RFQ 443782 ATTACHMENT 2
CONSTRUCTION OF THE DULLES SOUTH RECREATION CENTER PHASE 5 – POOL FLITER UPGRADES
GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1: CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 APPLICATION FOR PAYMENT: Contractor's request for a progress or final payment accompanied by supporting documentation.

1.1.2 ARCHITECT, ENGINEER, ARCHITECT/ENGINEER, or A/E: The individual or firm identified as such in the County-Contractor Agreement.

1.1.3 BID: The offer submitted by the Contractor in response to an Invitation to Bid setting forth the price(s) for the Work.

1.1.4 CHANGE ORDER: A document issued on or after the Effective Date of the Contract authorizing an addition, deletion, or revision in the Work, including any adjustment in the Contract Price and/or the Contract Times. A Change Order, once signed by all parties, is incorporated into and becomes a part of the Contract.

1.1.5 CLAIM: A demand seeking an adjustment in the Work, Contract Price, and/or Contract Times made by one of the parties to the Contract pursuant to the Claims Procedure set forth herein.

1.1.6 CLAIMS PROCEDURE: The process and requirements for making a Claim.

1.1.7 COMMENCEMENT DATE: The date indicated in the Notice to Proceed or County-Contractor Agreement setting the time when the Work will begin, and the Contract Times begin to run.

1.1.8 CONSTRUCTION SUPPORT SERVICES FIRM, CONSTRUCTION SUPPORT CONSULTANT, CONSTRUCTION ENGINEERING INSPECTION SERVICES, OR CEI: The individual or firm identified as such in the County-Contractor Agreement.

1.1.9 CONTRACT: The entire written agreement between the parties, including all Contract Documents.

1.1.10 CONTRACT COMPLETION DATE: The date by which the Work must be Substantially Complete.

1.1.11 CONTRACT DOCUMENTS:

The Contract Documents include the County-Contractor Agreement and any documents expressly incorporated therein. 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.

1.1.12 CONTRACT PRICE: The total compensation payable to the Contractor for performing the Work.

1.1.13 CONTRACT TIMES: The number of calendar days allowed for achieving Milestones, Substantial Completion, or Final Completion.

1.1.14 CONTRACTOR: The individual or entity performing the Work under the Contract

1.1.15 CONSTRUCTION SCHEDULE: Contractor's plan set forth in a schedule for completing the Work within the Contract Times. The Construction Schedule may also be referred to as the Progress Schedule.

1.1.16 COUNTY: The County of Loudoun, Virginia, a political subdivision of the Commonwealth of Virginia.

1.1.17 COUNTY-CONTRACTOR AGREEMENT: The written document executed by the County and Contractor that identifies the parties, the architect or engineer, the Contract Documents, Contract Price, Contract Times, where Notices are sent, and the amount of liquidated damages, if any.

1.1.18 DAYS: Calendar days unless otherwise specified.

1.1.19 DEFECTIVE: A term used to describe Work that is does not conform to the requirements of the Contract Documents for any reason, including damaged Work prior to Final Completion.

1.1.20 DEFAULT: Contractor's failure to fulfill one or more of its obligations required by the Contract Documents.

1.1.21 DRAWING: A page or sheet of the Plans which presents a graphic representation, usually drawn to scale, showing technical information, design, location, and dimensions of various elements of the Work.

1.1.22 EFFECTIVE DATE: The date when the County-Contractor Agreement is fully executed by the parties.

1.1.23 EMERGENCY: A situation that poses immediate danger to persons or property.

1.1.24 FIELD ORDER: A written order of the A/E clarifying or explaining the plans, specifications, or any portion or detail thereof, without changing the Work, Contract Price, or Contract Times.

1.1.25 FINAL COMPLETION DATE: The date that the Work is totally complete, and the County accepts the Work.

1.1.26 FINAL PAYMENT: The last payment that Contractor receives under the Contract.

1.1.27 FLOAT TIME: Excess time included in the Progress Schedule to account for weather delays and other unforeseen circumstances.

1.1.28 FURNISH, INSTALL, PROVIDE: The terms "Furnish" or "Install" or "Provide", unless specifically limited in context, means furnishing and incorporating a specified item, product, or material in the Work, including all necessary labor, materials, and equipment to complete the Work.

1.1.29 MANUALS: The manufacturer's installation, start-up, operating, maintenance and repair instructions, together with parts lists, pictures, sketches and diagrams that set forth the manufacturer's requirements, for the benefit of the Contractor and the County.

1.1.30 MILESTONE: A Work performance event that Contractor must achieve at a

specific time.

1.1.31 MISCELLANEOUS WORDS OR TERMS: Whenever they refer to the Work or its performance, "directed", "required", "permitted", "ordered", "designated", "prescribed", and words of like import shall imply the direction, requirements, permission, order, designation, or prescription of the County and "approved", "acceptable", "satisfactory", "in the judgment of" and words of like import shall mean approved by or acceptable to, or satisfactory to, or in the judgment, of the County.

1.1.32 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.

1.1.33 NOTICE: All written notices, demands, instructions, claims, approvals and disapprovals required or authorized under the Contract documents. Notice instructions shall be included in the County-Contractor Agreement.

1.1.34 NOTICE OF AWARD: The written notice of County's acceptance of Contractor's Bid.

1.1.35 NOTICE TO PROCEED: Written notice to Contractor setting the Commencement Date for the Work.

1.1.36 NOTICE OF TERMINATION: Written notice to Contractor of County's termination of the contract for cause or convenience.

1.1.37 PAYMENT SCHEDULE: The schedule by which payments will be made to the Contractor pursuant to the Contract Documents.

1.1.38 PLANS: Project specific drawings showing the Work included in the Contract Documents.

1.1.39 PRODUCT: Materials, equipment, supplies, articles, fixtures, devices, types of construction, or products, as appropriate.

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

1.1.41 PROGRESS PAYMENT: a partial payment to Contractor made in accordance with the Payment Schedule.

1.1.42 PROGRESS SCHEDULE: Contractor's plan set forth in a schedule for completing the Work within the Contract Times.

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

1.1.44 REQUEST FOR INFORMATION or RFI: Formal written process in which the Contractor and Architect/Engineer, clarify information gaps in the Contract Documents.

1.1.45 SAMPLES: The physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

1.1.46 SCHEDULE OF SUBMITTALS: A schedule of Contractor's required submittals and related construction activities.

1.1.47 SCHEDULE OF VALUES: The schedule prepared by the Contractor and acceptable to the County allocating portions of the Contract Price for the major components of the Work.

1.1.48 SHOP DRAWINGS: The drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

1.1.49 SITE: The physical location of the Work.

1.1.50 SPECIFICATIONS: That part of the Contract Documents containing the written administrative requirements and the technical descriptions of materials, equipment, construction systems, standards, and workmanship which describe the proposed Work in sufficient detail and provide sufficient information for the Building Official to determine code compliance and for the Contractor to perform the Work.

1.1.51 SUBCONTRACTOR: A person or entity having a direct contract with Contractor or with any other Subcontractor for the performance of the Work. Subcontractor includes any person who provides on-site labor but does not include any person who only supplies materials for the Project

1.1.52 SUBMITTALS: All shop, fabrication, setting and installation drawings, diagrams, illustrations, schedules, samples, and other data required by the Contract Documents and prepared by or for the Contractor to illustrate some portion of the Work.

1.1.53 SUBSTANTIAL COMPLETION: The condition of the Work, or portion of the Work, that is sufficiently complete in accordance with the Contract Documents, so (a) the County can utilize it, in its sole discretion, for the purpose it was intended and (b) the Contractor has satisfied all other requirements for Substantial Completion which may be set forth in the Contract Documents.

1.1.54 SUPPLEMENTAL CONDITIONS: A written document that amends or supplements these General Conditions.

1.1.55 SUPPLIER: A person or entity under contract with the Contractor or a Subcontractor that provides materials or equipment to be incorporated into the Work.

1.1.56 TERMINATION FOR CAUSE: The County's termination of the Contract due to Contractor's failure to fulfill its obligations under the Contract Documents as set forth in section 15.2 of the General Conditions of the Construction Contract. The term "Termination for Cause" may be used interchangeably with "Termination for Default."

1.1.57 TERMINATION FOR CONVENIENCE: County's termination of the Contract, in whole or in part, for any reason or no reason and at any time for its sole convenience, without being deemed a breach of the Contract.

1.1.58 TIME FOR COMPLETION: The number of Days from the Commencement Date until Substantial Completion.

1.1.59 WORK: The term used to refer to the work to be performed by the Contractor at the Project Site including all labor, materials, supplies, equipment, and other facilities and things necessary or proper or incidental to the carrying out and completion of this Contract. The term "Work" shall be construed to include material suitably stored and protected.

1.2 EXECUTION, INTENT, AND INTERPRETATION OF CONTRACT DOCUMENTS

1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one document shall be interpreted as required by all of the Contract Documents. Words and abbreviations that have well-known technical or trade meanings and not defined herein, are used in the Contract Documents in accordance with such recognized meanings.

1.2.2 Anything shown on the drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings shall have the same effect as if shown or mentioned in both documents. Technical specifications take priority over general specifications and detail drawings take precedence over general drawings. Any conflict or inconsistency in the drawings shall be submitted by the Contractor to the A/E, with a copy to the County. The A/E's decision thereon shall be final. In case of conflict or inconsistency between the drawings and the specifications, the specifications shall govern.

1.2.3 Should any labor or material be required which is not denoted in the drawings and specifications, but which is, nevertheless, reasonably necessary for the proper carrying out of the intent of the Work, it is agreed that the labor or material is implied, and the Contractor shall provide such labor and furnish such materials as fully as if they were completely delineated and prescribed without additional cost to the County.

1.2.4 The Contractor may be furnished additional instructions and detail drawings to carry out the Work included in the Contract. The additional drawings and instructions thus supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as a part thereof. The Contractor shall carry out the Work in accordance with the additional detail drawings and instructions.

1.2.5 The drawings and specifications are divided into sections for convenience and clarity only. The Contractor shall not construe this as a division of the Work into various subcontractor units. The Contractor may subcontract the Work in such divisions as he sees fit, but he is ultimately responsible for furnishing all Work shown on the drawings and in the specifications.

1.2.6 The provisions of this Contract cannot be amended, modified, varied, or waived in any respect except by a Modification. **The Contractor is hereby given notice that no person has authority to orally waive, or to release the Contractor from any of the Contractor's duties or obligations under or arising out of this Contract.** Any waiver, approval or consent

granted by Modification to the Contractor shall be limited to those matters specifically and expressly stated therein to be waived, approved, or consented to and shall not relieve the Contractor of the obligation to obtain any future waiver, approval or consent.

