

# GENERAL CONDITIONS

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## **GENERAL CONDITIONS**

These General Conditions establish requirements and conditions governing responsibility, policy, and procedures under the Contract Documents that apply during the construction and Warranty Period. Additional requirements and conditions appear in other Contract Documents. The Contract Documents may be modified only in writing, signed by the Owner.

### **DEFINITIONS**

Wherever in the Contract Documents the following terms are used, their intent and meaning shall be interpreted as follows:

1. **APPROVED AND AS APPROVED**

The words "approved" and "as approved," unless otherwise expressly defined or qualified, shall be understood to be followed by the words "by the Engineer for conformance with the Contract Documents."

2. **AS SHOWN AND AS INDICATED**

The words "as shown" and "as indicated" shall be understood to be followed by the words "on the Drawings or otherwise in the Contract Documents."

3. **BIDDER**

The person or persons, partnership, firm, joint venture, or corporation submitting a Bid for the Work contemplated.

4. **BIDDING REQUIREMENTS**

The Bidding Requirements consist of the Invitation to Bid, Instructions to Bidders, the Bid Form, and the Bid Bond.

5. **CONTRACT**

A. "The Contract" is the written agreement of the parties, and shall be deemed to incorporate the Contract Documents covering the performance of the Work and the furnishing of labor, materials, Equipment, incidental services, tools, and equipment for the construction of the Work. It shall be deemed to include Supplemental Agreements amending or extending the scope of the Work contemplated and which may be required to achieve Substantial Completion or Final Completion or both. The Contract, as so defined, represents the entire and integrated agreement between the Owner and the Contractor, and supersedes all prior negotiations, representations, or agreements, both written and oral.

B. The Contract may be modified only in writing signed by the Owner. The Contractor recognizes that no representative or agent of Owner has any authority to modify the Contract Documents in any other manner, express or implied. The Contractor agrees that it shall not rely upon or in any way assert the occurrence of any modification

of any Contract Document other than in writing signed by the Owner and waives any right or ground to do so.

6. CONTRACT DOCUMENTS

The Contract Documents consist of the Bidding Requirements, a signed copy of the Bid Form, the signed Contract, the Escrow Agreement (if applicable and elected for use by the Contractor), the Payment Bond, the Performance Bond, the General Conditions, the Supplemental Conditions, the Specifications and the Drawings, and shall include all modifications of any of the foregoing incorporated by Addenda into the Contract Documents prior to execution of the Contract, and all Supplemental Agreements or Changes to the Contract Documents made subsequent to execution of the Contract in accordance with General Conditions, Article 40, CHANGES IN THE WORK.

7. CONTRACT PRICE

The total compensation to be paid the Contractor for performance of all requirements of the Contract Documents. Any provision of the Contract Documents which imposes any responsibility or performance obligation upon the Contractor shall be deemed to include the phrase "within the Contract Price". Any claim or request by the Contractor for additional compensation for any reason shall be deemed to be a claim for modification of the Contract Price.

8. CONTRACT TIME

The time within which the Contractor is required to achieve Substantial Completion, and thereafter to achieve Final Completion, of the Work. The Contract Time is of the essence of the Contract.

9. CONTRACTOR

The Bidder who enters into the Contract awarded it by the Owner.

10. DAYS

Unless otherwise specifically stated, the term "days" will be understood to mean calendar days. Business day, working day, or words of similar import means any day other than Saturday, Sunday, or the following listed holidays:

New Year's Day	Thanksgiving Day
Martin Luther King Jr. Day	Day after Thanksgiving
Memorial Day	Christmas Eve Day
Independence Day	Christmas Day
Labor Day	

## 11. DEFECT

The word "defect" as used in the Contract Documents shall mean any portion of the Work which does not strictly comply with the intent and requirements of the Contract Documents. In addition to Work which does not so comply with the intent and requirements of the Contract Documents, any Work required by the Contract Documents which is either missing or incomplete shall constitute a defect. The term "defect" shall be used synonymously with "non-conforming work" or "non-conformance".

## 12. DRAWINGS

- A. The term "Drawings" refers to the drawings, profiles, cross sections, elevations, details, and other working drawings and supplemental drawings, or reproductions thereof, signed by the Engineer which show the location, character, dimensions, and details of the Work to be performed. Drawings may either be bound in the same book as the balance of the Contract Documents or bound in separate sets, and are a part of the Contract Documents, regardless of the method of binding.
- B. All Drawings issued by the Engineer subsequent to issuance of the Invitation to Bid and prior to execution of the Contract are identified in Addenda, the receipt of which the Contractor has acknowledged in writing.
- C. The Drawings for this Contract are described in Supplemental Condition 12.C.

## 13. ENGINEER

The Engineer shall be as set forth in Supplemental Condition 13.

## 14. EQUIPMENT

Equipment includes all devices or components to be incorporated into the Work requiring servicing or maintenance or containing parts requiring instruction for replacement. The term "Equipment" as herein defined is not intended to apply where the context in which the word "equipment" is used refers to devices such as tools, machinery, or mechanized apparatus used in the performance of the Work but not incorporated into the Work. The identification of items is not intended to be an all-inclusive list of Equipment as that term is used in the Contract Documents.

## 15. FINAL COMPLETION, FINALLY COMPLETE

- A. "Final Completion," or the state of being "Finally Complete," shall mean total completion of all Work, or a defined portion thereof, required by or reasonably contemplated by the Contract Documents. "Final Completion" or the state of being "Finally Complete" shall include all applicable changes set forth in Supplemental Agreements.
- B. As used herein the term "or a defined portion thereof" shall be such portion of the Work as may be designated by the Owner in its sole discretion and shall not affect the determination of Final Completion of the Work as a whole which is understood to be indivisible.

## 16. INSTALLED

The words "installed," "install," "installed complete," and "install complete" as used in the Contract Documents shall mean installed in place in accordance with the requirements of the Contract Documents, including but not limited to providing all required spare parts, all operation and maintenance manuals, all maintenance summaries, all certificates of proper installation, the successful completion and documentation of all performance testing and any other testing specified, and the completion of all other Manufacturer services specified, including but not limited to, training of the Owner's personnel to the satisfaction of the Owner.

## 17. MANUFACTURER/SUPPLIER OR MANUFACTURER

The entity which manufactures, fabricates or produces material or Equipment to such an extent that it has control of and is responsible for the quality and performance of the item.

## 18. NORMAL WORKING HOURS

"Normal Working Hours" or "regular working hours" or phrases of similar intent for the Owner, the Engineer, and their employees and personnel shall be the hours set forth in Supplemental Condition 18, Monday through Friday, excluding holidays as listed herein.

## 19. NOTICE

- A. The term "Notice" or the requirement to notify, as used in the Contract Documents or applicable state or federal statutes, shall mean a written communication delivered in person or by certified or registered mail to the individual, or to a member of the firm, or to an officer of the corporation for whom it is intended. Certified or registered mail shall be addressed to the last business address known to the party who gives the Notice. Notice to the Owner shall be given at the office of the Owner's project manager as designated by the Executive Director. Notice provided to the Engineer shall not be deemed Notice to the Owner. Notice is effective upon receipt. Communications by email shall not satisfy any Notice requirements of the Contract Documents except as may be provided specifically.
- B. Those persons authorized to issue any Notice on behalf of the Owner or the Contractor shall be designated in writing by each party to the other. Such designation may be changed or supplemented from time to time but any Notice issued by a person not previously designated as authorized to do so shall not be effective.
- C. Any hand delivered Notice, written communication or submittal required to be provided to either the Owner, the Engineer, or both shall be delivered between 7:30 A.M. and 3:00 P.M., Monday through Friday excluding holidays as the same are identified in General Conditions, Article 10, DAYS and Presidents' Day, Columbus Day, and Veteran's Day.

20. NOTICE TO PROCEED

A written Notice given by the Owner to the Contractor establishing the date on which the Contract Time will commence and on which the Contractor shall be authorized to begin the Work.

21. "OR EQUAL" AND/OR "OR APPROVED EQUAL"

The term "Or Equal" and/or "Or Approved Equal" shall be deemed to mean that, in the opinion of the Engineer, the material or Equipment proposed by the Contractor as a substitute for an item of material or Equipment initially specified in the Contract Documents is the functional equivalent of the specified item, possesses the salient characteristics of that item, is of the same general configuration, style, type and character, is of equal quality, workmanship, and economy of operation, and is otherwise fully suitable for the intended purpose or indicated application. Only the Engineer shall make determination of equivalence. No proposed "Or Equal" and/or "Or Approved Equal" material or Equipment shall be purchased or installed by the Contractor without first obtaining written authorization from the Engineer to do so. For further information concerning Substitutions, see General Conditions, Article 76, SUBSTITUTIONS, and all applicable Specifications.

22. OWNER

- A. Wherever in the Contract Documents the word "Owner" appears, it shall be understood to mean the Upper Occoquan Sewage Authority, also known as Upper Occoquan Service Authority, and referred to by the acronym "UOSA", whose address is 14631 Compton Road, Centreville, Virginia, 20121-2506 (telephone number 703-830-2200). The Executive Director of the Upper Occoquan Sewage Authority shall have the authority to act on behalf of the Upper Occoquan Sewage Authority for all purposes under this Contract, and in the absence or incapacity of the Executive Director, the Deputy Executive Director shall have all powers and authority of the Executive Director. The Executive Director may, from time to time, designate by written Notice to the Contractor additional individuals authorized to act on behalf of the Owner.
- B. UOSA is a public body politic and corporate organized under the Virginia Water and Waste Authorities Act and subject to the Occoquan Policy. UOSA was created by the concurrent actions of the governing bodies of Fairfax County, Prince William County, the Town of Manassas (now the City of Manassas), and the Town of Manassas Park (now the City of Manassas Park) and was chartered by the State Corporation Commission of Virginia on April 1, 1971. UOSA was formed to acquire, finance, construct, operate and maintain facilities for the abatement of pollution resulting from sewage in its service areas in order to protect water quality in the Occoquan Watershed.
- C. UOSA currently owns and operates an advanced water reclamation plant and a regional system of interceptor sewer lines, pump stations and force mains that deliver sewage from the four member jurisdictions to the treatment plant.



D. The Member Jurisdictions of UOSA are the Counties of Fairfax and Prince William and the Cities of Manassas and Manassas Park. UOSA is governed by an eight-person Board of Directors consisting of two members from each of the four Member Jurisdictions, appointed by the governing body of their respective Member Jurisdictions. The UOSA Executive Director is responsible to the Board of Directors for the day-to-day management and operation of UOSA.

23. PLANS

See General Conditions, Article 12, DRAWINGS.

24. PROJECT

The term "Project" shall be synonymous with the term "the Work."

25. PROJECT REPRESENTATIVE

The phrase "Project Representative" shall mean the person or persons designated in writing by the Executive Director of UOSA, who may be an employee of UOSA, the Engineer, contract administrator, or inspector in the employ of, or under the direction and control of, the Engineer and acting on behalf of the Owner. The Project Representative shall not have authority to modify the Contract Documents expressly or by implication.

26. PROJECT SCHEDULE

At any time during the performance of the Contract, reference to the Project Schedule shall mean the construction schedule most recently accepted pursuant to the provisions of the Specifications.

27. PROVIDE

The word "provide", as applicable to the Work performed by the Contractor, shall be understood to mean "provide complete in-place," that is, "furnish and install complete."

28. SHOP DRAWINGS OR SUBMITTALS

See the Specifications and General Conditions, Article 77, SUBMITTALS.

29. SITE

The terms "Site," "on site," "on-Site," "on-site," or words of similar import when used in the Contract Documents shall be deemed to include all real property owned by the Owner on which Work is to be performed, all easements, and permitted areas appurtenant to such property or necessary for the Work.

### 30. SPECIFICATIONS

- A. The term "Specifications" refers to those portions of the Contract Documents, which consist of written technical descriptions of materials, Equipment, construction systems, standards, and workmanship to be applied to the Work and certain administrative details applicable thereto. The Specifications are written in imperative and streamlined form. This imperative language is directed to the Contractor unless specifically noted otherwise. The words "shall be" or "shall meet the requirements of" shall be included by inference where a colon is used within sentences or phrases.
  
- B. The standard specifications, abbreviations and acronyms applicable to the Work are listed in the Specifications. Where reference is made to standard specifications, the applicable portions of such standard specifications shall be construed to have been incorporated by reference and to be a part of the Contract Documents in which they are referenced. Provided, however, if such referenced standard specifications conflict with requirements or details specifically set forth otherwise in the Contract Documents, precedence shall be given to such requirements or details otherwise set forth in the Contract Documents.

### 31. STRUCTURE

The term "structure" refers to anything built or constructed.

### 32. SUBCONTRACTOR

"Subcontractor" is defined as any party, entity, or enterprise of any sort other than the Contractor providing labor or services to the Project pursuant to any agreement or arrangement with the Contractor.

### 33. SUBSTANTIAL COMPLETION, SUBSTANTIALLY COMPLETE, PARTIAL UTILIZATION

- A. "Substantial Completion" or the state of being "Substantially Complete" shall be that degree of completion of the Work, or of a defined portion of the Work, as evidenced by the Owner's written Notice of Substantial Completion, which is sufficient to provide the Owner, in its sole discretion, with the full-time use of the Project, or defined portion of the Project, in all manners or modes of operation and for the purpose or purposes for which it was intended, subject, however, to the further requirements set forth herein or otherwise in the Contract Documents. "Substantial Completion" or the state of being "Substantially Complete" of an operating facility or system shall be that degree of completion which is sufficient to have provided a minimum of seven (7) continuous days of successful, trouble-free operation in the manner that was intended, which period shall be deemed to begin only after all functional, performance, and acceptance tests have been successfully demonstrated to the satisfaction of the Engineer and Owner. Compliance with all applicable permits and inspection requirements for the Work shall

be a condition precedent to achieving Substantial Completion but shall be in addition to and not in lieu of all other requirements for Substantial Completion. All Work necessary to enable the Owner to operate the facility in the manner intended shall have been installed complete by the Substantial Completion Date. The specific tasks required to accomplish Substantial Completion of any defined portion of the Work may be set forth in more particular detail in the Specifications and to the extent so set forth are incorporated herein.

- B. The terms "or a defined portion thereof," "Partial Utilization," "Owner's Partial Utilization," "defined portion of the Work," "Owner's use of portions of the Work," or words of similar import when used in the Contract Documents shall be deemed to mean such portion of the Work as may be designated by the Owner in its sole discretion as having achieved that degree of completion which will permit the Owner to take over and commence the use and operation thereof prior to Substantial Completion of all Work. Such determination as to a defined portion of the Work so as to permit Owner's Partial Utilization shall not affect the determination of either Substantial Completion or Final Completion of the Work as a whole, which is understood to be indivisible, nor shall such determination have any impact on the obligation of the Owner to assess and deduct Liquidated Damages for failure to achieve Substantial Completion of the Work.

#### 34. SUPPLEMENTAL AGREEMENTS

"Supplemental Agreements" are written agreements covering alterations, amendments, or extensions to the Contract and include Change Orders, Unilateral Change Orders, Work Orders, and Field Orders.

#### 35. SURETY

Whenever the term "Surety" is used herein it shall refer to the party providing any bond required under the Contract Documents. A Surety providing any such bond shall have a sound financial standing and a record of service satisfactory to the Owner, and shall be authorized to do business in the Commonwealth of Virginia. Sureties executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended). The attorney-in-fact who executes any bond on behalf of the Surety, must attach a notarized copy of the Power of Attorney in compliance with all applicable Virginia law as evidence of his authority to bind the Surety on the date of execution of the bond. The term "Surety" shall include any form of Bid Security deposited in the form of cash or certified check.

#### 36. WARRANTY PERIOD

- A. All warranties and guarantees against any defect in the Work shall apply from the date of Substantial Completion of the Work and shall continue for a period of one (1) year thereafter. Provided, however, in the event the Owner declares Partial Utilization as to a defined portion of the Work and commences Partial Utilization of such defined portion, the one (1) year Warranty Period as to such defined portion of the Work shall

commence on the date the Owner commences such Partial Utilization. See General Conditions, Article 81, CORRECTION OF DEFECTIVE WORK BEFORE AND DURING WARRANTY PERIOD, for the effect of repairs upon the duration of the Warranty Period.

- B. The terms of any extended warranty, or prorated warranty or guaranty required by the Contract Documents for a particular portion of the Work shall begin on the date of Substantial Completion of the Work or the applicable defined portion thereof or date of Partial Utilization as established by the Owner. See General Conditions, Article 81, CORRECTION OF DEFECTIVE WORK BEFORE AND DURING WARRANTY PERIOD, for the effect of repairs upon the duration of the Warranty Period.

### 37. WORK

The word "Work" within the Contract Documents shall include all material, labor, equipment and tools, Equipment, appliances, machinery, transportation, appurtenances, bonds, insurance, and all related costs necessary to perform and complete the Contract, and any such additional items and costs not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated or as required by industry practice, custom or usage to provide a complete and satisfactory system or Structure in strict compliance with all requirements of the Contract Documents.

## CONTRACT DOCUMENTS

### 38. INTENT OF CONTRACT DOCUMENTS

- A. The Contract Documents are complementary, and what is called for by any one part thereof shall be as binding as if called for by all. The intent of the Contract Documents is to describe a functionally complete Project (or defined portion thereof) to be constructed in accordance with the Contract Documents. Any material, labor, equipment, tools, Equipment, appliances, machinery, transportation, appurtenances, bonds, insurance, and all related costs that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be deemed to be part of the Work whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe any portion of the Work, such words shall be interpreted in accordance with that meaning. In the event of any dispute concerning such interpretation or meaning, the Contractor agrees to be bound by the interpretation of the Engineer and shall have no claim for additional time or compensation arising from or related to such interpretation. The words "will" or "shall" are used interchangeably and denote mandatory, non-discretionary conduct or intent.
- B. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard

specification, manual, code or laws or regulations in effect on the first published date of the Invitation to Bid, except as may be otherwise specifically stated. Provided, however, that the Contractor shall comply with all subsequent amendments to applicable laws or regulations, and the Contractor may submit such Change Order requests related thereto as the Contractor deems appropriate. Provided further, that no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference into the Contract Documents) shall be effective to change the duties and responsibilities of the Owner, Contractor, or Engineer, or any of their consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Engineer, or to any of Engineer's consultants, agents, or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of General Conditions, Article 46, DUTIES AND RESPONSIBILITIES OF THE ENGINEER.

- C. Prior to issuing the Invitation to Bid and up to the time of Bid opening, the Owner confirmed that for any Major Equipment identified in the Bid Form, the Named Manufacturer/Supplier designated in the Bid Form for that Major Equipment had an established capability of providing a product which fully meets the requirements of the Contract Documents applicable to that Equipment.
- D. The Contract Documents may identify potential Manufacturers/Suppliers of Equipment, materials or equipment required for performance of the Work either in addition to or in the absence of a Named Manufacturer/Supplier. Such names are provided only as a convenience to the Contractor. The Owner has not confirmed, and does not warrant, that any such Manufacturer/Supplier, other than a Named Manufacturer/Supplier, at any time was or is capable of providing a product which fully meets the requirements of the Contract Documents applicable to that item.
- E. For all Equipment, materials or equipment incorporated into the Work by the Contractor, whether provided by a Named Manufacturer/Supplier, a Manufacturer/Supplier identified in the Contract Documents, or otherwise, it is the sole responsibility of the Contractor to fully comply with the requirements of the Contract Documents at the time of installation. Using a Named Manufacturer/Supplier identified by the Contract Documents shall not be deemed compliance with the requirements of the Contract Documents if at the time the Equipment, material or equipment is installed it does not fully comply with the requirements of the Contract Documents. If the product provided by a Named Manufacturer/Supplier no longer complies with the Contract Documents at the time of intended installation due to a change made by the Named Manufacturer/Supplier, the Contractor may seek a modification of the Contract Price or the Contract Time. Provided, however, the Contractor shall not be entitled to any modification of the Contract Price or Contract Time for any impact which could

have been avoided by due diligence.

