

**Tall Cedars Pkwy & Stone Springs Blvd  
Traffic Signal Installation  
ATTACHMENT 3 TO IFB RFQ 132782  
LOUDOUN COUNTY REVISIONS TO THE 2016 VDOT ROAD & BRIDGE SPECIFICATIONS  
DIVISION I GENERAL PROVISIONS**

- A. The Loudoun County Revisions to the 2016 VDOT Road and Bridge Specifications revise only the specification sections identified herein. The unedited specifications remain as is and are incorporated into the IFB. Other than Section 101.02 Terms, if a specification sub-section is included in these revisions such as 103.05, for example, it is to be deleted from the 2016 VDOT Road & Bridge Specifications Division 1 General Provisions and replaced with the revisions provided herein.
- B. This is a **UNIT PRICE CONTRACT**.
- C. In the event of conflict between the the Loudoun County Revisions to the 2016 VDOT Road and Bridge Specifications and the 2016 VDOT Road & Bridge Specifications, the Loudoun County Revisions to the 2016 VDOT Road and Bridge Specifications shall prevail, unless Contractor is directed otherwise by the County.
- D. Reference in this document, as well as the 2016 VDOT Road & Bridge Specifications to "Department," shall be construed to refer to the Loudoun County Department of Transportation and Capital Infrastructure (DTCI) or the County generally, except in references to approvals and certifications provided by VDOT, VDOT as author of the 2016 VDOT Road & Bridge Specifications, or where related to matters of VDOT final approval and acceptance the Work.
- E. Reference in this document as well as in the 2016 VDOT Road & Bridge Specifications to "Engineer" shall be construed to refer to the Project Manager/Contract Administrator from the Loudoun County Department of Transportation and Capital Infrastructure.
- F. The County requires the Contractor to use e-Builder for the administration of this project. The County will provide the Contractor no more than two licenses for Contractor's use. Basic training will be required and provided by the County at no cost to the Contractor. This level of training is at the recommendation of e-Builder and should provide proficiency. If the Contractor does not demonstrate proficiency with the software following this training, additional training required for complete proficiency will be at the Contractor's cost. Additional licenses may also be purchased at the Contractor's cost. Contact e-Builder for further information at [www.e-builder.net](http://www.e-builder.net) or 1-800-580-9322.
- G. Any references in this document or in the plans to 2008 VDOT Road & Bridge Standards are replaced with 2016 VDOT Road & Bridge Standards for this project. Any references in this document or in the plans to 2007 VDOT Road & Bridge Specifications are replaced with 2016 VDOT Road & Bridge Specifications for this project.

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**SECTION 101—DEFINITIONS OF ABBREVIATIONS, ACRONYMS, AND TERMS**

**101.02—Terms.**

It is understood that reference in this document as well as the 2016 VDOT Road & Bridge Specifications to "Department" shall be construed to refer to the Loudoun County Department of Transportation and Capital Infrastructure or the County generally, except in references to approvals and certifications provided by VDOT, VDOT as author of the 2016 VDOT Road & Bridge Specifications, or where related to matters of VDOT final approval and acceptance of the Work.

It is understood that reference in this document as well as the 2016 VDOT Road & Bridge Specifications, to "District Engineer", it shall be replaced by the term "Engineer" or "County Project Manager". The County reserves the right to enter into a separate contract with a consultant who shall serve as the County's Architect/Engineer. The Architect/Engineer shall be identified in the County-Contractor Agreement.

Reference in the Contract Documents to the term "State" appears in the context of the governing body of the Commonwealth of Virginia, and whenever the terms "Board", "Virginia Department of Transportation" and "Department" appear in the context of the authority vested with the operation of the state's roadway network, such term shall remain unchanged.

Revisions herein include only those terms that vary from those in the 2016 VDOT Road & Bridge Specifications Division I, Section 101 or have been added.

**-A-**

**Addendum** - A written revision or addition to any of the Contract Documents, transmitted in advance of the opening of proposals to all parties who have been recorded by the County as having secured full sets of Contract Documents.

**Agreement; County – Contractor.** The written instrument used for signature and execution which binds the County and Contractor and is evidence of mutual understanding and agreement between the Parties. The Contract Agreement expressly incorporates and enumerates any documents, which are referred to as the "Contract Documents".

**Architect/Engineer (A/E).** The term Architect/Engineer, hereinafter "A/E" shall mean the consulting firm or County agency, or their duly authorized representatives, lawfully licensed to practice in Virginia, that is responsible for designing or engineering the work, and performing the activities specified herein. The A/E is identified in the County-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender.

**Award.** The decision of the Loudoun County Board of Supervisors or Loudoun County Purchasing Agent to accept the bid of the lowest responsive and responsible bidder for the work. The award is subject to the execution and approval of a satisfactory Contract therefore, and such conditions as may be specified or required by law.

**Award Date, Notice of.** The date a Notice of Award is posted on the County's web site ([www.loudoun.gov/procurement](http://www.loudoun.gov/procurement)) and on the bulletin board located in the Division of Procurement, 4th floor, One Harrison St, SE, Leesburg, 20175

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**-B-**

**Bid.** The offer of a bidder, submitted on the proposal (Invitation for Bid), to perform the work and furnish the materials and labor at the prices set forth therein; valid only when properly signed and guaranteed.

**Bidder.** Any individual, partnership, corporation, or joint venture that formally submits a bid for the work contemplated, or for any portion thereof, acting directly or through a duly authorized representative.

**Bids, Invitation for.** See **Proposal**

**Board.** Loudoun County Board of Supervisors.

**-C-**

**Commissioner.** Chairman, Loudoun County Board of Supervisors.

**Contract Documents** - The Contract Documents are complimentary, and what is required by one shall be as binding as if required by all. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work, including without limitation, all labor, materials, equipment and furnishings required in connection therewith. Such incorporated documents customarily include but are not limited to; the Invitation for Bid (Proposal) including any and all addendums and attachments, Loudoun County Revisions to 2016 VDOT Road & Bridge Specifications Division 1 General Provisions, Plans, , Bidder Response/ Proposal, County – Contractor Agreement and all attachments and exhibits thereto, 2016 VDOT Road and Bridge Specifications, Insurance coverage/policies, bonds, Specifications, and all Modifications, including addenda and subsequent change orders. The edition of the Road and Bridge Specifications cited in the Invitation for Bid (Proposal) and Contract, which include addenda or Revisions issued prior to the Bid Date, the Supplemental Specifications, Special Provisions, Special Provision Copied Notes, the Plans. Oral representations or promises will not be considered a part of the Contract. Any soils, geotechnical or other reports, surveys and analyses which may be made available to the Contractor for review or information under this Contract, are not adopted by reference into, nor are they part of the Contract Documents.

**Contracting Officer.** Contracting Officer from the Procurement Division of the Loudoun County Department of Finance and Procurement assigned to manage the Contract.

**Commonwealth.** Commonwealth of Virginia and/or the County of Loudoun

**County.** The County of Loudoun in the Commonwealth of Virginia.

Also referred to herein as County of Loudoun or Board. The Board of Supervisors of Loudoun County, Virginia and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term County means the County or its authorized representative of the Board of Supervisors for this Contract.

The County's Department of Transportation and Capital Infrastructure will designate a single County's representative with the title of Project Manager (PM) who will have the power to act, within the scope of this delegated authority, for and on the behalf of the County, in accordance with the terms of the Contract.

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For purposes of change in the work, the term "County" or "County's Representative" specifically excludes any inspectors having specification and material compliance responsibilities.

**-D-**

**Department.** County of Loudoun, Virginia and/or Virginia Department of Transportation.

**-E-**

**Engineer.** The Project Manager/Contract Administrator from the Loudoun County Department of Transportation and Capital Infrastructure to administer construction contracts on behalf of County's Board of Supervisor's and VDOT's Chief Engineer.

**Engineer, Contract.** County Contracting Officer.

**Execution date.** The effective date on the Loudoun County County – Contractor Agreement.

**Extra work.** An item of work that is not provided for in the Contract as awarded but that is found to be essential to the satisfactory fulfillment of the Contract within its intended scope.

**-F-**

**Final Completion (date of).** The date of Final Completion of the Work is the date determined by the County when the Work is totally complete, to include punch list work, in accordance with the Contract Documents and the County may fully occupy and utilize the Work for the use for which it is intended.

**-M-**

**Modification.** A Modification is (a) a written Amendment to the Contract signed by both parties, (b) a written Change Order signed by both parties (c) a written Field Order or, (d) a Unilateral Change Order issued by the County.

**-N-**

**Notice.** The term "Notice" as used herein shall mean written notice delivered to:

County:	Loudoun County Department of Transportation and Capital Infrastructure 101 Blue Seal Drive, SE, Suite 102 PO Box 7500 Leesburg, VA 20177
Purchasing Agent:	Loudoun County Department of Finance and Procurement Division of Procurement 1 Harrison Street, S.E. Leesburg, VA 20175

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Purchasing Agent Mailing Address:

Loudoun County Department of Finance and Procurement  
Division of Procurement  
PO Box 7000  
Leesburg, VA 20177

County Attorney: Loudoun County  
1 Harrison Street S.E.  
Leesburg, VA 20175

Contractor: Address in the County – Contractor Agreement

Delivery shall be deemed to have been given when made in writing and (a) when delivered in person, or (b) on the date delivered by special courier or recognized overnight delivery service, or three (3) business days after being sent by United States mail. Facsimile copies and e-mail shall be acceptable if the original is received by special courier, recognized overnight delivery service, or United States mail within three (3) business days.

**Notice of Award.** Written notice documenting the award date that is posted on the County's web site ([www.loudoun.gov/procurement](http://www.loudoun.gov/procurement)) and on the bulletin board located in the Division of Procurement, 4th floor, 1 Harrison St, SE, Leesburg, 20175.

**Notice to Proceed.** A written notice to the Contractor from the County's Contracting Officer/Contract Engineer that advises him of the date on which prosecution of the work shall begin.

**-P-Q-**

**Project Manager.** The individual designated by the Director, Loudoun County Department of Transportation and Capital Infrastructure to administer the construction contract on behalf of the County. Normally the same individual as the Engineer or Contract Administrator.

**Project Showing.** Referred to as the Pre-Bid Meeting. The scheduled event at which the County's representative meets with prospective bidders to describe and answer questions regarding the proposed work.

**Proposal.** Referred to as the Invitation for Bid. The document sent by the County to prospective bidders that describes the work for which bids will be accepted; it includes the official form on which the County requires bids to be submitted for the work described. Also identified as the Invitation for Bid (IFB).

**-R-**

**Request for Information.** A Request for information (RFI) is a written request from the Contractor to Engineer requesting information regarding the existing site conditions, interpretation or clarification of the Contract Design or other applicable information that the Contractor may find necessary in the execution of their Work. The Contractor shall promptly notify the Engineer in writing of the specific information and other applicable desired and numbered sequentially

**Resident Engineer.** Deleted.

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**-S-**

**Substantial Completion of Work (date of).** Substantial Completion of the Work or designated portion thereof is the date determined by County when: (a) construction is sufficiently complete, in accordance with the Contract Documents, so the County can occupy or utilize the Work or designated portion thereof for the use for which it is intended; and (b) the Contractor has satisfied all other requirements for Substantial Completion which may be set forth in the Contract Documents.

**-V-**

**Vouchered.** Deleted.

**SECTION 102—BIDDING REQUIREMENTS AND CONDITIONS**

**102.02 - Content of Invitation for Bid (Proposal)**

Upon request, the County will furnish a proposal (Invitation for Bid) to any interested party. The proposal (Invitation for Bid) will specify the location and description of the contemplated construction, the estimate of the various quantities and kinds of work to be performed or materials to be furnished, and a Schedule of Items for which unit prices are invited. The proposal (Invitation for Bid) will specify the time in which the work shall be completed and the date and time by which bids must be filed. The proposal (Invitation for Bid) will also include a Loudoun County Revisions to the 2016 VDOT Road and Bridge Specifications, Division I – with supplemental specifications, special provisions, or special provision copied notes governing the proposed work. Attachments to the proposal (Invitation for Bid) will be considered a part of the bid. The plans, Specifications, and other documents specified in the proposal (Invitation for Bid) will be considered a part of the proposal (Invitation for Bid) and contain required supplemental specifications, special provisions, and special provision copied notes governing the proposed work not included in Division I.

**102.04- Examination of Site of Work and Proposal (Invitation for Bid).**

**(a) Evidence of Examination of Site of Work and Proposal**

The submission of a bid will be considered conclusive evidence that the bidder has examined the site of the proposed work, the bid (proposal) and other documents referenced therein, and the plans before submitting a bid and is satisfied as to the conditions to be encountered in performing the work and the requirements specified in the proposal.

**(b) Subsurface Data**

Subsurface data may be available for review by the bidder in the form of a geotechnical report. Such data are accurate with regard to test holes and are made available to the bidder in good faith in order to apprise him of information in possession of the Department. The Department does not warrant these conclusions to be correct, either expressly or by implication. Further, the Department does not warrant the condition, amount, or nature of the material that may be encountered or the sufficiency of the data, either expressly or by implication. The bidder shall make his own interpretation of the

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subsurface data that may be available and satisfy himself with regard to the nature, condition, and extent of the material to be excavated, graded, or driven through. The submission of a bid will be considered conclusive evidence that the bidder is satisfied with regard to the subsurface conditions to be encountered in the work and has taken such conditions into consideration when submitting the bid.