1.2.7 The Contractor shall not construe reviews, approvals, or inspections by the County, the County's inspectors, agents, and employees as a waiver, release, warranty, or assumption of liability on the part of the County. The Contractor understands and agrees that reviews, approvals, and inspections are for the County's sole use and benefit. Any such reviews, approvals, and inspections shall not relieve the Contractor of its contractual duties and obligations or be conclusive as to the acceptability of the Contractor‘s performance.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All Plans, Drawings, Specifications, and memoranda relating to the Work are the property of the County and are to be used only for the Project.

1.3.2 The Contractor shall be furnished the number of sets of drawings and specifications, as set forth in the Contract Documents, free of charge by the County for use in construction. Additional sets of drawings and specifications may be obtained by paying the County for printing, mailing, and handling charges.

1.4 PROJECT ANDMINISTRATION

1.4.1 The County will require the Contractor to use e-Builder for the administration of this project. The County will provide the Contractor with two (2) licenses for their use and provide training for the Contractor. 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. It the Contractor does not demonstrate proficiency with the software following this training, additional training required for complete proficiency would 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 or 1-800-580-9322.

ARTICLE 2: ARCHITECT/ENGINEER

2.1 ARCHITECT/ENGINEER STATUS

2.1.1 The A/E will provide services as described in these General Conditions.

2.1.2 The A/E will advise and consult with the County. The County's instructions to the Contractor may be forwarded through the A/E. The A/E will have authority to act on behalf of the County only to the extent provided in the Contract Documents, unless otherwise changed by Modification.

2.1.3 The A/E may visit the Site at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. The Contractor may not rely on the A/E to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

2.1.4 The A/E will immediately inform the County and Contractor whenever in the reasonable opinion of the A/E any of the Work is proceeding contrary to the requirements of the Contract Documents and will be unacceptable. Such notification by the A/E will not be a cause for the Contractor to claim either delay of the Work or any increase in the Contract Price.

2.1.5 The A/E, the County and other governmental representatives shall at all times have access to the Work. The Contractor shall provide facilities for such access so that the A/E, the County and other governmental representatives may perform their functions under the Contract Documents.

2.1.6 Where applicable, based on the A/E's observations and an evaluation of the Contractor's Applications for Payment, the A/E will recommend the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Article 9 Payments and Completion. The A/E shall Certify to the County that, to the best of the A/E's knowledge and belief, the work has progressed as indicated in the Contractor's Application for Payment. This certification shall bear the signature of the A/E responsible for the review of the Contractor's Application for Payment.

2.1.7 The A/E will be an interpreter of the requirements of the plans, drawings, and specifications. The A/E will render interpretations necessary for the proper execution and progress of the Work, with reasonable promptness and in accordance with any time limit agreed upon. The County and Contractor may make written request to the A/E for such interpretations. All interpretations of the A/E shall be consistent with the intent of and reasonably inferable from the plans, drawings, and specifications and will be in writing and/or in the form of drawings. The A/E will not deal directly with any subcontractor or sub-subcontractor or materials supplier. Subcontractor, sub-subcontractors or material suppliers shall route requests for information or clarification through the Contractor to the A/E, with a copy to the County.

2.1.8 The A/E will recommend to the County the rejection of Work that does not conform to the plans, drawings, and specifications. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with section 7.6 whether or not such Work be then fabricated, installed or completed.

2.1.9 The A/E will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data, Samples and Manuals, but only for conformance with the design concept of the Work and with the information given in the plans, drawings, and specifications. The A/E approval of a specific item shall not indicate approval of an

assembly of which the item is a component.

2.1.10 The A/E's acceptance of materials or products on behalf of the County shall not bar future rejection of such items if they are subsequently found to be defective or inferior in quality or uniformity to the materials or products specified by the Contract, or if such items are not as represented by the Contractor.

2.1.11 As required, the A/E will conduct inspections to assist the County in determining the dates of Substantial Completion and Final Completion, will receive and forward to the County for the County's review written warranties and related documents required by the Contract and assembled by the Contractor, and will recommend final Certificate for Payment upon compliance with the requirements of Article 9 Payment and Completion.

2.1.12 All claims, disputes, or other matters or questions between the Contractor and County arising out of or relating to the A/E's interpretation of the Contract Documents or any other decisions, communications, or actions of the A/E arising out of or relating to the performance of the Work shall be resolved as set forth in Article 12 Changes and Modifications in the Work.

2.1.13 In case of the termination of the employment of the A/E, the County shall appoint a new A/E, who shall have the same status under the Contract Documents as the former A/E.

ARTICLE 3: COUNTY

3.1 AUTHORIZED REPRESENTATIVE

3.1.1 The Director of the Department of Transportation and Capital Infrastructure or the Director of the Department of General Services, is the authorized representative of the County for this Contract.

3.1.2 The Department of Transportation and Capital Infrastructure or the Department of General Services will designate a single County's representative, with the title of Construction Manager (CM), who will have the power to act, within the scope of his delegated authority, for and on behalf of the County, in accordance with the terms of the Contract.

3.1.3 At the County’s option, the County may employ a Construction Support Services firm, to assist the County’s CM in the execution of this project including, but not limited to, project management, construction administration, and to provide quality assurance consistent with the requirements of the Project specifications.

3.1.3.1 The Construction Support Services firm may have a part-time or a full-time, on-site presence throughout construction. To facilitate efficient administration of the Project, the County may rely on the Construction Support Services firm to act for and on behalf of the County, in accordance with the terms of

the Contract.

3.1.3.2 As the County's authorized representative, the Project Manager for the Construction Support Services firm may issue directives, notices, orders, and/or requests as part of their duties in assisting the County's Construction Manager. Accordingly, the Contractor shall heed such actions by the Construction Support Service firm's Project Manager as if such action were taken by the County's Construction Manager directly.

3.1.4 For purposes of change in the Work, the term "County" or "County's representative" specifically excludes any and all inspectors having building code or County ordinance responsibilities or jurisdiction under the requirements of the Building Permit.

3.2 INFORMATION POSSESSED BY COUNTY

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

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

3.3 COUNTY-PAID PERMITS AND FEES

3.3.1 The County will, where applicable, secure and pay for:

3.3.1.1 Sewer availability fees;

3.3.1.2 Water availability/meter connection fee;

3.3.1.3 Electrical, natural gas, telephone, and cable TV permanent installation charges;

3.3.1.4 Any easements required;

3.3.1.5 Grading Permits are issued by the Loudoun County Department of Building & Development. A Responsible Land Disturber Certification shall be required by the contractor.

3.3.1.6 Health Department Permits for sanitary pump and haul facilities.

3.3.1.7 Coverage of the project Site by General Permit for Discharge of Stormwater from Construction Activities (VAR10). Although the County will secure initial coverage by the General Permit, permit coverage and the designation of "Operator" will be transferred to the Contractor after Notice of Award. Therefore, the Contractor will be required to provide all necessary information to transfer permit coverage to the Contractor's name and to sign the permit coverage transfer application. The County will pay the permit coverage transfer fee. Since permit coverage will be in the name of the Contractor, it will be responsible for performing all required inspections and complying with the General Permit and associated Stormwater Pollution Prevention Plan.

3.3.2. The Contractor's attention is directed to Article 4.7 Contractor-Paid Taxes, Permits, Fees, and Notices describing other permits to be obtained and fees to be paid by the Contractor.

3.3.3 The foregoing are in addition to other duties and responsibilities of the County enumerated elsewhere in the Contract Documents.

3.4 COUNTY'S RIGHT TO STOP WORK

3.4.1 If the Contractor fails to correct defective Work as required herein or persistently fails to carry out the Work in accordance with the Contract Documents, the 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.

3.4.2 Any person on the project has the ability to stop Work due to safety concerns. Until the hazardous situation is reviewed and deemed safe by the Contractor's Site safety officer, all work in relation to and in the vicinity of the safety concern must cease; however, this right 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. Any delay and any cost that may arise, caused by such a stoppage will be borne fully by the Contractor.

3.5 COUNTY'S RIGHT TO CARRY OUT THE WORK

3.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of

written Notice from the County to commence and continue correction of such default or neglect with diligence and promptness, the County may, without prejudice to any other remedy it may have, rectify such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the A/E's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the County.

3.5.2 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 Surety's responsibility as provided for in the Performance Bond and Guarantee of Contractor, pursuant, but not limited, to Articles 4 Contractor and 14 Uncovering and Correction of Work.

3.6 SUSPENSION OF WORK

3.6.1 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:

3.6.1.1 Unsuitable weather;

3.6.1.2 Other conditions considered unfavorable for the suitable prosecution of the Work; and/or

3.6.1.3 Other conditions considered adverse to the best interests of the County.

3.6.2 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 3.6 and Article 8 Contract Times herein.

3.6.3 No such suspension of the Work shall be the basis of a claim by the Contractor for any increase in the Contract Price or for any other damages, losses, costs, or expenses so long as the suspension is reasonable under the circumstances and the cause of the suspension is beyond the control and is without the fault or negligence of the County.

3.6.4 In the event of suspension of Work, the Contractor will and will cause its subcontractors to carefully protect the Work and materials 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.

3.7 USE AND OCCUPANCY PRIOR TO FINAL ACCEPTANCE BY COUNTY

3.7.1 The County has the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the entire Work or any portions thereof may, or may not, have expired. The taking of possession and use by the County shall be in accordance with the provisions regarding Substantial Completion in Article 9.8 Substantial Completion and Guarantee Bond. If such prior use delays the Work, the Contractor may submit a request for a time extension in accordance with the requirements of Article 8 Contract Time.

3.8 RIGHT TO AUDIT AND PRESERVATION OF RECORDS

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

3.8.1.1 If the Contract is terminated for any reason in accordance with the provisions of these Contract Documents in order to arrive at equitable termination costs;

3.8.1.2 In the event of a disagreement between the Contractor and the County on the amount due the Contractor under the terms of this Contract;

3.8.1.3 To check or substantiate any amounts invoiced or paid which are required to reflect the costs of the Contractor, or the Contractor's efficiency or effectiveness under this Contract or in connection with extras, changes, claims, additions, back charges, or other, as may be provided for in this Contract; and/or

3.8.1.4 If it becomes necessary to determine the County's rights and the Contractor's obligations under the Contract or to ascertain facts relative to any claim against the Contractor which may result in a charge against the County.

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

3.8.3 The Contractor shall make all his books, records, documents, and other evidence bearing on his costs and expenses under this Contract available to the County for a period of three years after final payment or termination hereunder

3.8.4 All payments under this Contract are subject to audit under the circumstances stated above. Audits may be performed at the County's

option, either during the Contract time period or during the above record retention time period. Regardless of authorization, approval or acceptance, signatures or letters which are given by the County and are part of the County's control systems or are requested by the Contractor, the payments made under this Contract shall not constitute a waiver of the County's right to audit. Payments shall not constitute a waiver or agreement by the County that it accepts as correct the billings, invoices, or other charges on which the payments are based. If the County's audit produces a claim against the Contractor, the County may pursue all its legal remedies even though it has made all or part of the payments required by this Contract.