### 39. DISCREPANCIES, OMISSIONS, INCONSISTENCIES AND CLARIFICATIONS

- A. Any discrepancies, omissions, or inconsistencies found in the Contract Documents by the Contractor, or any provision of the Contract Documents upon which the Contractor requires information, shall be reported to the Engineer immediately by submitting in writing a Request for Information (RFI). The Engineer will address any such RFI and provide information, in writing, within the time stated in Supplemental Condition 39.A. If the Contractor proceeds with any portion of the Work which may be affected by the questions raised in the RFI prior to obtaining such information from the Engineer, the Contractor does so at its own risk. The Contractor shall proceed with other portions of the Work not affected by the questions raised in the RFI. If the Contractor fails to discover such a discrepancy, omission or inconsistency which, in the exercise of reasonable care and diligence it should have discovered, the Contractor shall be solely responsible for all costs and delays arising therefrom or related thereto.
  
- B. The Owner may submit to the Engineer a Request for Information of any term, provision or requirement addressing scope of performance. Any interpretation or information provided by the Engineer in response to such a request shall be binding upon the parties if consistent with the general intent of the Contract Documents.
  
- C. In resolving inconsistencies among two or more sections of the Contract Documents, precedence shall be given in the following order:
  - 1. Signed Contract
  - 2. Supplemental Agreements
  - 3. Supplemental Conditions
  - 4. General Conditions
  - 5. Signed Bid Form
  - 6. Instructions to Bidders
  - 7. Invitation to Bid
  - 8. Specifications
  - 9. Drawings
  - 10. Escrow Agreement
  
- D. Addenda and Changes pursuant to General Conditions, Article 40, CHANGES IN THE WORK, shall take precedence over any provisions of the Contract Documents addressed

therein. Figure dimensions on Drawings shall take precedence over scale dimensions. When a portion of the Work is depicted on more than one Drawing, the Drawing having the greater detail shall have precedence.

- E. The Contractor agrees that, in the event of any ambiguity or conflict in the Contract Documents, the language in the Contract Documents shall not be construed against the Owner.

#### 40. CHANGES IN THE WORK

- A. The Owner, without Notice to the Sureties and without invalidating the Contract, may order changes in the Work within the general scope of the Contract by altering, adding to, or deducting from the Work, the Contract Price and Contract Time provisions, if appropriate, being adjusted accordingly. The Owner may move Work from one Sub-Project to another if the Owner determines it is in the Owner's best interest to do so. All such Work shall be executed under the original conditions of the Contract except as specifically adjusted at the time of ordering such change.
- B. Except as otherwise provided in the Contract Documents, a change in the Work may be made by any of four methods, with any adjustments in Contract Price or Contract Time to be established in accordance with General Conditions, Article 102, PAYMENT FOR CHANGES IN THE WORK. The four methods are as follows:

##### 1. CHANGE ORDER

- a. Work under a Change Order shall not commence until the Owner, Engineer and the Contractor have agreed to and have executed a Change Order. The Change Order shall set forth the Work to be performed and any adjustment in the Contract Price or Contract Time resulting from the change(s).
- b. If the Contractor commences work which it contends is not a part of the Work prior to issuance by the Owner of a Unilateral Change Order or a Work Order, or a Change Order having been signed by both the Owner and the Contractor, the Contractor does so at its own risk and shall be entitled to no adjustment in the Contract Price or Contract Time for such work except as provided by General Conditions, Article 104, DISPUTES AND CLAIMS GENERALLY.

##### 2. UNILATERAL CHANGE ORDER

- a. If the Owner and Contractor are unable to agree upon the terms of a Change Order, the Owner may in its sole discretion modify unilaterally the Work, the Contract Time or the Contract Price in such manner as it

may deem appropriate.

- b. The Owner may either issue a Unilateral Change Order specifying the Work to be performed and any adjustments in Contract Price or Contract Time which the Owner agrees result from the change, or direct the Contractor to proceed by Force Account pursuant to General Conditions, Article 102, PAYMENT FOR CHANGES IN THE WORK. The Contractor shall commence the Work directed thereby promptly upon receipt of the executed Unilateral Change Order.
- c. Any objection the Contractor may have to any modification of, or failure to modify, the Contract Price or the Contract Time in a Unilateral Change Order shall be subject to the Notice of claim and claims submittal requirements of the Contract Documents. Compensation for any Work directed to be performed by Force Account shall be subject to the requirements of General Conditions Article 102, PAYMENT FOR CHANGES IN THE WORK, dealing with Force Account Work.

### 3. WORK ORDER

When circumstances do not allow sufficient time for negotiation of and agreement upon adjustments in Contract Price or Contract Time resulting from contemplated changes in the Work, or in the interest of efficient administration and prosecution of the Work, the Owner may issue a Work Order specifying the changed or additional Work to be performed or deleted. Any adjustments to Contract Price or Contract Time resulting from the Work Order shall thereafter be made either by Change Order or by Unilateral Change Order.

### 4. FIELD ORDER

The Owner may order minor changes in the Work which the Contractor and the Owner agree do not involve extra cost or additional time by the use of a Field Order. The purpose of such Field Order is to document the scope of the change and to provide the authorization and direction for the Contractor to make such change(s).

- C. Except in an emergency endangering life or property, changes in the Work shall be effected only by a Change Order signed by both parties, a Unilateral Change Order issued by the Owner, a Work Order issued by the Owner, or a Field Order issued by the Owner. Written Notice of the Contractor's intent to file a claim or to make a claim for additional compensation or for an extension of the Contract Time for any change,



interpretation, clarification, action or direction of the Owner or the Engineer shall be given to the Owner and the Engineer at the time of the occurrence or before beginning the Work upon which the claim is based, whichever occurs first. Compliance with all Notice and claims submittal requirements set forth in the Contract Documents shall be a condition precedent to pursuit of any such claim. Provided, however, Notice of claim for any modification of the Contract Price or Contract Time arising from a Work Order shall not be required until the Owner issues a Unilateral Change Order stating what the Owner agrees to be the impact on Contract Price and/or Contract Time resulting from that Work Order. If the Contractor disagrees with the modification to Contract Price or Contract Time established by the Unilateral Change Order, the Contractor shall give to the Owner and the Engineer Notice of any such claim related to such Work Order within seven (7) days after issuance by the Owner of such Unilateral Change Order. Provided, however, if the Owner previously has issued a final decision regarding the impact upon Contract Price and/or Contract Time, the issuance of a Unilateral Change Order incorporating that prior final decision shall not extend the time for giving Notice of claim related to or seeking judicial appeal of such final decision.

- D. If the Work is reduced by a change or changes, the Contract Price shall be reduced as appropriate and such reduction shall not be the basis for a claim of any sort, including but not limited to a claim based on loss of anticipated profits.
- E. Any dispute regarding Contract Time arising from any change or asserted change shall be subject to the provisions of General Conditions, Article 91, DELAYS AND EXTENSIONS OF TIME. Any dispute regarding additional compensation or credit adjustment to the Contract Price arising from any change or asserted change shall be subject to the provisions of General Conditions, Article 104, DISPUTES AND CLAIMS GENERALLY.

#### 41. EXAMINATION AND VERIFICATION OF CONTRACT DOCUMENTS

By executing the Contract, the Contractor confirms that it has thoroughly examined and become familiar with all of the Contract Documents; that it has determined the nature and location of the Work; the general and local conditions; the availability and competence of labor; the availability of equipment, materials, supplies, and Equipment, and all other matters which can in any way affect the Work under the Contract. Failure to have made any examination necessary for these determinations shall not release the Contractor from any of the obligations of the Contract nor be grounds for any claim based upon unforeseen conditions. No verbal agreement or conversation with any officer, agent, or employee of the Owner or of the Engineer, either before or after the execution of the Contract, shall affect or modify any of the terms or obligations of the Contract Documents.

#### 42. DOCUMENTS TO BE KEPT ON THE SITE

- A. The Contractor shall at all times keep one copy of the Contract Documents on the Site, in good order, available to the Engineer and the Owner and to their representatives.
- B. The Contractor shall maintain on a daily basis at the Site, and make available to the Engineer on request, one current record set of full scale Drawings which have been accurately marked to indicate all modifications in the Work that differ from the information shown on the Drawings. As a condition of Substantial Completion of the Work, the Contractor shall provide the Engineer one complete set of full scale, marked up record Drawings.

#### 43. ADDITIONAL COPIES OF CONTRACT DOCUMENTS

The Owner will provide Contract Documents to the Contractor, including reduced scale Drawings free of charge for use by the Contractor. The Owner may also provide full scale Drawings free of charge for use by the Contractor. The number of sets the Owner will provide is stipulated in Supplemental Condition 43. Additional complete sets of the Contract Documents may be obtained from the Owner at the price stipulated in Supplemental Condition 43.

#### 44. OWNERSHIP OF CONTRACT DOCUMENTS

All portions of the Contract Documents, and copies thereof furnished by the Engineer, are instruments of service for the Project. They are not to be used on other work and are to be returned to the Engineer on request at the completion of the Work or termination of the Contract. Any reuse of these materials without specific written authorization, verification or adaptation by the Engineer will be at the risk of the user and without liability or legal expense to the Engineer or the Owner. Such user shall hold the Engineer and the Owner harmless from any and all damages, including reasonable attorneys' fees, from any and all claims arising from any such reuse. Any such verification and adaptation shall entitle the Engineer to further compensation at rates to be agreed upon by the user and the Engineer.

### **THE ENGINEER**

#### 45. AUTHORITY OF THE ENGINEER

The Engineer shall be the Owner's representative during the construction period. The Engineer's authority and responsibilities shall be limited to those set forth in the Contract Documents. The Engineer is not the Owner's agent for purposes of receipt of Notice when Notice to the Owner is required by the Contract Documents.

#### 46. DUTIES AND RESPONSIBILITIES OF THE ENGINEER

- A. The Engineer will make visits to the Site at intervals appropriate to the various stages of the construction to observe the progress and quality of the Work and to determine, in

general, if the Work is proceeding in accordance with the intent of the Contract Documents. For these purposes, one or more Project Representatives may be assigned by the Engineer to observe the Work. The Engineer will not, however, make either comprehensive or continuous reviews or observations to check the quality and quantity of the Work being performed. The Contractor shall furnish all reasonable assistance required by the Engineer or its Project Representatives for proper observation of the Work. The Engineer will not be responsible for the Contractor's construction means, methods, techniques, sequences or procedures, or for the Contractor's safety precautions and programs in connection with the performance of the Work. Visits, and observations, or tests made by the Engineer, or other agents of the Owner shall not relieve the Contractor of its obligations to conduct comprehensive inspections and testing of the Work to confirm compliance with the Contract, to furnish conforming materials, to perform acceptable Work, to provide adequate safety precautions, and otherwise to conform strictly with the intent of the Contract Documents. No failure by the Engineer to detect defective Work shall relieve the Contractor of its obligations to perform all Work in strict compliance with the requirements of the Contract Documents.

- B. The Engineer shall have the authority to reject Work which does not conform to the intent of the Contract Documents. Project Representatives shall have the authority to issue notices of nonconformance and to make decisions within the limitations upon the authority of the Engineer otherwise set forth in the Contract Documents. The Engineer, however, has no power to change the terms and provisions of the Contract Documents in any manner which will result in a change in the Work, the Contract Price or the Contract Time.
- C. Neither the Engineer's authority to act under this provision, nor any decision made by the Engineer in good faith either to exercise or not to exercise such authority, nor the actions of the Project Representatives, shall give rise to any duty or responsibility of the Engineer or its Project Representatives to the Contractor, any Subcontractor, or any of their respective Sureties, or agents.
- D. When requested by the Owner, the Engineer will make recommendations to the Owner, in writing, on claims arising from interpretation of the Contract Documents or from the execution of the Work. The Owner is under no obligation to obtain such recommendation from the Engineer before making a decision on any claim made by the Contractor. Any such recommendation shall be advisory only and is not binding upon the Owner. The Owner may conduct such further investigation and consult with such sources as it deems necessary in its sole discretion in order to make a decision. Such recommendations from the Engineer will be of a factual and/or technical nature, and will not include legal interpretations of the Contract Documents. The Owner will make any necessary legal interpretations of the Contract Documents. Any determination that the Contractor is or is not entitled to a change in the Contract Price or the Contract Time,

shall be at the sole discretion of the Owner and shall be subject to the claims submission and resolution procedures established by the Contract Documents.

- E. The Engineer shall not be responsible for the acts or omissions of the Contractor or of any Subcontractor, or of any other person or organization performing or furnishing any of the Work on behalf of the Contractor.
- F. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved," or other terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," or "satisfactory," or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of the Engineer as to the Work, it is intended that such requirement, direction, review, or judgment will be solely to evaluate the Work for compliance with the intent of the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective in any writing by the Engineer to the Contractor shall not be effective to assign to the Engineer any duty or authority to supervise or direct the furnishing or performance of the Work by the Contractor or any duty or authority to undertake responsibility contrary to the provisions of this Article.
- G. Only the Owner has the authority to suspend the Work or any portion of the Work. The Engineer has no power to change the terms and provisions of the Contract in any manner which will result in a change in either the Work, the Contract Price or the Contract Time.

#### 47. NONCONFORMING OR DEFECTIVE WORK

- A. Any Work deemed by the Owner or the Engineer at any time during performance of the Work or prior to expiration of the Warranty Period to be defective shall be corrected or removed and replaced by Work which shall conform to the intent and requirements of the Contract Documents. Any Work condemned or rejected shall be corrected or removed at once. All such correction or removal and replacement shall be at the Contractor's expense, and shall not be the basis, in whole or in part, for any adjustment of the Contract Time or the Contract Price.
- B. No failure on the part of either the Owner or the Engineer during the performance of the Work to condemn or reject Work which does not comply with the intent and requirements of the Contract Documents or to reject nonconforming Work contained in Contractor submittals shall be construed to imply acceptance thereof.

#### 48. LATENT DEFECTS

- A. No failure on the part of either the Owner or the Engineer to discover and either to condemn or reject Work which does not comply with the intent and requirements of the Contract Documents shall be construed to imply acceptance thereof. The Owner reserves and retains all of its rights and remedies at law or in equity against the

Contractor for correction of any and all defective or nonconforming Work whenever discovered, whether before, during or after the Warranty Period.

- B. No tests or inspections conducted by the Owner, the Engineer or others shall relieve the Contractor of its obligations to execute the Work in strict compliance with the requirements of the Contract Documents and to correct defective or nonconforming Work not initially identified by the Owner, the Engineer or others at the time of tests or inspections but discovered subsequently.

#### 49. RIGHT TO ACCEPT DEFECTIVE OR NONCONFORMING PERFORMANCE

If any part or portion of the Work shall prove defective or nonconforming or otherwise not in accordance with the intent and requirements of the Contract Documents, the Owner, at its sole discretion, shall have the right and authority to accept such Work and make such deductions in the payment therefore as may be just and reasonable. The Owner shall be under no obligation to accept any defective or nonconforming Work.

#### 50. LINES AND GRADES

- A. The Owner shall provide bench marks for the Contractor's use in laying out the Work. It shall be the Contractor's sole responsibility to lay out the Work from the information provided by the Owner and to transfer elevations from bench marks. Where new construction connects to existing facilities, the Contractor shall field check and establish the exact location of all existing facilities prior to beginning any construction of the new facilities.
- B. All stakes, bench marks, and other base line information provided by the Owner shall be carefully preserved by the Contractor, and in case of their removal by any cause without prior written consent from the Owner, such stakes, bench marks, and other base line information shall be re-established by the Owner at the Contractor's expense.
- C. Dimensions, lines and elevations for Structures, appurtenances and utilities are indicated on the Drawings together with other information which may be required for laying out the Work. If Site conditions vary from those indicated, the Contractor shall notify the Owner immediately, who will promptly make any adjustment as required.
- D. The location and elevation of the bench marks are shown on the Drawings. The Contractor shall retain a Professional Land Surveyor licensed in the Commonwealth of Virginia to lay out the Work, establish the center lines or base lines of principal Structures, roads, pipelines, and facilities, and to set additional bench marks as necessary to establish layout and set required elevations.
- E. The Contractor shall notify the Owner immediately upon the discovery of any errors indicated by the Contract Documents or in the bench marks established by the Owner. If the Contractor proceeds with the Work with knowledge of any such error without first

receiving written clarification or correction from the Owner, the Contractor does so at its own risk and shall be solely responsible for all costs and delays arising therefrom or related thereto. If the Contractor fails to discover an error, which, in the exercise of reasonable care and diligence the Contractor should have discovered, the Contractor shall be solely responsible for all costs and delays arising therefrom or related thereto.

#### 51. DETAIL DRAWINGS AND INSTRUCTIONS

The Engineer will furnish to the Contractor, upon request pursuant to the provisions of General Conditions, Article 39, DISCREPANCIES, OMISSIONS, INCONSISTENCIES AND CLARIFICATIONS, or otherwise as deemed necessary in the discretion of the Engineer, additional instructions by means of Drawings or otherwise, if, in the Engineer's opinion, such are required for the proper execution of the Work. All such Drawings and instructions will be consistent with the Contract Documents or reasonably inferable therefrom.

### **THE CONTRACTOR AND ITS EMPLOYEES**

#### 52. INDEPENDENT CONTRACTOR

The Contractor shall perform or cause to be performed all Work under the Contract as an independent contractor and shall not be considered either an agent or employee of the Owner or of the Engineer, nor shall the Contractor's Subcontractors or their employees be considered subagents or employees of the Owner or of the Engineer.

#### 53. SUBCONTRACTING

- A. No less than thirty (30) days prior to entering into a subcontract with any Subcontractor, the Contractor shall submit to the Engineer for review the following documents as to such Subcontractor:
1. The proposed subcontract containing the name and address of the proposed Subcontractor, the scope of work, time allowed for performance, and compensation. Such subcontract shall contain all additional provisions required therein by the Contract Documents.
  2. Proof of compliance with the applicable requirements of General Conditions, Article 59, INSURANCE AND LIABILITY.
  3. Proof of compliance with all licensing requirements of the Contract Documents.
- B. The Engineer may review the subcontract submittals to confirm compliance with the Contract Documents and may either approve or disapprove the proposed subcontract based on compliance with the Contract Documents within thirty (30) days of submittal

by the Contractor. The Contractor agrees that any disapproval of a proposed subcontract shall not be grounds for any claims by the Contractor for additional compensation or extension of time. Approval of a subcontract by the Engineer shall not constitute a certification or warranty by the Engineer of performance by or competence of such Subcontractor, but only a confirmation that the foregoing submittals and the proposed subcontract form comply with the requirements of the Contract Documents. The Contractor shall, promptly following execution thereof, file with the Engineer a certified copy of all subcontracts. A certified copy of each subcontract, which satisfies the requirements of the Contract Documents, shall be submitted to the Engineer as a condition precedent to any payment by the Owner for Work performed by the Subcontractor.

- C. The Contractor shall, with its own forces, perform Work having a value equal to at least the amount specified in Supplemental Condition 53.C.
- D. The Contractor is as fully responsible to the Owner for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them as the Contractor is for the acts and omissions of persons directly employed by the Contractor.
- E. Nothing contained in the Contract Documents shall create any contractual relationship, express or implied, between any Subcontractor and either the Owner or the Engineer.
- F. No failure or defect in the performance of any Subcontractor or supplier of any materials or Equipment shall be grounds for an extension of the Contract Time or for an adjustment of the Contract Price except as otherwise specifically permitted by the Contract Documents.