A Geotechnical/Geophysical release form signed by an authorized individual per Invitation for Bid Section 19.7 – Authority to Bind Firm in Contract must be provided with your request for a plans and specifications CD. This form must also be submitted with the Bidder's bid submission.

**(c) Notice of Alleged Ambiguities**

If a word, phrase, clause, or any other portion of the proposal is alleged to be ambiguous, the Bidder shall submit to the Contract Engineer a written notice of the alleged ambiguity not later than the date specified in IFB Section 19.2 – Questions and Inquiries and request an interpretation thereof. This written notice shall be submitted in accordance with the instructions in IFB Section 19.2.

The Department will not be responsible for any other explanations or interpretations of the alleged ambiguities except those brought to the attention of and responded to by the Contract Engineer. No employee or agent of the Department shall have the authority to furnish any explanation or interpretation, verbal or written, of alleged ambiguities that are not submitted to the Contract Engineer by the Bidder.

If the Bidder fails to give written notice and request an interpretation of the alleged ambiguity within the specified time, he shall waive any right he may have had to his own interpretation of the alleged ambiguity.

**(d) Utilities**

In general, the bid proposal will indicate the various utility items known to exist, will indicate items to be adjusted or improvements proposed by the respective owners and will designate any items that are to be adjusted by the Contractor. Information contained in the bid proposal regarding utility locations is advisory only and shall not be construed as being a representation of completeness or accuracy. The bidder shall contact the owners of the various utilities to determine the exact location of the utilities and the owner's schedule of work. Unless otherwise noted, all utility adjustments will be performed by the Utility or its representative. The Contractor shall cooperate with the owners of any utilities in their adjustment operations. Prior to preparing a bid, the bidder shall contact known utility owners to determine the nature, extent, and location of existing, adjusted, or proposed new utility facilities within the areas of construction. It is understood and agreed that the Contractor (1) has considered in his bid all of the permanent and temporary utility appurtenances in their present and relocated positions and, any proposed utility capital improvements, and (2) the Contractor has contacted the utility owner with regard to the Contractor's proposed schedule of work. The Contractor shall include in his proposed schedule the amount of time to make utility adjustments, from time estimates furnished by the utility owners. Any costs associated with contacting, and coordinating with the utilities shall be reflected in the bid price for other items in the Contract. In the event the utility owners are non-responsive to the Contractor's efforts to contact them, the Contractor shall notify the Department prior to submitting a bid, as required in Section 102.03(c).



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**102.05 - Preparation of Bid.**

**(a) Instruction to Bidders.**

Detailed instructions on the preparation and submissions of bids is contained in IFB Section 19.0 – Instruction to Bidders

**(b) General**

- (1) The bidder shall furnish a unit or lump sum price as called for in the bidding proposal, in numerical figures, for each pay item listed. The bidder shall also show the products of the unit prices and quantities in numerical figures in the column provided for that purpose and the total amount of the bid.

If a unit or lump sum price is omitted, the bid will be rejected. If there is a discrepancy between the unit price and its extension, the unit price will govern.

Bids will be considered irregular and may be rejected for *any* of the reasons stated in Section 102.06.

The Bidder shall submit a proposal guaranty in accordance with the requirements of Section 102.07.

A bid may be rejected and the Bidder may be disqualified for *any* of the reasons stated in Section 102.08.

- (2) Required Certifications

A bidder who makes a false certification on the Bidder Certification of the Prequalification Classification and Work Capacity Form will be subject to forfeiture of his bid bond and/or disqualification from bidding on future work for a 90 day period, or both. The Contracting Officer will determine the imposition and the extent of such sanctions.

A sworn statement shall be executed by the bidder or his agent on behalf of each person, firm, association, or corporation submitting a bid. The statement shall certify that the person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action to restrain free competitive bidding in connection with the proposal. The sworn statement shall be part of the bid or in the form of an affidavit and shall be sworn to before a person who is authorized by the laws of the State to administer oaths. The bids shall contain the identical sworn statement. The original of the sworn statement shall be filed with the Department when the bid is submitted.

- (3) Acknowledgement of Receipt of Revisions (Addendums)

It is the responsibility of all bidders to ensure that they have received all Addendums and to include signed copies of the Addendums with their bid. Addendums can be downloaded from [www.loudoun.gov/procurement](http://www.loudoun.gov/procurement). Failure to include signed addendums may lead to a bidder being deemed non-responsive and/or non responsible.

- (4) Bids shall be signed by individuals authorized to do so. Refer to IFB Section 19.7 – Authority to Bind Firm in Contract

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**102.06 - Irregular Bids.**

Bids will be considered irregular and may be rejected for *any* of the following reasons:

- (a) If the bidder fails to comply with the requirements of IFB Sections 18.0 and 19.0
- (b) If the bidder fails to comply with the requirements of Sections 102.05 and 102.07
- (c) If the bidder fails to provide Certification of Prequalification with VDOT
- (d) If the bid is not properly signed
- (e) If the bidder fails to acknowledge Addendum(s) by not including the signed Addendum(s) in their bid.
- (f) If there are unauthorized additions, conditional or alternate bids, or irregularities of any kind that may make the bid incomplete, indefinite, or ambiguous
- (g) If the unit prices in the bid are obviously unbalanced, either in excess or below the cost analysis values as determined by the Department. A mathematically unbalanced bid is a bid containing lump sum or unit price items that do not include reasonable labor, equipment, and material costs plus a reasonable proportionate share of the bidder's overhead costs, other indirect costs, and anticipated profit.
- (h) If the bidder fails to submit a statement concerning collusion
- (i) If bids are submitted showing a designation for a project other than the project for which the bid is made
- (j) The bid is not totaled or is totaled incorrectly.
- (k) If erasures or alterations in the bidder's entries on paper bids, when allowed, are not initialed by the bidder
- (l) If any attachments included in the bid are altered when the bid is submitted except as otherwise provided for herein
- (m) If the bidder adds any provisions reserving the right to accept or reject an award or enter into a contract pursuant to an award except as otherwise permitted in these Specifications
- (n) The bidder, if required, fails to register or obtain authorization to transact business in Virginia from the State Corporation Commission prior to bidding.

**102.07 – Invitation for Bid (Proposal) Guarantee**

Bid will not be accepted or considered unless accompanied by a proposal guarantee in the form of a bid bond. Refer to IFB Section 19.17 – Construction Contract Bid Security

**102.09 - Submission of Bids**

Refer to IFB Section 19.0 – Instruction to Bidders

**102.10 - Withdrawal of Bid.**

Refer to See Invitation for Bid, Section 19.8 – Withdrawal of Construction Contract Bid Due to Error.

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**102.11 – eVA Business-To-Government Vendor Registration**

Delete this section in its entirety.

**102.12—Public Opening of Bids.**

Bids will be read publicly at the time and place specified in the Initiation for Bid. Interested parties are invited to be present.

**SECTION 103—AWARD AND EXECUTION OF CONTRACTS**

**103.01—Consideration of Bids.**

After bids have been opened and read, the County will evaluate bid submittals to determine if all requirements of Section 102 and the Invitation for Bid have been met. Bids not submitted in accordance with the requirements of Section 102 and the Invitation for Bid may be rejected.

Bids will be compared on the basis of the summation of the products of the quantities shown in the bid schedule and the unit bid prices.

The Department may correct arithmetical errors in the bid prior to such comparison, in accordance with Section 102.05. The results of the comparisons will be available to the public after the determination has been made to award the Contract.

The County reserves the right to reject any or all bids, waive informalities, advertise for new bids, or proceed to do the work if it deems that the best interest of the County would be promoted thereby.

**103.02—Award of Contract**

- (a) See Invitation for Bid, Section 19.5 – Firm Pricing for County Acceptance
- (b) See Invitation for Bid, Section 19.12 – Vendor Preference in Tie Bids
- (c) See Invitation for Bid, Section 19.14 – Basis for Award.

**103.03—Cancellation of Award**

The County may cancel the award of any contract at any time before the execution of the contract by all parties without liability to the County.

**103.04—Forfeiture of Proposal (Invitation for Bid) Guarantee**

The apparent low bidder's proposal guaranty shall be subject to forfeiture if the apparent low bidder withdraws his bid prior to award, or fails to sign and return the Contract. The proposal guaranty shall be forfeited according to the forfeiture provisions in Code of Virginia (§ 2.2-4336) and the proposal guaranty.

**103.05—Requirements of Contract Bond**

See Invitation for Bid, Section 14.0 - Construction Contract Payment and Performance Bonds.

The Contractor will be required to obtain a land use permit and post a bond with VDOT for the estimated value of the work that is to be constructed in the VDOT right of way prior to the County's Notice to Proceed being issued.

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**103.06—Contract Documents.**

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work, including without limitation, all labor, materials, equipment and furnishings required in connection therewith. The Contract Documents are complimentary, and what is required by one shall be as binding as if required by all.

- (a) Contract:** The Contract shall include all Contract Documents, including but not limited to the Invitation for Bid (Proposal); all attachments to the Invitation for Bid; all addendums issued; Schedule of Bid Items submitted by the bidder, bidder's bid (proposal), plans, standard drawings, specifications, supplemental specifications, special provisions, special provision copied notes, and the County – Contractor Agreement.
- (b) Contract Bonds:** Contract bonds shall conform to the requirements of Section 103.05.
- (c) Affidavits and Documents:** Affidavits and documents shall include those required to be made a part of the Contract by any federal or state law in effect on the date of the Notice of Advertisement.
- (d) Progress Schedule:** The Contractor shall submit a progress schedule in accordance with the requirements of Section 108.03 or as specified in the Contract Documents.
- (e) Insurance:**

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

    - 1. Maintain Workers' Compensation and Employer's Liability to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
    - 2. The Contractor agrees to maintain Comprehensive General Liability insurance to protect the Contractor, its subcontractors, and the interest of the County, its officers, employees, and agents against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverage for explosion, collapse, and underground hazards, where required.
    - 3. The Contractor agrees to maintain owned, non-owned, and hired Automobile Liability insurance, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Comprehensive General Liability policy.

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4. Professional Liability against any and all wrongful acts, errors, or omissions on the part of the Contractor resulting from any action or operation under the Contract or in connection with the contracted work.
  5. The Contractor shall purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents. This insurance shall include the interests of the County, the Contractor and subcontractors.
- C. The Contractor agrees to provide the above referenced policies with the following limits. Liability insurance limits may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
1. Workers' Compensation:

Coverage A:	Statutory
Coverage B:	\$100,000
  2. General Liability:

Per Occurrence:	\$1,000,000
Personal/Advertising Injury:	\$1,000,000
General Aggregate:	\$2,000,000
Products/Completed Operations:	\$2,000,000
Fire Damage Legal Liability:	\$100,000
- GL Coverage, excluding Products and Completed Operations, should be on a Per Project Basis**
3. Automobile Liability:

Combined Single Limit:	\$1,000,000
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  4. Professional Liability

Per Claim:	\$1,000,000
General Aggregate:	\$1,000,000
  5. Boiler & Machinery: (If applicable) \$1,000,000
- D. The following provisions shall be agreed to by the Contractor:
1. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five (45) day written notice to the County. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
  2. Liability Insurance "Claims Made" basis: If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

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- a. Agree to provide, prior to commencing work under the Contract, certificates of insurance evidencing the above coverage for a period of two (2) years after final payment for the Contract for General Liability policies and five (5) years for Professional Liability policies. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's work under this Contract, or
  - b. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
3. The Contractor must disclose the amount of deductible/self-insured retention applicable to the General Liability, Automobile Liability and Professional Liability policies, if any. The County reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible/self-insured plan. If this provision is utilized, the Contractor will be permitted to provide evidence of its ability to fund the deductible/self-insured retention. In addition, the Contractor agrees to provide insurance issued by:
  - a. Companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A: VII.
  - b. European markets including those based in London, and the domestic surplus lines market that operate on a non-admitted basis are exempt from this requirement provided that the Contractor's broker can provide financial data to establish that a market's policyholder surpluses are equal to or exceed the surpluses that correspond to Best's A:VII Rating.
4.
  - a. The Contractor will provide an original signed Certificate of Insurance and such endorsements as prescribed herein.
  - b. The Contractor will secure and maintain all insurance certificates of its subcontractors which shall be made available to the County on demand.
  - c. The Contractor will provide on request certified copies of all insurance coverage related to the Contract within ten (10) business days of demand by the County. These certified copies will be sent to the County from the Contractor's insurance agent or representative. Any request made under this provision will be deemed confidential and proprietary.
  - d. Any certificates provided shall indicate the Contract name and number.
5. The County, its officers and employees shall be Endorsed to the Contractor's Automobile and General Liability policies as an "additional insured" with the provision that this coverage "is primary to all other coverage the County may possess." (Use "loss payee" where there is an insurable interest). A Certificate of Insurance evidencing the additional

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insured status must be presented to the County along with a copy of the Endorsement.

6. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities provisions of the Contract.
- E. Contractual and other Liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
- F. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the County. The Contractor shall be as fully responsible to the County for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
- G. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
- H. The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.
- I. Any loss insured under subparagraph 5.6.B.4 is to be adjusted with the County and made payable to the County as trustee for the requirements of any applicable mortgagee clause. The Contractor shall pay each subcontractor a just share of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each subcontractor to make payments to his sub-subcontractors in similar manner.
- J. When the County finds it necessary to occupy or use a portion or portions of the work prior to substantial completion thereof, such occupancy shall commence with a mutual agreement between the County and Contractor. The insurance company or companies providing the property insurance recognize this contingency and shall provide evidence of such endorsement prior to commencement of work. This insurance shall not be canceled or lapsed for the unoccupied part of the building on account of such partial occupancy. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.
- K. If an "ACORD" Insurance Certificate form is used by the Contractor's insurance, the words "endeavor to" and "... but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted.
- L. The Contractor agrees to waive all rights of subrogation against the County, its officers, employees, and agents.

**103.07 - Failure to Furnish Bonds or Certificate of Insurance**

Failure by the successful bidder to furnish the County acceptable payment and performance bonds and proof of the insurance requirements in Sections 103.05 and 103.06 within 15 calendar days after the effective date of the County – Contractor Agreement shall be considered just cause for cancellation of award and forfeiture of the proposal guarantee (bid bond). This does not include any Bonds associated with the VDOT Land Use Permit. In such event, the proposal guarantee (bid bond) shall become the

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property of the County, not as a penalty but in liquidation of damages sustained. The Contract may then be awarded to the next lowest responsive and responsible bidder, or the work may be re-advertised or constructed otherwise, as determined by the County.

**103.09 - Execution of Contract**

The bid as submitted, including the documents specified in Section 103.06(a), shall be a part of the Contract upon submittal of the Loudoun County payment and performance bonds and proof of the insurance requirements in 103.06(e) and the final execution by the County. After the County has recommended the bid for award the apparent low bidder shall be required to sign and return the County – Contractor Agreement to the County Purchasing Agent. Failure to sign and return the County – Contractor Agreement within 15 calendar days of receipt may result in forfeiture of the proposal guarantee (bid bond). If the Contract is not awarded within the time limit specified in IFB Section 19.5, the bidder may withdraw his bid without penalty or prejudice unless the time limit is extended by mutual consent. No Contract shall be considered effective until it has been fully executed by all parties.

**SECTION 104—SCOPE OF WORK**

**104.01 - Intent of Contract**

The intent of the Contract is to provide for completion of the work specified therein within the Contract Amount and time limit stated in the Contract. Further it is understood that the Contractor execute the Work under the Contract as an independent

contractor and not as an agent of the County.

**104.02 - Alteration of Quantities or Character of Work**

**(a) General**

The Engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to complete the project satisfactorily. Such changes in quantities and alterations shall not invalidate the Contract or release the surety, and the Contractor shall agree to perform the work as altered. No change, alteration or modification in or deviations from the Contract or the Contract Documents, or the giving by the Department of any extension of time for the performance of the Contract, or the forbearance on the part of the Department shall release or exonerate in whole or in part either the Contractor or any surety on the obligations of any bond given in connection with the Contract. Neither the Department nor the Contractor shall be under any obligation to notify the surety or sureties of any such alteration, change, extension or forbearance, notice thereof being expressly waived. Any increase in the Contract amount shall automatically result in a corresponding increase in the penal amount of the bonds without notice to or consent from the surety, such notice and consent being hereby waived. Decreases in the Contract amount shall not, however, reduce the penal amount of the bonds unless specifically provided in any change order as authorized in accordance with the provisions of Section 109.05 decreasing the scope of the work.

If the alterations in the nature of the work or changes in quantities, significantly change the character of the work under the Contract, an adjustment, excluding anticipated profits for reduced or eliminated work, may be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable.



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At the option of the Engineer, the Contractor may be directed to accomplish the work on a force account basis when the scope of work meets the requirements for such a determination in accordance with the requirements of Section 109.05.

If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the Contract.

The term *significant change* shall be construed to apply only to the following circumstances:

- (1) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or
- (2) When a major item of work, as defined elsewhere in the contract is increased or decreased more than 25 percent of the original contract quantity. Any allowance for an increase or decrease in cost due to an increase in quantity of more than 25 percent shall be calculated only on that quantity in excess of 125 percent of the original contract bid item quantity. Also any allowance for an increase or decrease in cost due to a decrease in quantity of more than 25 percent shall be calculated only on that quantity below 75 percent of the original contract bid item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed, or
- (3) When overruns and underruns of piling amount to more than 25 percent of the original bid quantity, whether or not such item has been designated as a major item, or
- (4) When overruns or underruns of more than 100% on minor items can be demonstrated as not representative of the true cost of the work when considering the unit bid price.

**104.03 - Differing Site Conditions**

During the progress of the work, if subsurface or latent physical conditions differing materially from those indicated in the contract are encountered at the site, the Contractor shall promptly notify the Engineer in writing of the specific differing conditions.

If unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract, are encountered at the site the Contractor shall promptly notify the Engineer in writing of the specific differing conditions.

**SECTION 105—CONTROL OF WORK**

**105.01— Contract Time, Notice of Contract Execution and Notice to Proceed**

- a) Unless otherwise provided, the Contract Time is the period of time specified in the County-Contractor Agreement for Final Completion of the Work as defined herein, including authorized adjustments thereto. The Contractor shall complete the Work within the Contract Time.
- (b) The date of commencement of the Work is the date established in the Notice to Proceed.
- (c) The Contractor shall commence work no later than ten (10) calendar days after the date established in the Notice to Proceed.

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- (d) The Contractor shall not commence work or store materials or equipment on site until written Notice to Proceed is issued or until the Contractor otherwise receives the County's written consent.
- (e) The date of Final Completion of the Work is the date determined by the County when the Work is totally complete, to include punch list work, in accordance with the Contract Documents and the County may fully occupy and utilize the Work for the use for which it is intended.
- (f) The effective date of the County – Contractor Agreement shall be the date of contract execution. The Contract Time will begin upon the date of the Notice to Proceed. The County Purchasing Agent or his designated representative, the Contracting Officer, will contact the Contractor on the date of contract execution to inform Contractor of such action.
- (g) The County plans to issue the Notice to Proceed thirty (30) calendar days after the execution of the County – Contractor Agreement. The thirty (30) calendar days between the execution of the County Contractor Agreement and the date of the Notice to Proceed is to provide reasonable time for the Contractor to complete the following pre-construction requirements:
- i. e-Builder Training
  - ii. Construction Schedule per Section 108.03
  - iii. Detailed Schedule of Values (AIA form or similar) based on Schedule of Bid Items
  - iv. Environmental Protection Plan
  - v. Project Organizational Diagram (Org Chart)
  - vi. Qualifications and Resumes for the Contractor's Project Manager and Superintendent. Resumes must demonstrate ten (10) years' experience in similar size and type of projects and include the following as a minimum:
    - Biographical sketch, education, and construction related certifications and licenses related to the type of work they will be performing. The Superintendent must have at the time of bid submission an OSHA 10-hour certification.
    - Project list for past and current projects that include a brief description of the project, role related to the project and completion date of the project to demonstrate ten (10) years construction experience for the work they will be performing of similar size and type.
    - A list of current projects including project description and details including a completion date for each project.
- By submitting a bid, the bidder agrees that the Project Manager and Superintendent identified in their bid shall be the Project Manager and Superintendent assigned to the project for the duration of the project unless they are no longer employed by the applicant or the County has approved a substitution.
- vii. Qualifications of Quality Assurance Firms/Individuals
  - viii. Submittal Register (in e-Builder format provided) and Identification of Critical Technical Submittals with Long Lead Time Requiring Early Submittal
  - ix. Any Technical Questions or Recommendations

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- x. Copy of Responsible Land Disturber Certificate
- xi. Contractor's Safety Plan
- xii. Insurance Certificate(s)
- xiii. Performance Bond
- xiv. Payment Bond
- xv. Technical Submittal for the traffic signal poles and mast arms must be submitted and approved by the County prior to the Notice to Proceed being issued. In addition, these items must be placed on order and delivery date verified prior to the Notice to proceed being issued.

Pre-construction submittals shall be due to the County for review seven (7) days prior to the Pre-construction Meeting and must be approved prior to the scheduled Pre-construction Meeting.

- (h) In the event the Contractor, for matters of his convenience, wishes to begin work later than 10 calendar days from the date of Notice to Proceed he shall promptly make such a request in writing to the County. If the Contractor's requested start date is acceptable to the Department, the Contractor will be notified in writing; however, the Contract fixed completion date will not be adjusted but will remain binding. The Contractor's request to adjust the start date for the work on the Contract will not be considered as a basis for claim that the time resulting from Contractor's requested start date, if accepted by the County, is insufficient to accomplish the work nor shall it relieve the Contractor of his responsibility to perform the work in accordance with the Scope of Work and requirements of the Contract. In no case shall work begin before the Department executes the Contract. The Contractor shall notify the County at least 24 hours prior to the date on which he plans to begin the work.

**105.03 – Authorities of Project Personnel, Communication and Decision Making**

**(a) Authority of the County**

**(1) County's Right To Stop Work**

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

**(2) County's Right to Carry Out the Work**

- a. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written Notice from the County to commence and continue correction of such default or neglect with diligence and promptness, the County may, without prejudice to any other remedy he may have, rectify such deficiencies as outlined in Section 105.03 (a)(4) County's Right to Perform Work and to Award Separate Contracts. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the A/E's additional services

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made necessary by such default, neglect or failure ("Deductive Change Order"). If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the County.

- b. Neither the County nor the A/E nor their officers, agents, assigns or employees are in any way liable or accountable to the Contractor or his surety for the method by which work performed by the County, or at the County's direction, or any portion thereof, is accomplished or for price paid therefor. Notwithstanding the County's right to carry out a portion of the Work, maintenance and protection of the Work remains the Contractor's and Contractor's surety's responsibility as provided for in the Contractor's Bonds and Guarantee.

**(3) Suspension of Work**

- a. The County shall have the authority to suspend the Work, in whole or in part, for such periods and such reasons as the County may deem necessary or desirable, in its sole discretion, including without limitation:
  - i. Unsuitable weather;
  - ii. Other conditions considered unfavorable for the suitable prosecution of the Work; and/or
  - iii. Other conditions considered adverse to the best interests of the County.

Any such suspension shall be in writing to the Contractor. The Contractor shall obey immediately such orders of the County and shall not resume the Work until so ordered in writing by the County. The Contractor may be entitled to an extension of the Contract Time subject to the provisions of this Section 105.03 (a) (3) and Section 108.04.

No such suspension of the Work shall be the basis of a claim by the Contractor for any increase in the Contract Amount or for any other damages, losses, costs or expenses whatsoever provided that the suspension is for a reasonable time under the circumstances then existing or the cause thereof is beyond the control and is without the fault or negligence of the County.

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

**(4) County's Right to Perform Work and to Award Separate Contracts**

- a. The County reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site.
- b. When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate County-Contractor Agreement.

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**(b) Authority of Engineer**

During prosecution of the work, the Engineer will answer all questions that may arise as to the quantity, quality, and acceptability of materials furnished and work performed; rate of progress of the work; interpretation of the plans and Specifications; acceptable fulfillment of the Contract by the Contractor; disputes and mutual rights between contractors; and compensation.

The Engineer has the authority to suspend the work wholly or in part if the Contractor has created conditions that are unsafe or fails to correct conditions that are unsafe for workers or the general public or fails to carry out the provisions of the Contract. The Engineer may also suspend work for such periods as he may deem necessary because of catastrophic or extraordinary weather in accordance with the definition of such in Section 108.04, conditions considered unsuitable for prosecution of the work, or any other condition or reason deemed to be in the public interest.

The Engineer may issue written clarifications or directives that either enhance or alter Contract Documents. The Engineer may order such work as may be necessary to complete the Contract satisfactorily.

**(c) Authority of Inspector.**

Inspectors employed or contracted by the Department are authorized to inspect all work performed and materials furnished. Inspection may extend to all or any part of the work and to the preparation, fabrication, and manufacture of the materials to be used. The Inspector is not authorized to alter or waive the provisions of these Specifications or make changes in the plans.

The Inspector is not authorized to make final acceptance of the Project, approve any operation or item, or act as foreman for the Contractor. However, the Inspector will have the authority to reject defective work and material and suspend work that is being improperly performed, subject to the concurrence of the Engineer. Such inspection shall not relieve the Contractor of any obligation to furnish acceptable materials or provide completed construction that is in accordance with the requirements of the Contracts.

The Inspector will exercise only such additional authority as may be delegated by the Engineer. The Engineer will advise the Contractor in writing of delegations of authority that will affect his operations.

**(d) Communication and Decision Making**

(1) Description: The intent of this provision is to establish procedures, processes and guidelines for making decisions and managing communications regarding the Work. The information contained herein is not meant to be all inclusive but to serve as a minimal general framework for promoting efficient and effective communication and decision making at both the project and, if needed, executive administrative level. It is also not meant to override the decision-making processes or timeframes of specific Contract requirements.

(2) Definitions: For the purposes of this provision the following terms will apply and be defined as follows:

Submittals - Documents required by the Contract that the Contractor must submit for the Department's review, acceptance, or approval. Submittals may include shop drawings, working drawings, material test reports, material certifications, project progress schedules, and schedule updates. The Contractor shall provide submittals as early as practicable so as not to delay review, acceptance, or

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approval of the Work. Submittals may require both County review and VDOT review to be fully approved. .

Requests for information (RFI) - Requests where either the Contractor or the Department asks that the other party supply information to provide better understanding of or to clarify a certain aspect of the Work. 5 working days are allocated for response to a Request for Information.