3.8.5 If any audit by the County or the County's representative discloses an underpayment by the County, the County shall have the duty to pay any amounts found by the audit to be owed to the Contractor. If such audit discloses an overpayment, the Contractor shall have the obligation to reimburse the County for the amount of the overpayment.

3.8.6 The County's right to audit and the preservation of records shall terminate at the end of three (3) years as stated herein above. The Contractor shall include this "Right to Audit and Preservation of Records" clause in all subcontracts issued by him and he shall require same to be inserted by all lower tier subcontractors in their subcontracts, for any portion of the Work. Should Contractor fail to include this clause in any such Contract or lower tier Contract, or otherwise fail to insure the County's rights hereunder, Contractor shall be liable to County for all cost, expenses, and attorney's fees which County may have to incur in order to obtain an audit or inspection of or the restoration of records which would have otherwise been available to County from said persons under this clause. Such audit may be conducted by the County or its authorized representative.

3.9 RIGHT TO REVIEW OTHER DOCUMENTS AND MATERIALS

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

may withhold all or any portion of any progress payments, which may be otherwise due, in the event Contractor refuses to comply with is obligations under this paragraph. The review of documents and other records under this clause may be conducted by the County or its authorized representatives.

ARTICLE 4: CONTRACTOR

4.1 CONTRACTOR STATUS

4.1.1 This entire Contract is not one of agency by the Contractor for County but one in which the Contractor is engaged independently in the business of providing the services and performing the Work herein described as an independent Contractor.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 The Contractor shall not perform any portion of the Work at any time without having obtained the Contract Documents or, where required, approved Shop Drawings, Product Data, Samples, or Manuals for such portion of the Work.

4.2.2 The Contractor and his subcontractors shall keep at the Site at least two (2) copies of the drawings and specifications and shall at all times give the A/E, inspectors, as well as representatives of the County access thereto. Further, said drawings shall be the approved sets issued to the Contractor by the appropriate County Permit agencies

4.3 CONTRACTOR'S REPRESENTATIONS

By entering into this Contract with the County, the Contractor represents and warrants the following, together with all other representations and warranties in the Contract Documents.

4.3.1 That Contractor is experienced in and competent to perform the type of work required and to furnish the plant, materials, supplies or equipment to be so performed or furnished by it;

4.3.2 That Contractor is financially solvent, able to pay his debts as they mature, and possessed of sufficient working capital to initiate and complete the Work and pay its subcontractors as required under the Contract.

4.3.3 That Contractor is familiar with all federal, state, and local government laws, ordinances, permits, regulations, and resolutions that may in any way affect the Work or those employed therein.

4.3.4 That Contractor will perform the Work required by the Contract Documents in accordance with the Contract Documents; that the Work will be fit for use

for its intended purpose; and that such construction will not injure any person or damage any property.

4.3.5 That Contractor has carefully examined the Contract Documents and the Site and based on its investigations, it is satisfied and familiar with: (a) the nature and location of the Work, (b) the character, quality, and quantity of materials likely to be encountered, including, but not limited to, all structures and obstructions on or at the Site, both natural and man-made; (c) the character of equipment and other facilities needed for the performance of the Work, (d) the general and local conditions including, without limitation, its climatic conditions, the availability and cost of labor and the availability and cost of materials, tools and equipment; (e) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in the manner required by the Contract Documents; and (f) all other matters or things which could in any manner affect the performance of the Work;

4.3.6 That Contractor will fully comply with all requirements of the Contract Documents;

4.3.7 That Contractor will perform the Work consistent with good workmanship, sound business practice, and in the most expeditious and economical manner consistent with the best interests of the County;

4.3.8 That Contractor will furnish efficient business administration, an experienced superintendent, and an adequate supply of workmen, equipment, tools and materials at all times;

4.3.9 That Contractor will complete the Work within the Contract Times and meet Contract Milestones;

4.3.10 That the Contract Price is based upon the materials, systems and equipment required by the Contract Documents, without exception;

4.3.11 That Contractor is satisfied as to the feasibility and correctness of the Contract Documents for the construction of the Work; and

4.3.12 That Contractor will perform the Work in a safe manner and in accordance with all local and federal safety regulations.

4.4 SUPERVISION AND CONSTRUCTION PROCEDURES

4.4.1 The Contractor shall supervise and direct the Work, using its best skill and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract; subject, however, to the County's right to reject means and methods proposed by the Contractor which are unsafe or otherwise not in compliance with the Contract Documents.

4.4.2 The Contractor shall be responsible to the County for the acts and omissions of its employees, subcontractors, and sub-subcontractor's, suppliers, their agents, and employees, and of other persons performing any of the Work and for their compliance with each and every requirement of the Contract Documents, in the same manner as if they were directly

employed by the Contractor.

4.4.3 The Contractor understands and agrees that it shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the County or the A/E in the administration of the Contract, or by inspections, tests, or approvals required or performed by persons other than the Contractor.

4.4.4 Before starting a section of Work, the Contractor shall carefully examine all preparatory work that has been executed by others to receive his Work to see that it has been completed. Contractor shall check carefully, by whatever means are required, to ensure that its Work and adjacent, related work will finish to proper quality, contours, planes, and levels.

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

4.4.6 The Contractor shall employ no plant, equipment, materials, or persons for the Work to which the County objects.

4.4.7 The Contractor shall not remove any portion of the Work or stored materials from the Site.

4.5 LABOR, MATERIALS AND EQUIPMENT

4.5.1 The Contractor shall furnish all plant, labor, materials, supplies, equipment and other facilities and things necessary or proper for or incidental to the Work and will perform all other obligations imposed on it by this Contract. Final payment will not be made until the Work is fully completed.

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

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

4.5.4 The Contractor shall perform at least the percentage of the Work specified in the County-Contractor Agreement, if a percentage is specified, with forces that are in the direct employment of the Contractor's organization.

The Contractor shall submit to the County within thirty (30) calendar days after award of the Contract for the Work, a designation of the Work to be performed by the Contractor with his own forces. The percentage of the Work to be performed under subcontract shall be calculated by adding the amounts of all subcontracts and dividing this sum by the total amount of the Contract.

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

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

4.5.7 No materials or supplies for the Work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage, or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to all materials and supplies used by him in the Work.

4.5.8 The Contractor shall provide approved and adequate sanitary accommodations. All wastes shall be covered, disinfected, incinerated, or otherwise disposed of legally.

4.5.9 All equipment, apparatus and/or devices of any kind to be incorporated into the Work that are shown or indicated on the drawings or called for in the specifications or required for the completion of the Work shall be entirely satisfactory to the County as regards operations, capacity and/or performance. No approval, either written or verbal, of any drawings, descriptive data or samples of such equipment, apparatus, and/or device shall relieve the Contractor of his responsibility to turn over the same in good working order for its intended purpose at the completion of the Work in complete accordance with the Contract Documents. Any equipment, apparatus and/or device not fulfilling these requirements shall be removed and replaced by proper and acceptable equipment, etc., or put in good working order satisfactory to the County without additional cost to the County.

4.5.10 No materials or equipment shall be stored on the Site which will not be incorporated into the project or needed to construct the project.

4.6 WARRANTY

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

properly approved and authorized, may be considered defective.

4.6.2 If required by the County, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 14, Uncovering and Correction of Work.

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

4.6.4 In the event that a component of the Work requires installation by an authorized installer of the component's manufacturer, Contractor shall provide proof of manufacturer's authorization to the County.

4.7 CONTRACTOR-PAID TAXES, PERMITS, FEES AND NOTICES

4.7.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective. Taxes to be paid by the Contractor shall include, but shall not be limited to, the Loudoun County Business, Professional and Occupational License Tax (a gross receipts tax).

4.7.2 Except as provided in Article 3.3 County-Paid Permits and Fees the Contractor will be responsible for obtaining and paying for all other fees, permits and licenses necessary for the proper execution of the Work, including but not limited to:

4.7.2.1 Building Permit and inspections (County fees waived);

4.7.2.2 Plumbing, Electrical, Mechanical Permits and inspections (County fees waived);

4.7.2.3 Temporary water meter, temporary electrical and temporary telecommunications installations, and temporary utility usage;

4.7.2.4 Temporary security lighting;

4.7.2.5 All other permits necessary in order to perform the Work shall be secured by the Contractor and fees necessary in order to perform the Work shall be paid by it as part of this Contract at no additional cost to the County.

4.7.2.6 Permits for Work in Virginia Department of Transportation (VDOT) right-of-way. The Contractor is required to comply with the General Requirement for Work in the VDOT right-of-way as outlined in the Loudoun County Facilities Standards Manual and the VDOT Manual for this Work. Upon completion of all Work in the VDOT right-of-way, the VDOT Personnel will conduct an inspection and issue a punch list.

4.7.2.7 The Contractor will be responsible for preparing applications and associated documents, paying fees, and obtaining any VDOT entrance permits. The Contractor will also be responsible for posting any bonds required by VDOT and

seeking bond release upon the completion of Work.

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

4.8 COMPLIANCE

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

4.8.2 The Contractor shall complete the Work in conformance with all applicable and current editions or revisions of the following codes, specifications, and standards. In case of conflict, the order of precedence shall be as hereinafter listed:

4.8.2.1 Contract Documents.

4.8.2.2 Loudoun County Purchasing Policy, as amended.

4.8.2.3 The Virginia Uniform Statewide Building Code, as amended (BOCA and NEC);

4.8.2.4 The Department of Building and Development Loudoun County, Facilities Manual; and

4.8.2.5 The Virginia Department of Transportation Road and Bridge Specifications and the Road Designs and Standards.

4.8.3 If the Contractor (or any person in contract with the Contractor relating to the subject project) finds an error, inconsistency, omission, ambiguity, discrepancy, conflict or variance in the Contract Documents, or between the Contract Documents and any of the codes, specifications and standards set forth in 4.8.2 herein, the Contractor has the obligation to seek a clarification thereof from the A/E, with a copy to the County, prior to the time the Work is performed which is affected by such error, inconsistency, omission, ambiguity, discrepancy, conflict, or variance. The County will welcome such a clarification request and, if deemed necessary by the County, the County will issue a written instruction clarifying the matter in question. If the Contractor feels that the written clarification requires additional Work, the Contractor shall follow the change process in Article 12 Changes and Modifications in the Work.

4.8.4 Should the Contractor fail to seek such a clarification thereof immediately upon the discovery of the need therefor, prior to the time the said Work is performed, the Contractor thereby assumes all risk of loss related to such error, inconsistency, ambiguity, discrepancy, conflict or variance which the Contractor (and any person in contract with Contractor relating to the subject project) knew or should have known, using a normal, professional

standard of care, existed prior to the time the Work was performed.

4.8.5 Any material or operation specified by reference to publications, published specifications of a Manufacturer, a Society, an Association, a Code, or other published Standard, shall comply with the requirements of the referenced document which is current on the date of receipt of bids. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, it shall promptly notify the A/E in writing, with a copy to the County. The A/E will make such judgments as are necessary and notify the Contractor prior to the performance of the Work.

