partial occupancy. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.
 - 11.1.11 The School Board of Stafford County, Virginia, its officers and employees shall be named as an

"additional insured" and "loss payee" on the Automobile, Commercial General Liability policies and it shall be stated on the Insurance Certificate with the provision that this coverage "is primary to all other coverage the SCPS may possess." (Use "loss payee" where there is an insurable interest). In addition, the Contractor shall provide the SCPS with an endorsement to the policies verifying the SCPS's additional insured and loss payee status.

- 11.1.12 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.

11.2 CONTRACTOR'S INSURANCE REQUIREMENTS FOR CONTRACTS UNDER \$1 MILLION IN VALUE

- 11.2.1 The Contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract.

- 11.2.2 The contractor shall, during the continuance of all work under the Contract provide the following:

- .1 Maintain statutory Workers' compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
- .2 The Contractor agrees to maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Contractor, its Subcontractors, and the interest of the SCPS, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The Commercial General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required.
- .3 The Contractor agrees to maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.

.4 BUILDER'S RISK POLICY:

The Contractor shall provide Builder's Risk and Fire and Extended Coverage insurance to protect SCPS and Contractor and Subcontractors against loss caused by the perils insured in the amount of 100% of the insurable value of the Contract less the value of that portion

of the Work which has been accepted as substantially complete. Such insurable value shall reflect any increases to the contract amount through Change Orders. Policy to be in Builder's Risk Completed Value forms, including the following:

1. Policies shall be written to include the names of contractors and SCPS and the words "as their interest may appear";
 2. all insurance shall be in effect on or before the date when construction work is to commence; and
 3. all insurance shall be maintained in full force and effect until substantial completion of the Work or any portions thereof.
- .5 Liability insurance may be arranged by Commercial General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- .6 Contractor agrees to maintain Environmental Impairment Liability including sudden and accidental pollution and in transit coverage as well as coverage for storage at site.
- .7 LIABILITY INSURANCE "CLAIMS MADE" BASIS:

If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

1. Agree to provide certificates of insurance evidencing the above coverages for a period of two years after final payment for the Contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's or Subcontractor's work under this Contract, or
 2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- .8 The Contractor shall purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the SCPS, the Contractor and Subcontractors.
- .9 Rating Requirements:
1. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
 2. European markets including those based in London, and the domestic surplus lines market that operate on a non-admitted basis are exempt from this requirement provided that the Contractor's broker can provide financial data to establish that a market's policyholder surpluses are equal to or exceed the surpluses that correspond to Best's A:VI Rating.

- .10 Hold-harmless and Indemnification:

The Contractor hereby agrees to indemnify and hold harmless the School Board of Stafford County, Virginia, its officers, agents and all employees and volunteers, from any and all claims for bodily injury, personal injury, and/or property damage, including cost of investigation, all expenses of litigation, including reasonable attorney fees, and the cost of appeals arising out of any claims or suits which result from errors, omissions, or negligent acts of the Contractor, his Subcontractors and their agents and employees.

- .11 The Contractor will provide an original, signed Certificate of Insurance and such endorsements as prescribed herein.
 - .12 The Contractor will secure and maintain all insurance certificates of its Subcontractors which shall be made available to the SCPS on demand.
 - .13 The Contractor will provide on demand certified copies of all insurance coverages related to the Contract within ten (10) business days of demand by the SCPS. These certified copies will be sent to the SCPS from the Contractor's insurance agent or representative.
- 11.2.3 No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five (45) day written notice to the SCPS. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
 - 11.2.4 Compliance by the Contractor and all Subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all Subcontractors of their liabilities provisions of the Contract.
 - 11.2.5 Contractual and other Liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the SCPS from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the Subcontractors.
 - 11.2.6 Nothing contained in the specifications shall be construed as creating any contractual relationship between any Subcontractor and the SCPS. The Contractor shall be as fully responsible to the SCPS for the acts and omissions of the Subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
 - 11.2.7 Precaution shall be exercised at all times for the protection of persons (including employees) and property.
 - 11.2.8 The Contractor and all Subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.
 - 11.2.9 Any loss insured under subparagraph 11.2.2.4 is to be adjusted with the SCPS and made payable to the SCPS as trustee for the requirements of any applicable mortgagee clause. The Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to his Sub-subcontractors in similar manner.
 - 11.2.10 When the SCPS finds it necessary to occupy or use a portion or portions of the work prior to substantial completion thereof, such occupancy shall commence with a mutual agreement between the SCPS and Contractor. The insurance company or companies providing the

property insurance recognize this contingency and shall provide evidence of such endorsement prior to commencement of work. This insurance shall not be canceled or lapsed for the unoccupied part of the building on account of such partial occupancy. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

- 11.2.11 The School Board of Stafford County, Virginia, its officers and employees shall be named as an "additional insured" and "loss payee" on the Automobile, General Liability policies and it shall be stated on the Insurance Certificate with the provision that this coverage "is primary to all other coverage the SCPS may possess." (Use "loss payee" where there is an insurable interest). In addition, the Contractor shall provide the SCPS with an endorsement to the policies verifying the SCPS's additional insured and loss payee status.
- 11.2.12 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.