#### 54. SUBCONTRACTS

- A. The Contractor shall provide in all subcontracts that the Subcontractor is obligated to the Contractor in the same manner and to the same extent that the Contractor is obligated to the Owner under the Contract Documents, and that the Contractor is obligated to the Subcontractor in the same manner and to the same extent that the Owner is obligated to the Contractor under the Contract Documents. The Contract Documents contain additional provisions required to be in each subcontract, including but not limited to the following:
  - 1. The subcontract shall give the Contractor the same power for the Contractor to terminate or suspend the performance of the Subcontractor as the Owner has under the Contract Documents to terminate or suspend the performance of the Contractor.

2. The Contractor agrees that, in the event of the Owner's termination of the Contractor, each subcontract shall if so requested by the Owner be deemed assigned to the Owner, in whole or in part to the extent specified by the Owner, in its sole discretion, by written Notice of assignment given to the Subcontractor subsequent to such termination of performance of the Contractor. Each subcontract shall provide that, in the event of the Owner's termination of the Contractor, the Subcontractor shall, at the request and at the sole discretion of the Owner, agree to such assignment of the subcontract to the Owner and that the Subcontractor shall continue performance thereunder to the extent specified by the Notice of assignment. The subcontract shall provide further that, in such event, the Owner shall have no payment responsibility or payment obligation to the Subcontractor for performance prior to the date of written Notice by the Owner to the Subcontractor that the Owner has elected to exercise its right of assignment, shall be free from any and all obligations arising from or related to performance or attempted performance by the Subcontractor prior to such Notice from the Owner, and that the Owner may further assign the subcontract.
3. The payment and interest requirements set forth in General Conditions, Article 56, PAYMENT OF SUBCONTRACTORS, shall be set forth in each subcontract.
4. Each subcontract shall set forth the warranty requirements of General Conditions, Article 36, WARRANTY PERIOD; Article 55, WARRANTIES; and Article 81, CORRECTION OF DEFECTIVE WORK BEFORE AND DURING WARRANTY PERIOD.
5. Each subcontract shall require the Subcontractor to comply with all requirements of the Specifications.
6. Each subcontract shall set forth the insurance requirements provided in General Conditions, Article 59, INSURANCE AND LIABILITY, as applicable to the Subcontractor.
7. The Owner is an agency of the Government and as such its property is immune from mechanic's liens. Each subcontract shall provide for a waiver of all mechanic's lien rights. Further, each subcontract shall contain a procedure similar in scope and operation for the Subcontractor to that provided by General Conditions, Article 105, RELEASE OF LIENS AND CLAIMS, for the Contractor.
8. The prohibition against employment discrimination shall be set forth in each subcontract to the extent required, and as set forth, by General Conditions, Article 57, EMPLOYMENT DISCRIMINATION.



9. Each subcontract shall set forth the requirements for a drug free workplace as set forth by General Conditions, Article 69, REQUIREMENTS OF VIRGINIA LAW FOR PUBLIC CONTRACTS, Paragraph C.
10. Each subcontract shall contain a payment clause which requires (i) individual subcontractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their Federal Employer Identification Numbers.

55. WARRANTIES

The Contractor warrants to the Owner that all materials and Equipment furnished under the Contract will be new unless otherwise specified, and that all workmanship will be of first class quality, free from faults and defects and in strict compliance with the Contract Documents and with all other warranties and guarantees specified therein. Where no standard is specified for such workmanship or materials, they shall be in strict conformance with the intent and requirements of the Contract Documents and shall be the best of their respective kinds. All Work not conforming to these requirements may be considered defective or nonconforming.

56. PAYMENT OF SUBCONTRACTORS

- A. The Contractor shall, within seven (7) days after receipt of payment from the Owner for Work performed or material provided by a Subcontractor:
  1. pay the Subcontractor for the proportionate share of the total payment received from the Owner attributable to the Work performed or materials supplied by the Subcontractor; or
  2. notify the Owner and the Subcontractor, in writing, of the Contractor's intention to withhold all or a part of the Subcontractor's payment with specification of the amount withheld and the reason for such nonpayment.
- B. The Contractor shall employ no Subcontractor without a written subcontract, and shall include in each subcontract the following clauses:
  1. an interest clause that obligates the Contractor to pay interest to the Subcontractor on all amounts owed by the Contractor to the Subcontractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the Owner for Work performed or materials provided by the Subcontractor under that subcontract, except for amounts withheld as allowed in Subparagraph A above; and

2. an interest rate clause stating: "unless otherwise provided under the terms of the subcontract, interest shall accrue at the rate of one percent per month on all amounts not paid the Subcontractor when due."; and
  3. a clause requiring the Subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier Subcontractor performing any portion of the Work or providing any of the equipment, materials or Equipment necessary for the performance of the subcontract.
- C. The Contractor's obligation to pay an interest charge to a Subcontractor pursuant to the clauses required above to be included in each subcontract shall not be construed to be an obligation of the Owner. There shall be no change made to the Contract for the purpose of providing reimbursement to the Contractor for such interest charge. No claim by the Contractor for additional compensation for any reason shall include any amount for any such interest charge payable or paid to a Subcontractor.
- D. The Contractor shall indemnify and hold the Owner and Engineer harmless, including but not limited to attorneys' fees and other costs of defense, from all claims for nonpayment asserted by third parties arising from performance of any part of the Work. The Contractor shall, promptly and at its own expense, obtain the release of record of any lien placed against the Owner's property or any part of the Work.

## 57. EMPLOYMENT DISCRIMINATION

- A. Employment discrimination by the Contractor is prohibited.
1. During the performance of this Contract, the Contractor agrees as follows:
    - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
    - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this subparagraph.

2. The Contractor will include the provisions of the foregoing paragraphs a, b and c in every Subcontract or purchase order of over \$10,000.00, so that the provision will be binding upon each Subcontractor or vendor.

## 58. EMPLOYMENT OF ALIENS

It shall be the responsibility of the Contractor to comply and to require compliance by others on the Project with all federal, state and local laws dealing with employment of aliens, including, but not limited to, the requirements and prohibitions provided in the Immigration and Nationality Act (INA) of 1952, as amended, and the Immigration Reform and Control Act (IRCA) of 1986, as amended, which control employment of unauthorized aliens.

## 59. INSURANCE AND LIABILITY

### A. GENERAL

1. Before commencing Work under the Contract, the Contractor shall furnish the Owner with copies of the policies and endorsements evidencing the insurance coverage required hereinafter. Additionally, all policies and endorsements shall have the clauses or sections evidencing the required information and coverage marked or highlighted in some manner to facilitate review by the Owner. The insurance companies shall be licensed to do business in Virginia which have a rating in the most recent issue of A.M. Best Key Rating Guide of A-IX or higher and which are acceptable to the Owner. The Contractor shall pay all costs for the insurance coverage designated hereinafter. All Insurance shall be maintained for the Contract Time.
2. All policies shall clearly show the type, amount, class of operations covered, effective dates, and expiration dates of policies.
3. All policies shall include the Owner and Engineer, their officers, agents and employees as additional named insured, and shall contain substantially the following provision:

"This policy of insurance, as it applies to Upper Occoquan Service Authority, will not be cancelled or materially altered except after written notice has been issued by certified mail giving thirty (30) days' notice to Upper Occoquan Service Authority, 14631 Compton Road, Centreville, Virginia 20121-2506. With respect to Workers' Compensation, the Insurance Company hereby waives any right of subrogation against Upper Occoquan Service Authority or its agents."

4. The Contractor shall provide an additional named insured endorsement reflecting this coverage.
5. All policies shall include a waiver of subrogation, with the exception of Workers' Compensation.
6. Failure by the Contractor to provide to the Owner proof of uninterrupted insurance coverage as required by this Article throughout the Contract Time shall be grounds for the Owner to withhold payment in whole or in part, until satisfactory proof of such coverage has been submitted.
7. In case of the breach of any provision of this Article, the Owner, at its option, may take out and maintain, at the expense of the Contractor, such insurance as the Owner may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Contractor under the Contract.

#### B. CONTRACTOR INSURANCE

1. The Contractor shall not commence Work under the Contract until it has obtained all the insurance required hereunder and such insurance has been reviewed and approved by the Owner, nor shall the Contractor allow any Subcontractor to commence Work on any subcontract until insurance specified in Paragraph G below has been obtained. Review and approval of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

#### C. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

##### Requirements:

1. Statutory Workers' Compensation for the Commonwealth of Virginia Employer's Liability Insurance coverage in the amount not less than \$100,000.00 for each incident, for all of its employees engaged in Work on the Project under the Contract
2. In case any such Work is sublet, the Contractor shall require the Subcontractor to provide Workers' Compensation for the Commonwealth of Virginia and Employer's Liability Insurance in compliance with Paragraph G below.

#### D. LIABILITY INSURANCE (INCLUDING AUTOMOBILE) AND UMBRELLA LIABILITY INSURANCE

##### Requirements:

1. Provide Commercial General Liability and Commercial Automobile Liability Insurance as will provide coverage for claims for damages for personal injury and bodily injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from performance of the Work under the Contract.
2. Limits of liability for such insurance (Commercial General Liability and commercial Automobile Liability Insurance) shall be not less than \$1,000,000.00 for bodily injury, personal injury and property damage, per occurrence and \$2,000,000.00 aggregate and shall include the Owner and Engineer, their officers, agents and employees as additional named insured.
  3. The Contractor agrees to notify the Owner if the aggregate is impaired by \$100,000.00 or more.
  4. The Commercial General Liability Insurance shall include an endorsement making the aggregate limit applicable per project.
  5. The Commercial Automobile Liability Insurance shall include all owned, hired, and non-owned automobiles with a limit of liability not less than \$1,000,000.00 combined single limit.
  6. The Commercial Automobile and Commercial General Liability Insurance shall be primary over any otherwise applicable Owner's coverage.
  7. The Commercial General Liability insurance shall include coverage for Premises/Operations, Contractual, Contractors Protective, and Products/Completed Operations, and shall not exclude coverage for the XCU hazards.
  8. The Contractor agrees to continue the Products/Completed Operations coverage for a period of two (2) years following Final Completion and to furnish Owner with a renewal certificate of insurance for each and every year of the said two (2) years following Final Completion.
  9. In the event any Work under the Contract is performed by a Subcontractor, the Contractor shall be responsible for any liability directly or indirectly arising out of the Work performed under the Contract by a Subcontractor, which liability is not covered by the Subcontractor's insurance.
  10. Contractor also shall provide Umbrella Liability Insurance acting as excess insurance over the Commercial General Liability Insurance, the Commercial Automobile Liability Insurance and Employer's Liability Insurance with a Limit of Liability of \$2,000,000.00 in excess of the primary insurance.
  11. With respect to Commercial General Liability and Commercial Automobile

Liability Insurance and Umbrella Liability Insurance, the Insurance Company(ies) shall waive any right of subrogation against Upper Occoquan Service Authority or its agents and the Contractor shall provide proof of such waiver(s).

#### E. BUILDER'S RISK INSURANCE

##### Requirements:

1. The Contractor shall secure and maintain throughout the Contract Time Builders Risk Insurance coverage for one hundred percent (100%) of the Contract Price.
2. Such insurance shall be issued on an All Risk form, subject to exclusions, and shall not exclude coverage for earthquake, landslide, flood, collapse, or loss due to the results of faulty workmanship.
3. Such Builders Risk Insurance shall cover the insurable interests of the Owner, Engineer, Contractor, Subcontractor, suppliers of any portion of the Work, and any bondholders and shall contain a Waiver of Subrogation clause as to all such entities as part of the form or by separate endorsement.
4. Proceeds of any claim shall be payable to the Owner to be applied toward repair or replacement of the damaged Work.
5. To the extent permitted by law and only to the extent covered by Builders Risk Insurance which meets or exceeds the coverage requirements of the preceding subparagraph 59.E.1, Contractor hereby agrees to waive any rights Contractor may have against the Owner, Engineer, Subcontractor(s), suppliers of any portion of the Work, and any bondholders, for any damage to the Work, even if caused by the negligence of the Owner, Engineer, Subcontractor(s), suppliers of any portion of the Work, or any bondholders.
6. The Contractor shall include in the Contract Price the costs of such Builders Risk Insurance and shall disclose such cost to the Owner promptly after award of the Contract. If the Owner can provide such Builders Risk Insurance at a price less than that available to the Contractor, the Owner reserves the right to provide such insurance and to issue a deductive Change Order for the cost of such insurance included by the Contractor in the Contract Price.

#### F. INSURANCE COVERAGE FOR SPECIAL CONDITIONS

When the Work is to be accomplished within a public or private right of way or easement requiring special insurance coverage, the Contractor shall conform to the particular requirements of the applicable public authority or of the owner of the servient

estate and provide the insurance required by such public authority or such owner. The Contractor shall include in its liability policy all endorsements that such public authority or such owner may require for the protection of such public authority or such owner, and the officers, agents, and employees of either of them. Insurance coverage for special conditions, when required, shall be provided as set forth in the Supplemental Agreement addressing such special conditions.

#### G. SUBCONTRACTOR INSURANCE

1. The Contractor shall require all Subcontractors to provide the same insurance coverage as that required of the Contractor as set forth in the Contract Documents. The following exceptions will be permitted with respect to the insurance requirements pertaining to any Subcontractor's insurance:
2. Workers' Compensation policy for the Commonwealth of Virginia shall be acceptable without the Waiver of Subrogation requirement.
3. The Umbrella Insurance requirement will be acceptable at a minimum limit of \$1,000,000.00
4. There is no requirement for the Subcontractor to provide Builders Risk Insurance separate from that obtained by the Contractor or Owner.
  - i. A Certificate of Insurance indicating compliance with the provisions herein shall be provided to the Owner and the Contractor prior to the commencement of any Work by any Subcontractor.

#### H. NO PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions hereof in exercising any authority granted by the Contract, there shall be no personal liability upon any public official.

#### 60. INDEMNITY

- B. The Contractor shall indemnify and hold harmless the Owner, the Engineer, their officers, agents and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, personal injury, sickness, disease, or death, or to injury or to destruction of tangible property including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

- C. In any and all claims against the Owner, the Engineer, their officers, agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under Workers' Compensation Acts, Disability Benefit Acts, or other Employee Benefit Acts.
- D. The obligation of the Contractor under this Article shall not extend to the liability of the Engineer and its agents or employees arising out of the preparation or approval of maps, Drawings, opinions, reports, surveys, Supplemental Agreements, designs, or Specifications. The Contractor agrees that all indemnification obligations of the Contractor set forth in the Contract Documents will be an insured occurrence under the General Liability Insurance as required in Paragraph D of General Conditions, Article 59, INSURANCE AND LIABILITY.

#### 61. SITE ACCESS AND RESTRICTIONS

- A. The Contractor's employees are strictly prohibited from entering areas of the Site that are not part of, or associated with, the Work. The Owner reserves the right to have personnel who violate this provision removed from the Site.
- B. The Owner may limit, restrict, or prohibit access to areas of the Site on a permanent or temporary basis by signs, fencing, barricades, or other appropriate markings. When access to such restricted areas is required by the Contractor in order to perform the Work, the Contractor shall obtain the written permission of the Owner for such access sufficiently in advance of the required access to avoid any delay to the Work and shall comply with such conditions or limitations to access as may be imposed by the Owner in granting such permission.
- C. The Owner shall have the right to deny access to the Site, or to require the Contractor to remove from the Site, any individual who has exhibited violent, abusive or threatening behavior or conduct toward others.
- D. Except where expressly permitted, smoking of tobacco products of any kind is prohibited in all parts of the Site occupied by the Owner. This smoking prohibition includes but is not limited to all existing buildings, structures and facilities and all grounds and between such buildings, structures and facilities; all new construction within Owner-occupied areas; and all new construction once it has been occupied by the Owner. The Contractor acknowledges that this smoking prohibition is a critical safety requirement because of the presence of explosive gases throughout the Site and agrees that this smoking prohibition will be strictly enforced at all times.



## 62. TAXES AND CHARGES

The Contractor shall withhold and pay any and all nonexempt sales and use taxes and all withholding taxes, whether State or Federal, and pay all Social Security charges and all State Employment Compensation charges, and pay or cause to be withheld, as the case may be, any and all taxes, charges, or fees or sums whatsoever, which are now or may hereafter be required to be paid or withheld under any laws. Provided, however, if the Contractor contends that, subsequent to bid opening, there is adopted, enacted or imposed a change in any nonexempt sales or use tax, fee, or similar charge for any goods, materials, Equipment, or item not incorporated into the Work which results in an increase in cost to the Contractor, the Contractor may submit a claim for a change in the Contract Price pursuant to the provisions of General Conditions, Article 40, CHANGES IN THE WORK, and Article 102, PAYMENT FOR CHANGES IN THE WORK.

## 63. LABOR REGULATIONS

The Contractor shall strictly adhere to the provisions of the U.S. Department of Labor Regulations regarding minimum wages, the 8-hour day and 40-hour week, overtime, Saturday, Sunday, and holiday work. The Contractor shall forfeit to the appropriate agency the penalties prescribed in the U.S. Department of Labor Regulations for violations without cost to the Owner.

## 64. CODES, ORDINANCES, PERMITS, AND LICENSES

- A. The Contractor, by submitting a Bid, has acknowledged that it is familiar with, and has considered the application to the Project of, all local, state and federal ordinances, laws, codes, regulations, and any other form of governmental requirements which in any manner may affect the Work, whether specifically identified in the Contract Documents or not, and waives any and all claims for additional compensation or extension of time which may arise as a result of the operation of any such requirement in effect, or adopted but with a deferred effective date, at the time of bid opening.
- B. Contractor, by submitting a Bid, has acknowledged that it is familiar with, and has considered the application to the Project of, the practice of the office of the Fire Marshall adding or changing signage, lighting or ingress/egress requirements from the approved building plans at the time of the final inspection process. Contractor shall allow sufficient time in its Project Schedule to address such foreseeable but unpredictable changes, and no change in signage, lighting or ingress/egress requirements by the office of the Fire Marshall shall entitle Contractor to any extension of the Contract Time. Provided, however, Contractor may seek a modification of the Contract Price to address actual costs of labor and materials for complying with such requirements of the Fire Marshall pursuant to the provisions of General Conditions, Article 40, CHANGES IN THE WORK, and Article 104, DISPUTES AND CLAIMS GENERALLY.
- C. The Contractor shall keep itself fully informed of all such local, state and federal ordinances, laws, codes, regulations, governmental requirements, and all permits required of either the Owner or the Contractor, and shall at all times comply therewith.

and shall protect and indemnify the Owner, the Engineer, and their respective employees, officers and agents against any claim or liability arising from, or based upon, the violation thereof caused by the Contractor or by any party performing any part of the Work for, or for the benefit of, the Contractor.