4.8.6 If the Contractor performs any Work contrary to such laws, ordinances, permits, rules, regulations and resolutions, it shall assume full responsibility therefor and shall bear all costs attributable thereto.

4.8.7 The Contractor will be held responsible for locating all underground structures such as water, oil and gas mains, water and gas services, storm and sanitary sewers and telephone and electric conduits which may be encountered during the construction operation. The Contractor shall have Miss Utility locate all utilities on the Site which are within the area of the Work and shall dig test holes to determine the position of the underground structures. The Contractor shall pay the cost of digging test holes and likewise he shall pay the cost of the services of the representatives of the owners of such utilities for locating the said utilities. The cost of determining the location of any and all utilities is to be included in the bid price. The County shall pay the owners of such utilities for fees or charges for relocation of gas, electric, telephone, cable or other lines and/or services indicated to be relocated by others.

4.8.8 If utilities are marked which are not shown on the plans, the Contractor shall immediately notify the County and the A/E of such finding. The County and A/E shall provide a direction to the Contractor within a reasonable period of time if additional work is required as a result of the finding. If the Contractor believes that it requires additional Work, the Contractor shall follow the change process in Article 12 Changes and Modifications in the Work.

4.8.9 Stormwater discharge from construction activities must conform to the requirements of General Permit No. VAR10. The County will secure a permit coverage letter for this specific project. The Contractor is responsible for compliance with General Permit No. VAR10 and all requirements outlined in the Stormwater Pollution Prevention Plan (SWPPP) specific to this project. The Contractor is considered the Site operator and shall designate a qualified individual (a licensed professional engineer, a responsible land disturber, or a person with a certification of competence from a regulatory board) under his direct supervision responsible for Site monitoring, inspections, record keeping, and any other items required by the SWPPP. The Contractor shall also ensure compliance with General Permit No. VAR10 of all subcontractors and sub-subcontractors.

4.8.10 The Contractor shall post a sign or other notice conspicuously near the main entrance of the Site. The sign or other notice must contain the following information:

4.8.10.1 A copy of the permit coverage letter that includes the registration number for the construction activity;

4.8.10.2 The internet address at which a copy of the SWPPP may be found or the location of a hard copy of the SWPPP and name and telephone number of a Contractor contact person for scheduling viewing times.

4.9 ALLOWANCES AND ALLOWANCES DERIVED FROM UNIT PRICES AND STATED QUANTITIES

4.9.1 The Invitation for Bid and Specifications may contain provisions for allowances and allowances derived from unit process and stated qualities unit prices, if such is applicable to this Contract. These allowances will be included in the lump sum cost.

4.10 SUPERINTENDENT

4.10.1 The Contractor shall employ a competent Superintendent and any necessary assistants to ensure supervisory attendance at the Project Site during the progress of the Work. The Superintendent shall be directly employed by the Contractor's organization and shall have full authority to represent the Contractor and all communications given to the Superintendent shall be as binding as if given to the Contractor. The Superintendent shall have a minimum of ten (10) years of direct experience in the capacity as Superintendent and be OSHA-30 certified.

4.10.2 It is understood that such Superintendent shall be acceptable to the County and shall be one who will be continued in that capacity for duration of this project, unless he ceases to be on the Contractor's payroll. The Superintendent shall not be employed on any other project during the performance of this Contract.

4.10.3 The Contractor shall provide the proposed Superintendent's resume to the County for review as required by the Division 1 Specifications. If the County judges the proposed Superintendent to not be qualified, the County may reject the proposed Superintendent and request another individual of satisfactory qualifications to be supplied. This process shall be repeated until a qualified Superintendent is provided.

4.10.4 The County may require removal of the Project Superintendent for any for the following documented circumstances below:

4.10.4.1 Failure to maintain a safe work environment at the project Site or surrounding community;

4.10.4.2 Failure to provide the quality standards set forth in the Contract Documents;

4.10.4.3 Ineffective management of subcontractors and work force;

4.10.4.4 Failure to keep the project in line with the approved schedule;

4.10.4.5 Failure to be on Site full time during construction;

4.10.4.6 Failure to provide daily reports and other documentation in a timely manner.

4.10.5 The replacement Superintendent must be approved by the County.

4.11 Project Manager

4.11.1 The Contractor shall employ a competent Project Manager, and any necessary assistants, to ensure satisfactory contract administration of the Work. The Project Manger shall be directly employed by the Contractor's organization and shall have full authority to represent the Contractor and all communications given to the Project Manager shall be as binding as if given to the Contractor.

4.11.2 It is understood that such Project Manager shall be acceptable to the County and shall be one who will be continued in that capacity for duration of this project, unless s/he ceases to be on the Contractor's payroll.

4.11.3 The County, at its sole discretion, may require the removal of the Project Manager should the County deem the Project Manager to be incompetent, improper or hinderance to the progress of the Work.

4.12 Construction Quality Control System Manager

4.12.1 If required by the Division 01 specification, the Contractor shall employ a competent Construction Quality Control (CQC) System Manager, and any necessary assistants, to ensure the completed Work meets all quality requirements of the Contract. The CQC System Manger shall be directly employed or contracted by the Contractor's organization and shall have full authority to represent the Contractor and all communications given to the CQC System Manager shall be as binding as if given to the Contractor. The CQC System Manager may not be a Corporate Officer nor Executive of the firm; their sole duty shall be to represent the Contractor as CQC System Manager. The CQC System Manager shall be a graduate engineer, graduate architect, or a graduate of construction management, or similar degree of study with a minimum of five (5) years of direct experience in the capacity as CQC System Manager. If the CQC System Manager does not meet the previously stated educational requirements, the individual must have a minimum of fifteen (15) years of direct experience in the capacity as CQC System Manager. The CQC System Manager must hold a current U.S. Army Corps of Engineers Construction Quality Control certificate.

4.12.2 It is understood that such CQC System Manager shall be acceptable to the County and shall be one who will be continued in that capacity for duration of this project, unless s/he ceases to be on the Contractor's payroll.

4.12.3 The County may require removal of the CQC System Manager for any for the following documented circumstances below:

4.12.3.1 Failure to maintain a full-time presence at the project Site

during construction activities;

4.12.3.2 Failure to maintain their U.S. Army Corps of Engineers Construction Quality Control certification;

4.12.3.3 Failure to attend progress meetings and report on quality issues and provide quality control updates;

4.12.3.4 Inadequate management of the outside organizations that are providing services for the project;

4.12.3.5 Failure to maintain and update the testing plan and log;

4.12.3.6 Failure to maintain and update the quality control checklist and sufficiently perform the inspections necessary to adequately check each phase of each definable feature of work;

4.12.3.7 Failure to identify, record, track, and complete re-work items;

4.12.3.8 Unsatisfactory review, approval, and management of submittals.

4.12.3.9 Unsatisfactory documentation and reporting,

4.13 CONSTRUCTION SCHEDULE

4.13.1 The Contractor shall within twenty (20) days after the effective date of the County – Contractor Agreement, prepare and submit to the A/E and County for review, a reasonably practicable and feasible Critical Path Method (CPM) Construction Schedule showing the method by which the Contractor will comply with Contract Milestone and Completion date requirements as set forth in the County-Contractor Agreement. The schedule shall show in detail how the Contractor plans to execute and coordinate the Work. The Contractor shall use this schedule in the planning, scheduling, direction, coordination and execution of the Work. The Construction Schedule shall encompass all of the work of all trades necessary for construction of the project and shall be sufficiently complete and comprehensive to enable progress to be monitored on a day-to-day basis. The County and A/E shall each be provided with a copy of all schedules, updates reports and other documentation required herein which shall be suitable for reproduction by the County.

4.13.2 It is the sole responsibility of the Contractor to prepare, maintain, update, revise and utilize the Construction Schedule as outlined in 4.11 Construction Schedule. The schedule shall be the sole overall Construction Schedule utilized by the Contractor in managing this project, provided, however, that Contractor may at its option employ and utilize other schedules based upon and consistent with the Construction Schedule. In general, it is the intent of this Paragraph to allow the Contractor to choose its own means, methods, and construction procedures consistent with good practice and the Contract Documents.

4.13.3 If the Contractor should submit a schedule or express an intention to

complete the Work earlier than any required Milestone or Completion date, the 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.

4.13.4 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.

4.13.5 Contractor shall consult with and obtain information from principal subcontractors necessary in preparation of the schedules, updates and revisions required herein. Contractor shall provide each principal subcontractor with copies of the Construction Schedule and any revisions or updates affecting a subcontractor's work. Contractor shall hold appropriate progress meetings with subcontractors and shall direct and coordinate the work of subcontractors consistent with and as required herein. 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 subcontractor, sub-subcontractor or supplier acknowledges and accepts the requirements of the Construction Schedule relating to their part of the Work.

4.13.6 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.

4.13.7 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.

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

4.13.9 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, upon the County's request, the Contractor shall revise its Construction Schedule and submit a Construction Schedule that accurately represents the progress and sequence of the Contractor's performance of the Work within 7 (seven) working days from the date of County's request. Under no circumstance shall the submittal of a revised Construction Schedule and County's acceptance of same, change the Time for Completion.

4.13.10 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 to that consultant.

4.13.11 Contractor covenants and guarantees that Contractor will not:

4.13.11.1 Misrepresent to County its planning and scheduling of the Work;

4.13.11.2 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;

4.13.11.3 Prepare schedules, updates, revisions, or reports which do not accurately reflect Contractor's actual intent or Contractor's reasonable and actual expectations as to:

a. The sequences of activities,

b. The duration of activities,

c. The responsibility for activities,

d. Resource availability,

e. Labor availability or efficiency,

f. Expected weather conditions,

g. The value associated with the activity,

h. The percentage complete of any activity,

i. Completion of any item of work or activity,

j. Project completion,

k. Delays, slippages, or problems encountered or expected,

l. Subcontractor requests for time extension, or delay claims of subcontractors, and

m. If applicable, the Float Time available.

4.13.12 Contractor's failure to comply with the foregoing covenant and guarantee of Paragraph 4.11.11 shall be deemed a substantial and material breach of the Contract which will permit County to terminate the Contractor for cause/default, or withhold payments under the Contract Documents, and

shall entitle County to the damages afforded for misrepresentation or fraud by these Contract Documents or applicable law.

4.13.13 Should Contractor fail to substantially comply with the provisions of the Contract Documents relating to scheduling and execution of the Work by the overall project schedule, 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 County and A/E 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 Times.

4.13.14 The Construction Schedule shall be utilized by County, A/E and Contractor for submission, review, and approval of monthly Payment Request. The schedule must be updated by Contractor monthly with each progress payment application and submitted to the County and A/E 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.