Requests for Department action (RDA) - Requests where the Contractor asks the Department to take certain action that the Contractor feels is required for proper completion of all or a portion of the Work.

Potential Change Order (PCO)/Change Order (CO) - Requests where the Contractor asks the Department to make an adjustment to the Contract because of excusable and/or compensable events, instructions that have or have not been given, or other work requiring time and/or cost beyond that specified or envisioned within the Contract.

Requests for Contractor action (RCA) - Requests where the Department asks the Contractor to take certain action that is in the best interests of the project and/or is required for proper completion of all or a portion of the Work.

Responsible Person - The individual in the normal or escalated resolution process, for either the Contractor or the Department, having the direct authority, responsibility and accountability to formulate and respond to each category of information request.

(3) Process for Decision Making:

(a) Project teams composed of the Contractor's and the Department's representatives, who are directly responsible for the administration, prosecution, and inspection of the Work, shall define and agree upon the field decision-making process during the pre-construction conference. This process should be written down and distributed to all affected parties once it is established. Where there are responsibilities, authority or personnel changes associated with this process, such changes shall be distributed to all affected parties as quickly as practicable after they are effective so as not to delay or impede this process. The process for making field decisions with respect to the Work detailed in the Contract requires the following basic steps:

(1) The Contractor and the Department agree on the decision-making process, the identity, authority and accountability of the individuals involved, and on the cycle times for responses required for each category of decision.

(2) The requesting party requiring a decision generates the appropriate request documents, and calls for a decision from the individual who is accountable for the particular facet of the Work under consideration within the agreed period.

(3) The responding party has an internal decision-making process that supports the individual who is accountable and provides the information required within the agreed period for each category of decision.

(4) The party receiving the decision has an internal process for accepting the decision or for rejecting the decision and initiating further action according to the decision-making process within an agreed period of time.

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(b) The process also requires that clear and well-understood mechanisms be in place to log and track requests; document the age and status of outstanding requests and actions to be taken on requests that have not been answered within the agreed period.

(c) Both the Department and the Contractor shall agree on the following:

(1) The documentation and perhaps format to be developed for each category of information requested.

(2) The name (as opposed to organizational position) of all individuals with the responsibility, authority, and accountability to formulate and respond to each category of information requested.

(3) The cycle times for each stage in the decision-making process.

(4) The performance measures to be used to manage the process.

(5) The action to be taken if cycle times are not achieved and information is not provided in a timely manner.

**105.12 - Coordination of Plans, Standard Drawings, Specifications, Supplemental Specifications, Special Provisions, and Special Provision Copied Notes**

The plans, Standard Drawings, these Specifications, Invitation for Bid, Loudoun County Revisions to VDOT Division 1 General Provisions, Supplemental Specifications, Special Provisions, Special Provision Copied Notes and Supplementary Documents are parts of the Contract. These Contract documents are defined in Section 101 - Definitions. A requirement occurring in one shall be as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of a discrepancy, the following order of priority will apply, with the highest governing item appearing first and the least governing item appearing last:

- (a) Loudoun County – Contractor Agreement
- (b) Loudoun County Invitation for Bid, including all attachments and addendums
- (c) Loudoun County Revisions to 2016 VDOT Road & Bridge Specifications Division 1 General Provisions
- (d) Special provision copied notes
- (e) Special provisions
- (f) Plans
- (g) Supplemental Specifications.
- (h) Specifications (including all revisions issued through the date of Advertisement)
- (i) Standard Drawings(including all revisions issued through the date of Advertisement) with calculated dimensions, unless obviously incorrect, will govern over scaled dimensions.

Sketches, drawings, general notes and other written information that are not included in special provisions or special provision copied notes used in No Plan and Minimum Plan Concept projects will have the same status as plans.

The Contractor shall not take advantage of any obvious or apparent error or omission in the Contract Documents, including the plans or Specifications. If the Contractor discovers an error or omission, he shall immediately notify the Engineer. The Engineer will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Contract.

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**105.13—State Force Construction Surveying**

This specification section is deleted and replaced with:

The General Contractor shall be responsible for providing all surveying and stakeout for the successful prosecution of work as indicated on the plans and as directed by the Engineer. Stakeout work shall be in accordance with VDOT's Survey Manual.

The following surveying work shall be performed by or under the direct control and personal supervision of a surveyor who is licensed in Virginia as a Land Surveyor and is experienced in highway construction stakeout, right of way and boundaries affecting property ownership, horizontal and vertical control for bridges, horizontal and vertical control for box culverts and culverts having spans or openings larger than 48 inches, horizontal and vertical control for culverts with design grades, horizontal and vertical control for additional centerlines or baselines for roadways, ramps, loops and connections.

All other surveying work may be performed by or under the direct supervision and control of the Contractor who is experienced in highway construction stakeout.

The Contractor shall provide the Engineer with a record copy of survey drawings, field notes and computations prior to the use of said stakeout information for construction. Survey record drawings shall be prepared and certified in accordance with the requirements of the sample figure drawings as shown in the Survey Manual. Electronic data files may be submitted along with paper sketches and drawings, subject to the prior approval of the Engineer. All electronic copies submitted shall be in a format fully compatible with the County's existing computer hardware and software. It shall be the responsibility of the Contractor to check all surveying work for correctness. Consideration will not be given for any delays to the project that are a result of inaccurate stakeout or time lost to correct elements of the defective survey work. Contractor shall bear all cost to correct all deficiencies resulting from defective survey work. Should a discrepancy arise during construction, the Contractor shall immediately provide oral and written notice to the County, accurately describing and documenting the discrepancy. The County will respond to the Contractor's notice and provide direction on how the work is to proceed.

The Contractor shall perform all construction and other surveying which the Contractor deems necessary to construct this project in accordance with the Contract documents. The location of any reference points which may have been established by the County and any control data which the County may have will be made available to the Contractor upon request. The cost for all surveying performed by the Contractor shall be included in the price bid for other items in the Contract.

The Contractor shall provide and protect temporary construction benchmarks within the construction limits. Temporary construction benchmarks shall be located not farther than 500 feet apart for the total length of the project or as indicated on the plans. Temporary construction benchmarks that are disturbed during construction operations shall be reestablished by the Contractor at no additional cost to the Department.

**105.17 - Inspection of Work**

Inspection will be performed at critical stages. However, all stages, materials, and details of the work are subject to inspection. The Contractor shall provide the Engineer and Inspectors with full and safe access to all parts of the work and shall be furnished such information and assistance by the Contractor as are required to make a complete, timely and detailed inspection. The Engineer and his appointed representatives shall have ready access to machines and plant equipment used in processing or placing materials.

Prior to the beginning of operations, the Engineer will meet with the Contractor to establish an understanding of the critical stages of work that shall be performed in the presence of the Inspector. In



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order for the Department to schedule inspection of the work, the Contractor shall keep the Engineer informed of planned operations in accordance with the requirements of Section 108.03.

If the Engineer requests it, the Contractor shall remove or uncover such portions of the finished work as may be directed at any time before final acceptance. The Contractor shall restore such portions of the work to comply with the appropriate contract specification requirements. If the work exposed is acceptable, the uncovering or removing and replacing the covering or making good the parts removed will be paid for as extra work in accordance with the requirements of Section 104.03. If the work is unacceptable, the cost of uncovering or removing and replacing the covering or making good the parts removed shall be borne by the Contractor.

When any unit of government, political subdivision, or public or Private Corporation is to pay a portion of the cost of the work specified in the Contract, its representatives shall have the right to inspect the work. The exercise of this right shall not be construed as making them a party or parties to the Contract or conferring on them the right to issue instructions or orders to the Contractor.

If materials are used or work is performed without inspection by an authorized representative of the Department, the Contractor may be ordered to remove and replace the work or material at his own expense unless the Department's representative failed to inspect the work or material after having been given reasonable notice in writing that the material was to be used or the work was to be performed.

If an inspection reveals that work has not been properly performed, the Contractor will be so advised and he shall immediately inform the Department of his schedule for correcting such work and the time when a reinspection can be made.

(a) Inspection, Examination and Testing by the County

- (1) All material and workmanship shall be subject to inspection, examination and testing by the County, the Engineer, the Project Inspector, authorized inspectors and authorized independent testing entities at any and all times during manufacture and/or construction. The Engineer and the County shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefore, and the Contractor shall promptly segregate and remove the rejected material from the Site. If the Contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the County may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed. As a result, the Contractor and its Surety may be held liable for any damages to the same extent as provided in Contract for termination hereunder.
- (2) Site inspections, tests conducted on site or tests of materials gathered on site, which the Contract requires to be performed by independent testing entities, shall be contracted and paid for by the County. Examples of such tests are the testing of cast-in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings and steel framing connections. The Contractor shall promptly furnish, without additional charge, all reasonable facilities, labor and materials necessary and convenient for making such tests. Except as provided in this specification section, whenever such examination and testing finds defective materials, equipment or workmanship, the Contractor shall reimburse the County for the cost of re-examination and retesting. Although conducted by independent testing entities, the County will not contract and pay for tests or certifications of materials, manufactured products or assemblies which the Contract, codes, standards, etc., require to be tested and/or certified

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for compliance with industry standards such as Underwriters Laboratories, Factory Mutual or ASTM. If fees are charged for such tests and certifications, they shall be paid by the Contractor. The Contractor shall also pay for all inspections, tests, and certifications which the Contract specifically requires him to perform or to pay, together with any inspections and tests which he chooses to perform for his own purposes, but are not required by the Contract.

- (3) Where Work is related to or dependent upon work that is subsequently found to be defective, the Contractor shall stop such related or dependent Work until the Defective Work or deficiency is corrected or an alternative solution is presented that is satisfactory to the County. Where Work is rejected because of defective material or workmanship, the Contractor shall stop like Work in other areas or locations on the Project until the matter is resolved and the County has approved corrective measures.

**105.19 - Submission and Disposition of Claims**

No claim shall be made under this Contract until and unless the Contractor has failed to obtain a Change Order or has received a Deductive Change Order. The Contractor shall give the County written Notice of Intent To File a Claim within ten (10) calendar days of each and every occurrence that the Contractor feels gives it the right to make a claim or prior to the beginning of the work upon which the claim is to be based, or the rejection of his proposed Change Order, whichever is earlier. This written Notice shall clearly inform the County that it is a "Notice of Intent to File a Claim" and describe the act of omission or commission by the County or its agents that allegedly caused damage to the Contractor and the nature of the claimed damage. Failure to submit such Notice of Intent shall be a conclusive waiver to such claim for damages by the Contractor. **An oral notice or statement will not be sufficient.**

In addition, at the time of each and every occurrence that the Contractor feels gives it the right to make a claim or prior to beginning the work upon which a claim and any subsequent action will be based, the Contractor shall furnish the Engineer an itemized list of materials, equipment, and labor for which additional compensation will be claimed. Only actual cost for materials, labor and equipment will be considered. The Contractor shall afford the Engineer every facility for keeping an actual cost record of the work. Failure on the part of the Contractor to afford the Engineer proper facilities for keeping a record of actual costs will constitute a waiver of a claim for such extra compensation except to the extent that it is substantiated by the County's records. The filing of such Notice of Intent by the Contractor and the keeping of cost records by the Engineer shall in no way establish the validity of a claim.

No claim shall be allowed and no amounts paid for any and all costs incurred if the "Notice of Intent to File a Claim" is not given to the County as herein provided.

The complete written claim, with all supporting documentation, shall be submitted to the County Purchasing Agent no later than sixty (60) days after final payment. No supplements to the documentation or additional claims shall be considered after that date. If the claim is not disposed of by agreement, the Purchasing Agent shall reduce his decision to writing and mail or otherwise forward a copy thereof to the Contractor within thirty (30) days of receipt of the claim.

The Purchasing Agent's decision shall be final unless the Contractor appeals within thirty (30) days by submitting a written letter of appeal to the County Administrator. The County Administrator shall render a decision within sixty (60) days of receipt of the appeal.

No litigation shall be instituted prior to the exhaustion of the aforesaid claims process. The Contractor may not introduce factual matters in such litigation that were not set forth in the aforesaid claims process. Each party shall bear its own costs and expenses resulting from any litigation, including attorney's fees.

Any monies that become payable as the result of claim settlement after final payment will not be subject to payment of interest unless such payment is specified as a condition of the claim settlement.

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The Contractor shall submit a certification with any claim using the following format:

Pursuant to *Code of Virginia*, I hereby certify that this contract claim submission for the County of Loudoun Project Construction of Tall Cedars Parkway and Stone Springs Blvd Traffic Signal Installation (RFQ-xxxxx) is a true and accurate representation of additional costs and/or delays incurred by (name of Contractor) in the performance of the required contract work. Any statements made, and known to be false, shall be considered a violation of the Virginia Governmental Frauds Act, punishable as allowed by the Virginia Code for a Class 6 Felony.

**SECTION 106—CONTROL OF MATERIAL**

**106.02—Material Delivery.**

The Contractor shall advise the Engineer at least 2 weeks prior to the delivery of any material from a commercial source. The Contractor shall provide the Engineer with one copy of all invoices (prices are not required) for materials delivered to the project with the following exceptions: asphalt concrete; dense graded aggregate, to include aggregate base, sub base, and select material; fine aggregate; open graded coarse aggregate; crusher run aggregate; and road stabilization aggregate. The printed weights of each load of these materials, shall accompany the delivery, and such information shall be made available to the Engineer or his designated representative at the Project.