- D. The governmental agencies having jurisdiction over the Work are hereafter referred to as "Government Agencies" or "Government Agency", and include but may not be limited to, city governments, county governments, and agencies of the Commonwealth of Virginia. Except as otherwise provided herein, the Owner and Engineer shall obtain all federal and Commonwealth of Virginia regulatory permits required for construction of the planned improvements, and shall obtain from Government Agencies, all site plan approvals, required building permits for Structures, and shall submit all required soils reports to Government Agencies. All other permits, licenses, and inspection fees necessary for prosecution and completion of the Work, and all permits required of the Contractor by the Government Agencies, including, but not limited to, compliance with any special inspections programs, critical structures programs, storm water discharge permits, trade permits, and all permits for Work within any public right-of-way shall be secured and paid for by the Contractor. Once construction begins on a building or Structure for which any permit is required, it shall be the Contractor's responsibility to be familiar with all applicable requirements for preventing the expiration of such permit and the Contractor shall be responsible for preventing such expiration. If the Contractor fails to prevent the expiration of a permit, the Owner may, but is not required to, secure a new permit and in such event the Contractor shall be liable to the Owner for all costs associated with securing the new permit and the Owner is authorized to deduct such costs from any payments then or thereafter due the Contractor. The consequences of the Contractor's failure to keep a permit active shall not be a basis for an increase to the Contract Price or Contract Time. The Owner and Engineer shall provide reasonable assistance to the Contractor to aid the Contractor in achieving compliance with requirements of the Government Agencies for obtaining any required permits, licenses, or inspections, but all responsibility for doing so shall rest solely with the Contractor. The Contractor shall abide by all regulations, requirements, terms and conditions stipulated in any such permit or license, and such regulations, requirements, terms and conditions are hereby made a part of the Contract Documents as if fully set forth herein. The Contractor shall, at its sole expense, provide all bonds required by any Government Agency in the amount and form required by such governmental entity before commencing any portion of the Work subject to such bonding requirement.
- E. The Contractor shall meet or exceed all requirements of any special inspections program of any Government Agency applicable to any portion of the Work in effect on the date of execution of the Contract, the Government Agencies' Special Inspections Manual, as amended for the Work, in addition to other local, state and federal building codes. Violations, defects, or deficiencies noted as a result of this program resulting from acts or omissions of the Contractor shall be grounds for

withholding partial and/or final payments to the Contractor until such time as they are corrected or resolved.

- F. In the event that two or more code requirements conflict, or a code requirement conflicts with a provision of the Contract Documents, the more stringent requirement which will satisfy code requirements shall govern.
- G. All required field coordination of the Work with affected utility companies and Government Agencies and scheduling the Work accordingly shall be the responsibility of the Contractor. No additional monetary compensation or time extension shall be granted for any impact on construction activities for Work due to restrictive conditions, whether listed herein or not, required by utility companies or affected Government Agencies.

## 65. SUPERINTENDENCE

The Contractor shall provide at the Site competent, full time supervisory personnel. The Contractor shall designate, in writing to the Owner, before starting Work, a Project Superintendent or Project Manager and provide all contact information. Any Project Superintendent or Project Manager assigned to the Project by the Contractor shall have a minimum of five (5) years of experience as a Project Superintendent or Project Manager on projects similar to that contemplated by the Contract Documents. A written resume of prior work experience shall be provided if requested by the Owner. The Project Superintendent or Project Manager shall be fluent in English and in such other languages as may be necessary to communicate effectively and efficiently with all employees and Subcontractors engaged in the performance of the Work. Provided, however, the requirement for fluency in languages other than English may be satisfied by the presence at the Site of a competent foreign language to English interpreter. The cost of such interpreter or interpreters as may be needed shall be borne solely by the Contractor and shall not be the basis for any additional compensation from the Owner. The Project Superintendent or Project Manager shall have complete authority to represent and to act for the Contractor and to receive all Notices for the Contractor. The Owner shall be notified in writing prior to any change in the Project Superintendent or Project Manager. The Contractor shall provide efficient supervision of the Work. Except as otherwise provided by the Contract Documents, the Contractor shall be solely responsible for all construction means, methods, techniques, and procedures, and for providing adequate safety precautions and coordinating all portions of the Work under the Contract. It is specifically understood and agreed that, except as otherwise provided by the Contract Documents, neither the Engineer nor the Owner, nor any of their employees or agents, shall exercise any control over nor have any authority regarding and shall not be responsible in any way for the construction means, methods, techniques, procedures, or safety precautions of the Contractor in connection with the performance of any Work under the Contract, except as provided in the Contract Documents.

## 66. RECEPTION OF COMMUNICATIONS

- A. The Contractor shall establish a Project Office on the site for the maintenance of records and the receipt of communications. The Project Office shall be open and staffed during all regular working hours.
- B. The Project Superintendent or Project Manager shall receive at the Project Office on behalf of the Contractor all communications or directions from the Engineer and/or Owner. Oral communications will be confirmed in writing by the Engineer upon request from the Contractor.
- C. The Engineer and/or Owner may schedule Project meetings for the purposes of discussing and resolving matters concerning the various elements of the Work. The time and place for these meetings and the names of persons required to be present shall be as determined by the Engineer and/or Owner and communicated to the Contractor in writing by either the Owner or the Engineer. The Contractor shall comply with these attendance requirements and shall also require the Subcontractors to comply.

## 67. SANITATION

- A. Sanitary conveniences conforming to state and local codes shall be erected and maintained by the Contractor at all times while workers are employed on the Work. The sanitary convenience facilities shall be as approved by the Owner. The facilities shall be secured in such a manner so as to prevent sewage spills.
- B. Sanitary facilities in the existing Structures on the Site are not available for use by the Contractor nor by any persons performing a portion of the Work.

## 68. EMPLOYEES

The Contractor shall employ only competent, skillful workers to do the Work, and whenever any person shall appear to be incompetent or to act in a disorderly or improper manner, such person shall be removed from the Work.

## 69. REQUIREMENTS OF VIRGINIA LAW FOR PUBLIC CONTRACTS

- A. It is understood that the Contract is subject to and governed by the Virginia Public Procurement Act, Title 2.2, Chapter 43, Code of Virginia 1950 as amended.
- B. It is understood and agreed that the Contractor shall determine the contents and applicability to the Project of all other governing statutes, ordinances, codes, and regulations and comply with their provisions throughout the performance of the Contract.

- C. During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) 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; (iii) 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 (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each Subcontractor or vendor.

## 70. SAFETY

- A. The Contractor shall be solely and completely responsible for conditions at the Site, including but not limited to the safety and security of all persons (including employees) and property during performance of the Work. This requirement shall apply continuously and not be limited to Normal Working Hours. Safety provisions shall conform to U.S. Department of Labor (OSHA), and all other applicable federal, state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve it of responsibility for compliance with the obligations and penalties set forth therein.
- B. The Contractor shall develop and maintain for the duration of the Contract a safety program which effectively incorporates and implements all safety provisions required by the Contract Documents. The Contractor, prior to commencing Work, shall establish a written safety program and furnish copies thereof to the Contractor's insurance carrier, who shall monitor the Contractor's compliance with the program. In addition, copies of the program as accepted by the Contractor's insurance carrier shall be submitted to the Owner and the Engineer before starting the Work at the Site. The Contractor shall appoint an employee who is qualified, authorized and charged with the responsibility to supervise and enforce compliance with the safety program.
- C. The duty of the Engineer to visit the Site and observe the performance by the Contractor of the Work does not include review or approval of the adequacy of the Contractor's safety program, safety supervisor, or any safety measures taken in, on, or near the Site.
- D. The Contractor, as a part of its safety program, shall maintain at its Project Office or other well-known place at the Site, safety equipment appropriate for the Work as prescribed by its insurance carrier or appropriate regulatory authorities, all articles necessary for giving first-aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a physician's care of persons (including employees) who may be injured on the Site.
- E. If death, bodily injuries, personal injuries or property damages occur, the incident causing such shall be reported immediately by telephone or messenger to both the Engineer and the Owner. In addition, the Contractor shall promptly, after its occurrence,

report in writing to the Engineer and the Owner all such incidents whatsoever arising out of, or in connection with, the performance of the Work whether on, or adjacent to, the Site, giving full details and statements of witnesses.

- F. If a claim is made by anyone against the Contractor or any Subcontractor because of any incident related to the Work, the Contractor shall promptly report the facts in writing to the Engineer and Owner, giving full details of the claim.
- G. The Contractor must have a written permit-required confined space entry program that meets or exceeds the requirements of the OSHA Confined Space Entry Standard (29 CFR 1910.146). Copies of this program shall be provided to the Engineer and to the Owner before starting Work at the site. All Work performed in permit-required confined spaces shall be conducted in compliance with this program. The Owner shall be consulted about the classification of and hazards present in all confined spaces in the Work area as required by the OSHA standard.
- H. In the performance of the Work, the Contractor may encounter sewage at various stages of treatment in excavations, existing Structures, and elsewhere around the Site. Further the Contractor may encounter chemicals and utilities used by the Owner. The Contractor shall take all necessary precautions when these conditions are encountered.

#### 71. PROTECTION OF WORK AND PROPERTY

- A. The Contractor shall at all times safely guard and protect the Owner's property, adjacent property, and its own Work from damage, injury or loss in connection with the performance of the Contract. The Contractor acknowledges the requirements of the Specifications regarding the importance of maintaining uninterrupted operation of the Owner's existing facilities. All measures, equipment, and facilities required for the provision of such protection by federal, state, or municipal laws and regulations and local conditions must be established, provided and maintained.
- B. The Contractor shall protect the Work and materials from damage due to the nature of the Work, the elements, carelessness of other contractors, or from any cause whatsoever until Final Completion and acceptance by the Owner of the Work. Provided, however, the Contractor shall not be responsible for damage to the Work caused by the Owner's use thereof after Substantial Completion.
- C. Before commencing any Work, the Contractor shall identify the locations of all subsurface utilities. The Contractor shall field verify the nature, conditions, location, shape, configuration, dimensions, materials, or other properties of all buried utilities and facilities, whether shown in the Contract Documents or not, prior to proceeding with the subsurface Work. The Contractor shall protect all existing utilities and facilities at all times unless otherwise shown in the Contract Documents. In the event of the failure of the Contractor to comply with the requirements of this Article, or promptly to effect repair of any damage or injury to the Owner's property, adjacent property or the Contractor's own property, the right is reserved to the Owner, but the Owner shall not be required, to provide such protection and to effect such repairs. Should the Owner take

actions as provided by this Article, the Contractor shall reimburse the Owner for all costs incurred by the Owner, including but not limited to labor, materials, equipment, fines, charges, penalties, and legal actions plus an administrative fee of fifteen percent (15%) of all such costs. The Owner is authorized to deduct such costs from any amount due, or that may become due, the Contractor.

## 72. ASSUMPTION OF RISK FOR UNFORESEEN CONDITIONS

- A. Execution of the Contract by the Contractor is an acknowledgement by the Contractor that it has exercised due diligence in the investigation of the Site and of all Equipment, Structures and improvements thereon as provided in the Instructions To Bidders, Article 5, BIDDER'S UNDERSTANDING. The Contractor shall have no claim for any adjustment of any sort to the Contract Price or the Contract Time arising from or related to any conditions at the Site and all Equipment, Structures and improvements thereon or other information provided by the Owner that should have been discovered by such investigation.
  
- B. If the Contractor in the performance of the Work encounters physical conditions at the Site which differ materially from those indicated in the Contract Documents and which should not have been discovered previously in the exercise of due diligence, the Contractor promptly, and before the conditions are disturbed, shall give written Notice thereof to the Owner and to the Engineer and shall not disturb the conditions until the Owner and the Engineer have inspected the same and the Owner has issued written instructions to proceed. Any request for an adjustment to the Contract Time or the Contract Price thereafter shall be subject to and governed by the provisions of General Conditions, Article 40, CHANGES IN THE WORK; Article 91, DELAYS AND EXTENSIONS OF TIME; Article 102, PAYMENT FOR CHANGES IN THE WORK; Article 104, DISPUTES AND CLAIMS GENERALLY; and the Specifications. Compliance with the Notice provisions is a condition precedent to any claim for adjustment of either the Contract Time or of the Contract Price due to such conditions. Failure to strictly comply with the condition precedent shall be an absolute bar to any claim for adjustment of either the Contract Time or the Contract Price.

## 73. RESPONSIBILITY OF CONTRACTOR TO ACT IN EMERGENCY

- A. In case of an emergency, which threatens either loss or damage to property, and/or loss of life or injury to a person, the Contractor shall act, immediately and without previous instructions from the Owner or the Engineer, as the situation may warrant to eliminate or mitigate such threat. The Contractor shall notify the Engineer and the Owner immediately of both the nature, cause, and extent of the threat and the actions which it is taking or has taken in response thereto. Any claim by the Contractor for additional compensation or an extension of time arising from or related to such emergency shall be

determined in accordance with General Conditions, Article 91, DELAYS AND EXTENSIONS OF TIME, and Article 104, DISPUTES AND CLAIMS GENERALLY.

- B. In the event any action is required on the part of the Owner to remediate or mitigate, or to assist the Contractor in remediating or mitigating, an emergency situation which resulted directly or indirectly from Contractor's operations, that require Owner support or any action on the part of the Owner, the Contractor shall reimburse the Owner for all costs incurred by the Owner, including but not limited to labor, materials, equipment, fines, charges, penalties, and legal actions plus an administrative fee of fifteen percent (15%) of all such costs. The Owner shall deduct such costs and administrative fee from any amount due, or that may become due, the Contractor.

#### 74. MATERIALS AND EQUIPMENT

- A. Unless otherwise provided by the Contract Documents, the Contractor shall provide and pay for all materials, labor, water, tools, Equipment, heat, light, fuel, power, transportation, construction equipment and machinery, appliances, telephone, sanitary facilities, temporary facilities and other facilities and incidentals necessary for the execution and completion of the Work. This shall include all costs associated with operation and maintenance of Equipment and facilities including weekly janitorial service to clean such facilities prior to their being accepted as Substantially Complete.
- B. Unless otherwise specified by the Contract Documents, all materials and Equipment shall be new, and all workmanship, materials, and Equipment shall be of the highest quality. The Contractor shall, if required, furnish evidence satisfactory to the Engineer as to both the kind and quality of all such materials and Equipment.
- C. In selecting and/or approving Equipment provided by the Contractor for installation in the Project, neither the Owner nor the Engineer assumes any responsibility for injury or claims resulting from failure of the Equipment as manufactured or Installed to comply with applicable federal, state, or local safety codes or requirements, or with the requirements or standards of a recognized regulatory agency or body, or failure due to faulty Equipment design concepts, or defective workmanship or materials.
- D. STANDARDIZATION AND UNIFORMITY OF EQUIPMENT AND CERTAIN MATERIALS
  - 1. To ensure standardization and uniformity in all parts of the Work under the Contract, like items of Equipment provided by the Contractor shall be the products of one Manufacturer. Like items of materials provided by the Contractor shall be the products of one Manufacturer unless otherwise specified.



2. Uniformity in like Equipment items is required to provide the Owner with interchangeability capabilities, simplified spare parts inventory, and standardized maintenance programs and Manufacturers' services.
3. Uniformity in like material items is required to provide the Owner with a simplified spare materials inventory; continuity in patterns, color, and texture; and a standardized procedure for maintenance, care and Manufacturers' services.
4. Visible architectural items such as but not limited to exterior finishes, roofing materials, floor and wall covering, ceiling materials, doors, windows, cabinetwork, paint, and miscellaneous appurtenances, when specified alike shall be standardized.
5. Generally, material items exempt from standardization include structural steel, reinforcing steel, building insulation, sheet metal, materials specified only by reference to a recognized standard, and items similarly hidden from view and not subject to ready replacement where interchangeability, color, and texture are not significant factors for standardization.
6. The Contractor shall inform all Subcontractors of these requirements and shall provide the necessary coordination to accomplish the standardization specified.

75. CONTRACTORS' AND MANUFACTURERS' COMPLIANCE WITH STATE SAFETY, OSHA, AND OTHER CODE REQUIREMENTS

- A. Whether shown on the Drawings or not, the completed Work shall include all necessary permanent safety devices, such as machinery guards and similar ordinary safety items required by the state and federal (OSHA) industrial authorities and applicable local, state and national codes. Further, any features of the Work subject to such safety regulations shall be fabricated, furnished, and installed (including Owner-furnished Equipment) in compliance with these requirements. The Contractor, Manufacturers and Manufacturers/Suppliers of Equipment shall be held responsible for compliance with all safety requirements. The Contractor shall notify all Subcontractors, Manufacturers, and Manufacturers/Suppliers of the requirements of this Article.
- B. It shall be a condition precedent to achieving Substantial Completion of the Work or of a defined portion thereof, that the Contractor shall satisfy the requirements of applicable structural, electrical, heating, plumbing, elevator, fire protection, public utilities, and all other inspections required by Federal, State, County or other local codes and covered under General Conditions, Article 64, CODES, ORDINANCES, PERMITS, AND LICENSES.
- C. Signed copies of the inspection approval shall be submitted to the Owner and the Engineer. It shall be a condition precedent to achieving Substantial Completion of the

Work or of a defined portion thereof that all violations or deficiencies noted therein shall be resolved prior to Substantial Completion of the facilities or a defined portion thereof or Partial Utilization. However such inspection approval shall not by itself mean that all Substantial Completion requirements have been satisfied.

- D. The Contractor shall sequence and perform the Work in such a manner as to ensure that none of the Owner's existing facilities and operations, nor any defined portion of the Work under the Owner's control, is caused to become in violation of any applicable structural, electrical, heating, plumbing, elevator, fire protection, or other codes or ordinances.

## 76. SUBSTITUTIONS

- A. The Specifications may indicate or specify by patent or proprietary name, by name of Manufacturer, or by catalogue number a particular item of Equipment, material, device, product, fixture, form, type of construction, or process. Such indication or specification shall be deemed to be used only for the purpose of establishing a standard of quality and facilitating the description of the item of Equipment, material, device, product, fixture, form, type of construction, or process desired except as otherwise provided by the Instructions To Bidders or the Bid Form. Such specifications are not intended to eliminate, and are not to be construed as eliminating, from competition other items of Equipment, materials, devices, products, fixtures, forms, types of construction, or processes of equal or better quality by other Manufacturers except as otherwise provided by the Instructions To Bidders or the Bid Form. Any such specification of a particular item of Equipment, material, device, product, fixture, form, type of construction, or process shall, accordingly, be deemed to be followed by the words "Or Approved Equal" and/or "Or Equal." The Contractor may, where substitutions are permitted, submit complete data to the Engineer, as required by the Contract Documents, for consideration of another item of Equipment, material, device, product, fixture, form, type of construction, or process, which the Contractor deems to be substantially equal in every respect to that so indicated or specified. Substitutes of any type shall not be purchased, used, or installed without first obtaining the written authorization of the Engineer which shall be copied to the Owner at the time of the Engineer's determination of the substitution's equivalence. The Owner has the right to reject any Engineer-approved substitution, so long as it does so within 14 days of receipt of the Engineer's written approval of the substitution. In considering the acceptability of any proposed substitution, neither the Engineer nor the Owner shall have any obligation to consider whether redesign of any other part of the Work will be required as a result of its approval, or whether as a result of such approval and/or redesign the Contractor's cost or time of performance will be increased, and the Contractor as the proponent of such substitution assumes the risk of and waives all claims arising from or related to all such impacts.

B. Design of the Project is based on the use of the Equipment, materials, devices, products, fixtures, forms, types of construction, or processes as may be identified in the Contract Documents. Should the Contractor desire to make a substitution, it shall comply with the following:

1. Submit to the Engineer complete information regarding any and all dimensional, mechanical, electrical, structural, or other changes to or modifications of any other Work and/or other requirements necessary for the substitute's use for the performance of any associated redesign and the issuance of any associated revisions to Contract Specifications or Drawings. The Contractor shall also submit evidence of the possession of any paid-up licenses necessary for the use of the proposed substitute if required by the Manufacturer/Supplier.
2. Any redesign required as a result of the substitution shall be performed and shall be approved by the Engineer at the Contractor's expense. The Contractor shall be solely responsible for reimbursing the Engineer for the costs of such redesign, as well as for any additional cost or time required for the redesign and any resulting changes in any other aspect of the Work. Reimbursement of the Engineer shall be based on the Engineer's raw salary costs times a multiplier equal to the Engineer's then standard billable rate plus any direct, non-labor expenses such as but not limited to travel, per diem and reproduction costs. The Contractor authorizes the Owner to deduct any costs associated with redesign from the Contractor's subsequent Applications for Payment pursuant to General Conditions, Article 103.C.1.b, PARTIAL PAYMENTS, and to make payment of such amounts as may be due the Engineer for such redesign.
3. The Contractor agrees that any delay or any cost incurred as a result of the Contractor's request for a substitution or of the allowed use of a substitute requested by the Contractor shall not constitute grounds for any increase in Contract Price or extension of the Contract Time and hereby waives any and all claims arising from or related to the request for or the use of such Contractor requested substitute.