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

4.14 RESPONSIBILITY FOR COMPLETION

4.14.1 The Contractor shall furnish such manpower, materials, facilities, and equipment and shall work such hours, including night shifts, overtime operations and Sundays and holidays, as may be necessary to ensure the

performance of the Work within the Milestone and Completion dates specified in the County-Contractor Agreement. If the County notifies the Contractor that it has become apparent that the Work will not be completed within required Milestone or Completion dates, the Contractor agrees that it will assume full responsibility to take some or all of the following actions, at no additional cost to the County (except for circumstances beyond the Contractors' control), in order to ensure, in the opinion of the County, that the Contractor will comply with all Milestone and Completion date requirements:

4.14.1.1 Increase manpower, materials, crafts, equipment and facilities;

4.14.1.2 Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing; and

4.14.1.3 Reschedule activities to achieve maximum practical concurrency of accomplishment of activities.

Failure of the County to notify the Contractor of the apparent delay shall not relieve Contractor of the obligation to finish the project within the required Milestone or Completion date.

4.14.2 If the actions taken by the Contractor are not satisfactory, the County may direct the Contractor to take any and all actions necessary to ensure completion within the required Milestone and Completion dates, without additional cost to the County (except for circumstances beyond the Contractor's control). In such event, the Contractor shall continue to assume responsibility for his performance and for completion within the required dates.

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

4.14.4 Contractor's failure to prosecute the Work with such diligence as will ensure its completion within the Contract Times shall be a material breach of this Contract and may result in termination pursuant to Article 15, Termination of the Contract.

4.14.5 The County may, at its sole discretion and for any reason, including when it is apparent to the A/E or County that the Work will be completed within the required Milestone or Completion dates, require the Contractor to accelerate the Schedule of Performance by providing overtime, Saturday, Sunday and/or holiday work and/or by having all or any subcontractors designated by the County provide overtime, Saturday, Sunday, and/or holiday work. In the event that the County requires overtime, Saturday, Sunday or holiday work by the Contractor's or his subcontractor's own forces, and such requirement is not related in any way to the Contractor's apparent inability to comply with Milestone and Completion date requirements, the County shall reimburse the Contractor for the direct cost to the Contractor of the premium time for all labor utilized by the Contractor

in such overtime, Saturday, Sunday or holiday work (but not for the straight time costs of such labor), together with any Social Security and State or Federal unemployment insurance taxes in connection with such premium time. However, no overhead supervision costs, commissions, profit or other costs and expenses shall be payable in connection therewith.

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

4.15 DOCUMENTS AND SAMPLES AT THE SITE

4.15.1 The Contractor shall, at the County's direction, maintain at the Site for the County one record copy of all Drawings, Specifications, Addenda, Change Orders Submittals, RFI's, and all other logs, Project Schedule, Plan Revisions, As built Plans, approved Shop Drawings, Product Data, Samples and Manuals and other Modifications, in good order and marked currently to record all changes made during construction. Additional documentation maintained on the Site shall include, but not limited to, all daily Contractor Work Reports, Safety Meetings, Progress Meetings and Reports, material documentation, tickets, and certifications, and on and offsite material testing results. All documentation shall be maintained weekly and prior to the approval of the monthly Pay Application. The documentation shall be in an organized manner and in good order. These shall be delivered to the County upon completion of the Work.

4.16 SHOP DRAWINGS, PRODUCT DATA, SAMPLES AND MANUALS

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

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

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

4.16.4 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the County or A/E's approval of Shop Drawings, Product Data, Samples, or Manuals under

Article 2 Architect/Engineer unless the Contractor has specifically informed the County and A/E in writing of such deviation at the time of submission and the County has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, Samples, or Manuals by the A/E's approval thereof.

4.16.5 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, or Samples, to revisions other than those requested by the County or A/E on previous submittals.

4.16.6 No portion of the Work requiring submission of Shop Drawings, Product Data, or Samples shall commence until the submittal has been approved by the County and A/E as provided in Article 2 Architect/Engineer. All such portions of the Work shall be in accordance with approved submittals.

4.16.7 For substances that are proposed for use in the project that may be hazardous to human health, the Contractor shall submit to the A/E, for information only, information on precautions for safely using these substances, including certification of registration by the Contractor with authorities under the respective Virginia and Federal Toxic Substances Control Acts.

4.16.8 Unless otherwise modified by the County in writing, the Contractor shall label or stamp and number all Shop Drawings, Product Data, Samples, or Manuals as prescribed in the Specifications.

4.16.9 The Contractor shall submit a copy of each submittal, including the transmittal sheet (for shop drawings, product data, samples or manuals) to the County simultaneously with the Contractor's submission of said drawings, data, samples or manual packages to the A/E. Submittal shall be submitted electronically through e-Builder if so directed by the County.

4.17 EQUAL PRODUCTS:

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

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

4.17.2.1 Complete data substantiating compliance of the proposed equal product with the Contract Documents;

4.17.2.2 Accurate cost data on proposed equal product in comparison with product or method specified;

4.17.2.3 Product identification including manufacturer's name, address, and phone number;

4.17.2.4 Manufacturer's literature showing complete product description, performance and test data, and all reference standards;

4.17.2.5 Samples and colors in the case of articles or products;

4.17.2.6 Name and address of similar projects on which the product was used and date of installation;

4.17.2.7 All directions, specifications, and recommendations by manufacturers for installation, handling, storing, adjustment, and operation.

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

4.17.3.1 Contractor has investigated the proposed equal product and determined that it is equal or better in all respects to that specified and that it fully complies with all requirements of the Contract Documents;

4.17.3.2 Contractor will meet all Contract obligations with regard to this substitution;

4.17.3.3 Contractor will coordinate installation of accepted equal products into the Work, making all such changes and any required schedule adjustments, at no additional cost to the County, as may be required for the Work to be complete in all respects;

4.17.3.4 Contractor waives all claims for additional costs and additional time related to equal products. Contractor also agrees to hold the County harmless from claims for extra costs and time incurred by subcontractors and suppliers, or additional services which may have to be performed by the A/E, for changes or extra work that may, at some later date, be determined to be necessary in order for the Work to function in the manner intended in the Contract Documents;

4.17.3.5 Contractor will provide the same warranty and guarantee, and perform any work required in accordance therewith, for the equal product that is applicable to the specified item for which

the equal product is requested;

4.17.3.6 Material will be installed, handled, stored, adjusted, tested, and operated in accordance with the manufacturers' recommendation and as specified in the Contract Documents;

4.17.3.7 In all cases new materials will be used unless this provision is waived by notice from the County or unless otherwise specified in the Contract Documents;

4.17.3.8 All material and workmanship will be in every respect, in accordance with that which in the opinion of the County, is in conformity with approved and/or generally accepted industry standards; and

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

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

4.17.5 Equal products will not be considered for approval by the County if:

4.17.5.1 The proposed equal product is indicated or implied on the Contractor's shop drawing or product data submittals and has not been formally submitted for approval by the Contractor in accordance with the above-stated requirements; or

4.17.5.2 Acceptance of the proposed equal product will require substantial design revisions to the Contract Documents or is otherwise not acceptable to the County.

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

4.17.7 If the Contractor proposes a product which the County determines is not equal to the product named in Contract Documents but which the County nevertheless is willing to accept, Contractor shall provide upon request by the County an itemized comparison of the proposed substitution with the product specified and the cost differential which shall be credited to the

County in a Change Order issued in accordance with Article 12 Changes and Modifications in the Work.

4.18 USE OF SITE

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

4.19 CUTTING AND PATCHING OF WORK

4.19.1 The Contractor shall be responsible for all cutting, fitting, or patching that may be required to complete the Work and to make its several parts fit properly and in accordance with the Contract Documents.

4.19.2 The Contractor shall not damage or endanger any portion of the Work or the work of the County or any separate contractors by cutting, patching, or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the County or any separate contractor except with the written consent of the County and of such separate contractor. The Contractor shall not unreasonably withhold from the County or any separate contractor its consent to cutting or otherwise altering the Work. The County shall not be required to accept Work with a cut, splice, or patch when such cut, splice or patch is not generally accepted practice for the particular work involved or is otherwise unworkmanlike in the opinion of the County.

4.20 RIGHT TO PUBLISH

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

4.21 SITE CLEAN UP

4.21.1 The Contractor shall proceed with daily construction cleanup to keep the work, the site, and adjacent properties free from accumulations of waste materials, rubbish, and windblown debris, resulting from construction operations. Contractor shall remove mud, oil, grease, soil, gravel, trash,

scrap, debris, and excess materials that are unsightly or may cause accidents to person or properties. Contractor shall remove water from floor areas where electrical power tools are to be used and prevent stains on concrete that will be exposed to finish work. Contractor shall select and employ cleaning materials and equipment with care to avoid scratching, marring, defacing, staining, or discoloring surfaces cleaned.

4.21.2 Before final payment is made, the Contractor shall remove all waste materials, rubbish, scrap materials, debris, tools, construction equipment, machinery, surplus materials, false work, temporary structures, including foundations thereof and plant of any description, from the Project Site and put the Site in a neat, orderly condition.

4.21.2 If the Contractor fails to clean up as required herein at any time during the performance of the Work or at the completion of the Work, the County may, upon twenty-four (24) hours notification, clean up the Site at the Contractor's expense.

4.21.3 Any sediment runoff beyond perimeter controls shall be cleaned up according to the project's approved Erosion and Sediment Control Plan, Grading Permit, SWPPP, Virginia Erosion and Sediment Control Handbook, and Erosion and Sediment Control inspector's direction, whichever is most stringent.

4.22 PATENTS, ROYALTIES, ETC.

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

4.23 INDEMNIFICATION

4.23.1 It is hereby mutually covenanted and agreed that the Contractor is an independent contractor and is not an employee or agent of the County. Contractor shall be responsible for all damages, loss or injury, including death, to persons or property that may arise or be incurred in or during the conduct and progress of the Work as the result of any action, omission or operation under the Contract or in connection with the Work, whether such action, omission or operation is attributable to the Contractor, its 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 as a result of its neglect or violation of any Federal, State, County or local laws, regulations, or ordinances.

4.23.2 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.

4.23.3 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.

4.23.4 The obligations of the Contractor under this Article 4.21 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.

4.23.5 The obligations of the Contractor under this Article 4.21 shall not extend to the proportion of damages, loss or injury, including death, to persons or property that may arise or be incurred as the result of any action, omission or operation of the County, or County's Separate Contractor(s), and their employees, agents, servants, and/or representatives.

4.23.6 This section shall survive the Contract.

4.23.7 The County is prohibited from indemnifying Contractor and/or any other third parties.

4.24 NON-DISCRIMINATION IN EMPLOYMENT

4.24.1 During the performance of this Contract, the Contractor agrees as follows:

4.24.1.1 The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or status as a disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause;

4.24.1.2 The Contractor, in all solicitations or advertisements for

employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer;

4.24.1.3 Notices, advertisements, and solicitations placed in accordance with Federal Law, rule or regulation, shall be deemed sufficient for the purpose of meeting the requirements of this provision; and

4.24.1.4 The Contractor will include the provisions of paragraphs .1, .2 and .3 above in every subcontract or purchase order of over $10,000 so that the provisions will be binding upon every subcontractor or vendor.