**106.05 - Rights for and Use of Materials Found on Project**

With the approval of the Engineer, the Contractor may use in the project any materials found in the excavation that comply with the requirements of the Specifications. However, the Contractor shall replace at his own expense with other acceptable material the excavation material removed and used that is needed for use in embankments, backfills, approaches, or otherwise. The Contractor shall not excavate or remove any material from within the construction limits that is not within the grading limits, indicated by the typical section, slope and grade lines shown in the plans without written authorization by the Engineer.

**SECTION 107—LEGAL RESPONSIBILITIES**

**107.01 - Laws to Be Observed**

The Contractor shall keep fully informed of federal, state, and local laws, bylaws, ordinances, orders, decrees, and regulations of governing bodies, courts, and agencies having any jurisdiction or authority that affects those engaged or employed on the Work, the conduct of the Work, or the execution of any documents in connection with the Work. The Contractor shall observe and comply with such laws, ordinances, regulations, orders, or decrees. The Contractor shall execute and file the documents, statements, and affidavits required under any applicable federal or state law or regulation required by or affecting his bid or Contract or prosecution of the Work there under. The Contractor shall permit examination of any records made subject to such examination by any federal or state law or by regulations promulgated there under by any state or federal agency charged with enforcement of such law.

(a) Hold Harmless Clause

- (1) It is hereby mutually covenanted and agreed that the Contractor is an independent contractor and not an employee of the County and as such, he shall

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be responsible for all damages, loss, or injury, including death, to persons or property that may arise as the result of any action, omission, or operation under the Contract or in connection with the Work, whether such action, omission or operation is attributable to the Contractor, subcontractor, any material supplier, or anyone directly or indirectly employed by any of them. The Contractor shall make good any damages that may occur in consequence of the Work or any part of it. The Contractor shall assume all liability, loss, and responsibility of whatsoever nature by reason of his neglect or violation of any federal, state, county or local laws, regulations, or ordinances.

- (2) The Contractor shall indemnify, hold harmless, and defend the County, its employees, agents, servants, and representatives from and against any and all claims, suits, demands, actions (regardless of the merits thereof) and damages of whatever nature arising out of or resulting from the performance of the Work or the failure to perform the Work, including jurisdictional labor disputes or other labor troubles that may occur during the performance of the Work.
- (3) The indemnification obligations under this Article shall not be affected in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under worker's or workman's compensation acts, disability benefit acts or other employee benefit acts.
- (4) The obligations of the Contractor under this Hold Harmless Clause shall not extend to the actions or omissions of the A/E, his agents or employees, arising out of; (a) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, or (b) the giving of or the failure to give directions or instructions by the A/E, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.
- (5) The obligations of the Contractor under this Hold Harmless Clause shall not extend to the proportion of damages, loss or injury, including death, to persons or property that may arise or be incurred as the result of any action, omission, or operation of the County, or County's Separate Contractor(s), and their employees, agents, servants, and/or representatives.
- (6) This section shall survive the Contract.
- (7) The County is prohibited from indemnifying Contractor and/or any other third parties.

(b) **Payments to Subcontractors**

Within seven (7) days after receipt of amounts paid by the County for work performed by a subcontractor under this Contract, the Contractor shall either:

- (1) Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- (2) Notify the County and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment and the reason for non-payment.

The Contractor shall pay interest to the subcontractor on all amounts owed that remain unpaid beyond the seven (7) day period except for amounts withheld as allowed in item B. above.

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Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as set forth above with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of the County.

(c) Provisions Required By Law Deemed Inserted

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

(d) Severability

In the event that any provision shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

(e) Rights and Remedies

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

(f) Successors and Assigns

- (1) The County and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder, without the previous written consent of the County and the Contractor's Surety.

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- (2) In the event the Contractor desires to make an assignment of all or part of the Contract or any monies due or to become due hereunder, the Contractor shall file a copy of consent of surety, together with a copy of the assignment to the County and A/E. In the event the Contractor assigns all or any part of the monies due or to become due under this Contract, the instrument of assignment shall state that the right of assignees in and to any monies due to or to become due to Contractor shall be subject to prior liens and claims of all persons, firms and corporations that provided labor services or furnished material and equipment during the performance of the Work. The rights of assignees shall further be subject to the payment of any liens, claims, or amounts due to Federal, State, or Local governments.

(g) Applicable Laws/Forum

This Agreement shall be governed and construed in all respects by its terms and by the laws of the Commonwealth of Virginia, without giving effect to its conflicts of laws provisions. Any judicial action shall be filed in the appropriate court in the County of Loudoun, Virginia or in the United States District Court for the Eastern District of Virginia in Alexandria. Contractor expressly waives any objection to venue or jurisdiction of the Loudoun County Circuit Court, Loudoun County, Virginia or the United States District Court for the Eastern District of Virginia in Alexandria. Contractor expressly consents to waiver of service of process in an action pending in the Loudoun County Circuit Court pursuant to Virginia Code Section 8.01-286.1.

**107.06 - Personal Liability of Public Officials**

In carrying out any of the provisions of these Specifications or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the County, its elected officials, employees, or agents, the A/E, or their authorized representatives, either personally or as officials of the County. In all such matters, they act solely as agents and representatives of the County.

**SECTION 108—PROSECUTION AND PROGRESS OF WORK**

**108.02 – Limitation of Operations**

- (a) General: The Contractor shall conduct the work in a manner and sequence that will ensure its expeditious completion with the least interference to traffic and shall have due regard for the location of detours and provisions for handling traffic. The Contractor shall not open any work to the prejudice or detriment of the work already started. The Engineer may require the Contractor to finish a section of work before work is started on any other section.
- (b) Holidays: Except as is necessary to maintain traffic, work shall not be performed on Sundays or the following holidays without the permission of the Engineer: January 1, Easter, Memorial Day, July 4, Labor Day, Thanksgiving Day and Christmas Day.
- If any of these holidays occurs on a Sunday, the following Monday shall be considered the holiday.

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In addition to the Sunday or Holiday work limitations, mobile, short duration, short-term stationary, or intermediate-term stationary temporary traffic control zone (as defined in the Virginia Work Area Protection Manual) lane closures on mainline lanes, shoulders, or ramps shall not be performed during the Holiday time periods noted as Item (b)1 - 7 without the written permission of the Engineer. 14 calendar days notice is required for Engineer approval.

Additionally, a long-term stationary temporary traffic control zone (as defined in the Virginia Work Area Protection Manual) shall not be initially put in place, adjusted, or removed during the following Holiday time periods without the written permission of the Engineer. 14 calendar days notice is required for Engineer approval.

1. January 1: From Noon on the preceding day until Noon on the following day, except as indicated below.
2. Easter: As indicated below.
3. Memorial Day: As indicated below.
4. July 4: From Noon on the preceding day until Noon on the following day, except as indicated below.
5. Labor Day: As indicated below.
6. Thanksgiving Day: From Noon on the Wednesday preceding Thanksgiving Day until Noon on the Monday following Thanksgiving Day.
7. Christmas Day: From Noon on the preceding day until Noon on the following day, except as indicated below.

If the Holiday occurs on a Friday or Saturday: From Noon on the preceding Thursday to Noon on the following Monday.

If the Holiday occurs on a Sunday or Monday: From Noon on the preceding Friday to Noon on the following Tuesday.

- (c) Saturday Work: Notice of work to be performed on Saturdays is required from the Contractor to the Engineer. The notice is critical for coordination of County resource scheduling including testing and inspection resources. 5 calendar days notice is required to the Engineer.
- (d) Night Work: Notice of night work to be performed is required from the Contractor to the Engineer. The notice is critical for coordination of County resource scheduling including testing and inspection resources and public notification and coordination may also be required. 21 calendar days notice is required to the Engineer.

**108.03 - Progress Schedule General Requirements**

The Contractor shall plan and schedule the Work on the Project so as to complete the work within the time limit and budget established by the Contract and shall submit his plan to accomplish these objectives in the form of a Progress Schedule for the Engineer's review and acceptance. The Progress Schedule shall be used by the Engineer for planning, coordination and inspection activities, and for evaluation of the Contractor's rate of progress and the effects of time-related impacts on the Project.

Prior to preparing the schedule, the Engineer or the Contractor may request a meeting to discuss any Project specific items required for preparation of the Progress Schedule. The Contractor shall prepare and submit a practicable schedule to reflect a logical progress of the Work. The Progress Schedule shall represent the Contractor's overall Work plan to accomplish the Work in accordance with the requirements herein and those of the Contract as detailed in the Contract documents. It shall include all time-based tasks required for timely completion of the Work, including as applicable the Work to be performed by sub-contractors, suppliers, the Department, and/or others. When preparing the schedule, the Contractor shall consider all applicable constraints and restrictions such as seasonal, weather, traffic, utility, railroad, right-of-way, environmental, permits, and other limitations to the Work.

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- (a) Baseline Progress Schedule: Contractor shall within twenty (20) days after the date of contract execution, prepare and submit to the County and Engineer for review and approval, a detailed and feasible Critical Path Method (CPM) Construction Schedule showing the method by which the Contractor will comply with Contract Milestones and Completion date requirements as set forth in the County-Contractor Agreement called the Baseline Progress Schedule. Any changes to the initial schedule submission shall be performed within seven (7) days after receipt from the County and Engineer. The schedule shall show in detail all applicable activities, resources, duration, relationships and logic of how the Contractor plans to execute and coordinate the Work. The Contractor shall use this schedule in the planning, scheduling, direction, coordination and execution of the Work. The Construction Schedule shall encompass all of the work of all trades necessary for construction of the Project and shall be sufficiently complete and comprehensive to enable progress to be monitored on a day-to-day basis. The Contractor shall be provided with a copy of all schedules, updates reports and other documentation required herein which shall be compatible to the software used by the Engineer. The cost of the CPM and Biweekly Progress Construction Schedules, meetings and all monthly updates shall be included in the bidders Total Cost.

It is the sole responsibility of the Contractor to prepare, maintain, update, revise and utilize the CPM Construction Schedule as outlined herewith. The schedule shall be the sole overall Construction Schedule utilized by the Contractor in managing this Project, provided, however, that Contractor may at its option employ and utilize other schedules based upon and consistent with the Construction Schedule. In general, it is the intent of this Paragraph to allow the Contractor to choose its own means, methods and construction procedures consistent with good practice and the Contract Documents.

If the Contractor should submit a schedule or express an intention to complete the Work earlier than any required Milestone or Completion date, the County shall not be liable to the Contractor for any costs or delay should the Contractor be unable to complete the Work before such earlier Milestone or Completion date. The duties, obligations and warranties of the County to the Contractor shall be consistent with and applicable only to the completion of the Work on the Milestone and completion dates required in the County-Contractor Agreement.

Submission to the County of the Construction Schedule is advisory only and shall not relieve the Contractor of the responsibility for accomplishing the Work within each and every required Milestone and Completion date. Omissions and errors in the approved Construction Schedule shall not excuse performance that is not in compliance with the Contract. Submission to the County in no way makes the County an insurer of the Construction Schedule's success or liable for time or cost overruns flowing from its shortcomings. The County hereby disclaims any obligation or liability by reason of County approval or failure to object to the Construction Schedule and Contractor hereby acknowledges said disclaimer.

The Contractor shall consult with and obtain information from principal Subcontractors necessary in preparation of the schedules, updates and revisions required herein. Contractor shall provide each principal Subcontractor with copies of the Construction Schedule and any revisions or updates affecting a Subcontractor's work. Contractor shall hold appropriate weekly progress meetings with Subcontractors and shall direct and coordinate the work of Subcontractors consistent with and as required herein. County shall have the right to attend Subcontractor progress meetings but shall not be required to participate in such meetings or provide information to Subcontractors, except through the Contractor. Contractor shall keep up-to-date minutes of Subcontractor progress meetings and shall provide same to County. The Contractor shall ensure that each



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Subcontractor supplier acknowledges and accepts the requirements of the Construction Schedule relating to their part of the Work.

If Contractor's Construction Schedule indicates that County or a separate Contractor is to perform an activity by a specific date, or within a certain duration, County or any separate Contractor shall not be bound to said date or duration unless County expressly and specifically agrees in writing to same; the County's overall review of the schedule does not constitute an agreement to specific dates or durations for activities of the County or any separate contractor.

The CPM Construction Schedule shall be updated monthly reflecting actual progress of the Project. If the monthly Progress Schedule indicates the Contractor will not meet the Contract Completion date, the Contractor shall at no cost to the County attempt to recover any lost time due to ineffective planning and organization, lack of timely material acquisition inefficiencies, errors, or other causes due to no fault by the County. In such a case, the Contractor shall provide the necessary resources to regain lost time, provide remedies and solutions to meet the Project Completion Date. Two copies of the CPM Project Schedule update will be provided in original and an electronic format compatible with the County's and Engineer's software. The Contractor's Superintendent shall maintain at the job site, a current Construction Schedule, indicating actual monthly progress for those portions of the project on which work has been or is being performed.

If an extension or contraction of any Milestone or Completion Date is authorized by any Change Order, the Contractor shall revise his Construction Schedule, Milestone and Completion Dates accordingly.

If, in the opinion of the County, the Construction Schedule does not accurately reflect the actual progress and sequence of the Contractor's performance of the Work, the Contractor shall revise the Construction Schedule, upon the County's request, and submit revised Construction Schedule that accurately represents the progress and sequence of the Contractor's performance of the Work.