ARTICLE 12 - CHANGES AND MODIFICATIONS IN THE WORK

12.1 CHANGES IN THE WORK

- 12.1.1 The Owner, without invalidating the Contract and without notice to the surety, may order a change in the Work consisting of additions, deletions or other revisions to the general scope of the Contract, or changes in the sequence of the performance of the Work. The Contract Sum and the Contract Time shall be adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and all Work involved in a Change shall be performed in accordance with the terms and conditions of this Contract. If the Contractor should proceed with a Change in the Work upon an oral order, by whomsoever given, it shall constitute a waiver by the Contractor of any claim for an increase in the Contract Sum and/or Contract Time, on account thereof.
- 12.1.2 When the Owner and Contractor have agreed upon the cost and time impact, if any, associated with a change in the Work, but a written Change Order Document has not yet been executed, the Owner may, at its sole discretion and option, direct in writing the Contractor to proceed with the change in the Work pending the execution of the formal Change Order. Contractor shall proceed in accordance with such direction.

12.2 CLARIFICATIONS BY FIELD ORDER OR A/E/CM'S SUPPLEMENTAL INSTRUCTIONS

- 12.2.1 A Field Order (FO) or A/E/CM's Supplemental Instructions (ASI) is a written order to the Contractor signed by the Owner or A/E/CM directing the Contractor to perform minor changes in the Work. Any work relating to the issuance of a FO or ASI shall be performed promptly and expeditiously, without additional cost to the Owner and within the Contract Time. If the Contractor considers the FO or ASI a change to the Contract Sum or Contract Time, the Contractor shall submit a Proposed Change Order within twenty (20) calendar days from the issuance date of the FO or ASI. FOs and ASIs shall be numbered consecutively by date of issuance by the Owner or A/E/CM.
- 12.2.2 **REQUEST FOR INFORMATION**

A Request for Information (RFI) is a contractor initiated request, in writing, seeking a clarification or information. An RFI shall address the specific plan detail/drawing number and/or pertinent specification paragraph and section that relate to the question. The Owner or A/E/CM will respond in a reasonable period of time to clarify information or direct Contractor to perform minor changes in the Work. Any work relating to the issuance of an RFI response shall be performed promptly and expeditiously, without additional cost to the Owner and within Contract Time. If the Contractor considers the response a change to the Contract Sum or Contract Time, the Contractor shall submit a Proposed Change Order within 20 calendar days from the issuance date of the RFI response. If the Owner or A/E/CM considers the response a change to the contract a Request for Proposal (RFP) will be issued. RFP's shall be numbered consecutively by the date of issuance.

12.3 REQUEST FOR PROPOSAL

- 12.3.1 A Request for Proposal, issued by either the Owner or the A/E/CM, describes a proposed Change in the Work. The Contractor is required to submit a complete proposal within (20) calendar days of issuance of the Request for Proposal for the total cost and additional time, if any, necessary to perform the proposed Change in the Work. Requests For Proposals shall be numbered consecutively by date of issuance by the Owner.

12.4 PROPOSED CHANGE ORDER

- 12.4.1 A Proposed Change Order is a written request from the Contractor to the Owner requesting a change in the Contract Amount and/or Contract Time. A Proposed Change Order is required to be submitted for any contractor request to increase the Contract Sum or Contract Time in response to a Request for Proposal, a Field Order, or A/E/CM's Supplemental Instructions, a Request for Information or any other reason for a change to the Contract Sum or Contract Time. A Proposed Change Order must be submitted within twenty (20) calendar days, or within such other longer period as the Owner may agree in writing to allow. The Contractor shall not be entitled to time and/or costs of any nature from the Owner as a result of his failure to comply with this provision. Proposed Change Orders shall be numbered consecutively by date of issuance by the Contractor. The Contractor shall also indicate on the Proposed Change Order the number of the Request for Proposal, Field Order or Request for Information to which it responds from the Contractor's receipt of a RFP, FO, ASI, RFI or for any other reasons in which the Contractor seeks a change to contract Sum or Time.
- 12.4.2 In the case of a unit price contract, it is understood and agreed by the Contractor that the estimates of the quantities in unit price items are approximate only and presented solely for the purpose of comparing bids and may not represent the actual amount of work to be performed. The Contractor, therefore, understands and agrees that the Owner reserves the right to increase, decrease or eliminate entirely the quantity of work to be done under any item. If called upon to do more work under any unit price item named in the Form of Bid, he will perform all such additional work and accept as payment the unit price named in the proposal, subject to the 20% deviation limitations specified in subparagraph 12.4.2.2.
- 12.4.2.1 The Contractor's Proposed Change Order shall be determined by applicable unit prices, if any, as set forth in the Contract.
- 12.4.2.2 However, if changes in quantities are greater or lesser than twenty percent (20%) of the original bid quantity the Owner or the Contractor shall have the right to review the unit price and

negotiate a new unit price for the quantity greater than 120% or less than 80% of the original bid quantity.