C. For additional information concerning "Or Equal," see General Conditions, Article 21, "OR EQUAL" AND/OR "OR APPROVED EQUAL", and all applicable Specifications and Bidding Requirements.

## 77. SUBMITTALS

- A. After checking and verifying all field measurements and after complying with applicable procedures specified in the Specifications, the Contractor shall submit to the Engineer for review in accordance with the Schedule of Submittals its Shop Drawings, electrical diagrams, and catalog cuts for fabricated items and manufactured items (including mechanical and electrical equipment), which shall bear a stamp or specific written indication that the Contractor has satisfied the Contractor's responsibilities under the Contract Documents with respect to the review of the Submittal. All Submittals shall be

in the format as specified in Specifications, unless otherwise directed by the Engineer and shall be submitted to the Engineer unless otherwise directed by the Owner. The data shown shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to enable the Engineer to review the information.

- B. Before submission of each Submittal, the Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and have reviewed and coordinated each Submittal with other Submittals and with all the requirements of the Work and the Contract Documents.
- C. At the time of each submission, the Contractor shall give the Engineer specific written Notice of each variation that the Submittal may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation of each such variation to be made on each Shop Drawing submitted to the Engineer for review and approval.
- D. The Engineer shall review Submittals in a timely manner but not to exceed the time given in Supplemental Condition 77.D, unless specifically indicated otherwise in the applicable Specifications Sections, but the Engineer's review will be only for conformance with the intent of and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences, or procedures of construction (except where a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. The Contractor shall make corrections required by the Engineer, and shall return specified number of corrected copies of Submittals, including one reproducible copy, and submit as required new samples for review. The Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Engineer on previous Submittals. Should the Contractor fail to submit fully acceptable and correct Shop Drawings and Submittals on the second Submittal, one copy will be returned to the Contractor and the Contractor will be charged the amount stipulated in Supplemental Conditions 77.D. for reviewing each subsequent Submittal.
- E. The Engineer's review of Shop Drawings and Submittals shall not relieve the Contractor of its responsibility for any variation from the requirements of the Contract Documents unless the Contractor has called the Engineer's attention to each such variation in writing at the time of submission and the Engineer has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing, Submittal or sample approval; nor will any approval by the Engineer

relieve the Contractor of its responsibility for errors or omissions in the Submittals or Schedule of Submittals, for having complied with the provisions herein, nor otherwise for compliance with the requirements of the Contract Documents.

- F. Where a Shop Drawing, sample or Submittal of any kind is required by the Specifications, any related Work performed prior to Engineer's review and approval of the pertinent submission shall be at the risk of the Contractor.
- G. Where catalog cuts contain information on more than one model, the specific model to be supplied and all pertinent information shall be clearly identified by highlighting or other easily discernible method.

#### 78. TESTS AND OBSERVATIONS

- A. The Owner, Engineer and authorized government agents, and their representatives, shall at all times be provided safe and ready access to the Work wherever and whenever it is in preparation or progress, and the Contractor shall provide facilities for such access and for their observation of the Work including maintenance of temporary and permanent access.
- B. If the Specifications, or any laws, ordinances, codes, regulations, or any public authority require any Work to be tested or approved, the Contractor shall give timely Notice to the appropriate persons or authorities of its readiness to perform such testing or to provide an opportunity for observation of that Work. Where the Specifications, laws, ordinances, codes, regulations or any public authority require work to be tested, monitored or observed during other than Normal Working Hours, the Contractor shall provide at least one representative to accompany the Owner, Engineer and/or their designated representative. If any Work should be covered or concealed without approval or consent of the Engineer, it shall, if required by the Engineer, be uncovered or exposed for examination at the Contractor's expense, even if the Work is found to be acceptable.
- C. Examination of covered or concealed Work may be ordered by the Engineer, and, if so ordered, the Work shall be uncovered or exposed by the Contractor. Except as provided for in paragraph B above, if such Work is found to be in accordance with the Contract Documents, the Owner will pay the cost of uncovering, exposure, observation, inspection, testing and reconstruction. If such Work is found to be not in accordance with the Contract Documents, the Contractor shall correct the defective Work, and all costs associated with the inspection, correction and reexamination of the defective Work shall be paid by the Contractor. Except for Work covered or concealed in violation of paragraph B above, if such Work is found to be in

accordance with the Contract Documents, the Contractor shall be entitled to an adjustment of the Contract Price and/or Contract Time, as applicable, subject to the Notice, claims submittal and claims consideration procedures set forth in the Contract Documents.

#### 79. INSPECTIONS

- A. Government Agencies assign responsibilities and obligations for various inspections to specific parties. The Owner shall perform all obligations assigned to it as non-delegable by Government Agencies. The Owner shall fulfill the responsibilities assigned by such authorities directly, or through the Architect of Record, the Structural Engineer of Record, or the Geotechnical Engineer of Record. The Contractor, at its own expense, shall comply with all other inspections required by Government Agencies.
- B. Except as identified above, any inspections required to be made by inspectors or representatives provided by any Government Agencies or utility companies having jurisdiction over the Work shall be scheduled and obtained at the expense of the Contractor.

#### 80. ROYALTIES AND PATENTS

- A. The Contractor shall pay all royalty and license fees, unless otherwise specified. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of the Owner or the Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents. The Contractor shall defend all suits or claims for infringement of any patent rights or any other proprietary rights and shall save the Owner and the Engineer harmless from any and all loss, including reasonable attorneys' fees, on account thereof.
- B. Upon Final Completion, UOSA shall own all the Work, including, but not limited to, all technologies, materials, software, and processes provided under this Contract, except as specifically agreed to by the parties in a Supplemental Agreement prior to the performance of that portion of the Work that the Contractor does not intend to turn over ownership to UOSA. The presumption is that all Work will become UOSA's property with UOSA's ability to exercise control and access to all portions of the Work.

81. CORRECTION OF DEFECTIVE WORK BEFORE AND DURING WARRANTY PERIOD

- A. The Contractor hereby agrees to make, at its own expense, all repairs or replacements necessitated by defects or non-conformities in the Work and to pay for any damage to other work resulting from such defects or non-conformities which become evident at any time prior to expiration of any applicable Warranty Period 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 or otherwise provided. Defects or non-conformities which are remedied as a result of obligations of the warranty shall subject the remedied portion of the Work to an extended Warranty Period of one (1) year from the date upon which such defect or nonconformity was fully remedied or from the date of Final Completion, whichever is later. The Contractor must submit to the Owner a written certification that the item of defective or nonconforming Work has been corrected. Unremedied defects or non-conformities identified for correction during the Warranty Period but remaining after its expiration shall be considered as part of the obligations of the warranty.
- B. No tests or inspections conducted by the Owner, the Engineer or others shall relieve the Contractor of its obligations to execute the Work in strict compliance with the requirements of the Contract Documents and to correct defective or nonconforming Work not initially identified by the Owner, the Engineer or others at the time of tests or inspections, but discovered subsequently.
- C. The Contractor further assumes responsibility for a similar warranty for all Work provided by Subcontractors, Manufacturers or Manufacturers/Suppliers. The effective date for the start of the guarantee or Warranty Period for Equipment qualifying as Substantially Complete is defined in General Conditions, Article 36, WARRANTY PERIOD.
- D. The Contractor agrees to hold the Owner and the Engineer harmless from liability of any kind arising from damage due to said defects or non-conformities.
- E. The Contractor shall make all repairs and replacements promptly upon receipt of written order for same from the Owner. If the Contractor after receipt of written demand for repair from Owner fails to make or complete the repairs and replacements within fourteen (14) days, or within such lesser time as in the opinion of the Owner may be necessary to avoid serious impairment to the operation of the facilities or to prevent a threat to health or safety, or if the Owner otherwise has a reasonable grounds to determine that the Contractor will not perform the Work in question, the Owner may perform such repairs or replacements, and the Contractor shall be liable for the cost thereof plus the administrative fee stipulated in Supplemental Condition 81 E. Any condition of such urgency that in the opinion of the Owner immediate corrective action is required may be remedied by the Owner without prior Notice to the Contractor, and the Contractor shall be liable for the cost thereof. Any such corrective action taken by the Owner shall be without prejudice to the Contractor's warranty obligations as set

forth herein, which shall remain in full force and effect as if such corrective measures had been taken by the Contractor. In addition to the extension of the Warranty Period otherwise provided in this Article, the Warranty Period of any Work item requiring repair shall be extended by the number of days in excess of fourteen (14) days following written demand for correction required to accomplish the repairs to the satisfaction of the Owner. Any repetitive Equipment malfunction identified within the Warranty Period shall remain under warranty until it has been fully corrected and has performed without malfunction for one full year.

## **PROGRESS OF THE WORK**

### **82. BEGINNING OF THE WORK**

Following execution of the Contract but before beginning the Work, the Contractor shall meet with the Owner and the Engineer to discuss its arrangements for prosecuting the Work.

### **83. SCHEDULES AND PROGRESS REPORTS**

The Project Schedule Specification shall be deemed a General Condition.

### **84. PROSECUTION OF THE WORK**

- A. It is expressly understood and agreed that the time established for the commencement of the Work, the rate of progress of the Work, compliance with all Notice and submittal requirements of any sort, and the dates established for Substantial Completion and for Final Completion of the Work are of the essence of the Contract. The Work shall be prosecuted at such times and in such parts as may be required to complete the Project as required by the Contract Documents and in accordance with the Project Schedule.
- B. If the Contractor desires to carry on the Work or have access to the Site outside Normal Working Hours, the Contractor shall submit a timely written request in accordance with the requirements of the Specifications, to allow the Owner and the Engineer to make satisfactory arrangements for all required personnel and activities. All costs incurred by the Owner and the Engineer in facilitating such Work shall be borne by the Contractor. The hourly rate specified in the Supplemental Conditions shall be the rate of labor costs charged by the Owner for facilitating Work outside Normal Working Hours.
- C. The Contractor expressly acknowledges and agrees that the Contract Time is based upon performance of the Work during Normal Working Hours. The Owner reserves the right to deny the Contractor permission to work outside Normal Working Hours. Denial of such permission by the Owner shall not be the basis for any extension of the Contract Time nor for any claim for additional compensation.



## 85. ASSIGNMENT

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 the Contractor hereunder without the previous written consent of the Owner. The Owner shall be under no obligation to grant any such consent.

## 86. OWNER'S RIGHT TO SUBSTITUTE SURETY

If, at any time, the Owner determines that any Surety or Sureties providing Performance or Payment Bonds on behalf of the Contractor, no longer satisfies the requirements of General Conditions, Article 35, SURETY, the Contractor shall, within seven (7) days after receipt of written Notice from the Owner to do so, provide an acceptable substitute bond in such form and sum and signed by such other Surety or Sureties as may be satisfactory to the Owner. The premiums on all such bonds shall be paid by the Contractor. Upon the issuance of any such Notice by the Owner, no further partial payments shall be deemed due nor shall be made to the Contractor until the new bond has been obtained and accepted by the Owner. Any such substitution of Surety shall not be the basis for any extension of the Contract Time, and all costs associated with such substitute Surety or substitute bond shall be borne by the Contractor and shall not be the basis for any claim for additional compensation.

## 87. SITE AND ENVIRONMENT

- A. The Contractor shall maintain the Site and all paved, graveled or cleared surfaces as required by the Specifications. Failure by the Contractor to comply with such requirements within two (2) hours of receipt of written Notice from the Owner or the Engineer to do so shall be cause for the Owner to perform such Work. All costs incurred by the Owner in taking over and performing such Work, including but not limited to the costs for personnel, equipment, materials, and expenses plus an administrative fee of \$500.00 per incident, shall be borne by the Contractor. The Owner shall have the right to deduct such costs from any amount due, or that may become due, the Contractor.
- B. Within thirty (30) days from Notice to Proceed, spill prevention control and countermeasure plan shall be submitted to the Owner as an administrative submittal.
- C. The Contractor shall take all precautions as necessary and comply with all federal, state, and local codes and regulations to prevent wastewater, fuel, or chemical spills. In the event that a wastewater, fuel, or chemical spill, results in damages to any Structure or utility, the Contractor shall notify the Owner and affected utility owners immediately. The Contractor shall take the necessary steps to minimize the spill, begin cleanup, and restore the affected area immediately at the Contractor's expense. The Contractor shall also be responsible for the repair of the damages to any Structure or utility satisfactory to the Owner and utility owners.
- D. Failure of the Contractor to take necessary precautions, to implement safe means and methods, to properly evaluate subsurface conditions, to properly coordinate the Work, or to take prompt corrective action could result in serious health and sanitation risks

with extensive damages to public and private property and associated clean-up costs, and could put the Owner and its Contractor in violation of State and Federal regulatory permits and subject to fines, penalties and damages for such violation. The Contractor shall, at its own cost and expense, immediately remedy the breach and cited violations. The Contractor does hereby agree to indemnify and forever hold harmless UOSA of and from any and all claims and demands of whatever nature, actions, and causes of action, suits, debts, losses, bills, liability, damages, costs, attorney's fees, cost of litigation, and compensation on account of or in any way growing out of breach of requirements of the Contract Documents. Failure or lack of the Contractor's immediate remedial actions may cause Owner to take necessary corrective steps without any further notifications to the Contractor. As the cost of such damages are unknown, the actual cost to the Owner shall be based on Time and Material for the Owner's corrective and administrative measures, and penalties imposed by other Government Agencies at each occurrence of damages, wastewater/chemical, fuel spill and any other pollution. The Contractor agrees to pay costs incurred by the Owner, as outlined below.

- E. In the event that a spill of any type requires the Owner support or any action on the part of the Owner, the Contractor shall reimburse the Owner for all costs incurred by the Owner, including but not limited to labor, materials, equipment, fines, charges, penalties, and legal actions. An administrative fee of 15% will be added to all Owner costs. The Owner is authorized to deduct such costs from any amount due, or that may become due, the Contractor.

## 88. DEFAULT

### A. EVENTS OF DEFAULT

- 1. The Contractor may be deemed by the Owner to be in default of the Contract if the Contractor:
  - a. abandons the Work or a defined portion thereof; or
  - b. persistently or repeatedly fails or refuses to perform the Work or a defined portion thereof; or
  - c. persistently or repeatedly fails to make prompt payment to Subcontractors for material or labor pursuant to the requirements of General Conditions, Article 56, PAYMENT OF SUBCONTRACTORS; or
  - d. persistently or repeatedly disregards laws, ordinances, or regulations; or
  - e. fails to prosecute the Work either in a timely manner or in conformance with the Contract Documents; or

- f. neglects or refuses to remove and replace at its own cost Work rejected by the Engineer; or
- g. is otherwise in breach of the Contract.

**B. OWNER'S RIGHTS UPON CONTRACTOR'S DEFAULT**

1. If the Owner determines the Contractor to be in default, written Notice of such declaration of default shall be given to the Contractor and the Surety. If within ten (10) days following the date such Notice of default is issued the condition of default has not been cured to the satisfaction of the Owner, the Owner may, without prejudice to any other right or remedy that the Owner may have under the Contract or otherwise, give written Notice to the Contractor and the Surety that such condition of default has not been cured and immediately:
  - a. withhold further payment to the Contractor until satisfactory performance has resumed; or
  - b. transfer the obligation to perform the Contract from the Contractor to the Surety; or
  - c. take over the Work as a whole or that portion of the Work which has been improperly performed or not timely executed, and make good the deficiencies and deduct the cost thereof from the payments then or thereafter due the Contractor. Any such action by the Owner shall not prejudice any warranty rights of the Owner nor any rights of the Owner under the Contractor's Payment Bond or Performance Bond. Provided, however, the Owner may so proceed without such Notice if an emergency or danger to the Work or the public exists.
2. The provisions of this Article shall be in addition to, and not in lieu of, the Owner's right to perform the Work pursuant to the provisions of General Conditions, Article 87, SITE AND ENVIRONMENT or Article 101, CLEANING, MAINTENANCE AND FINAL SITE CLEAN-UP.

**C. PERFORMANCE BY THE SURETY UPON CONTRACTOR DEFAULT**

Upon receipt by the Surety of Notice from the Owner that the Contractor has been declared in default and that the obligation to perform the Contract has been transferred to the Surety, the Surety shall enter upon the premises and take possession of all materials, tools, and equipment thereon for the purposes of completing the Work included under the Contract and employ, by contract or otherwise, any qualified person or persons to finish the Work and to provide the materials therefor, in accordance with

the Contract Documents, without termination of the continuing full force and effect of the Contract. In case of such transfer of the obligation to perform to such Surety, all further payments which become due under the Contract shall be made directly to the Surety without any right of the Contractor to make any claim for the same or any part thereof.

**D. OWNER'S OPTION UPON CONTRACTOR DEFAULT AND NON-PERFORMANCE BY THE SURETY**

If, after furnishing of written Notice to the Surety that the obligation to perform the Contract has been transferred to the Surety, neither the Contractor nor the Surety make reasonable progress in the performance of the Work, the Owner without further condition may by Notice to the Contractor and the Surety terminate the employment of the Contractor and take possession of the premises and of all materials, tools, and equipment thereon, and finish the Work by whatever method the Owner may deem expedient and charge the cost of doing so to the Contractor and the Surety. In such event, neither the Contractor nor the Surety shall be entitled to receive any further payment until Final Completion of the Work. If the expenses of completing the Contract, including compensation for additional managerial and administrative services, exceeds the unpaid balance of the Contract, the Contractor and the Surety shall pay the difference to the Owner.

**E. CONTRACTOR'S DUTY UPON DEFAULT**

Upon receipt of a Notice that the Contractor is in default of the Contract and that its right to continue performance thereunder is being or has been terminated, the Contractor shall immediately take all reasonable and appropriate steps necessary to protect the Work in place, assign to Owner all Subcontracts as designated by Owner to be assigned, and thereafter discontinue all further operations on the Work or such part thereof, and shall immediately quit the Site or such part thereof, leaving in place all plant, materials, equipment, tools, and supplies.

**F. PARTIAL DEFAULT**

In the event the Owner declares the Contractor to be in default as to, and terminates the Contractor's right to proceed with, a part of the Work only, the Contractor shall immediately discontinue its performance of such part, shall continue performing the remainder of the Work in strict conformity with the terms of the Contract, and shall in no way hinder or interfere with any other contractor or person who the Owner may engage to complete the Work as to which the Contractor was declared to be in default.

G. DEFAULT TERMINATION DEEMED FOR CONVENIENCE

In the event a termination by the Owner for default, in whole or in part, subsequently is determined to have been without sufficient cause or justification, such termination shall be deemed to have been a termination of convenience and any claim by the Contractor for damages of any sort arising from such termination shall be subject to the provisions of General Conditions, Article 90, TERMINATION FOR CONVENIENCE.

89. SUSPENSION OF WORK

- A. The Owner has the right to suspend performance of the Work under the Contract in whole or, from time to time, in part if the Owner determines, in the Owner's sole discretion, that it is in the Owner's best interests to do so. Such suspension shall be accomplished by written Notice to Contractor specifying the extent of suspension and the effective date.
  
- B. Upon receipt of such Notice of suspension, the Contractor shall immediately, to the extent of the suspension:
  - 1. stop Work;
  
  - 2. place no further subcontracts or other orders for materials or services; and
  
  - 3. issue Notice of Suspension of Work to all affected Subcontractors to the extent of such suspension.
  