Contractor shall submit to the County the name of any scheduling consultant that Contractor may select or retain. Contractor shall not utilize any particular scheduling consultant over the reasonable objection of the County.

Contractor covenants and guarantees that Contractor will not:

- (1) Misrepresent to County its planning and scheduling of the Work;
- (2) Utilize schedules materially different from those made available to the County or any Subcontractors for the direction, execution and coordination of the Work, or which are not feasible or realistic;
- (3) Prepare CPM schedules, updates, revisions or reports which do not accurately reflect Contractor's actual intent or Contractor's reasonable and actual expectations as to:
  - a. The sequences of activities,
  - b. The duration of activities,
  - c. The responsibility for activities,
  - d. Resource availability,
  - e. Labor availability or efficiency,
  - f. Expected weather conditions,
  - g. The value associated with the activity,
  - h. The percentage complete of any activity,
  - i. Completion of any item of work or activity,
  - j. Project completion,

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

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

The Construction Schedule shall be utilized by County, Engineer and Contractor for submission, review and approval of monthly Payment Request. The CPM Construction Schedule must be updated by Contractor monthly using compatible software to the County, with each progress payment application and submitted to the County and Engineer for review with the progress payment application. County shall not be required to process and review Contractor's Application for Payment if Contractor has failed or refused to provide the scheduling update information required herein.

- (b). Failure to Furnish the Baseline Progress Schedule – Work shall not commence until the Contractor submits his Baseline Progress Schedule in accordance with the requirements of this section, unless otherwise approved in writing by the Engineer.

Delays in work resulting from the Contractor's failure to provide the Progress Schedule will not be considered just cause for extension of the Contract Time limit or for additional compensation.

- (c) Review and Acceptance: The Engineer will review all Progress Schedule submittals within 7 calendar days of receipt of the Contractor's complete submittal. Review and acceptance by the Engineer will be based on completeness and conformance with the requirements of this section, the Contract and the Specifications. If the Contractor's Progress Schedule is deemed to be unacceptable, the Engineer will issue a written notification for resubmission describing the deficiencies in completeness or conformance prompting the Engineer's decision.

Upon acceptance, the Engineer will issue a written notice of acceptance that may include comments or concerns on the schedule. The Contractor shall respond within 7 calendar days of receipt of the Engineer's comments, concerns or written notification for resubmission.

Progress Schedule or Revised Progress Schedule shall become the Schedule of Record (SOR). The SOR is defined as the currently accepted Progress Schedule by which all schedule references will be made and progress evaluated.

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Review and acceptance by the Engineer will not constitute a waiver of any contract requirements and will in no way assign responsibilities of the work plan, scheduling assumptions, and validity of the schedule to the Department. Failure of the Contractor to include in the Progress Schedule any element of work required for timely completion of the project shall not excuse the Contractor from completing the entire Scope of Work within the Contract specified completion milestone(s).

(d) Monitoring the Work and Assessing Progress

- (1) Monitoring the Work: –The Engineer will monitor the work regularly to identify any deviations from the Contractor's scheduled performance relative to the currently accepted Baseline or Revised Progress Schedule. The Engineer may request a meeting with the Contractor to discuss the Contractor's current progress or to establish the approximate date for starting each critical inspection stage. At least once a week, the Contractor shall advise the Engineer of the approximate timing for anticipated critical stages for the subsequent week. The Engineer shall be advised at least 24 hours in advance of any changes in planned operations or critical path. The cost of the Two Week Look Ahead schedules and Progress Meetings shall be included in the Contractor's bid.
- (2) Progress Evaluation – The Contractor shall prepare, distribute and be responsible for an Activities and Two Week Look Ahead Schedule updated biweekly to include:
  - a. The sequences, relationships and type of activities,
  - b. The duration of activities,
  - c. The responsibility for activities,
  - d. Resource availability,
  - e. Labor availability or efficiency,
  - f. Expected weather conditions,
  - g. Updates

Progress Meetings shall be held at the job site or at an approved location every two weeks and additionally as required by County or Engineer. The County's Representative or Engineer shall schedule the meeting dates. The second meeting each month shall be coordinated with preparation of payment request. Attendees shall include but not be limited to the County, County's representative, Engineer and the Contractor. Each subcontractor, supplier or other entity concerned with current progress or involved in planning coordination, or performance of future activities shall be represented as required by regular attendance.

The Engineer or County's representative shall prepare the agenda and distribute a written notice and agenda of each meeting to all attendees 24 hours in advance of the meeting date to include:

- a. Review, correction or approve minutes of previous progress meeting.
- b. Review Contractor's Activity Schedule and Two week "Look Ahead
- c. Schedule". Determine status of the activities in relation to the previous or base line schedule. Determine how construction

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- items behind schedule will be expedited and commitments to do so.
- d. Problem Resolution
  - e. Discuss other topics appropriate to current status of project.
  - f. Review the present and future needs of each entity present, including:
    - g. Interface requirements
    - h. Safety
    - i. Time Schedules
    - j. Sequencing of work
    - k. Deliveries and Material Acquisition
    - l. Access
    - m. Site utilization
    - n. Hours of work
    - o. Quality of Work
    - p. Housekeeping
    - q. Change Orders
    - r. Inspection and Communication

The County or County's Representative shall record minutes of the meeting and shall, no later than 24 hours before each meeting, distribute copies to all attendees.

The Contractor shall revise and update the Activities and Two Look Ahead Schedule after each progress meeting where revisions to the schedule have been made during the course of the progress or during the meeting or construction. The Contractor shall issue the updated Two Week Look Ahead Schedule within 7 days after the meeting.

- (3) Daily Reporting – The Contractor shall prepare and provide the County with a Daily Report for each calendar day of the contract period. Daily Reports shall be submitted daily via electronic means (via email or uploaded into e-Builder) to the County and the County's Representatives as determined at the Pre-Construction Meeting. Daily reports shall include a summary of all work activities performed onsite, contractor and subcontractor personnel, equipment, inspections and other activities. Weather conditions and work periods (times) shall also be included. The Contractor shall provide a sample format of the Daily Report for County review at the Pre-Construction Meeting.
- (e) Progress Deficiency and Schedule Slippage: When the Contractor's actual progress is deemed to be unsatisfactory, the Engineer will issue a written notice of unsatisfactory performance to indicate that further actions may be taken. Within 10 calendar days of the date of the Engineer's notice of unsatisfactory progress, the Contractor may submit to the Engineer, a recovery or mitigation plan to reflect a proposed plan to correct the progress deficiency or schedule slippage, or submit to the Engineer a written explanation and supporting documentation to establish that such delinquency is due to conditions beyond the Contractor's control. Any schedule revisions resulting from a recovery plan shall not replace the SOR.

**108.04 - Determination and Extension of Contract Time Limit**

The Contract Time will be set forth in the County – Contractor Agreement. No request for an extension of time will be considered that is based on any claim that the Contract Time as originally established was inadequate. Contract Time shall be calculated using calendar days and all requests for time extensions shall be in calendar days.

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The County will determine if an extension of the Contract Time is warranted by additions to the Contract. The Contractor shall inform the County, in writing, of a request for time extensions in accordance with 108.04 and the applicable portion(s) of Sections 104 or 109. The Contractor shall provide written supporting data for any request for extension of time due to quantity additions and or additional or altered Work.

During prosecution of the Work, the Contractor shall identify the causes for any delays attributable to conditions he deems to be beyond his control and shall identify the particular construction operations affected, their criticality to project milestones or overall contract completion, and the significant dates that encompass the periods of delay. The Contractor shall furnish all such information necessary for the County to make an adequate evaluation of any claim received from the Contractor for an extension of the Contract Time within the time limits identified in this Section.

(a) Claims for Time Extensions

1. The time during which the Contractor is delayed in the performance of the Work by the acts or omissions of the County, the Architect or Engineer or their employees or agents, acts of God, unusually severe and abnormal climatic conditions, fires, floods, epidemics, quarantine restrictions, strikes (not to exceed the actual duration of the strike), riots, civil commotion or freight embargoes, or other conditions beyond the Contractor's control and which the Contractor could not reasonably have foreseen and provided against, shall be added to the time for completion of the Work (i.e., the Contract Time) stated in the County – Contractor Agreement; however, no claim by the Contractor for an extension of time for delays will be considered unless made in compliance with the requirements of 108.04 and other provisions of the Contract Documents.
2. The County shall not be obligated or liable to the Contractor for, and the Contractor hereby expressly waives any claims against the County on account of any indirect or direct damages, costs or expenses of any nature which the Contractor, its subcontractors, or sub-subcontractor's or any other person may incur as a result of (a) any delays, reasonable or unreasonable, foreseeable or unforeseeable which are either not caused by the acts or omissions of the County, its agents or employees or which arise from or out of (or due to) causes not within the control of the County, its agents or employees, or (b) any reasonable delay regardless of its cause, it being understood and agreed that the Contractor's sole and exclusive remedy in any such events shall be an extension of the Contract Time, but only as determined in accordance with the provisions of the Contract Documents.
3. The burden of proof to substantiate a claim for an extension of the Contract Time shall rest with the Contractor, including evidence that the cause was beyond his control. It shall be deemed that the Contractor has control over the supply of labor, materials, equipment, methods and techniques of construction and over the subcontractors and suppliers, unless otherwise specified in the Contract Documents.
4. In the event of Changes in the Work, the Contractor must identify any additional time required in the Proposed Change Order. The County need not consider any time extensions for Changes in the Work not included in the Proposed Change Order.

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5. No time extensions will be granted as a result of the Contractor's improper or unreasonable scheduling or for the Contractor's failure to have Shop Drawings, Product Data, Samples or Manuals submitted in ample time for review under a reasonable and agreed upon schedule.
6. Delays by subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated herein.
7. The Contractor acknowledges and agrees that actual delays due to changes, suspension of Work or excusable delays, in activities which according to the schedule do not affect the Contract Time will not be considered to have any effect upon the Contract Time and therefore will not be the basis for a time extension.
8. The Contractor acknowledges and agrees that time extensions will be granted only to the extent that: (a) excusable delays exceed the available flexibility in the Contractor's schedule; and (b) Contractor can demonstrate that such excusable delay actually caused, or will cause, delay to the Contractor's schedule that will extend the Contract Time.
9. With respect to Suspensions of Work under 108.05 Suspension of Work by the Engineer herein, the Contractor may be entitled to an extension of the Contract Time not to exceed the length of time that the Work was suspended (unless as determined under this Section and the other requirements of the Contract Documents that a further extension is justified and warranted) if the claim is submitted in accordance with the requirements of this Section, and if the suspension is not due to any act or omission of the Contractor, any subcontractor or sub-subcontractor or any other person or organization for whose acts or omission the Contractor may be liable. The Contractor's claim will be evaluated in accordance with the terms of this Section.
10. The Contractor shall not be entitled to any extension of time for delays resulting from any conditions or other causes unless it shall have given written Notice to the County, within seven (7) calendar days following the commencement of each such condition or cause, describing the occurrence, the activities impacted and the probable duration of the delay. The Contractor's complete claim submittal for a time extension shall be submitted no later than twenty (20) calendar days after cessation of the delay or within such other longer period as the County may agree in writing to allow.
11. No such extension of time shall be deemed a waiver by the County of his right to terminate the Contract for abandonment or delay by the Contractor as herein provided or to relieve the Contractor from full responsibility for performance of his obligations hereunder.

**(b) Time Extensions for Weather**

1. The Contract Time will not be extended due to inclement weather conditions that are normal to the general locality of the Work site. The time for performance of this Contract is in calendar days and all requests for time extension due to inclement weather shall be made in calendar days.

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2. The following is the schedule of monthly anticipated normal inclement weather days for the project location and will constitute the base line for monthly weather time extension evaluations. The anticipated normal inclement weather calendar days have been included in the designated contract time for completion.

January	7
February	7
March	7
April	7
May	9
June	7
July	7
August	7
September	6
October	6
November	6
December	7

3. If the Contractor believes that the Progress of the Work has been adversely affected by weather conditions above and beyond the inclement weather days identified above, he shall submit a written request to the County for an Extension of Time, pursuant to Paragraph 108.04(a) Claims for Time Extensions. Such a request shall be evaluated by the County in accordance with the provisions of the Contract Documents. The decision of the County shall be final.
4. The Contractor shall not be entitled to any money damages whatsoever for any delays resulting from inclement weather, whether normal or abnormal, foreseeable or unforeseeable. The Contractor and County stipulate and agree that for delays due to weather as determined in 108.04(b), the Contractor's sole relief is a time extension granted in accordance with 108.04(a), Time Extensions for Weather.