- 12.4.2.3 It shall be understood that such unit prices shall constitute full payment for the extra work performed, including plant, materials, labor, equipment, overhead, profit, all direct and indirect costs, impacts, delays, taxes, insurance, and safety requirements.
- 12.4.3 If no such unit prices are set forth, and unless otherwise approved by the Owner, the Contractor's proposal shall be on a lump sum basis and shall be itemized and segregated by labor, equipment, and materials for the various components of the Change in the Work (no aggregate labor total will be acceptable) and shall be accompanied by signed proposals of any Subcontractors and sub-subcontractor who will perform any portion of the Change in the Work and of any persons who will furnish materials or equipment for incorporation therein.
 - 12.4.3.1 The portion of the proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors, may include reasonably anticipated gross wages of Job Site labor, including foremen, who will be directly involved in the Change in the Work (for such time as they will be so involved), plus payroll costs (including premium costs of overtime labor, if overtime is authorized, Social Security, Federal or State unemployment insurance taxes and fringe benefits required by collective bargaining agreements entered into by the Contractor or any such Subcontractor in connection with such labor).
 - 12.4.3.2 The portion of the proposal relating to materials may include the reasonably anticipated direct costs to the Contractor or to any of its Subcontractors of materials to be purchased for incorporation in the Change in the Work, plus transportation and applicable sales taxes.
 - 12.4.3.3 The proposal may further include the Contractor's and any of his Subcontractor's reasonably anticipated equipment rental costs, except for small hand tools, in connection with the Change in the Work. For Contractor Owned equipment, the Contractor will be allowed only 65% of the Blue Book rental rates which will be determined by using the monthly rental rates taken from the current edition of the Rental Rate Blue Book for Construction Equipment and dividing it by 176. An allowance will be made for operating costs for each and every hour the equipment is actually operating in accordance with the rates listed in the aforesaid Rental Book.
- 12.4.4 Base Cost is defined as the total of labor, material and equipment rentals as described in subparagraphs 12.4.3.1, 12.4.3.2 and 12.4.3.3. The actual net cost in money to the Owner for the Change in the Work shall be computed as follows:
 - .1 If the Contractor performs the Change in the Work, his compensation will be the Base Costs as described above, plus a mark-up of 15% on Base Costs for overhead and profit, and all other costs noted in Article 12.4.5.
 - .2 If the Work is performed by a bona fide Subcontractor, his compensation will be the Base Costs as described above plus a mark-up as described in Paragraph 12.4.4.1 for overhead and profit and all other costs noted in Article 12.4.5. The Contractor's compensation will be a mark-up of fifteen percent (15%) of the Subcontractors Base Costs for his overhead and profit, and other costs noted in Article 12.4.5.
 - .3 If the Work is performed by a bona fide Sub-subcontractor, his compensation will be the Base Costs as herein described plus a mark-up as described in Paragraph 12.4.4.1 for overhead and profit, and other costs noted in Article 12.4.5. The Subcontractors compensation will be a mark-up of ten percent (10%) of the Sub-subcontractor's Base Costs for his overhead and profit and other costs noted in Article 12.4.5. The Contractor's

compensation will be a mark-up of ten percent (10%) of the Sub-subcontractor Base Costs for his overhead and profit, and other costs noted in Article 12.4.5.