- C. During the term of such suspension of Work, the Contractor shall remain ready to resume performance of the Work upon receipt of written Notice from the Owner to do so. Should the Owner deem it appropriate for the Contractor to demobilize and remove all or any portion of its operations from the Site during the period of such suspension, the Owner shall issue specific written directions to do so to the Contractor, and the Contractor shall comply promptly therewith. In such event, the Contractor shall issue Notices similar in scope and content to all affected Subcontractors.
  
- D. Upon receipt of written notification from the Owner that the Contractor is to return to work, the Contractor shall do so in accordance with the requirements set forth in such Notice from the Owner. Any claim for additional compensation or an extension of Contract Time arising from or in any way related to such suspension of Work shall be submitted and processed in accordance with the Contract Documents. Provided, however, any such additional compensation shall be limited to the actual costs arising

from or related to such suspension, and shall not include any amount for interest or profit. Provided further, there shall be no additional compensation nor any extension of the Contract Time arising from such suspension if the suspension did not affect the Critical Path as shown on the Project Schedule or to the extent that performance of the Work would have been delayed for any other cause.

- E. The Owner may in its sole discretion convert the suspension of the Work to a termination in accordance with the provisions of General Conditions, Article 90, TERMINATION FOR CONVENIENCE.

#### 90. TERMINATION FOR CONVENIENCE

- A. The Owner may terminate performance of the Work under the Contract in whole or, from time to time, in part if the Owner determines, in the Owner's sole discretion, that it is in the Owner's best interests to do so. Such termination shall be accomplished by written Notice to the Contractor specifying the extent of termination and the effective date.
- B. Upon receipt of such Notice of termination, the Contractor shall immediately, to the extent of the termination:
  - 1. stop Work;
  - 2. place no further subcontracts or orders for materials or services;
  - 3. transfer title and deliver to the Owner all materials and Equipment for which the Owner has made payment or will make payment pursuant to this Article, and turn over to the Owner all complete or partial Drawings, releases, information, manuals and other such documentation related to such materials and Equipment;
  - 4. assign to Owner all Subcontracts as designated by Owner to be assigned and terminate all other subcontracts; and
  - 5. commence demobilization and removal of operations from the Site.
- C. Within ninety (90) days of the effective date of such termination, all claims which the Contractor may have for payment shall be submitted. Claims submitted after the expiration of the ninety-day period shall be deemed not timely and shall be barred.
- D. In the event of termination for convenience, the Contractor shall be entitled to compensation only for the following:
  - 1. Amounts previously approved for payment but not yet paid.
  - 2. Work completed prior to the effective date of the termination and billed and approved for payment pursuant to the Contract after termination, but not yet paid.

3. Reasonable actual costs for demobilization of all manpower, equipment and facilities.
  4. The reasonable costs of Engineer approved Subcontractors for demobilization of all manpower, Equipment and facilities, not to exceed the amount as to each Subcontractor for which the Contractor is liable to the Subcontractor under Engineer approved subcontracts and without additional markup for Contractor profit or administration.
  5. Neither the Contractor nor any Subcontractor shall be entitled to profit or overhead associated with the portion of the Work not performed or to profit associated with costs of demobilization.
- E. The Owner may subtract from the amount claimed by the Contractor any claim the Owner has against the Contractor.
- F. The Owner and the Engineer shall process the termination claim of the Contractor as a Claim pursuant to General Conditions, Article 104, DISPUTES AND CLAIMS GENERALLY.
- G. Any other claim the Contractor may have for Work performed but not approved for payment shall be subject to the provisions of General Conditions, Article 104, DISPUTES AND CLAIMS GENERALLY.

## 91. DELAYS AND EXTENSIONS OF TIME

- A. Any claim for an extension of time for a delay for any cause, other than for unanticipated weather (see Section C. below), shall be made by filing a Notice of claim with both the Owner and the Engineer at the time the delay begins or within seven (7) days thereafter if the resulting delay was not reasonably foreseeable. The Notice of claim for any delay shall be submitted in duplicate, in writing, and shall state the circumstances of the occurrence, the justification for the delay and for the extension of time, and provide the estimated duration of the delay and of the time extension requested.
- B. Except as otherwise provided herein for claims of delay due to unanticipated weather or for claims of delay under the Specifications, within seven (7) days after the delay has ceased, the Contractor shall give written Notice to the Owner and to the Engineer of the actual date of the cessation of the delay and the anticipated time extension. Within twenty (20) days after the delay has ceased, the Contractor shall submit a statement of the actual time extension requested as a result of the claimed delay which shall include all documentation and supporting information for such claimed delay required by this

Article and the Contract Documents. The supporting information to be submitted within twenty (20) days after the delay has ceased shall include a written schedule analysis illustrating the influence of the claimed delay upon Contract Time. Such schedule analysis is referred to as a "Time Impact Analysis."

C. Weather

1. For purposes of documenting the actual weather conditions encountered by the Contractor at the Site, the Contractor shall record on a daily, workday basis on forms approved by the Owner the actual weather conditions encountered at the Site.
  
2. For purposes of documenting the effect or impact of adverse weather conditions upon the Contractor's operations and progress, on workdays when adverse weather is encountered the Contractor shall record on forms approved by the Owner all critical activities then planned to be in progress as shown on the Project Schedule in effect at the time of the asserted delay, and indicate what, if any, effect or impact the adverse weather had on either the performance or progress of each such activity. The Contractor's record of such activities and asserted impacts shall, at the end of each adverse weather workday, be submitted to the Owner and the Engineer. This submission shall serve as the Contractor's Notice of claim for a weather delay. In the event the Contractor asserts that weather was so adverse as to prevent the Contractor from getting to the Site to submit the required adverse weather workday report on the day of the occurrence, such adverse weather workday report shall be submitted on the next day the Contractor is able to gain access to the Site. Submission of all such daily reports to the Owner and the Engineer shall be a condition precedent to any claim for an extension of time on the grounds of weather, and failure to strictly comply with such submission requirements shall constitute a waiver of any claim for an extension of time related to weather for that day.
  
3. For purposes of establishing the number of workdays per calendar month upon which the parties agree that the Contractor should anticipate that normal, seasonal weather may adversely affect the Contractor's performance, the Monthly Anticipated Adverse Weather Workdays set forth below shall be incorporated into the Contractor's schedule for performance of all weather affected activities.

MONTHLY ANTICIPATED ADVERSE WEATHER WORKDAYS											
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec



7	7	7	7	9	7	7	7	6	6	6	7
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4. If unanticipated abnormal and unusually severe weather is the basis for any claimed and requested extension of Contract Time, the Contractor shall submit to the Owner and the Engineer monthly a comparison between the "Monthly Anticipated Adverse Weather Workdays," as established above, and the "actual adverse weather workdays." Such request shall be documented by data substantiating that the weather conditions at issue were abnormal and unusually severe for the period of time in question and that such could not reasonably have been anticipated, as well as that those weather conditions actually had an adverse effect or impact upon the critical activities of the scheduled work as shown on the Project Schedule in effect at the time of the asserted delay. The claim shall be submitted to the Owner and the Engineer within seven (7) days after the end of the month in which the claimed delay is asserted to have commenced. The weather delay claim shall be submitted in duplicate, in writing, and shall state the extension requested. The Time Impact Analysis for the asserted weather delay shall be submitted with the weather delay claim and shall be a condition precedent to any claim for an extension of time on the grounds of weather. Failure to comply with such submission requirements shall constitute a waiver of any claim for an extension of time related to weather.
  5. The Contractor shall not be entitled to any time extension based upon adverse weather unless the number of actual adverse weather workdays, which shall be calculated chronologically from the first to last workday in each month, exceeds the number of Monthly Anticipated Adverse Weather Workdays.
- D. Strict compliance with all Notice and submittal requirements set forth in the Contract Documents shall be a condition precedent to any claim for an extension of time or for additional compensation related to such extension of time, to the extent otherwise permitted by the Contract Documents, resulting from a delay for any cause. Filing of such Notices, submission of the Time Impact Analysis in strict compliance with the requirements of Specifications, and strict compliance with all other submittal requirements set forth herein are conditions precedent for a time extension but compliance therewith shall not establish any obligation of the Owner to grant such a requested extension.
- E. Any written decision by the Owner denying a request for extension of the Contract Time shall be effective immediately and shall constitute the Owner's final decision regarding such claim. Except as otherwise provided in this Article, an extension of Contract Time may be accomplished, and shall be effective only by a written Change Order or Unilateral Change Order.

- F. The Contractor shall be entitled to an extension of time for delay caused by any act or any neglect of the Owner, the Engineer or by any separate contractor employed by the Owner; or by strikes, lockouts, fire, insurrection, war, acts of public authorities, lightning, hurricane, tornado, flood, abnormal and unusually severe weather as defined above, or for any delays arising as a result of the occurrence of any physical conditions, subsurface conditions or soil conditions which may be encountered in the prosecution of the Work and which, in the exercise of reasonable care and due diligence in the investigation and analysis of all information available, should not have been foreseeable, anticipated, or indicated; or by any other cause which in the opinion of the Owner is entirely beyond the expectation and control of and arises without the fault or negligence of the Contractor. Entitlement to such extension of time shall, however, be subject to all limitations on claims for delay set forth in this Article, and shall be conditioned upon strict compliance with all Notice and submission requirements imposed by this Article. The Contractor shall be entitled to an extension of time for such causes only for the number of days of delay which the Owner may determine to be due solely to such causes and then only to the extent that such occurrences actually delay the Substantial or Final Completion of the Project or defined portions thereof. **If the delay is not due solely to such causes but also is due concurrently to causes for which the Contractor is not entitled to an extension of time, the Contractor shall not be entitled to an extension of time for such period of concurrent delay.** Any request for extension of time shall, to the extent that such information has not been included in any previously submitted Time Impact Analysis, as required by the Specifications, be accompanied by detailed documentation of what specific schedule activities were affected, when they were affected and for what duration, as well as what actions the Contractor took to eliminate or mitigate the extent of the delay. Provided, however, compliance with this requirement shall not be in lieu of, nor result in any extension of, the submittal requirements for a Time Impact Analysis as required by Specifications.
- G. No extension of time will be granted to the Contractor for delays occurring to parts of the Work if such delays have no measurable impact on the completion of the total Work under the Contract; nor will an extension of time be granted for delays to parts of the Work that are not located on the Project's critical path. In the event a time extension is granted by the Owner, and it subsequently is determined that the event or occurrence which was the basis of such time extension did not in fact impact the Critical Path of the Project, the Owner shall have the right to rescind the granting of such time extension in whole or in part.
- H. Delays in the delivery of Equipment or material purchased by the Contractor or its Subcontractors, or in the submission of required Shop Drawings or Submittals by the Contractor's or its Subcontractors' materialmen, Manufacturers or Manufacturers/Suppliers, or in the performance of any of the Contractor's

Subcontractors or caused by the performance of any of the Contractor's Subcontractors, shall not be considered as a just cause for an extension of time. Except for Owner-furnished equipment, the Contractor shall be fully responsible for the timely submission, ordering, scheduling, expediting, fabrication, delivery and installation of all Equipment, materials, and Shop Drawings or Submittals.

- I. Within ninety (90) days after the Contractor files the Notice of the anticipated duration of the extension of time and the Time Impact Analysis required by Specifications, as are required herein, the Owner will present its written decision to the Contractor. A written decision by the Owner within the stated time shall be a condition precedent to the institution of any judicial claim for relief by the Contractor. The Owner's written decision shall be final and conclusive unless the Contractor institutes appropriate judicial appeal within six (6) months of the date of the decision by the Owner. In the event the Owner has not rendered a decision on a claim for an extension of time within ninety (90) days after submission of such claim as provided herein, the claim shall be deemed denied and the Owner's final decision shall be deemed to have been issued on the ninetieth (90<sup>th</sup>) day after submission of the claim. In the interest of compromise, the Owner may, but is not required to, consider further submissions by the Contractor related to a claim after a final decision on a claim, but no such actions by the Owner shall in any way affect or extend the effective date of the Owner's final decision on the claim.
  
- J. The Contractor shall be entitled to additional compensation for the costs or damages proximately and foreseeably resulting from unreasonable delay caused by the Owner or the Engineer due to causes within their control. As a condition precedent to any entitlement to such additional compensation for unreasonable delay, the Contractor shall satisfy all Notice and submission requirements set forth in the Contract Documents for approval of any extension of Contract Time or any change in the Contract Price. The term "unreasonable delay" as used herein, shall apply only to the portion of any delay which is on the Critical Path as established by the Project Schedule in effect at the time of the asserted delay, and which is determined to be both unreasonable and not in any way the fault of the Contractor, and not to the entire duration of such delay. If the Contractor asserts such a claim for additional compensation for unreasonable delay, the Contractor shall be liable to the Owner and shall pay the Owner for a percentage of all costs incurred by the Owner in investigating, analyzing, negotiating, and litigating the claim, including but not limited to attorneys' fees, which percentage shall be equal to the percentage of the Contractor's total delay claim which is determined through litigation to be false or to have no basis in law or in fact. If the Contractor asserts such a claim for additional compensation for unreasonable delay, the Owner shall be liable to and shall pay the Contractor a percentage of all costs incurred by the Contractor to investigate, analyze, negotiate, litigate and arbitrate the claim, which percentage shall be equal to the percentage of the Contractor's total delay claim for which the Owner's denial is determined through litigation or arbitration to have been made in bad faith.

- K. The right of the Contractor to complete any portion of the Work prior to the expiration of the performance period allowed for by the Contract Documents is recognized. Such early completion is encouraged and the Owner and the Engineer will cooperate with the Contractor's efforts to achieve early completion. Provided, however, and notwithstanding the foregoing, neither the Owner nor the Engineer nor any other separate contractor or supplier of the Owner shall have any obligation to facilitate or otherwise accommodate the Contractor's actual ability to perform in accordance with any such early completion schedule by performing any action required of either or any of them at an earlier point in time or in less time than is either expressly provided for by the Contract Documents or, where no such time is so stated, that is reasonable for the performance of any such action. Provided further, that no such earlier performance date or lesser period of time for the performance(s) by the Owner, Engineer, or other contractor or supplier shall be included by the Contractor in any Project Schedule without the prior written consent of the Owner. Approval by the Owner of any Project Schedule which includes any such earlier performance date or any such lesser period of time for such performance(s) without such prior written consent shall not be deemed binding upon the Owner, and upon the discovery thereof the Owner shall have thirty (30) days within which to approve such Project Schedule or in the Owner's sole discretion to direct that the Project Schedule be adjusted by replacing all such earlier performance dates and all such lesser periods of time for performance(s) with those times provided by the Contract Documents or where no such time is so provided then with a time that is reasonable for the performance of any such action. The Contractor shall have no claim for additional time nor for additional compensation for increased or additional costs which are asserted by the Contractor to have arisen from or to be related in any way to any such act or omission to act on the part of the Owner, Engineer, or other contractor or supplier of the Owner which is asserted by the Contractor to have prevented the Contractor from completing, or adversely affected the ability of the Contractor to complete, all or any portion of the Work prior to the expiration of the performance period allowed for by the Contract Documents for Substantial Completion and/or Final Completion.
- L. This Article shall be construed to be included where applicable in every portion of the Contract Documents regardless of whether or not it is specifically referenced therein. The provisions of General Conditions Article 104, DISPUTES AND CLAIMS GENERALLY, are incorporated herein as applicable to any claim for delay.

## 92. HAZARDOUS MATERIALS

- A. Hazardous or regulated materials as such terms are used in the Contract Documents shall mean any materials designated by any applicable governmental agency as requiring special handling, containment or disposal procedures as a matter of health or environmental protection.

- B. Existing facilities were constructed and installed in the mid-1970's and such facilities and systems may contain materials in concentrations now considered hazardous by federal, state and/or local regulatory agencies. Examples of such regulated and/or hazardous materials include, but are not limited to, lead, cadmium and other metals, asbestos, and polychlorinated biphenyls (PCBs). Some such hazardous materials are identified in the Specifications.
- C. Should hazardous or regulated materials be encountered at the Site or in the existing facilities and systems, which are declared by governmental actions, after the bid opening, to be hazardous or regulated, the Contractor shall cease all activity impacted by such hazardous or regulated materials until written instructions are received from the Owner. Any resulting claim for a modification of the Contract Price or the Contract Time shall be subject to Notice and claims submittal requirements of the Contract Documents.

93. ARCHEOLOGICAL FINDS

A. GENERAL

The Contractor shall preserve and protect material of an archaeological or paleontological nature, or of scientific or historical value.

B. DEFINITIONS

- 1. Archaeological finds are defined as evidence of human occupation or use of an area on the Site prior to the year 1900. Evidence may consist of skeletons, stone, or utensils, or other evidence of habitations or structures.
- 2. Paleontological finds are defined as evidence of prehistoric plants or animal life, such as skeletons, bones, fossils, or casts and other indications such as pictographs.

C. REQUIREMENTS

- 1. Should finds be made, the Contractor shall immediately stop Work in the vicinity of the find and notify the Engineer, but shall continue Work in other areas without interruption.
- 2. The Owner may order Work stopped in other areas if, in the Owner's opinion, the find is more extensive than may appear from uncovered material.
- 3. To protect finds, the Contractor shall:
  - a. cover, fence, or otherwise protect finds until Notice to resume Work is given;

- b. cover finds with plastic film held in place by earth, rocks, or other weights placed outside the find, and should additional back-filling be necessary for safety or to prevent caving, place backfill material loosely over the plastic film;
- c. sheet or shore as necessary to protect excavations underway;
- d. place temporary fencing to prevent unauthorized access; and
- e. de-water finds made below the water table as necessary to protect construction work underway and divert groundwater or surface runoff away from find by ditching or other acceptable means.

4. Removal of Finds

- a. All finds are the property of the Owner. The Contractor shall not remove or disturb finds without the Owner's written authorization.
- b. Should the Owner elect to have a find removed, the Contractor shall provide equipment, labor, and material to permit the safe removal of the find without damage.
- c. The Contractor shall provide transportation for delivery to individuals, institutions, or other places as the Owner may find desirable, expedient, or required by law.

5. Compensation

Should the need for labor, materials, or equipment arise under this section, it shall be considered as extra work in accordance with General Conditions, Article 40, CHANGES IN THE WORK.

94. LIQUIDATED DAMAGES

Should the Contractor fail to achieve Substantial Completion or Final Completion of the Work within the periods of time required by the Contract Documents, the Contractor shall reimburse the Owner for the additional expense and damage incurred by the Owner as a result thereof for each calendar day that the Work, or any defined portion thereof, remains uncompleted. The parties hereby agree that the damages to the Owner for the continued expense of completion of the Work and on account of the value of the operation of the facilities which are dependent upon such completion are anticipated to be substantial but are not readily ascertainable. It therefore is agreed that the amount of such additional expense and damage incurred by the Owner by reason of a failure to complete the Work within the required times shall be the per diem rates stipulated in the Contract Documents. It is expressly understood and agreed that these amounts are not to be considered in the nature of a penalty, but as Liquidated Damages. The Contractor hereby waives any defense as to the validity of any Liquidated Damages under the Contract as they may appear on the grounds that such Liquidated Damages are void as penalties or are not reasonably related to actual damage. The Owner shall deduct from funds otherwise due the Contractor Liquidated

Damages which have been assessed. In the event more than one ground for assessment of Liquidated Damages as provided by the Contract Documents exists concurrently, such grounds shall be deemed to be independent and all applicable Liquidated Damages shall be deducted cumulatively.

95. OTHER CONTRACTS

- A. The Owner reserves the right to award other contracts in connection with the Work, or to self-perform activities in connection with the Work. The Contractor shall, at all times, afford other contractors and the Owner reasonable opportunity for the introduction and storage of their materials and the execution of their work at the Site and shall properly connect and coordinate the Contractor's Work with that of other contractors and the Owner.
  