**108.06 - Failure to Complete on Time/Liquidated Damages**

**(a) General**

For each calendar day that any work remains incomplete after the Contract time limit specified for the completion of the work, the Department will assess liquidated damages against the Contractor. Liquidated damages will be assessed at the rate applicable to the Contract in accordance with the Schedule of Liquidated Damages, Table I-1, or as otherwise specified in the Contract provisions. Liquidated damages will be deducted from any monies due the Contractor for each calendar day of additional time consumed until final completion and acceptance of the Work, subject to such adjustments as provided in accordance with the requirements of Section 108.04, not as a penalty, but as liquidated damages. The Contractor waives any defense as to the validity of any liquidated damages stated in the Contract or these Specifications and assessed by the Department against the Contractor on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

**(b) Liquidated Damages**

The following Schedule of Liquidated Damages, representing the cost of administration, engineering, supervision, inspection and other expenses, will be charged against the Contractor for each calendar day beyond the Contract Time that the Work remains in an incomplete state:

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**TABLE I-1  
Schedule of Liquidated Damages**

<b>Original Contract Amount in Dollars</b>	<b>Daily Charge in Dollars</b>
0.00 - 500,000.00	350
500,000.01 - 2,000,000.00	600
2,000,000.01 - 8,000,000.00	1,350
8,000,000.01 - 15,000,000.00	2,500
15,000,000.01 or more	3,100

**108.07 – Default of Contract**

The Contractor may be declared in default and the Contract terminated if Contractor:

- (a) fails to begin the work under the Contract within 10 calendar days of the date of the Notice to Proceed except as otherwise permitted by specific contract language or the provisions of Section 108.02, or
- (b) fails to perform the work with sufficient workers and equipment or with sufficient materials to ensure prompt completion of the work, or
- (c) performs the work unsuitably or neglects or refuses to remove materials or perform anew work that is unacceptable, or
- (d) discontinues prosecution of the work, or
- (e) fails to resume work that has been discontinued within a reasonable time after notice to do so, or
- (f) becomes insolvent, is declared bankrupt, or commits any act of bankruptcy or insolvency
- (g) allows any final judgment to stand against him unsatisfied for a period of 10 days, or
- (h) makes an assignment for the benefit of creditors, or
- (i) fails for any other cause whatsoever to carry on the Work or contractual obligations in an acceptable manner.
- (j) fails to complete preconstruction requirements within thirty calendar days of the date of execution of the County – Contractor Agreement as required by the provisions of Section 105.1.

If any one or more of these conditions exists, the Engineer will give notice in writing to the Contractor and his surety of the delay, neglect, or default. If within 10 days after the date of such notice the Contractor or his surety has not taken measures that will, in the judgment of the Engineer, ensure satisfactory progress of the work or give assurances satisfactory to the Engineer that the provisions of the Contract will be fully carried out and instructions complied with, the County may then, or at any time thereafter, declare the Contractor in default. Without violating the Contract, the County may call upon the Contractor's surety for the satisfactory and expeditious completion of all Work under the Contract or may otherwise terminate the Contract in accordance with the provisions of Section 108.08.

If the Contractor's surety fails or refuses to proceed with the Work in accordance with the instructions of the surety documents, the County will appropriate and use any or all materials and equipment on the project site that are suitable and acceptable and will enter into an agreement with others for the



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completion of the work, or he will use such other methods as he deems necessary to ensure the completion of the work.

Costs and charges incurred by the Department, including the cost of completing the work under the Contract, will be deducted from any monies due or that will become due the Contractor and his surety. If the expense incurred by the Department is less than the sum that would have been payable under the Contract had the work been completed by the Contractor, the Contractor and his surety will be entitled to receive the difference. If the expense exceeds the sum that would have been payable under the Contract, the Contractor and his surety shall be liable for and shall pay to the County the amount of the excess.

**108.08 - Termination of Contract**

(a) Contractor's Right To Stop Work Or Terminate Contract

1. If the Work should be stopped under an order of any court or other public authority for a period of ninety (90) days through no fault of the Contractor or anyone employed by Contractor, or if the County should fail to pay to the Contractor within thirty (30) days any sum certified by the Architect/Engineer when no dispute exists as to the sum due or any provision of the Contract, then the Contractor may, upon ten (10) calendar days written Notice to the County, stop Work or terminate the Contract and recover from the County payment for the cost of the Work actually performed, together with overhead and profit thereon, but profit on the Work performed shall be recovered only to the extent that the Contractor can demonstrate that it would have had profit on the entire Contract if it had completed the Work. The Contractor may not receive profit or any other type of compensation for parts of the Work not performed. The Contractor may recover the reasonable cost of physically closing down the Site, but no other costs of termination. The County may offset any claims it may have against the Contractor against the amounts due to the Contractor. In no event shall termination of the Contract by the Contractor terminate the obligations of the Contractor's surety on its payment and performance bonds.

(b) County's Right To Terminate Contract For Cause

1. The County may terminate the Contract for cause if:
  - a. If the Contractor is adjudged as bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency;
  - b. If the Contractor refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials and equipment to achieve Substantial Completion or Final Completion of the Work within the Contract Times;
  - c. If the Contractor fails to make prompt payment to subcontractors or suppliers of material of labor as required herein;
  - d. If the Contractor should refuse to prosecute the Work or any part thereof with such diligence as will ensure the Substantial Completion or Final Completion of the Work within the Contract Times;
  - e. If the Contractor fails to Substantially Complete the Work within the Time for Completion;

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- f. If the Contractor fails to comply with applicable laws, ordinances, or the written instructions of the Architect/Engineer or the County, or otherwise be in substantial violation of any provision of the Contract;
  - g. If the Contractor fails to complete preconstruction requirements as defined in the Contract Documents;
  - h. If the Contractor fails to maintain the required insurance and bonds as set forth in the Contract Documents;
  - i. If the Contractor materially breaches any term or provision of the Contract Documents.
- 2. In the event a Termination for Cause is warranted based upon the Contractor's conduct set forth above, the County shall give the Contractor and its surety written Notice of Termination for Cause and allow the Contractor and/or its surety a period of ten (10) days (or such other period as may be designated in the Notice) to rectify or cure the basis for the Notice. If Contractor or its surety rectifies or cures the issue(s) to the satisfaction of the County within said ten (10) days (or other period designated in the Notice), the County may rescind its Notice of Termination for Cause. Any rescission of the Notice must be in writing to be effective. **If not rescinded, the Termination for Cause shall become effective at the end of the ten (10) day or other period designated in the Notice without further notice to the Contractor.** In the alternative, the County may, in writing, postpone the effective date of the Termination for Cause, at its sole discretion, if it should receive reassurances from the Contractor and/or its surety that the basis for the termination will be remedied in a time and manner which the County finds acceptable. If at any time after such postponement, the County determines that Contractor and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the County may immediately Terminate for Cause, without the necessity of further ten (10) day notice, by notifying the Contractor and its surety in writing of the termination. In no event shall Termination for Cause terminate the obligations of the Contractor's surety on its payment and performance bonds.
- 3. Upon Termination for Cause, the Contractor shall immediately cease work and the County shall take possession of the Site and of all materials, tools, and equipment thereon and finish the Work by whatever method it may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the County has finally completed the Project or Work through its own resources or those of a subsequent contractor. If the County's expense of finishing the Work, including, but not limited to, costs for additional design, managerial, and administrative services, exceeds the unpaid balance of the Contract Price retained by the County, the Contractor shall receive no further payments and shall also be liable to the County to pay the difference between the cost to complete the Work and the unpaid balance of the Contract Price. If the unpaid balance of the Contract Price exceeds the costs of finishing the Work, including costs for additional design, managerial, and administrative services, such excess shall be paid to the Contractor.
- 4. If it should be judicially determined that the County improperly terminated this Contract for cause, then the Termination for Cause shall be deemed to be a Termination for Convenience by the County.
- 5. Termination of the Contract for Cause is without prejudice to any other right or remedy of the County.

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(c) County's Right To Terminate Contract For Convenience

1. County may terminate this Contract for its convenience, in whole or in part, at any time upon giving the Contractor written Notice of Termination for Convenience. Upon receiving a Notice of Termination for Convenience, the Contractor shall immediately cease Work and remove from the Site all of its labor forces and such of its materials as County elects not to purchase or to assume in the manner hereinafter provided. Upon such Notice, the Contractor shall take such steps as County may require to assign to the County the Contractor's interest in all subcontracts and purchase orders designated by County. After all such steps have been taken to County's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:
  - a. Amounts due for Work performed in accordance with the Contract through the date of termination set forth in the Notice.
  - b. Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination. The Contractor shall not be entitled to any compensation or damages for lost profits or for any other type of contractual compensation or damages other than those provided by the preceding sentence. Upon payment of the foregoing, County shall have no further obligations to Contractor of any nature.
2. In no event shall termination for the convenience of the County terminate the obligations of the Contractor's surety on its payment and performance bonds.
3. After receipt of a Notice of Termination for Convenience, the Contractor shall submit its termination claim to the County utilizing the claims process set forth in 105.19. Upon failure of the Contractor to submit its Notice of Claim and/or its complete written claim within the time period set forth in 105.19, the County may determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination.

(d) Contractor's Responsibilities Upon Termination

1. After receipt of a Notice of Termination pursuant to this Article 15, the Contractor shall mitigate any damages to the extent reasonably possible.
2. In addition to its duty to mitigate its damages, the Contractor shall:
  - a. At the option of the County, assign to the County, in the manner, at the time, and to the extent directed by the County, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the County shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
  - b. Transfer title and deliver to the County in the manner, at the times, and to the extent, if any, directed by the County:
    - (1) The fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material procured as a part of, or acquired in connection with the performance of the Work terminated by the Notice of Termination; and
    - (2) The completed or partially completed drawings, releases, information, manuals, and other property which, if the Contract

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had been completed, would have been required to be furnished to the County;

- c. Complete performance of the part of the Work not terminated by the Notice of Termination; and
  - d. Take such action as may be necessary, or as the County may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the County has or may acquire an interest.
  - e. Perform Site clean-up pursuant to the Contract Documents.
- (e) Disputes upon Termination

The provisions of 105.19 - Submission and Disposition of Claims, shall be applicable to any claim, dispute or other matter arising because of termination under 108.08.

**108.10 Termination of Contractor's Responsibilities.**

The Contract will be considered complete upon final acceptance and approval by Loudoun County and the Virginia Dept. of Transportation. The Contractor will be notified in writing of the final acceptance, and his responsibility will then cease except as set forth in his bond.

**SECTION 109—MEASUREMENT AND PAYMENT**

**109.08 - Partial Payments**

Partial payments will be based on a monthly progress estimate consisting of approximate quantities and value of work performed as determined by the Engineer.

- (a) Application for Payment
  - (1) The Contractor shall submit to the A/E three (3) originally executed, itemized Applications for Payment (and one (1) copy to the County) on or about the first day of each month as designated in Article 4 of the County-Contractor Agreement. The Application for Payment shall be notarized, indicate in complete detail all labor and material incorporated in the Work during the month prior to submission, and supported by such data substantiating the Contractor's payment request as the County may require. The Application for Payment shall also contain Contractor's certification that due and payable amounts and bills have been paid by the Contractor for work for which previous Certificates of Payment were issued and payments received from the County. The Application for payment shall also include an updated Progress Schedule.
  - (2) Payment may be made for the value of materials, which are to be incorporated into the finished Work, and which are delivered to and suitably stored and protected on the Work site. The Contractor shall provide releases or paid invoices from the Seller to establish, to the County's satisfaction, that the County has title to said material. Stored materials shall be in addition to the Work completed and shall be subject to the same retainage provisions as the completed Work. Material once paid for by the County becomes the property of the County and may not be removed from the Work site without the County's written permission.

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- (3) The requirements for the payment of materials stored on-site shall remain unchanged. The requirements for payment for materials stored off-site shall include, but is not limited to, those specified in Section 109.09 and the additional requirements hereinafter specified. Material stored off-site under this provision shall be included in the definition of Work.
- a. For purposes of administering this provision, the following definitions are provided.
    - 1. Material stored NEAR the Work Site: A storage location shall be considered near the work site if it is not more than fifty (50) miles (approximately a one-hours drive) from the Work Site.
    - 2. Material stored DISTANT from the Work Site: Locations beyond the limit of fifty (50) miles shall be considered distant.
  - b. All proposed off-site locations, regardless of whether they are near or distant, shall be approved by the County prior to any payment under this Article. The approval process will include an inspection of the proposed storage site, which may or may not coincide with any inspection of materials stored.
  - c. Prior to payment for any material stored off-site, said material shall be inspected to verify that it is properly stored; i.e., segregated, inventoried, identified as the property of the County and Contractor. This material shall be clearly identified and physically segregated from any other material or stock, in such a manner that it is clear, from casual observation, that said material is not a part of any other stock or stored material.
  - d. For materials stored distant to the Work site, the Contractor shall reimburse the County for all reasonable costs incurred by the County, to include but not limited to salary, transportation, lodging and per diem, for the County's or the A/E's employees to travel to and from the storage locations for the purpose of verifying the material is properly stored. It is anticipated that such trips would occur whenever additional material is claimed for payment and/or at least every six (6) months until the material is delivered to the work site.
  - e. Except for unusual circumstances, the Contractor will not be required to reimburse the County's costs for visits to storage locations near the work site.
  - f. The Contractor shall hold the County harmless from any and all losses, additional costs, direct or indirect damages and/or delays, whatsoever, which may occur as a result of a failure of the Contractor to deliver (or have delivered), in a timely manner, materials (for which payment has been made) to the work site for installation and incorporation into the Work.
  - g. The Contractor shall provide to the County, a Release of Lien or other suitable certification by the Seller, in addition to paid invoices, verifying that the Contractor has valid title to all materials for which payment is requested. The Seller, however, shall not be required to waive his rights for recovery, if his Contract is breached.
- (4) The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the County either by incorporation in

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the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens". The Contractor further warrants that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor or by any other person performing Work at the site or furnishing materials and equipment for the Project that is subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

- (5) The Contractor's Application for Payment shall provide that the payment request attests that all Work for which the request is made has been completed in full according to the drawings, specifications and other terms of the Contract Documents. By submitting his Application for Payment, the Contractor also represents that he has no knowledge that any subcontractor or suppliers have not been fully and timely paid and that, insofar as he knows, the only outstanding items for payment with respect to the Contract are those to be paid from the funds for which Application is being made.