4.25 CONTRACT SECURITY

4.25.1 The Contractor shall deliver to the County, within fifteen (15) calendar days from the Effective Date of the County – Contractor Agreement, two (2) originals of a Performance Bond and a separate Labor and Material Payment Bond in a form acceptable to the County and each in an amount required by the Contract Documents as security for the faithful performance of the Contract, and the payment of all persons performing labor and furnishing materials in connection with this Contract. The County will not issue Notice to Proceed until the bonds are received. The amount of the Performance and Payment Bonds shall be increased to the same extent the Contract Price is increased due to modifications. The form of bonds shall be acceptable to the County and the surety shall be such surety company or companies as are acceptable to the County and as are authorized to transact business in the Commonwealth of Virginia. The cost of such bonds shall be included in the Contractor's proposal amount.

4.25.2 The Contractor shall require that all sureties providing bonds for the Project will give written Notice to the County, at least thirty (30) days prior to the expiration or termination of the bond(s).

4.25.3 If, at any time, any surety or sureties becomes insolvent or is determined by the County to be unable to adequately secure the interest of the County, the Contractor shall within (30) days after Notice from the County to do so, substitute an acceptable bond(s) in such form and sum and signed by such other sureties as may be satisfactory to the County. The premiums on such bond(s) shall be paid by the Contractor.

ARTICLE 5: SUBCONTRACTORS AND SUPPLIERS

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

5.1.1 The Contractor shall submit to the County with a copy to the A/E prior to the award of any subcontract for work under this Contract and thirty (30) calendar days after the award of this Contract, the names of the suppliers of principal items, systems, materials, and equipment proposed for the

Work; the names and addresses, business and emergency phones of the subcontractors which it proposes to employ under this Contract, and such other information as may be requested by the County. The County will review each subcontractor and supplier based upon its apparent financial soundness and responsibility, its known or reported performance on previous similar work, and its available plant, equipment, and personnel to perform the Work. The Contractor shall not employ a subcontractor or supplier to whom the County reasonably objects. The County's objection to a proposed subcontractor or supplier shall not affect the Contract Price. At the County's request, the Contractor shall provide to the County a copy of its fully executed written contract(s) with its subcontractor(s) working on the Project.

5.1.2 The Contractor shall make no substitutions for any subcontractor, person, or entity previously selected unless first submitted to the County for review.

5.2 SUBCONTRACTUAL RELATIONS

5.2.1 By an appropriate written and fully executed agreement (Subcontract), the Contractor shall require each subcontractor to perform the subcontractor's portion of the Work according to the plans and specifications set forth in the Contract Documents and include those provisions of the Contract Documents in the Subcontract that are required by law. The Contractor shall require each subcontractor to enter into similar agreements with his sub-subcontractor's. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of all of the Contract Documents, and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of the Contract Documents available to its sub-subcontractor's. Each subcontract agreement shall require and ensure that all appropriate provisions of the Contract Documents are complied with by the subcontractor.

5.2.2 The provisions herein regarding the County's reasonable objection to any subcontractor shall in no way affect the liability of the Contractor to County regarding performance of all obligations by or payment of subcontractors. The County's failure to object to any given subcontractor shall not relieve the Contractor of his obligation to perform or have performed to the full satisfaction of the County all of the Work required by this Contract.

5.2.3 Neither this Article nor any other provision of the Contract Documents shall be deemed to make the County a joint venturer or partner with the Contractor or to place the subcontractor and materialmen in privity of Contract with the County.

5.2.4 This Contract is exclusively between and for the benefit of the County and Contractor. Nothing contained herein shall be construed as granting, vesting, creating, or conferring any third-party beneficiary status, right of action, or any other right or benefit upon past, present, or future employees, subcontractors, and materialmen of the Contractor, or upon any other third party.

5.3 QUALIFICATION SUBMITTALS

5.3.1 Specific qualification submittals may be required of subcontractors, installers, and suppliers for certain critical items of the Work. Required qualification submittals are set forth in detail in the Specifications and shall be collected and submitted by the Contractor to the A/E with copies to the County. All information required of a single subcontractor, installer or supplier shall be contained in a single, complete submittal. The Contractor shall submit the required qualification information within ten (10) days after receipt of the County's request or as required by the Specifications.

5.3.2 The County shall reject any proposed subcontractor, installer, or supplier, or any qualification submittals related thereto, for the following reasons:

5.3.2.1 The Contractor's failure to submit requested information within the specified time; or

5.3.2.2 The Contractor's failure to provide all of the requested information; or

5.3.2.3 The Contractor's submission of a subcontractor, installer, or supplier, or qualifications thereof, which are unacceptable in the judgment of the County.

5.3.3 Should the County have reasonable objection to any proposed subcontractor, installer, or supplier, the Contractor shall submit another firm for approval by the County at no additional cost to the County and with no adjustment of the Time for Completion.

ARTICLE 6: WORK BY COUNTY OR BY SEPARATE CONTRACTORS

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

6.1.1 The County reserves the right to perform work related to the Project with its own forces, and to award separate contracts in connection with other portions of the Project or other work on the Site.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford other contractors and the County reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and shall properly connect and coordinate the Work with such other work. The Contractor shall coordinate its Work with the County and other contractors to store its apparatus, materials, supplies and equipment in such orderly fashion at the Site of the Work as will not unduly interfere with the progress of the Work or the work of any other contractors.

6.2.1.1 If the execution or result of any part of the Work depends upon any work of the County or of any separate contractor, the Contractor shall, prior to proceeding with the Work, inspect and promptly report to the County in writing any apparent discrepancies or defects in such work of the County or of any separate contractor that render it unsuitable for the proper execution or result of any part of the Work.

6.2.1.2 Failure of the Contractor to so inspect and report shall constitute an acceptance of the County's or separate contractor's work as fit and proper to receive the Work, except as to defects which may develop in the County's or separate contractor's work after completion of the Work and which the Contractor could not have discovered by its inspection prior to completion of the Work.

6.2.2 Should the Contractor cause damage to the work or property of the County or of any separate contractor on the Project, or to other work on the Site, or delay or interfere with the County's work on ongoing operations or facilities or adjacent facilities or said separate contractor's work, the Contractor shall be liable for the same; and, in the case of another contractor, the Contractor shall attempt to settle said claim with such other contractor prior to such other contractor's institution of litigation or other proceedings against the Contractor.

6.2.3 If such separate contractor sues the County on account of any damage, delay or interference caused or alleged to have been so caused by the Contractor, the County shall notify the Contractor, who shall defend the County in such proceedings at the Contractor's expense. If any judgment or award is entered against the County, the Contractor shall satisfy the same and shall reimburse the County for all damages, expenses, and other costs that the County incurs as a result thereof.

6.2.4 Should Contractor have a dispute with a separate contractor with whom the County has contracted regarding damage to the Work or the property of Contractor or to the Work or property of said separate contractor or with regard to any delays or interferences which either Contractor or said separate contractor has caused to the performance of the other's Work, Contractor agrees to attempt to settle such dispute directly with said separate contractor. Contractor agrees that it will not seek to recover from the County any damages, costs, expenses (including, but not limited to, attorney's fees) or losses of profit incurred by the Contractor as a result of any damage to the Work or property of the Contractor or for any delay or interference caused or allegedly caused by any separate contractor.

6.3 COUNTY'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Article 4 Contractor, the County may clean up and charge the cost thereof to the Contractor responsible therefore as the County shall determine to be just.

ARTICLE 7: MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW, FORUM, AND WAIVER OF JURY TRIAL

7.1.1 This Agreement shall be governed and construed in all respects by its terms and by the laws of the Commonwealth of Virginia. Any judicial action shall be filed in the Commonwealth of Virginia, County of Loudoun. Contractor expressly waives any objection to venue or jurisdiction of the Loudoun County Circuit Court, Loudoun County, Virginia. 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.

7.1.2 Each of the parties irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either party for any claim, demand, action, or cause of action, arising out of this Agreement. Each of the parties hereby agrees and consents that any such claim, demand, action, or cause of action shall be decided by court trial without a jury.

7.2 PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

7.3 SUCCESSORS AND ASSIGNS

7.3.1 The County and the Contractor each binds itself, its 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 of its rights or obligations under the Contract including, but not limited to, any monies due to it or to become due, without the previous written consent of the County and the Contractor's Surety.

7.3.2 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.

7.4 RIGHTS AND REMEDIES

7.4.1 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.

7.4.2 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.

7.4.3 Contractor agrees that it 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.

7.5 SEVERABILITY

7.5.1 In the event that any provision of this Contract shall be adjudged or decreed to be invalid, by a court of competent jurisdiction 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.

7.6 TESTS

7.6.1 If the Contract Documents, laws, ordinances, rules, regulations, permits, resolutions or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the County at least a twenty-four (24) hour notice of its readiness so that the County or the A/E or other representatives of the County may observe such inspection, testing or approval. The Contractor shall bear all

costs of such inspections, tests or approvals conducted by public authorities. 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 include, but are not limited to, the testing of cast-in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings, and steel framing connections.

7.6.2 All materials and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, examination or test by the County, A/E, and other representatives of the County, at any and all times during the manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. Special, full-sized and performance tests shall be as described in the specifications. Without additional charge, the Contractor shall furnish promptly all reasonable facilities, labor and materials necessary to make tests safe and convenient.

7.6.3 The selection of bureaus, laboratories and/or agencies for the inspection and tests of supplies, materials or equipment shall be subject to the approval of the County. Satisfactory documentary evidence, including but not limited to certificates of inspection and certified test reports, that the material has passed the required inspection and tests must be furnished to the County, with a copy to the A/E, by the Contractor prior to the incorporation of the materials in the Work or at such times as to allow for appropriate action by the County.

7.6.4 Inspection or testing performed exclusively for the Contractor's convenience shall be the sole responsibility of the Contractor. Tests required by Contractor's or subcontractor's error, omission or non-compliance with the Contract Documents, shall be paid for by the Contractor.

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

7.7 NO SMOKING

7.7.1 Smoking in all County facilities is prohibited regardless of whether the facility is in use, under renovation or under construction. The County may designate a smoking area outside County facilities. Contractor shall only use those designated smoking areas. Certain County facilities, both inside and outside, may be entirely smoke free. Contractor shall inquire of the Contract Administrator or designee if a facility is entirely smoke free. Failure to adhere to the County’s no smoking policies may lead to removal of Contractor employees and possible Contract termination.