- B. If any part of the Work under the Contract depends for proper execution or results upon the work of others, the Contractor shall inspect and promptly report to the Engineer in writing any patent or apparent defects or deficiencies in such work that render it unsuitable for such proper execution and results. The Contractor's failure to inspect or discover any such defect or deficiency or to so report shall constitute an acceptance by the Contractor of the work by others as being fit and proper for integration with Work under the Contract, except for those defects and deficiencies in the work by others which are latent or otherwise were not discoverable by reasonable inspection.

96. USE OF SITE

- A. The Contractor shall confine its equipment, the storage of its materials, and the operation of its workers and Subcontractors to the limits shown on the Drawings or indicated by law, ordinances, permits, or directions of the Engineer or Owner, and shall not otherwise unreasonably obstruct the Site. The Contractor shall utilize for access throughout the Site only the roads and routes identified in the Contract Documents to access the Work. The Contractor at its own expense shall identify, obtain Owner approval for, install and maintain any additional roads or routes the Contractor considers necessary to perform the Work. The Contractor shall not construct any additional roads or routes without obtaining the Owner's and the affected property owner's written approval. Construction and maintenance of such additional roads and routes shall be as required by the Specifications. The Contractor shall provide, maintain and restore, at its own expense, the necessary rights-of-way, staging area, and access to the Work, which may be required from outside the limits of the Site and shall furnish the Engineer copies of all permits and agreements authorizing the use of such property before commencing any Work thereon.
  
- B. The Contractor shall not load nor permit any part of any Structure to be loaded in any manner that will endanger the Structure, nor shall the Contractor subject any part of the Work or any adjacent property to stresses or pressures that will endanger them.

C. The Contractor shall indemnify and hold the Owner harmless in the event any claim for damages or other relief is asserted by any third party arising from or related to use of the Site by the Contractor or any of its Subcontractors. Such indemnification shall include but not be limited to all attorneys' fees and direct or indirect costs incurred by the Owner in defense or resolution of such claims.

97. DATE OF SUBSTANTIAL COMPLETION OR PARTIAL UTILIZATION

The Date of Substantial Completion is the date upon which the Contractor achieves Substantial Completion of all Work as required by the Contract Documents. The Owner may issue a written Notice of Substantial Completion of a defined portion of the Work or a Notice of Partial Utilization, for the purpose of establishing the starting date for specific Equipment warranties, and to establish the date upon which the Owner will assume the responsibility for the cost of operating such Equipment. Any such Notice shall not be considered as Substantial Completion of any portion of the Work not specifically identified therein, shall not relieve the Contractor of the obligation to complete the remaining Work within the Contract Time and in full compliance with the Contract Documents, and shall impose no obligation upon the Owner to recognize Final Completion of such defined portion prior to Final Completion of the Work as a whole.

98. TESTING

All testing of operating Equipment and systems required by the Contract Documents shall be performed in the presence of the Engineer and the Owner to demonstrate compliance with the requirements of the Contract Documents. Performance testing shall be conducted under the specified design operating conditions or under such simulated operating conditions as recommended or approved by the Engineer. Testing shall be scheduled and conducted in compliance with the requirements of the Contract Documents.

99. OWNER'S USE OF PORTIONS OF THE WORK

The Owner shall have the right, pursuant to the provisions of General Conditions, Article 97, DATE OF SUBSTANTIAL COMPLETION OR PARTIAL UTILIZATION, to take possession of and use any defined portion(s) of the Work which the Owner has declared to have reached the state of Partial Utilization for purposes of establishing the starting date for specific Equipment warranties and to establish the date upon which the Owner will assume the responsibilities for the cost of operating such Equipment. Such use shall not constitute recognition of any divisible Substantial Completion of the Work as a whole nor constitute recognition of any divisible Final Completion of the Work as a whole. Any claim by the Contractor arising from such action by the Owner shall be subject to the Notice and claim submittal requirements of the Contract Documents. Furthermore, Partial Utilization of all or a portion of the Work shall not be considered Substantial Completion or Final Completion of said Work and shall not relieve the Contractor of the obligation to achieve Substantial Completion of the Work, and thereafter Final Completion of the Work, within the Contract Time in strict compliance with the Contract



Documents, and shall not entitle the Contractor to any reduction in the rate of any applicable Liquidated Damages.

100. CUTTING AND PATCHING

The Contractor shall do all cutting, fitting, or patching of the Work that may be required to make its several parts come together properly and to make it fit to receive or be received by work of other contractors, suppliers or manufacturers shown upon or reasonably inferred from the Drawings. Any defective or nonconforming Work which is discovered by the Engineer or the Owner at any time prior to expiration of the Warranty Period shall be removed and replaced or patched in a manner as approved by the Engineer at the expense of the Contractor.

101. CLEANING, MAINTENANCE AND FINAL SITE CLEANUP

The Contractor shall, at all times, keep the Site and the adjacent property free from accumulations of waste material or rubbish caused by employees or by the Work. The Contractor shall clean the Site and remove all rubbish and accumulated waste materials on a weekly basis or more frequently as directed by the Owner. Upon completion of the construction, the Contractor shall remove all temporary structures, rubbish, and waste materials resulting from its operations. Failure by the Contractor to comply with such requirements within 24 hours of receipt of written Notice from the Owner to do so shall be cause for the Owner to perform such work. All costs incurred by the Owner in taking over and performing such work, including but not limited to the costs for personnel, equipment, materials, and expenses plus an administrative fee of \$500.00 per incident, shall be borne by the Contractor. The Owner shall have the right to deduct such costs from any amount due, or that may become due, the Contractor.

**PAYMENT**

102. PAYMENT FOR CHANGES IN THE WORK

A. All changes for which the Contractor claims additional compensation for whatever reason shall be subject to the requirements of this Article. The Owner's request for quotations on changes to the Work shall not be considered authorization to proceed with such Work prior to the issuance of a Supplemental Agreement, nor shall such request justify any delay in the performance of any other portion of the Work. Quotations for changes to the Work shall include substantiating documentation with an itemized breakdown of Contractor and Subcontractor costs, including labor, material, rentals, approved services, overhead, profit, and any claim for additional time related to the change. The Owner may require detailed cost data to substantiate the reasonableness of the costs presented in a quotation for a change to the Work. Such quotations shall remain firm for a period of ninety (90) days if not accepted sooner. In the event the Contractor fails to submit its quotation to the Engineer in such detail as described herein and/or requested by the Owner within twenty (20) days of the Owner's request, the

Owner shall be authorized to withhold all or any portion, at the Owner's discretion, of partial payments otherwise due the Contractor until such quotation is submitted, or, in the alternative and at the sole discretion of the Owner, the Owner may direct the Contractor to proceed with the Work contemplated by the change on a Force Account basis as provided in this Article. Any claim for an extension of the Contract Time arising from or related to the change shall be submitted and processed in accordance with General Conditions, Article 91, DELAYS AND EXTENSIONS OF TIME and the Specifications.

- B. The total additional compensation and any extension of time due the Contractor arising from or related to any change shall be as set forth in the Change order which defines the change.
1. By signing the Change Order, the Contractor agrees that the adjustments to the Contract Price and the Contract Time set forth in the Change Order constitute full and complete compensation for the performance of all increased, additional or changed Work arising from or related to the change, including but not limited to the interruption of schedules, extended overhead of any sort, delay, and any other impact or ripple effect of the change on any portion of the Work. By signing such Change Order, the Contractor specifically waives and is barred from asserting any reservation of the right to make a claim for any further compensation or additional time extension arising from or related to the change addressed by the Change Order.
  2. In the event the Contractor asserts a reservation of any rights beyond those set forth in the proposed Change Order, the Change Order signed by the Contractor shall determine the change in the Work, but such reservation shall be deemed a rejection of the Owner's offer of compromise and shall conclusively establish the absence of any agreement on any impact on Contract Price or Contract Time arising from the change. Any claim asserted by the Contractor for a change to the Contract Price or the Contract Time resulting from the change shall be governed by the provisions and requirements of General Conditions Article 91, DELAYS AND EXTENSIONS OF TIME, and Article 104, DISPUTES AND CLAIMS GENERALLY.
  3. The Owner may, but is not required to, issue a Unilateral Change Order making a modification to the Contract Price or the Contract Time related to the change. In such event, the rights of the Contractor are as provided in General Conditions Article 40, CHANGES IN THE WORK.

4. Upon execution of a Change Order or a Unilateral Change Order establishing any change to the Contract Price or the Contract Time, the Contractor may incorporate the consequences of such Change Order or Unilateral Change Order in its next Application for Payment pursuant to General Conditions Article 103, PARTIAL PAYMENTS. The payment date for such change shall be the payment date for the Application for Payment in which such agreed Change Order or Unilateral Change Order is incorporated.
- C. Except as otherwise provided by the Contract Documents, costs which shall not be paid under the Contract on any claim made by the Contractor include, but are not limited to: interest costs of any type; claim preparation or filing costs; legal expenses; all costs for administration, execution and scheduling arising from or related to changed Work, except as specifically provided herein; the costs of preparing Change Order proposals; lost revenue; lost profits; lost income or earnings; rescheduling costs; costs of idled equipment when such equipment is not at the Site or has not been employed on the Work; lost earnings or interest on unpaid retainage; claims consulting costs; and the costs of Contractor employees, officers or agents visiting the Site.
- D. Except as specifically provided herein, no payment shall be made nor credit given for any change to the Work until the Contract Price has been adjusted by Change Order or Unilateral Change Order. Such adjustment to the Contract Price shall be determined by one or more or a combination of the following methods, as applicable, at the Owner's discretion:
1. UNIT PRICES: Those unit prices stipulated in the Contract Documents, if any, shall be utilized regardless of quantity. Unit prices for new items included in a Supplemental Agreement shall be negotiated and mutually agreed upon.
  2. LUMP SUM
    - a. A total lump sum for the changed Work negotiated and mutually acceptable to the Contractor and Owner.
    - b. Lump sum quotations for changes to the Work shall include a breakdown of Contractor and Subcontractor costs. Costs shall be separated into the categories of: (1) labor; (2) materials and equipment; (3) construction equipment; (4) additional or reduced bonds; (5) additional or reduced insurance; and (6) subcontracts. These costs shall be calculated as specified under Subparagraph 3.a, FORCE ACCOUNT WORK, below. An itemized breakdown of costs

within these categories shall be presented to facilitate the Engineer's review. The Contractor and Subcontractor(s) shall provide substantiating documentation of their estimated costs as required by the Engineer.

c. To cost quotations under 2.b above, the Contractor and Subcontractor(s) performing the Work shall utilize the following additional fixed fees for overhead and profit:

- (1) for net additive cost quotations, a fixed fee of twenty percent (20%) of the cost of Items (1) (labor), (2) (materials and equipment) and (3) (construction equipment) above;
- (2) for net deductive cost quotations, a fixed fee of ten percent (10%) of the cost of Items (1) (labor), (2) (materials and equipment) and (3) (construction equipment) above;
- (3) for net additive or net deductive cost quotations a fixed fee of five percent (5%) of the cost of Item (1) labor above as a small tool allowance; and
- (4) as total compensation to the Contractor for all oversight, administration, overhead, and profit for all portions of the changed Work performed for the Contractor by Subcontractors, the Contractor shall add to or delete from its overhead and profit an eight percent (8%) combined percentage markup to the total costs of any subcontracts, excluding such profit and overhead as was allowed such Subcontractors. No additional fixed fee will be allowed for the administrative handling of the Work performed by a Subcontractor of a Subcontractor unless granted by written permission from the Owner.
- (5) The added fixed fees shall be considered to be full compensation, covering the cost of general and administrative overhead, field office overhead including supervision, overhead, profit, interruptions of schedules, extended overhead, delays or any other impact claim or ripple effect, or any other general expense.

### 3. FORCE ACCOUNT WORK

- a. If the method of payment cannot be agreed upon prior to the beginning of performance of the changed Work or if the Owner at its sole discretion determines that it is in the interest of efficient administration and prosecution of the changed Work, the Owner may direct by Work Order that such Work be performed on a Force Account basis. When so directed, the Contractor shall

furnish labor, equipment, and materials and Equipment necessary to complete such Work in the manner directed by the Owner. For such Work performed, payment will be made for the actual cost documented as follows:

- (1) LABOR - For all labor, including the foreman in direct charge of the specific operations, the Contractor shall receive the actual wage rate in effect at the time the Work is performed for each and every hour that said worker(s) and foreman are actually engaged in such Work. Said agreed wage rate shall be no higher than that regularly paid the employee. The only acceptable evidence of all such wages and costs shall be the Contractor's formal payroll records reflecting all such wages and costs. The Contractor shall also receive the actual costs paid to or on behalf of each employee by reason of fringe benefits as established by negotiated labor agreements or formalized fringe benefit programs including, but not limited to, health and retirement benefits, sick leave, vacation, holiday pay, and subsistence and travel allowance where required by collective bargaining agreements or labor or employment contracts. The Contractor shall also receive the actual costs paid to or on behalf of each employee by reason of labor taxes and insurance, including and limited to social security contributions, Virginia Employment Commission Tax, and Workers' Compensation. All other taxes and insurance are considered a part of overhead and included in the fixed fees set forth below.
  
- (2) MATERIALS AND EQUIPMENT - For cost of materials and Equipment which are incorporated into the finished Work and accepted by the Engineer and materials consumed in the performance of the Work, the Contractor shall receive the actual cost of such materials and Equipment delivered to the Work, including transportation charges paid by the Contractor. Rental or other cost of equipment shall be compensable only as set forth below.
  
- (3) CONSTRUCTION EQUIPMENT - Construction equipment costs shall be based on actual costs when equipment is rented, except that the allowable rental costs shall not be greater than those listed in the most recent edition of the *Rental Rate Blue Book for Construction Equipment* published by Dataquest. Ownership and operating costs for Contractor-owned equipment shall be based on the most recent edition of the *Cost Reference Guide for Construction Equipment* published by Dataquest.
  - (a) Costs for Contractor-owned equipment and rented equipment shall be based on the actual time the equipment is required to perform the Work.

- (b) Move-in, unloading, loading, and move-out costs will not be allowed unless approved by the Engineer. If the equipment is used at the Site for the performance of other Work, ownership and operating costs will be prorated accordingly.
  - (c) Construction equipment for Force Account purposes is defined as equipment with a current new value of \$1,000.00 or more, which is used in direct performance of the Work. Construction equipment with a new value less than \$1,000.00 shall be considered a small tool, which shall be covered by the small tool allowance set forth below.
- (4) ADDITIONAL BOND - as required and approved by the Owner.
- (5) ADDITIONAL INSURANCE - (other than labor insurance) as required and approved by the Owner.
- (6) SUBCONTRACT - The Work performed by Subcontractors at any tier shall be tracked, documented, and calculated in accordance with Items (1) through (3) of this Subparagraph 3.a, FORCE ACCOUNT WORK.
- a. To the foregoing costs there shall be added the following fixed fees for the Contractor or Subcontractor actually performing the Work:
- (1) a fixed fee of fifteen percent (15%) of the cost of Items 3.a.(1) (LABOR), 3.a.(2) (MATERIAL AND EQUIPMENT), and 3.a.(3) (CONSTRUCTION EQUIPMENT);
  - (2) a fixed fee of five percent (5%) of the cost of Item 3.a.(1) (LABOR) above as a small tool allowance; and
  - (3) for all portions of such Force Account work performed by Subcontractors, the Contractor may add an additional fixed fee of eight percent (8%) to the total costs of all such Subcontractors excluding any profit and overhead as was allowed such Subcontractors. No additional fixed fee will be

allowed for the administrative handling of Work performed by a Subcontractor of a Subcontractor, unless by written permission from the Owner.

- b. The added fixed fees shall be considered to be full compensation, covering the cost of general and administrative overhead, field office overhead including supervision, overhead, profit, interruptions of schedules, extended overhead, delays or any other impact claim or ripple effect, or any other general expense. Any claim asserted by the Contractor for additional compensation for unreasonable delay shall be subject to the provisions and limitations of General Conditions, Article 91, DELAYS AND EXTENSIONS OF TIME and the Specifications.
- c. The Owner reserves the right to furnish any materials or Equipment as it deems expedient, and the Contractor shall have no claim for profit or added fees on the cost of such materials or Equipment.
- d. The Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Work paid for on a Force Account basis and the costs of other operations. The Contractor shall provide the Engineer with twenty-four (24) hour advance Notice indicating the Contractor's intent to perform any Force Account Work. The Contractor shall furnish the Engineer report sheets in duplicate of each day's Force Account Work no later than the working day following the performance of said Work. The daily report sheets shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, Subcontractor, or other forces. The daily report sheets shall provide names and classifications of workers and each worker's actual hourly rate of pay and hours worked. The daily report sheets shall also list the type, size, make and model number of individual pieces of equipment used on the changed Work and the hours operated. No payment shall be made for any cost or expense not reported in accordance with this provision.
- e. Material charges shall be substantiated by valid copies of vendors' invoices. Such invoices shall be submitted with the daily report sheets, or, if not available, they shall be submitted with subsequent daily report sheets, immediately upon receipt from the vendor. Said daily report sheets shall be signed by the Contractor or its authorized agent.

- f. The rentals allowed for equipment will, in all cases, be understood to cover all costs related to such equipment, including but not limited to all fuel, supplies, repairs, maintenance and depreciation, and no further allowances will be made for such costs unless approved by the Owner.
- g. To receive payment for Force Account Work, the Contractor shall submit in a manner approved by the Engineer, detailed and complete documented verification of the Contractor's and any of its Subcontractors' actual current costs involved in the Force Account Work pursuant to the issuance of an approved Change Order, Unilateral Change Order or Work Order. Such costs shall be submitted within thirty (30) days after said Work has been performed, and shall be submitted on the 25<sup>th</sup> of the month, concurrent with the Contractor's Application for Payment per General Condition 103.B.1. Within five (5) calendar days after the Contractor submits its Force Account costs, the Engineer will review the Contractor's Force Account costs, as defined in General Condition 102.D.3.a, and will provide a recommendation to the Owner regarding said Force Account costs. Within five (5) calendar days of receipt of the Engineer's recommendation, the Owner will advise the Contractor of the amount the Owner will process in the Contractor's Application for Payment. The Contractor shall include this amount in its Application for Payment, which is due before the 10<sup>th</sup> day of each calendar month per General Condition 103.B.1. This amount shall be included in the Application for Payment as a change to the Contract Price. Upon completion of all Force Account Work described in the Work Order, the Owner will issue a Change Order to the Contractor, pursuant to General Condition 40.B, for the amounts previously paid as part of the Contractor's Application for Payment, plus the Contractual fixed fees stipulated in General Condition 102.D.3.b.
- h. No payment for Force Account Work will be made for Work not billed, submitted, and documented to the Engineer in accordance with these provisions. Upon receipt of the Engineer's recommendation regarding payment for Force Account Work, payment for such Force Account Work will be made by the Owner in the amount agreed by the Owner to be due at the time of the next regular partial payment pursuant to General Conditions, Article 102, PARTIAL PAYMENTS, following receipt of the Engineer's recommendation. No extra or additional work shall be performed by the Contractor, except in an emergency endangering life or property, unless in pursuance of a written Change Order, Unilateral Change Order, Work Order or Field Order, as provided in General Conditions, Article 40, CHANGES IN THE WORK.



## 103. PARTIAL PAYMENTS

### A. GENERAL

1. Except as provided below for bonds and insurance, acceptance by the Owner of the Schedule shall be a condition precedent to the obligation of the Owner to make any partial payment to the Contractor. Partial payments for bonds and insurance shall be substantiated by such supporting documentation as may be required by the Owner. Acceptance of the Project Schedule thereafter, as and when required by the Specifications, shall be a condition precedent to the obligation of the Owner to consider any subsequent Application for Payment submitted by the Contractor.
  