(b) **Certificates for Payment**

- (1) The A/E will, within seven (7) calendar days after the receipt of the Contractor's Application for Payment, recommend a Certificate for Payment to the County, for such amount as the A/E determines is properly due, with his reasons for withholding or adjusting a Certificate as provided in Section 109.08(d) Payments Withheld, if any.
- (2) After the Certificate for Payment is recommended by the A/E, the County will review it and make any changes deemed necessary by the County's Representative. The recommendation of the Certificate for Payment by the A/E does not waive or limit the County's right to reduce the amount of the payment due to the Contractor as determined to be appropriate by the County.
- (3) The recommendation of a Certificate for Payment will constitute a representation by the A/E to the County, based on his observations at the site hereof and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief:
  - (a) The quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial or Final Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that
  - (b) The Contractor is entitled to payment in the amount certified. However, by recommending a Certificate for Payment, the A/E shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Amount.

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(c) Progress Payments

- (1) The County shall make payment in the manner and within thirty (30) calendar days after receipt of the Certificate of Payment from the A/E based upon the County's approval or adjustment of said Certificate. The Contractor shall be paid the amount approved or adjusted by the County.
- (2) In relation to punch list or other uncompleted work, the County may, at its sole discretion, elect to retain fixed amounts directly relating to the various items of uncompleted Work. All amounts withheld shall be included in the Final Payment.
- (3) The Contractor shall, within seven (7) days after receiving payment from the County, do one of the following:
  - a) Pay all subcontractors for the proportionate share of the total payment received from the County for work performed by each subcontractor under the Contract; or
  - b) Notify the County and subcontractor(s), in writing, of his intention to withhold all or part of the subcontractor's payment with the reason for nonpayment.
- (4) The Contractor shall make payment to subcontractors as heretofore specified. Each payment shall reflect the percentage actually retained, if any, from payments to the Contractor on account of such subcontractor's Work.
- (5) The Contractor shall provide the County with his social security number, if an individual, and their federal identification number if a corporation, partnership, or proprietorship.
- (6) The Contractor shall be obligated to pay unpaid subcontractors interest on payments that are not made in accordance with this Section 109.06(e) Progress Payments. The rate of interest shall be in compliance with the Prompt Payment section of the Virginia Public Procurement Act of the Code of Virginia. The Contractor shall, by an appropriate agreement with each subcontractor require each subcontractor to make payments to his sub-subcontractors according to all the same requirements as provided in this Section 109.06(e) Progress Payments.
- (7) The County may, upon written request, furnish to any subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the County on account of Work done by such subcontractor.
- (8) Neither the County nor the A/E shall have any obligation to pay or to see to the payment of any monies to any subcontractor except as may otherwise be required by law.
- (9) No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the County, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

(d) Payments Withheld

- (1) The County may withhold the payment in whole or in part, if necessary, to reasonably protect the County. If the A/E is unable to make representations as provided in Section 109.08(b) and to recommend payment in the amount of the application, he will notify the County as provided in Section 109.06(d)(1). If the Contractor and the County cannot agree on a revised amount, the County will

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promptly issue a Certificate for Payment for the amount for which he is able to make representations with respect to payment due for work performed. The County may also decline to certify or make payment or, because of subsequently discovered evidence or subsequent observations, the County may nullify the whole or any part of any Certificate for Payment previously issued.

- (2) The County may withhold from the Contractor so much of any payment approved by the A/E, as may in the judgment of the County be necessary:
- a. To protect the County from loss due to defective work not remedied;
  - b. To protect the County upon receipt of Notice of the filing in court or in an arbitration proceeding as may be required in any third party contract, of verified claims of any persons supplying labor or materials for the Work, or other verified third party claims;
  - c. To protect the County upon reasonable evidence that the Work will not be completed for the unpaid balance of the Contract Amount;
  - d. To protect the County upon reasonable evidence that the Work will not be completed within the Contract Time, or any Contract Milestones as established by this Contract; or
  - e. To protect the County upon the Contractor's failure to properly schedule and coordinate the work in accordance with or as required by the Contract Documents, or failure to provide progress charts, revisions, updates or other scheduling data as required by the Contract Documents, or upon the Contractor's failure to provide as-built drawings as required herein, or upon Contractor's failure to otherwise substantially or materially comply with the Contract Documents.
- (3) If required by the County-Contractor Agreement, the Contractor shall, concurrent with his submission of the Construction Schedule, submit a practicable and realistic payment schedule showing the dates on which the Contractor will submit each and every Application for Payment and the amount he expects to receive for each and every monthly progress payment. If during the performance of the Work, the Contractor expects to receive an amount for a monthly progress payment larger than that indicated on the payment schedule; the Contractor shall notify the County at least thirty (30) days in advance of that payment so that the necessary allocation of funds can be processed. In the event the Contractor fails to submit a practicable and realistic payment schedule, the Contractor's Application for Payment shall be honored only to the extent that the Work is actually performed and that the proportion of payments made to the Contract Amount does not exceed the proportion of the Contract Time expired as of the time of the request.

(e) **Failure of Payment**

If the County does not make payment to the Contractor within the thirty (30) calendar days after receipt of the Contractor's Application for Payment by the A/E through no fault of Contractor, and the County otherwise not being entitled under the Contract Documents or applicable law to withhold payment, then the Contractor may, upon fifteen (15) additional days' written Notice to the County and the A/E, stop the Work until payment of the amount owing has been received. In such event, the Contract Amount shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, which shall be effected by appropriate Change Order as provided herein.



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- (f) Substantial Completion and Warranty Bond
- (1) Unless otherwise specified in Section 109.10 Final Completion and Final Payment, when the Contractor considers that the Work, or a designated portion thereof which is acceptable to the County, is substantially complete, the Contractor shall request in writing that the A/E and the County perform a Substantial Completion inspection. Prior to such inspection the Contractor shall:
    - a. If applicable, secure a Certificate of Occupancy for the Project or a designated portion thereof; and
    - b. Submit five (5) copies each of the Operations and Maintenance Manuals to the A/E as specified and one (1) copy to the County.
  - (2) The County shall determine whether the project is substantially complete and shall compile a punch list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.
  - (3) When the County on the basis of his inspection determines that the Work or a designated portion thereof is substantially complete, the A/E will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion and shall state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance. The Certificate of Substantial Completion shall be submitted to the County and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.
  - (4) The Contractor shall have the thirty days from the Date of Substantial Completion to complete all items on the punch list to the satisfaction of the County. If the Contractor fails to complete all punch list items within the designated time, the County shall have the option to correct or conclude any remaining items by utilizing its own forces or by hiring others. The cost of such correction of remaining punch list items by the County or others shall be deducted from the final payment to the Contractor.
  - (5) Guarantees and warranties required by the Contract Documents shall commence on the Date of Final Completion of the Work, unless otherwise provided in the Certificate of Substantial or Final Completion, or the Contract Documents. Provided, however, that if Contractor does not complete certain punch list items within this time period, specified in Section 109.08(f)(4), all warranties and guarantees for such incomplete Punch List items shall become effective upon issuance of final payment for the project.
    - a. The Contractor shall warranty for a term of one (1) year from the date of Final Completion or Final Payment, (unless otherwise provided for in the Certificate(s) of Substantial or Final Completion or the Contract Documents): (a) the quality and stability of all materials equipment and Work; (b) all the Work against defects in materials, equipment or workmanship; and (c) all shrinkage, settlement or other faults of any kind which are attributable to defective materials or workmanship. The Contractor shall remedy at his own expense, when so notified in writing to do so by the County, and to the satisfaction of the County, the Work or any part thereof that does not conform to any of the warranties and guaranties described in the Contract Documents.

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- b. In order to make good the warranty as herein required, the Contractor may be required to deposit with the County, after Substantial Completion but before Final Payment, a Warranty Bond(s) issued by a surety licensed to do business in Virginia, otherwise acceptable to the County and on a form approved by the County in advance, for the faithful performance of the guarantee. Said Bond(s) shall be for a period of one (1) year and in the amount of five percent (5%) of the final gross value of the Contract.
  - c. The Contractor shall complete repairs during the warranty period, within five (5) working days after the receipt of notice from the County and if the Contractor shall fail to complete such repairs within the said five (5) working days, the County may employ such other person or persons as it may deem proper to make such repairs and pay the expenses thereof out of any sum retained by it, provided nothing herein contained shall limit the liability of the Contractor or his surety to the County for non-performance of the Contractor's obligations at any time.
- (6) The issuance of the Certificate of Substantial Completion does not indicate final acceptance of the project by the County, and the Contractor is not relieved of any responsibility for the project except as specifically stated in the Certificate of Substantial Completion.
  - (7) Upon Substantial Completion of the Work, or designated portion thereof, and upon application by the Contractor and certification by the A/E, the County shall make payment, adjusted for retainage and payments withheld, if any, for such Work or portion thereof, as provided in the Contract Documents.
  - (8) Should the County determine that the Work or a designated portion thereof is not substantially complete, he shall provide the Contractor a written notice stating why the project or designated portion is not substantially complete. The Contractor shall expeditiously complete the Work and shall re-request in writing that the County perform a substantial completion inspection.

**109.10 - Final Payment**

**Final Completion and Final Payment**

- (a) A Certificate of Final Completion shall be issued by the A/E prior to final payment. At the County's sole option, this Final Completion Certificate may be issued without a Certificate of Substantial Completion. The Contractor, prior to application for Final Payment and within the time specified for completion of the Work, shall complete all Work, to include punch list items and provide operating manuals and as-built data, for the Work, as completed and in place. Said Certificate of Final Completion shall be issued, even if a Certificate of Substantial Completion has been issued previously and temporary authority to operate the Work has been granted.
  - a. The Certificate of Final Completion shall certify that all Work has been completed in accordance with Contract Documents and is ready for use by the County.
- (b) For all projects where Substantial Completion Certificates have been issued for various portions of the Work, at differing times, the Contractor shall request and the County shall, prior to final payment, issue a Certificate of Final Completion which certifies that all required Work, including punch list items, have been completed in accordance with the Contract Documents.
- (c) Neither the final payment nor any remaining retainage shall become due until the Contractor submits to the A/E the following:

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- (1) An Application for Payment for all remaining monies due under the Contract.
  - (2) Consent of surety, if any, to final payment and the guarantee bond;
  - (3) If required by the County, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims arising out of the Contract, to the extent and in such form as may be designated by the County. If any subcontractor refuses to furnish waiver of claims satisfactory to the County, the Contractor may furnish a bond satisfactory to the County to indemnify him against any such claim. If any such claim remains unsatisfied after all payments are made, the Contractor shall refund to the County all monies that the latter may be compelled to pay in discharging such claim, including all costs and reasonable attorneys' fees;
  - (4) As-built drawings, operation and maintenance manuals and other project closeout submittals, as required by the Contract Documents;
  - (5) Construction releases as required by the Contract Documents from each property County on whose property an easement for construction of this project has been obtained by the County, such release to be in the forms to be provided by the County. This release is for the purpose of releasing the County and the Contractor from liability, claims, and damages arising from construction operations on or adjacent to the easement and includes proper restoration of the property after construction. It shall be the Contractor's sole responsibility to obtain all such releases and furnish them to the County; and
  - (6) A written certification that:
    - a. The Contractor has reviewed the requirements of the Contract Documents,
    - b. The Work has been inspected by the Contractor for compliance with all requirements of the Contract Documents,
    - c. Pursuant to this inspection, the Contractor certifies and represents that the Work complies in all respects with the requirements of the Contract Documents,
    - d. The Contractor further certifies and represents that all equipment and systems have been installed in accordance with the Contract Documents and have been tested in accordance with specification requirements and are operational, and
    - e. The Contractor hereby certifies and represents that the Work is complete in all respects and ready for final inspection.
- (d) Upon receipt of the documents required in Section 109.10 (c) and upon receipt of a final Application for Payment, the A/E and County will promptly make a final inspection. When the A/E finds the Work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue a final Certificate for Payment and a Final Certificate of Completion. The Certificate of Completion will state that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance designated in the final certificate for payment is due and payable. The final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Section 109.10 (c) have been fulfilled. The County shall review the Certificate of Payment and shall accept it and issue final acceptance, or reject it and notify the

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Contractor, within ten (10) days. Final payment to the Contractor shall be made within thirty (30) days after final acceptance. All prior estimates and payments, including those relating to change order work shall be subject to correction by this final payment.

- (e) The making of Final Payment shall constitute a waiver of all claims by the County, except those arising from:
  - (1) Unsettled claims;
  - (2) Faulty, defective, or non-conforming Work discovered or appearing after Substantial or Final Completion;
  - (3) Failure of the Work to comply with the requirements of the Contract Documents;
  - (4) Terms of any warranties or guarantees required by the Contract Documents; or
  - (5) Fraud or bad faith committed by the Contractor or any subcontractor or supplier during performance of work but discovered by County after Final Payment.
- (f) The acceptance of Final Payment shall constitute a waiver of all claims by the Contractor, except those previously made in writing and so identified by the Contractor, as unsettled at the time of the final Application for Payment. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this Contract or the Performance or the Warranty Bonds.