- 12.4.5 The mark-up on the cost of labor, materials, and equipment described in Paragraphs 12.4.4.1, 12.4.4.2, and 12.4.4.3 shall also compensate the Contractor, Subcontractor, and Sub-subcontractor for all indirect costs associated with or relating to the Change in the Work including, but not limited to, labor and/or equipment inefficiency, changes in sequence, delays, interferences, disruptions, impact on unchanged work, state and any other gross receipts taxes, any use tax, additional premiums for increases in all bonds as required in Article 4.23, any additional insurance premiums, supervision, field engineering and coordination, superintendent, small tools, reproduction, Proposed Change Order preparation costs, administration, schedule adjustments and updates, as-built documentation and updates, safety requirements, temporary structures and offices, all other general and administrative, home office and field office expenses.
- 12.4.6 In the event that it is necessary to increase the Contract Time in order to perform the Change in the Work, the Contractor shall provide an estimate of the increase in the Contract Time which shall be negotiated by the parties to the contract. The Contractor's request for a time extension shall be evaluated in accordance with the criteria described in Article 8.3.
- 12.4.6.1 If and to the extent that the Contractor can demonstrate that it is entitled to an extension of the Contract Time as a result of a Change in the Work under Article 12, the Contractor shall be entitled to an adjustment of the Contract Sum for the reasonable additional costs incurred by the Contractor solely as a direct result of such extension of the Contract Time. Contractor shall not be entitled to recover any home office overhead or indirect expenses, including any "unabsorbed" home office overhead expenses, unless it can demonstrate that: a) the Contractor was forced to standby and could not progress the Work as a result of the delay and b) the Contractor was unable to take on other revenue producing contracts to absorb its home office overhead during the period of such delay. Contractor shall provide an itemized accounting of all costs claimed under this Article which costs shall be subject to audit in accordance with Article 3.8.
- 12.4.7 If the Contractor's Proposed Change Order is rejected by the Owner as being within the scope of the Work required by the Contract Documents the Owner may, at its sole option and discretion, direct the Contractor to perform the Work which is the subject of the said Proposed Change Order; the Contractor shall then promptly proceed with said Work. Nothing herein shall excuse the timely performance by the Contractor of the Work because any Proposed Change Order is pending.

12.5 CHANGE ORDER

- 12.5.1 A Change Order is a written order to the Contractor signed by the Owner and the A/E/CM, issued after execution of the Contract, authorizing a Change in the Work or an adjustment in the Contract Sum and/or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. Change Orders shall be numbered consecutively by date of issuance by the Owner and shall, if applicable, indicate the number of the Field Order(s), Request For Proposal(s) and/or Proposed Change Order(s) to which it relates.
- 12.5.1.1 If the Owner determines that the Contractor's Proposed Change Order, submitted pursuant to Article 12.4 for a change in the Contract Sum or Contract Time, is acceptable, the Department

Director identified in the Owner-Contractor Agreement, or his designee, shall prepare and issue, or cause to be prepared and issued, a Change Order signed by authorized representatives of the Owner and Contractor, which will authorize the Contractor to proceed with the Change in the Work for the cost and time stated in the Change Order, or as otherwise may be agreed upon by the parties. The amounts stated in the Change Order for the cost and time to perform the Change in the Work shall be binding on the parties.

- 12.5.2 After issuance of the Change Order, the Contractor shall ensure that the amount of the Performance and Payment Bond coverage has been revised to reflect the increase in the Contract Sum due to the Change Order.
- 12.5.3 If the Contractor's Proposed Change Order is not acceptable to the Owner or if the parties are unable to otherwise agree as to the cost and time necessary to perform the Change in the Work, the Owner may, at its sole option and discretion, direct the Contractor to perform the Work based on a Unilateral Change Order, or Construction Change Directive, or on a time and material basis. The Contractor shall then promptly proceed with the Work.
- 12.5.4 If the Owner elects to have the Change in the Work performed on a time and material basis, the same shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-subcontractor's, at actual cost to the entity performing the Change in the Work (without any charge for administration, clerical expense, supervision or superintendent of any nature whatsoever. The percent mark-ups for the Contractor, Subcontractors and Sub-subcontractor's shall be as described in subparagraphs 12.4.4 and 12.4.5.
 - 12.5.4.1 Prior to starting the work on a time and material basis, the Contractor shall notify the Owner in writing as to what labor, materials, equipment or rentals are to be used for the Change in the Work. During the performance of the Change, the Contractor shall submit to the Owner daily time and material tickets, which shall list the categories and amounts of labor and equipment for which Change Order compensation is to be charged for the previous work day. Such tickets shall specifically include the following information: location and description of the Change in the Work, the classification of labor employed, including names and social security numbers of laborers, labor trades used, man hours, wage rates, insurance, taxes and fringe benefits, equipment and materials suppliers' quotations with detailed break-out and pricing, rental equipment hours and rates, and materials quantities and unit prices and such other evidence of cost as the Owner may require.
 - 12.5.4.2 The Contractor shall commence submission of daily time and material tickets immediately upon commencement of the Change Order Work and continue to submit them until completion of the Change Order Work. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose.
 - 12.5.4.3 The failure of the Contractor to provide any required authentication shall, if the Owner elects to treat it as such, constitute a waiver by the Contractor of any claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the Owner shall not constitute an acknowledgment by the Owner that the items thereon were reasonably required for the Change in the Work.
 - 12.5.4.4 For any work performed on a time and material basis, the Contractor shall submit its complete submission of the reasonable actual cost and time to perform the Change in the Work within twenty (20) days after such Work has been completed or within such other longer period as the Owner may agree in writing to allow. The Owner and the A/E/CM shall review the costs and time submitted by the Contractor on the basis of reasonable expenditures and savings of those

performing the Change in the Work. If such costs and time are acceptable to the Owner, or if the parties otherwise agree to the actual reasonable cost to perform the Change in the Work, a Change Order will be issued for the cost and time agreed upon. The amounts stated in the Change Order for the cost and time to perform the Change in the Work shall be binding upon the parties.