ARTICLE 8: CONTRACT TIMES

8.1 COMMENCEMENT OF THE WORK

8.1.1 The date of commencement of the Work is the date established in the Notice to Proceed. It is the intent of the County's to issue the Notice to Proceed no later than sixty (60) calendar days after the execution of the County – Contractor Agreement or the completion of the Kick-Off Meeting, whichever is later. The intent of the sixty (60) day period is to provide a reasonable time for: the Contractor to complete e-Builder training (if required); submit and receive final approval of all preconstruction submittals identified in the contract documents including, but not limited to, the payment and performance bonds and insurance requirements; to attend the preconstruction meeting to submit and receive final approval for all material and equipment submittals required by the Project plans and specifications; purchase all material and equipment required to complete the Project. Failure to complete these preconstruction requirements with in the sixty (60) day period allocated, may be cause for the County, at its sole discretion, to terminate the Contract per Article 15 herein or issue the Notice to Proceed with deficiencies and limitations noted. Should the County issue a Notice to Proceed with deficiencies and limitations noted there will be no adjustment of the Time for Completion or Contract Times. Under no circumstances will the Notice to Proceed be issued without verification that the Contractor has obtained all the insurance required by the contract documents and provided a Performance Bond and a separate Labor and Material Payment Bond in a form acceptable to the County.

8.1.2 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. The Contractor shall commence Work no later than ten (10) days after the date established in the Notice to Proceed.

8.1.3 In the event the Contractor, for matters of its convenience, wishes to begin work later than 10 days from the date of Notice to Proceed. The Contractor shall promptly make such a request in writing to the Construction Manager. If the Contractor's requested start date is acceptable to the Construction Manager, the Contractor will be notified in writing; however, the Time for Completion 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 Construction Manager, is insufficient to accomplish the Work nor shall it relieve the Contractor of its 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 County executes the Contract. The Contractor shall notify the Construction Manager at least 48 hours prior to the date on which he plans to begin the Work.

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

8.2.2 The Contractor shall begin the Work on the Commencement Date as defined herein and shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial and Final Completion as required by the Contract Documents.

8.3 CLAIMS FOR TIME EXTENSIONS

8.3.1 Excusable Non-Compensable Delays: The time during which the Contractor is delayed in the performance of the Work by 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; **provided however, that Contractor shall give the County and A/E written notice of the delay within fourteen (14) days of the inception of the delay. Contractor shall also give written notice to the County and A/E of the termination of the delay not more than fourteen (14) days after such termination.** If the County agrees with the existence and the impact of the delay, County shall extend the Contract Times as warranted for the length of time that the date of Substantial Completion or Final Completion was actually delayed thereby and the Contractor shall not be charged liquidated or actual damages for delay during the period of extension. Contractor shall not be due compensation or damages of any kind, under any theory of law, as a result of such delay, or acceleration of Work as a result of such delay.

8.3.2 Excusable Compensable Delays: If and to the extent that Contractor is unreasonably delayed at any time in the progress of the Work by any acts or omissions of the County, its agents, or employees due to causes within the County's control, and the Contractor intends to request an extension of either the Time for Completion or Final Completion Date, and/or additional compensation for damages, if any, caused by the delay, then **Contractor shall notify the County and A/E immediately at the time of the occurrence giving rise to the delay by the fastest means available and shall give written notice of the delay no later than two (2) business days after the inception of the delay.** The Contractor's written notice shall specify the nature of the delay, the cause of the delay, and the impact of the delay on Contractor's Construction Schedule. The County shall have three (3) business days to respond to the Contractor's notice by providing a remedy, resolution, or direction to alleviate the delay, or a rejection of the delay. The County's failure to respond shall be deemed a rejection of the Contractor's claim for delay. **The Contractor shall also give a written notice of the termination of the delay not more than fourteen (14) days**

after such termination. If and to the extent that the delay is cause by the County or A/E taking actions permitted or required by the Contract, then Contractor shall be entitled to an extension of time or additional compensation only for the portion of the delay that is unreasonable, if any.

8.3.3 Non-Excusable Non-Compensable Delays: The Contractor shall not be entitled to an extension of the Time for Completion or Final Completion Date or to any additional compensation for delays if and to the extent that the delays are caused by 1) the acts, omissions, fault, or negligence of the Contractor or its subcontractors, agents, or employees, or due to foreseeable causes within their control including, but not limited to, delays from Defective Work (including workmanship and/or materials); from rejected Work that must be corrected before the Work can proceed; from incorrect, incomplete, or unacceptable Submittals or samples; or from the failure to furnish enough skilled workers, proper materials, or necessary equipment to diligently perform the Work in a timely manner according to the Construction Schedule; or 2) due to causes that would entitle the County to recover delay costs or damages.

8.3.4 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. No extension of time or additional compensation, if applicable, will be granted for any delay unless the claimed delay directly affects the critical bath of an approved CPM schedule or other Construction Schedule required by the Contract.

8.3.5 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.

8.3.6 No time extensions will be granted as a result of the Contractor's improper or unreasonable scheduling or for the Contractor's failure to have Shop Drawings, Product Data, Samples, or Manuals submitted in ample time for review under a reasonable and agreed upon schedule.

8.3.7 Delays by subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated herein.

8.3.8 The Contractor acknowledges and agrees that actual delays due to changes, suspension of work or excusable delays, in activities which according to the schedule do not affect the Contract Time will not be considered to have any effect upon the Contract Time and therefore will not be the basis for a time extension.

8.3.9 The Contractor acknowledges and agrees that time extensions will be granted only to the extent that: (a) excusable delays exceed the available Float Time 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.

8.3.10 With respect to Suspensions of Work under Paragraph 3.6 Suspension of Work 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 Article and the other requirements of the Contract Documents that a further extension is justified and warranted) if the claim is submitted in accordance with the requirements of this Article, and if the suspension is not due to any 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 Article.

8.3.11 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 as set forth herein. 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. **The failure to give written notice of either the inception or termination of the cause of delay or the failure to submit a claim for an extension of time and/or monetary compensation within the time periods prescribed herein shall constitute a waiver of that claim.**

8.4 CHANGE ORDER WORK

8.4.1 The Contractor shall make every reasonable effort to perform Change Order Work within the Contract Time and in such manner as to have minimum delaying effects on all remaining Work to be performed under the Contract. If, however, the Change Order Work results in an unavoidable increase in the time required to complete the project, an extension of the Contract Time may be granted to the Contractor for the Change Order Work. The Contractor's request therefor shall be determined in accordance with the provisions of Article 8.3 Claims for Time Extensions herein and as follows:

8.4.1.1 If the time required for performance of the Change Order Work has an unavoidable direct delaying effect on the primary sequence of Work activities remaining after rescheduling (e.g., the critical path in CPM type scheduling), the overall Contract time may be extended by the minimum number of days required for the Change Order Work as mutually agreed upon by the County and the Contractor.

8.4.1.2 If the time required for performance of the Change Order Work does not have an unavoidable direct delaying effect on the primary sequence of Work activities but is ordered by the County at a time such that insufficient time remains for completion of the Change Order Work (and any limited number of contingent Work activities), the Contract Times

may be extended by the minimum number of days required for the Change Order Work as mutually agreed upon by the County and the Contractor but only for the Change Order Work and contingent activities, all other unaffected Work shall be performed within the Contract Times;

8.4.1.3 Failure of the County and the Contractor to agree on a time extension as specified in .1 and .2 above shall not relieve the Contractor from proceeding with and performing the Change Order Work promptly, as well as in such manner as to have minimal delaying effects on all remaining Work to be performed under the Contract. Such disagreement shall be resolved as soon as practical by negotiation.

8.5 LIQUIDATED DAMAGES FOR DELAY

8.5.1 Agreed Compensation/Liquidated Damages for Contractor Delay: If the Contractor fails to complete the Work within the Time for Completion or the Final Completion Date, the Contractor shall be liable to the County in the amounts set forth in the County-Contractor Agreement, if any, not as a penalty, but as fixed, agreed, and liquidated damages for delay until the Work is substantially or finally completed as the case may be. If liquidated damages are not so fixed in the Agreement, the Contractor shall be liable for any and all actual damages sustained as a result of delay. In addition to damages for delay, whether liquidated or actual, the Contractor shall also be liable for any and all actual damages sustained by the County as a result of any other breach of the Contract, including, but not limited to, Defective Work and abandonment of the Contract. The Contractor waives any and all defenses as to the validity of any liquidated damage provisions in the Contract Documents, or of any liquidated damages assessed against the Contractor, on the grounds that such damages are void as penalties or are not reasonably related to actual damages.

8.5.2 Compensation for County Delay: If and to the extent that the Contractor is entitled to an extension in the Time for Completion or Final Completion Date and claims additional compensation is due purely as a result of an unreasonable delay by the County pursuant to section 8.3.2 above, the Contractor shall provide written documentation substantiating Contractor's claim for additional compensation for each day of the delay.

8.5.3 If the Contractor submits a frivolous claim for delay damages, the Contractor shall be liable to the County for a percentage of all costs incurred by the County in investigating, analyzing, negotiating, and litigating or arbitrating the claim, which percentage shall be equal to the percentage of the Contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact. (§ 2.2-4335, *Code of Virginia*)

8.5.4 Any change in the Contract Time for Completion or Final Completion Date shall be accomplished only by issuance of a Change Order.

8.6 TIME EXTENSIONS FOR WEATHER

8.6.1 The Contract Times will not be extended due to inclement weather conditions that are normal to the general locality of the Site. The time for performance of this Contract is in calendar days and all requests for time extensions due to inclement weather shall be made in calendar days.

8.6.2 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

8.6.3 The Contractor, in its planning and scheduling of the Work as required by the Contract Documents, shall allow for the normal inclement weather for the locality of the Site. If the Contractor believes that the progress of the Work has been adversely affected and that it will directly result in a failure to meet a Contract Milestone date, Substantial or Final Completion within the Contract Times, by weather conditions above and beyond the amount normally expected, it shall submit a written request to the County with a copy to the A/E for an Extension of Time, pursuant to Paragraph 8.3 Claims for Time Extensions. Such requests shall be evaluated by the County in accordance with the provisions of the Contract Documents.

8.6.4 The Contractor shall not be entitled to any money damages whatsoever for any delays resulting from inclement weather, whether normal or abnormal, foreseeable or unforeseeable. The Contractor and County stipulate and agree that for delays due to weather, the Contractor's sole relief is a time extension granted in accordance with this Article 8.6 Time Extensions for Weather.

ARTICLE 9: PAYMENTS AND COMPLETION

9.1 CONTRACT PRICE

9.1.1 The Contract Price is stated in the County-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the County to the Contractor for the performance of the Work under the

Contract Documents. The Contract Price includes, but is not limited to, the Contractor's profit and general overhead and all costs and expenses of any nature whatsoever (including without limitation taxes, labor and materials), foreseen or unforeseen, and any increases in said costs and expenses, foreseen or unforeseen, incurred by the Contractor in connection with the performance of the Work, all of which costs and expenses shall be borne solely by the Contractor. The Contractor agrees to assume all increases in costs of any nature whatsoever that may develop during the performance of the Work.