2. Nothing contained in this Article shall be construed to affect the right, hereby reserved to the Owner and/or Engineer, to reject the whole or any part of the Work, should such Work be later found not to comply with the Contract Documents. All estimated quantities of Work for which partial payments have been made are subject to review and correction on subsequent estimates. Payment by the Owner and acceptance by the Contractor of partial payments based on periodic estimates of quantities of Work performed shall not, in any way, constitute acceptance of the estimated quantities used as the basis for computing the amounts of the partial payments. Such estimates of quantities of Work performed shall be determined in accordance with the Project Schedule.

### B. APPLICATION FOR PAYMENT

1. The timeframe for which the Contractor is required to submit its Application for Payment is specified in Supplemental Condition 103.B. Each Application for Payment shall be accompanied by the photographic records required by the Specifications and by a release of liens and claims in compliance with General Conditions, Article 105, RELEASE OF LIENS AND CLAIMS.
  
2. The Engineer will, within ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application for Payment to the Owner, or return the Application for Payment to the Contractor indicating in writing the Engineer's reasons for refusing to recommend partial payment. In the latter case, the Contractor shall, within seven (7) days, make the necessary corrections and resubmit the Application for Payment.
  
3. The Engineer may refuse to recommend the whole or any part of any partial payment if, in the Engineer's opinion, it would be incorrect to make such recommendation to the Owner. The Engineer may also refuse to recommend any such partial payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such partial payment previously

recommended to such extent as may be necessary in the Engineer's opinion to protect the Owner from loss because:

- a. any part or portion of the Work is defective;
  - b. completed Work has been damaged, requiring correction or replacement;
  - c. written claims have been made against the Owner or liens have been filed in connection with the Work;
  - d. the Contract Price has been reduced because of Change Orders;
  - e. the Owner has been required to correct defective Work or complete the Work in accordance with General Conditions, Article 88, DEFAULT;
  - f. of the Contractor's unsatisfactory prosecution of the Work in accordance with the Contract Documents; or
  - g. of the Contractor's failure to make partial payment to Subcontractors or for labor, equipment and materials, or Equipment in compliance with the requirements of General Conditions, Article 56, PAYMENT OF SUBCONTRACTORS or as otherwise represented to the Owner.
4. The Owner reserves the right to withhold partial payments or a portion thereof if, in the opinion of the Owner, the Work is not proceeding according to the requirements of the Contract Documents or as the Contract Documents otherwise authorize the Owner to withhold or suspend payments regardless of the amount of partial payment recommended by the Engineer.
5. By recommending any such partial payment, the Engineer will not thereby be deemed to have represented that exhaustive or continuous Site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to the Engineer in the Contract Documents or that there may not be other matters or issues between the parties that might entitle the Contractor to be paid additionally by the Owner or the Owner to withhold partial payment to the Contractor.

#### C. DEDUCTION FROM APPLICATION FOR PAYMENT

1. The Owner will deduct from the Application for Payment such amounts as may be determined pursuant to Subparagraph B above.
2. The Owner will deduct from the Application for Payment Liquidated Damages which have been assessed and all other costs chargeable to the Contractor, including but not limited to fees, charges, fines, and cost reimbursements.
3. The Owner will deduct from the Application for Payment, and retain as part security for the Contractor's faithful performance in strict compliance with all its obligations

under the Contract Documents, five percent (5%) of the amount approved for payment for Work in place. The retainage of five percent (5%) shall also be applicable to stored material and equipment approved for payment. The Owner may hold such retention for the satisfaction of, or apply such retention to, any obligation of the Contractor under the Contract Documents at any time the Owner reasonably concludes that the amount remaining unpaid to the Contractor under the Contract Price will not be sufficient to satisfy the Contractor's financial obligations to the Owner by deduction from amounts otherwise due the Contractor.

#### D. QUALIFICATION FOR PARTIAL PAYMENT FOR MATERIALS AND EQUIPMENT

1. As a condition precedent to any obligation of the Owner to make partial payment for materials and Equipment not yet incorporated into the Work, the Contractor shall comply with the requirements of the Specifications, and shall comply with the following:
  - a. To receive partial payment for materials and Equipment fabricated, furnished and delivered to the Site but not incorporated into the Work, or stored and protected off-Site as provided herein, the Contractor shall list such material on the Application for Payment, certify in writing that proper storage and protection of the material has been accomplished to the satisfaction of the Engineer, and satisfy the Engineer that the material is free of liens. The Contractor shall also include a typed list of all materials and Equipment invoices included in the Application for Payment with corresponding information such as description of each item, the Project Schedule activity or activities in which it is included, the vendor, specific storage location, and any other information deemed necessary by the Engineer. This list shall also identify all items, which have been removed from storage and incorporated into the Work during the specific period covered by the Application for Payment. Upon satisfaction of such conditions, the Engineer may approve partial payment in accordance with Subparagraph C.1.c of this Article. Proper storage and protection shall be provided by the Contractor and be as approved by the Engineer. Proper storage and protection of materials stored off-Site shall require storage in a bonded facility local to the Site (within 25 miles) which meets all storage requirements recommended by the Manufacturer/Supplier and as otherwise required by the Contract Documents. The storage facility shall be provided at no cost to the Owner, but the items stored therein shall be under the control of the Owner. Upon Final Completion, all materials remaining for which partial payments have been made shall revert

to the Contractor, unless otherwise agreed, and partial payments made for these items shall be deducted from the final payment for the Work.

- b. The Contractor warrants and guarantees that title to all Work, materials, and Equipment covered by any Application for Payment, whether incorporated into the Project or not, will pass to the Owner at the time of any partial payment therefore, free and clear of all liens, claims, security interests, and encumbrances.
- c. The Contractor shall present with its Application for Payment invoices which clearly delineate the cost of the specific material or Equipment for which partial payment is being requested. If requested by the Engineer, the Contractor shall provide evidence in a form acceptable to the Engineer showing (i) that payment in full has been made for all materials and Equipment to the extent the Owner has made payment to the Contractor for such material or Equipment; and (ii) that all stored material and Equipment not yet incorporated into the Work comply with the Specifications. Such evidence shall become due within ten (10) days after receipt by the Contractor of the Engineer's request therefore. Failure to provide timely and acceptable evidence satisfactory to the Engineer in response to either request by the Engineer will result in a denial of the Application for Payment.
- d. The amount earned for material and Equipment not yet incorporated into the Work but eligible for partial payment pursuant to Subparagraph D, QUALIFICATION FOR PARTIAL PAYMENT FOR MATERIALS AND EQUIPMENT, is limited to Manufacturer's/Supplier's invoice less applicable deductions outlined herein.

#### E. PAYMENT

The partial payment approved by the Owner will be paid to the Contractor not later than thirty (30) days after receipt by the Owner of an acceptable Engineer's recommendation of the amount to be paid.

#### F. INTEREST

The payment date for any amounts not approved for payment in an Application for Payment shall be thirty (30) days following the date the amount due the Contractor is determined. Interest on amounts due the Contractor shall accrue at the rate of 0.10% per month (1.2% per annum) from the payment date.

### 104. DISPUTES AND CLAIMS GENERALLY

- A. In any case where the Contractor deems it is due additional compensation beyond the Contract Price, the Contractor shall give written Notice of such claim to the Owner and to the Engineer at the time of the discovery of the occurrence of the event giving rise to the claim and before beginning any Work on which the claim is based. Such Notice

shall identify itself as a Notice of claim, shall state the circumstances of the occurrence, shall specify the additional work contemplated as being required, shall state why such work is not already included within the scope of the Contract Documents, and to the extent reasonably foreseeable shall estimate the anticipated amount of the claim. If the Owner declines to consent to a Change Order and directs the Contractor to proceed with such Work, then the Contractor shall so proceed and within ten (10) days after completion of the Work for which additional compensation is claimed shall submit in writing to the Owner and to the Engineer an itemization of the actual additional compensation claimed. Compliance with these provisions shall be a condition precedent to the assertion of any claim, and any claim for additional compensation not presented as required in this provision shall be barred. Compliance with such requirements, however, shall not create any presumption of the validity of such claim.

- B. The Owner will make the final decision on all requests for additional compensation or an extension of Contract Time. The timeframe in which the Owner presents its final decision to the Contractor is specified in Supplemental Condition 104B. A written decision by the Owner within the stated time shall be a condition precedent to the institution of any judicial claim for relief by the Contractor. The Owner's written decision shall be final and conclusive unless the Contractor institutes appropriate judicial appeal within six (6) months of the date of the decision by the Owner. In the event the Owner has not rendered a decision on a claim for additional compensation or extension of Contract Time within the specified time frame after submission of such claim as provided herein, the claim shall be deemed denied and the Owner's final decision shall be deemed to have been issued on the last day of the specified time frame after submission of the claim. In the interest of compromise, the Owner may, but is not required to, consider further submissions by the Contractor related to a claim after a final decision on a claim, but no such actions by the Owner shall in any way affect or extend the effective date of the Owner's final decision on the claim.
- C. If the Owner agrees to pay additional compensation in response to such claim, payment shall be made in accordance with General Conditions, Article 102, PAYMENT FOR CHANGES IN THE WORK, or pursuant to such Supplemental Agreement as may be reached between the Owner and the Contractor.
- D. The Contractor shall comply with all directions and decisions of the Engineer or the Owner and shall proceed diligently with performance of the Contract and with any disputed work pending final resolution of any claim or dispute, whether for additional compensation or extension of time. "Final resolution" as used throughout the Contract Documents shall mean the conclusion or exhaustion of all judicial proceedings.
- E. If the Contractor at any time determines the Owner to be in material breach of the Contract, the Contractor shall provide Notice of claim thereof to the Owner within seven days of the occurrence the Contractor deems to constitute such material breach. Such Notice shall specify the precise occurrence(s) of such material breach. The Contractor's continuing performance under the Contract, after giving such Notice of claim, including

but not limited to receiving moneys thereunder, shall constitute an election to waive such material breach and to confirm the continued existence of the Contract.

- F. No payment or partial payment on any claim shall be made prior to final resolution of such claim.
- G. All matters of dispute must be resolved either to the mutual satisfaction of the Owner and the Contractor or by final resolution as a condition precedent to the Owner's obligation to make final payment for the Work to the Contractor.
- H. The Contractor shall make no claim against any officer, agent, or employee of the Owner or the Engineer for, or on account of, any act or omission to act in connection with the Contract, and hereby waives any and all rights to make any such claim or claims.
- I. If additional compensation and/or extension of time is granted as to any claim, the same shall be incorporated in a Change Order to the Contract. The Contractor shall not be entitled to recover interest on any amounts claimed to be due from the Owner which are the subject of a good faith dispute by the Owner which are paid by the Owner within thirty (30) days following the final resolution of such dispute.
- J. The terms "claim" and "dispute" are used interchangeably in the Contract Documents and either shall mean any request by the Contractor for compensation in excess of that to which the Owner agrees, for a time extension in excess of that to which the Owner agrees, or for any other relief beyond that to which the Owner agrees.
- K. For any judicial proceedings arising from or related to the Contract Documents, the Contractor and the Owner hereby consent to exclusive venue and jurisdiction in the Circuit Court of Fairfax County, Virginia, or the United States District Court for the Eastern District of Virginia (Alexandria Division).
- L. Failure of the Owner to require compliance with any term or condition of this Contract shall not be deemed a waiver of such term or condition, or a waiver of the subsequent enforcement thereof, including but not limited to the Owner's claim for a subsequent material breach of Contract.
- M. In the event the Contractor makes a claim for additional compensation which results in litigation, if the Owner substantially prevails in such litigation the Contractor shall indemnify and hold the Owner harmless from any and all reasonable attorneys' fees, litigation costs of all types, and expert witness fees and costs, arising from or related to such claim and litigation. Provided, however, this provision shall not apply to any claim which is subject to the provisions of General Conditions, Article 91.K.
- N. This Article shall be construed to be included where applicable in every portion of the Contract Documents regardless of whether or not it is specifically referenced therein. Failure by the Contractor to comply with any condition precedent to a claim provided by the Contract Documents shall be an absolute bar to such claim.

- O. The Contractor shall not pass along any claim from a Subcontractor without performing an independent analysis of the claim's strict compliance with the Contract Documents and the claim's merit. Any claim for an increase in Contract Price and/or Contract Time submitted by the Contractor shall also include an affirmative representation by the Contractor that it has reviewed the basis for such requested increase and that the Contractor represents that the claim strictly complies with the Contract Documents and is merited by the specific facts of the claim. The Contractor's independent analysis of the merits of the claim and compliance with Contract Documents and its representation of such analysis and compliance shall be conditions precedent to the claim for additional Contract Time and/or Contract Price.

105. RELEASE OF LIENS AND CLAIMS

- A. The Contractor hereby acknowledges and agrees that the Owner is an agency of the Government and as such its property is immune from mechanic's liens. The Contractor hereby waives any and all mechanic's lien rights it may purport to have, and agrees that it shall neither file nor assert any such lien claim.
- B. The Contractor shall indemnify and hold the Owner harmless in the event of the filing of a mechanic's lien by any third party related to the performance of the Work, including but not limited to all attorneys' fees and costs incurred by the Owner in the defense or removal of such lien. Promptly upon recordation of any such lien, the Contractor at its sole expense shall obtain the release of such lien of record pursuant to the provisions of Section 43-70 and 71, Va. Code Ann., as amended.
- C. As a condition precedent to final payment for the Work, the Contractor shall sign and deliver to the Owner a release of liens and claims sworn to under oath and duly notarized. The release shall be submitted on the form included in the Contract.
- D. As a condition precedent to any partial payment for the Work, the Contractor shall sign and deliver to the Owner with each Application for Payment a release of liens and claims sworn to under oath and duly notarized covering the Work in question. The release shall be submitted on the form included in the Contract.
- E. If any third party lien or claim remains unsatisfied after all payments to the Contractor are made, or if satisfied by the Owner prior to the payment to the Contractor of all sums otherwise due the Contractor, the Contractor or Surety shall pay to the Owner all monies expended by the Owner in defending and/or satisfying such claim, including but not limited to all costs and attorneys' fees, and also shall pay to the Owner all costs and attorneys' fees incurred in collecting such amounts from the Contractor or the Surety.

106. FINAL PAYMENT AND ACCEPTANCE

Upon completion of all of the Work under the Contract, the Contractor shall notify the Owner and Engineer, in writing, that the Contractor has achieved Final Completion and shall request final payment. If, in the opinion of the Engineer, the Contractor has achieved Final Completion, the Engineer will recommend acceptance of the completed Work and

submit a final estimate of the amount due the Contractor. Upon approval of this final estimate by the Owner and compliance with the provisions of General Conditions Article 104, DISPUTES AND CLAIMS GENERALLY, subparagraph G; General Conditions Article 105, RELEASE OF LIENS AND CLAIMS; and other provisions as may be applicable, the Owner shall pay the Contractor all monies due the Contractor under the provisions of the Contract Documents. Achieving Final Completion and satisfaction of all conditions precedent to Final Payment shall be a condition precedent to the Contractor's entitlement to release of Retention.

107. NO WAIVER OF RIGHTS

Neither inspection by the Owner or the Engineer, nor any payment for, or acceptance of, the whole or any part of the Work by the Owner or Engineer, nor any extension of time, nor any possession taken by the Owner, shall operate as a waiver of any provision of the Contract Documents, or of any power herein reserved to the Owner, or of any right to damages herein provided, nor shall any waiver, actual or implied, of any breach of the Contract Documents be held to be a waiver of any other or subsequent breach. Issuance of final payment shall not be binding and conclusive upon the Owner with regard to latent defects, fraud or bad faith, or such gross mistakes as may amount to fraud, or as regards the Owner's rights under any warranty. Failure of the Owner or Engineer to require strict compliance with any term or condition of the Contract Documents in any specific instance shall not be deemed a waiver of the right to subsequent enforcement thereof.

108. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

Acceptance by the Contractor of final payment shall release the Owner and the Engineer, as representative of the Owner, from all claims and all liability to the Contractor for all things done or furnished in connection with the Work, and from every act of the Owner and others relating to or arising out of the Work. No payment, however, final or otherwise, shall operate to release the Contractor or its Sureties from obligations under the Contract Documents.

**MISCELLANEOUS**

109. FINES AND PENALTIES

The Contractor shall be solely liable for, and shall reimburse the Owner for, any and all fines which may be levied by any governmental authority against the Owner and/or the Contractor which are related to the Contractor's operations, including but not limited to the diversion of raw or partially treated sewage.

110. CUMULATIVE REMEDIES

Any remedy provided in the Contract Documents to the Owner shall be taken and construed as cumulative, namely, in addition to each and every other right to suit, action or legal



proceeding. The Owner shall also be entitled as of right to an injunction against any breach by the Contractor of the provisions of the Contract Documents.

111. GOVERNING LAW

All disputes arising under or related to the Contract shall be governed by the laws of the Commonwealth of Virginia.

112. PARTIAL INVALIDITY

In the event any one or more of the provisions of the Contract Documents are found by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Contract Documents shall remain in full force and effect.

113. FEDERAL, STATE, COUNTY, AND LOCAL STANDARD SPECIFICATIONS

Where portions of the Work traverse or cross Federal, State, County, City, or local highways, roads, or streets, and the governmental agency in control of such property has established standard specifications governing such items of Work that differ from the Specifications, the more stringent requirements shall apply. It shall be the Engineer's responsibility to resolve any acceptance issues raised by any governmental agency in control of such property concerning any specified requirements which are more stringent than those normally specified by the governmental agency.

114. GENDER

All references in the Contract Documents to the masculine shall be deemed to include the feminine or neutral as applicable. All references to the singular or the plural shall be deemed to include the other as applicable.

115. DISPOSAL OF CEMENTITIOUS MATERIAL AND WASH WATER

A. Cementitious wash water is the contaminated water resulting from the cleaning of cementitious mixing, transporting and placing equipment, including, but not limited to, mixers, mixer truck hoppers, chutes, buckets, wheel barrows, shovels, rakes, trowels, and finishing equipment. Cementitious wash water and solids come from using such construction materials including, but not limited to, concrete, grout, flowable fill, mortar, plaster, and stucco.

B. The Contractor shall provide facilities at its designated staging or laydown area(s) designed specifically for the purpose of managing cementitious wash water. Cementitious wash water and resulting settled solids shall be handled and disposed of in accordance with the Contractor's approved site maintenance plan. Additionally, the management and disposal of cementitious wash water and solids shall be in compliance with UOSA's VPDES *Stormwater No Exposure Certification, Construction Stormwater Permit* and associated *Construction Stormwater Pollution Prevention Plan*.

Cementitious wash water shall not: come into contact with the ground or pavement; be discharged to any local waterway or to any storm drain system; or be discharged directly into the plant process drain or sanitary sewer system without first being collected in a non-pervious containment basin and given sufficient time for solids settlement. The resulting supernatant, when determined by the Owner to be fully settled, may be discharged to a plant process drain or sanitary sewer with the prior written approval of the Owner for each such discharge. Collected solids resulting from the settled cementitious wash water shall be disposed of offsite by the Contractor.

C. When available, the Contractor and/or their concrete supplier may use a designated Concrete Washout Area provided by UOSA. This area is for cementitious wash water only and not for the disposal of excess cementitious material. If this area is unavailable or inaccessible, the requirements above shall apply.

D. All rejected concrete, grout, flowable fill, or other cementitious material shall be disposed of offsite.

E. All excess plastic concrete, grout, and/or flowable fill shall be disposed of offsite. With prior written approval of the Owner, excess plastic concrete, grout, and/or flowable fill (not rejected truck loads) may be disposed of by first dumping in a UOSA-approved impermeable holding structure in the contractor's staging area or lay down yard and allowed to set before proper disposal off site.

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