- 12.5.5 The Contractor shall be entitled to costs as provided for in Article 12.4 which the Contractor, its Subcontractors, or Sub-subcontractors may incur as a result of delays, interferences, suspensions, changes in sequence or the like, which are unreasonable, as defined in Article 12.4.5.1 arising from the performance of any and all changes in the Work, caused by acts or omissions of the Owner, performed pursuant to this Article 12.

12.6 UNILATERAL CHANGE ORDER AND/OR CONSTRUCTION CHANGE DIRECTIVE

- 12.6.1 In the event that the parties are unable to agree as to the reasonable cost and time to perform the Change in the Work and the Owner does not elect to have the Change in the Work performed on a time and material basis, the Owner shall make a unilateral determination of the reasonable cost and time to perform the Change in the Work, based upon his own estimates, the Contractor's submission or a combination thereof. A Unilateral Change Order or Construction Change Directive shall be issued for the amounts of cost and time determined by the Owner and shall become binding upon the Contractor unless the Contractor submits its protest in writing to the Owner within thirty (30) days of the issuance of the Change Order or Change Directive. The procedure for the resolution of the Contractor's protest shall be as described in Article 12.10. Owner has the right to direct in writing the Contractor to perform the Change in the Work, which is the subject of such Unilateral Change Order or Construction Change Directive. Failure of the parties to reach agreement regarding the cost and time of performing the Change in the Work, or any pending protest, shall not relieve the Contractor from performing the Change in the Work promptly and expeditiously.

12.7 DECREASES AND WORK NOT PERFORMED

- 12.7.1 Should it be deemed expedient by the Owner at any time that the works are in progress to decrease the dimensions, quantity of material or work, or vary in any other way the work herein contracted for, the Owner shall have the full power to do so, and shall order and direct, in writing, such decreases to be made or performed without in any way affecting the enforcement of said Contract. The Contractor shall, in pursuance of such written orders and directions from the said Owner, execute the work thereby ordered and directed, and the difference in expense occasioned by such decrease or diminution so ordered shall be deducted from the amount payable under this Contract.
- 12.7.2 If work is not performed, and such deletion of work is not approved by the Owner, the Owner shall ascertain the amount of the credit due the Owner based on the reasonable value of the labor and materials so deleted.
- 12.7.3 If work is deleted from the Contract by Change Order, the amounts to be credited to the Owner shall reflect the same current pricing as if the work were being added to the Contract at the time the deletion is ordered plus mark-ups as outlined below:
- .1 If the Contractor performs the Change in the Work, the amount credited will be the Base Costs plus a mark-up of 5%.

- .2 If the Work is performed by a bona fide Subcontractor, the amount credited will be the Base Costs plus a mark-up of 5% from the subcontractor and 5% from the Contractor for a total credit mark-up of 10%.
- .3 If the Work is performed by a bona fide Sub-subcontractor, the amount credited will be the Base Costs plus a mark-up of 5% from Sub-subcontractor, 5% from the Subcontractor and 5% from the Contractor for a total credit mark-up of 15%.

If such deleted materials and equipment shall have already been purchased and stored on site and cannot be used in other projects, returned for credit or cannot be returned for credit at the price paid by the Contractor at the time of purchase, the Contractor shall be entitled, upon proper documentation and certification, to an adjustment in the pricing of the credit to avoid hardship to the Contractor. If necessary in order to establish such reasonable value, the Contractor may be required to submit a detailed breakdown of his original bid for the items or work involved.

12.8 CHANGES IN LINE AND GRADE

- 12.8.1 The Owner reserves the right to make such alterations in the line and grade of various structures or pipe lines shown on the drawings, as may be necessitated by conditions found during construction or that in the judgment of the Owner appears advisable. The Contractor shall not claim forfeiture of Contract by reason of such changes by the Owner. In case of a unit price contract, if such changes increase the amount of the work or materials, the Contractor will be paid according to the quantity of work actually done at the prices established for such work under the Contract.
- 12.8.2 In case of a lump sum contract, the price for the work shall be negotiated as herein provided. If such alterations or changes diminish the quantity of work to be done, they shall not constitute a claim for damages or for loss of anticipated profits in the work which may be dispensed with, and the work as constructed shall be paid for in accordance with the Contract prices as established for such work under this Contract, as stated in the proposal submitted by the Contractor.

12.9 SUBSURFACE CONDITIONS FOUND DIFFERENT

- 12.9.1 Should the Contractor encounter subsurface and/or latent conditions at the site materially differing from those shown on the drawings or indicated in the specifications, he shall immediately give notice to the Owner of such conditions before they are disturbed. The Owner shall thereupon promptly investigate the conditions and if he finds that they materially differ from those shown on the drawings or indicated in the specifications, he shall at once make such changes in the drawings and/or specifications as he may find necessary. Unless the risk for any such changes due to subsurface or latent conditions at the site has been assumed by Contractor pursuant to any other provision of the Contract Documents, any increase or decrease of cost resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional work and changes.

12.10 CLAIMS FOR ADDITIONAL COST AND/OR TIME

- 12.10.1 If the Contractor wishes to make a claim for an increase in the Contract Sum and/or Contract Time that is not related to a Request for Proposal or Field Order, he shall give the Owner written notice thereof within seven (7) calendar days after the commencement of the event

giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed as provided in Article 10. No claim shall be allowed and no amounts paid for any and all costs incurred if notice is not given to the Owner as herein provided. Any change in the Contract Sum and/or Contract Time resulting from such claim shall be authorized by Change Order. The Contractor's complete claim submittal for an increase in the Contract Sum and/or Contract Time shall be submitted no later than twenty (20) calendar days after the work for which the claim is made has been completed or within such other longer period as the Owner may agree in writing to allow.

- 12.10.2 If the Contractor claims that additional cost or time is involved because of, but not limited to, (1) any written interpretation pursuant to Article 2, (2) any order by the Owner to stop the Work pursuant to Article 3 where the Contractor was not at fault, (3) failure of payment by the Owner pursuant to Article 9, or (4) any written order for a minor change in the Work issued pursuant to Article 12.8.1; the Contractor shall make such claim as provided in Subparagraph 12.10.1.

ARTICLE 13 - UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

- 13.1.1 If any portion of the Work should be covered contrary to: (1) the request of the A/E/CM or Owner; (2) requirements specifically expressed in the Contract Documents; or (3) the requirements of applicable Construction Permits, it must, if required in writing by the Owner, be uncovered for their observation and shall be replaced at the Contractor's expense.
- 13.1.2 If any other portion of the Work has been covered which the Owner has not specifically requested to observe prior to being covered, the A/E/CM or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused solely by the Owner, in which event the Owner shall be responsible for the payment of such costs. If such Work be found not in accordance with the Contract Documents and the condition was caused by a separate contractor, Contractor may proceed against said separate contractor as provided in Article 6.

13.2 WARRANTY AND CORRECTION OF WORK

- 13.2.1 The Contractor guarantees and warrants to the Owner all work as follows:
- .1 That all materials and equipment furnished under this Contract will be new and the best of its respective kind unless otherwise specified;
 - .2 That all Work will be of first-class quality and free of omissions and faulty, poor quality, imperfect or defective material or workmanship;
 - .3 That the Work shall be entirely watertight and leakproof in accordance with all applicable industry customs and practices, and shall be free of shrinkage and settlement which are attributable to defective materials or workmanship;

- .4 That the Work, including but not limited to, mechanical and electrical machines, devices and equipment shall be fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care;
- .5 That consistent with requirements of the Contract Documents the Work shall be installed and oriented in such a manner as to facilitate unrestricted access for the operation and maintenance of fixed equipment; and
- 6 That the Work will be free of abnormal or unusual deterioration which occurs because of poor quality materials or workmanship.

- 13.2.2 All Work not conforming to guarantees and warranties specified in the Contract Documents, including products not properly approved and authorized, may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 13.2.3 The Contractor shall within five (5) working days after receipt of written notice from the Owner during the performance of the Work, reconstruct, replace or correct all Work rejected by the A/E/CM or Owner as defective, as failing to conform to the Contract Documents, or as not in accordance with the guarantees and warranties specified in the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of inspection and/or testing required to verify such rejected work. The Contractor shall bear all costs of reconstructing, replacing or correcting, re-inspecting and/or retesting such rejected Work, including compensation for the A/E/CM's additional services made necessary thereby.
- 13.2.4 If, within one (1) year after the Date of Substantial or Final Completion of the Work or designated portion thereof or within one (1) year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective, not in accordance with the Contract Documents, or not in accordance with the guarantees and warranties specified in the Contract Documents, the Contractor shall correct it within five (5) working days after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition. In the event that the correction of the condition is deemed by the Owner to impact the operation of the facility, the Contractor shall initiate the correction immediately after receipt of a written notice from the Owner.
- 13.2.5 Subject to limitation as prescribed by law, if at any time deficiencies in the Work are discovered which are found to have resulted from fraud or misrepresentation, or an intent or attempt to defraud the Owner by the Contractor, any Subcontractor or Supplier, the Contractor will be liable for replacement or correction of such Work and any damages which Owner has incurred related thereto, regardless of the time limit of any guarantee or warranty.
- 13.2.6 Any materials or other portions of the Work, installed, furnished or stored on site which are not of the character or quality required by the specifications, or are otherwise not acceptable to the Owner, shall be immediately removed and replaced by the Contractor to the satisfaction of the Owner, when notified to do so by the Owner.
- 13.2.7 If the Contractor fails to correct defective or nonconforming Work as required by Articles 13.2.3 and 13.2.4, or if the Contractor fails to remove defective or nonconforming Work from the site, as required by Article 13.2.6, the Owner may elect to either correct such Work in

accordance with Article 3.5 or remove and store materials and equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten additional days written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the A/E/CM's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

- 13.2.8 The Contractor shall bear the cost of making good all work of the Owner, separate contractors or others, destroyed or damaged by such correction or removal required under this Article.

13.3 ACCEPTANCE OF FAULTY, DEFECTIVE OR NON-CONFORMING WORK

- 13.3.1 If the Owner prefers to accept faulty, defective or nonconforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued at Owner's option, to reflect a reduction in the Contract Sum in an amount to be determined by the Owner.

13.4 NO LIMITATION OF LIABILITY

- 13.4.1 Subject to limitation as prescribed by law, nothing contained in this Article shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents. The establishment of the time period of one (1) year after the Date of Substantial or Final Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligations of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents (including all warranties specified herein) may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

ARTICLE 14 - TERMINATION OF THE CONTRACT

14.1 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

- 14.1.1 If the Work shall be stopped by order of the Court or any other public authority for a period of three (3) consecutive months without act or fault of the Contractor or any of his agents, servants, employees or Subcontractors, the Contractor may, upon ten (10) days' notice to the Owner, discontinue his performance of the Work and/or terminate the Contract. The Contractor may recover from the Owner payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages. The Contractor shall not be obligated to pay to the Owner any excess of the expense of completing the Work over the unpaid balance of the compensation to be paid the Contractor hereunder.

14.2 OWNER'S RIGHT TO TERMINATE CONTRACT FOR CAUSE

- 14.2.1 The Owner, without prejudice to any other rights or remedy it may have, may, by seven (7) days' notice to the Contractor, terminate the employment of the Contractor and his right to proceed either as to the entire Work or (at the option of the Owner) as to any portion thereof and may take possession of the Work and complete the Work by contract or otherwise as the Owner may deem expedient if, in the opinion of the Owner:
- .1 The insolvency, bankruptcy or financial condition of the Contractor will hinder or impede the Contractor's fulfillment of all contractual obligations, including completion within the Contract Time; or
 - .2 The Contractor shall refuse or fail, after Notice from the Owner, to supply enough properly skilled workmen or proper material; or
 - .3 The Contractor shall refuse or fail to prosecute the Work or any part thereof with such diligence as will insure its completion within the period herein specified (or any duly authorized extension thereof) or shall fail to complete the work within said period; or
 - .4 The Contractor shall fail to make prompt payment to persons supplying labor or materials for the work; or
 - .5 The Contractor shall refuse or fail to properly schedule and plan the Work, as specified herein, so as to perform the Work within the specified Milestone and Completion dates, or to provide scheduling or related information, revisions and updates as required by the Contract Documents; or
 - .6 The Contractor shall fail or refuse to regard laws, permits, ordinances, resolutions, or the instructions of the Owner or A/E/CM, or otherwise be guilty of a substantial violation of any provision of this contract.
- 14.2.2 If the Owner so terminates the employment of the Contractor, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the compensation to be paid to the Contractor hereunder shall exceed the expense of so completing the work (including compensation for additional managerial, administrative and inspection services and any damages for delay) such excess shall be paid to the Contractor.
- 14.2.3 If such expenses shall exceed the unpaid balance, the Contractor and his sureties shall be liable to the Owner for such excess. If the right of the Contractor to proceed with the work is partially or fully terminated, the Owner may take possession of and utilize in completing the Work such materials, appliances, supplies, plant and equipment as may be on the site of the terminated portion of the Work and necessary for the completion of the Work. If the Owner does not fully terminate the right of the Contractor to proceed, the Contractor shall continue to perform the part of the Work that is not terminated.
- 14.2.4 If, after notice of termination of the Contract under the provisions of this Article 14.2, it is determined for any reason that the Owner did not have the right, pursuant to the Contract Documents, to terminate the Contract for cause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience provisions of Article 14.3.

14.3 OWNER'S RIGHT TO TERMINATE CONTRACT FOR CONVENIENCE

- 14.3.1 The performance of work under this contract may be terminated by the Owner in accordance with this article in whole, or from time to time in part, whenever the Owner shall determine that such termination is in the best interest of the Owner. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.
- 14.3.2 After receipt of a Notice of Termination, the Contractor shall submit to the Owner his termination claim, in the form and with certification prescribed by the Owner. Such claim shall be submitted promptly but in no event later than three (3) months from the effective date of termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such three (3) month period or authorized extension thereof. However, if the Owner determines that the facts justify such action, he may receive and evaluate any such termination claim at any time after such three (3) month period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Owner may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination.
- 14.3.3 Subject to the provisions of subparagraph 14.3.2, the Contractor and the Owner may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of Work pursuant to this article, which amount or amounts may include a reasonable allowance for profit on Work completed; provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount if satisfactory to the Owner. Nothing in subparagraph 14.3.4 of this article, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Owner to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this article shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this subparagraph 14.3.3.
- 14.3.4 In the event of the failure of the Contractor and the Owner to agree, as provided in subparagraph 14.3.3, upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this article, the Owner shall pay to the Contractor the amounts determined by the Owner as follows, but without duplication of any amounts agreed upon in accordance with subparagraph 14.3.3.
- 14.3.4.1 With respect to all contract work performed prior to the effective date of the Notice of Termination, the total payment (without duplication of any items) shall consist of:
- .1 The cost of such work;
 - .2 The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in paragraph 14.4.1.3, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amounts shall be included in the cost on account of which payment is made under (.1) above;
 - .3 A sum, as profit on (.1) above, determined by the Owner to be fair and reasonable;

provided, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (.3) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

- .4 The reasonable cost of the preservation and protection of property incurred pursuant to paragraph 14.4.1.9 and the reasonable costs of settlement, including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination and settlement of subcontracts thereunder.

14.3.4.2 The total sum to be paid to the Contractor under subparagraph 14.3.4.1 above shall not exceed the total Contract Sum as reduced by the amount of payment otherwise made and as further reduced by the contract price of Work not terminated. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under 14.3.4.1 above, the fair value, as determined by the Owner, of property which is destroyed, lost, stolen, or damaged so as to become unusable or undeliverable to the Owner, or to a buyer pursuant to Article 14.4.1.7.

14.3.5 In arriving at the amount due the Contractor under this article there shall be deducted:

- .1 All unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Contract;
- .2 Any claims which the Owner may have against the Contractor in connection with this Contract; and
- .3 The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this article, and not otherwise recovered by or credited to the Owner.

14.3.6 If the termination hereunder be partial, prior to the settlement of the terminated portion of this Contract, the Contractor may file with the Owner a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

14.3.7 The Owner may, from time to time, and under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever in the opinion of the Owner the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this article, such excess shall be payable by the Contractor to the date on which such excess payment is repaid to the Owner upon demand, together with interest computed at the legal rate of interest for the period from the due date, such excess payment is received by the Contractor provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Owner by reason of the circumstances.

14.4 CONTRACTOR'S RESPONSIBILITIES UPON TERMINATION

14.4.1 After receipt of a Notice of Termination pursuant to Article 14.2 or 14.3 and except as otherwise directed by the Owner, the Contractor shall:

- .1 Stop work under the contract on the date and to the extent specified in the Notice of Termination;
- .2 Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
- .3 Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- .4 At the option of the Owner, assign to the Owner, in the manner, at the time, and to the extent directed by the Owner, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner, to the extent he may require, which approval or ratification shall be final for all the purposes of this article;
- .6 Transfer title and deliver to the Owner in the manner, at the times, and to the extent, if any, directed by the Owner:
 - .1 The fabricated or unfabricated parts, work in process, completed Work, supplies, and other material procured as a part of, or acquired in connection with the performance of, the Work terminated by the Notice of Termination, and
 - .2 The completed or partially completed drawings, releases, information, manuals and other property which, if the Contract had been completed, would have been required to be furnished to the Owner;
- .7 Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Owner, any property of the types referred to in 14.4.6 above, provided, however, that the Contractor:
 - .1 Shall not be required to extend credit to any purchaser, and
 - .2 May acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner and provided further that the process of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the Owner may direct;
- .8 Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination; and
- .9 Take such action as may be necessary, or as the Owner may direct, for the protection and

preservation of the property related to this Contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

14.5 DISPUTES UPON TERMINATION

- 14.5.1 The provisions of 7.4 shall be applicable to any claim, dispute or other matter arising because of termination under this Article 14.