9.2 SCHEDULE OF VALUES

9.2.1 For Lump Sum Price Type Contracts, before the pre-construction meeting, the Contractor shall submit to the County and A/E, a schedule of values allocated to the various portions of the Work, prepared on payment forms provided by the County and supported by such data to substantiate its accuracy as the County may require. This schedule of values, unless rejected by the County, shall be used as a basis for the Contractor's Applications for Payment.

9.2.2 For Unit Price type Contracts, the Contractor shall utilize the payment request form provided by the County, wherein the schedule of values shall correspond with the individual unit price bid items. When so requested by the County, the Contractor shall provide a more detailed cost breakdown of the unit price items.

9.2.3 Contractor may include in its schedule of values a line item for "mobilization" which shall include a reasonable amount for mobilization for the Contractor and its subcontractors. The Contractor shall not front-end load the schedule of values.

9.3 APPLICATION FOR PAYMENT

9.3.1 The Contractor shall submit to the A/E three (3) originally executed, itemized Applications for Payment (and one (1) copy to the County) or the Applications for Payment shall be submitted electronically through e-builder if so directed by the County; on or about the day of each month designated in Article 4 of the County-Contractor Agreement. The Application for Payment shall include for approval, an updated monthly Construction Schedule and Narrative, all supporting material documentation, Stored Materials documentation to include cost, on-site test results, Daily Contractor Quality Control Reports, Daily Work Reports, Weekly Safety Meetings, and 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 and materials provided by its subcontractors and suppliers as part of the Work pursuant to the Virginia Code § 2.2-4354 and section 9.5.3 herein.** Contractor's

certification shall be signed by the preparer of the Application for Payment. The Application for Payment shall include the seal or stamp of the notary who witnessed this signature.

9.3.2 Payment may be made for the value of materials, which are to be incorporated into the finished Work, and which are delivered to and suitably stored and protected on the Site. The Contractor shall provide releases or paid invoices from the Supplier 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 Site without the County's written permission.

9.3.3 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 Paragraph 9.3.2 and the additional requirements hereinafter specified. Material stored off-site under this provision shall be included in the definition of Work, Article 1 Contract Documents.

9.3.3.1. The requirements of Paragraph 10.2 Safety of Persons and Property are fully applicable to materials stored off-site.

9.3.3.2 For purposes of administering this provision, the following definitions are provided.

a. Material stored NEAR the Work Site: A storage location shall be considered near the Site if it is not more than fifty (50) miles (approximately a one-hours drive) from the Work Site.

b. Material stored DISTANT from the Work Site: Locations beyond the limit of fifty (50) miles shall be considered distant.

9.3.3.3 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.

9.3.3.4 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 and duly protected as required in Article 10.2 Safety of Persons and Property. 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.

9.3.3.5 For materials stored distant to the 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 Site.

9.3.3.6 Except for unusual circumstances, the Contractor will not be required to reimburse the County's costs for visits to storage locations near the Site.

9.3.3.7 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 Site for installation and incorporation into the Work.

9.3.3.8 The Contractor shall provide to the County, a Release of Lien or other suitable certification by the Supplier, in addition to paid invoices, verifying that the Contractor has valid title to all materials for which payment is requested. The Supplier, however, shall not be required to waive its rights for recovery, if its contract is breached.

9.3.4 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 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 Supplier or otherwise imposed by the Contractor or such other person.

9.3.5 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 its Application for Payment, the Contractor also represents that it has no knowledge that any subcontractor or suppliers have not been fully and timely paid and that, insofar as it 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. Contractor’s Application for Payment shall include a certification statement confirming the aforementioned and shall be signed by the preparer of the Application for Payment. The Application for Payment shall include the seal or stamp of the notary who witnessed this signature.

9.3.6 If required by the County-Contractor Agreement, the Contractor shall, concurrent with its 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 it 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 Price does not exceed the proportion of the Contract Times expired as of the time of the request.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 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 Paragraph 9.6 Payments Withheld, if any.

9.4.2 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.

9.4.3 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 as provided in Article 2 Architect/Engineer 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. Contractor’s Application for Payment shall include certification statement confirming the aforementioned and shall be signed by the A/E responsible for this evaluation. 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 Price.

9.5 PROGRESS PAYMENTS

9.5.1 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, less five percent (5%) retainage which is being held to assure faithful performance; provided however, that said retainage is not applicable to Time and Material Change Orders.

9.5.2 In relation to punch list or other uncompleted Work and in lieu of a portion of the above-specified five percent (5%) retainage, the 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.

9.5.3 The Contractor shall, within seven (7) days after receiving payment from the

9.5.3.1 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

9.5.3.2 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.

9.5.4 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.

9.5.5 The Contractor shall provide the County with its social security number, if an individual, or its federal identification number if a corporation, partnership, or proprietorship.

9.5.6 The Contractor shall be obligated to pay unpaid subcontractors interest on payments that are not made in accordance with this Article 9.5 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 Article 9.5 Progress Payments.

9.5.7 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.

9.5.8 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.

9.5.9 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.

9.6 PAYMENTS WITHHELD

9.6.1 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 subparagraph 9.4.3 and to recommend payment in the amount of the application, he will notify the County as provided in subparagraph 9.4.1. If the Contractor and the County cannot agree on a revised amount, the County will promptly issue a Certificate for Payment for the amount for which it 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.

9.6.2 The County may withhold from the Contractor so much of any payment approved by the A/E, as in the judgment of the County be necessary:

9.6.2.1 To protect the County from loss due to defective Work not remedied;

9.6.2.2 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;

9.6.2.3 To protect the County upon reasonable evidence that the Work will not be completed for the unpaid balance of the Contract Price;

9.6.2.4 To protect the County upon reasonable evidence that the Work will not be completed within the Contract Times, or any Contract Milestones as established by this Contract; or

9.6.2.5 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.

9.7 FAILURE OF PAYMENT

9.7.1 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 Price 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.

9.8 SUBSTANTIAL COMPLETION AND GUARANTEE BOND

9.8.1 Unless otherwise specified in Article 9.9 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 as defined herein, 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:

9.8.1.1 If applicable, secure a Certificate of Occupancy for the Project or a designated portion thereof; and

9.8.1.2 Submit five (5) copies each of the Operations and Maintenance Manuals to the A/E as specified and one (1) copy to the County.

9.8.2 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.

9.8.3 When the County on the basis of its 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.

9.8.4 The Contractor shall have the number of days from the Date of Substantial Completion as shown in County – Contractor Agreement 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.

9.8.5 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 9.8.4, all warranties and guarantees for such incomplete Punch List items shall become effective upon issuance of final payment for the project.

9.8.5.1 The Contractor shall guarantee for a term of one (1) year from the date of 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 its 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.

9.8.5.2 In order to make good the guarantee as herein required, the Contractor shall deposit with the County, after Substantial Completion but before Final Payment, a Guarantee Bond(s) issued by a surety licensed to do business in Virginia and otherwise acceptable to the County, 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.

9.8.5.3 The Contractor shall complete repairs during the guarantee 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 its surety to the County for non-performance of the Contractor's obligations at any time.

9.8.6 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.

9.8.7 Upon Substantial Completion of the Work, or designated portion thereof, and upon application by the Contractor and certification by the A/E, 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.

9.8.8 Should the County determine that the Work or a designated portion thereof is not substantially complete, it 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.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 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.

9.9.1.1 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.

9.9.2 For all projects where Substantial Completion Certificates have been issued for various portions of the Work, at differing times, the Contractor shall request and the County shall, prior to final payment, issue a Certificate of Final Completion which certifies that all required Work, including punch list items, has been completed in accordance with the Contract Documents.

9.9.3 Neither the final payment nor any remaining retainage shall become due until the Contractor submits to the A/E the following:

9.9.3.1 An Application for Payment for all remaining monies due under the Contract.

9.9.3.2 Consent of surety, if any, to final payment;

9.9.3.3 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 the County 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;

9.9.3.4 As-built drawings, operation and maintenance manuals and other project closeout submittals, as required by the Contract Documents;

9.9.3.5 Construction releases as required by the Contract Documents from each property owner on whose property an easement for construction of this project has been obtained by the 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

9.9.3.6 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.

9.9.4 Upon receipt of the documents required in subparagraph 9.9.3 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 Subparagraph 9.9.3 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 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.

9.9.5 The making of Final Payment shall constitute a waiver of all claims by the

County, except those arising from:

9.9.5.1 Unsettled claims;

9.9.5.2 Faulty, defective, or non-conforming Work discovered or appearing after Substantial or Final Completion;

9.9.5.3 Failure of the Work to comply with the requirements of the Contract Documents;

9.9.5.4 Terms of any warranties or guarantees required by the Contract Documents; or

9.9.5.5 Fraud or bad faith committed by the Contractor or any subcontractor or supplier during performance of work but discovered by County after Final Payment.

9.9.6 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 its sureties from any obligations under this Contract or the Performance or the Guarantee Bonds.

ARTICLE l0: PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

10.2.1.1 All employees on the Work and all other persons who may be affected thereby;

10.2.1.2 All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody or control of the Contractor or any of its subcontractors or sub-subcontractor's. Machinery, equipment and all hazards shall be guarded or eliminated in accordance with the safety provisions of the Manual of Accident Prevention in Construction published by the Associated General Contractors of America, to the extent that

such provisions are not in contravention of applicable law; and

10.2.1.3 Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, permits, resolutions and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

The Contractor shall at all times safely guard the County's property from injury or losses in connection with the Contract. The Contractor shall at all times safely guard and protect the Work and adjacent property as provided by law and the Contract Documents, from damage. All passageways, guard fences, lights and other facilities required for protection by local authorities or local conditions must be provided and maintained without additional cost to the County.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.5 The Contractor is responsible for the proper packing, shipping, handling and storage (including but not limited to shipment or storage at the proper temperature and humidity) of materials to be incorporated in the Work, so as to insure the preservation of the quality and fitness of the material for proper installation and incorporation in the Work, as required by the Contract Documents. For example, but not by way of limitation, Contractor shall, when necessary, place material on wooden platforms or other hard and clean surfaces and not on the ground and/or place such material under cover or in any appropriate shelter or facility. Stored materials or equipment shall be located so as to facilitate proper inspection. Material and equipment that is delivered crated shall remain crated until ready for installation. Lawns, grass plots or other private property shall not be used for storage purposes without the written permission of the County or lessee unless otherwise within the terms of the easements obtained by the County.

10.2.6 In the event of any indirect or direct damage to public or private property referred to in sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by an act, omission, or negligence on the part of the Contractor, any subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, the Contractor shall at his own expense and cost promptly remedy and restore such property to a condition equal to or better than existing

before such damage was done. The Contractor shall perform such restoration by underpinning, replacing, repairing, rebuilding, replanting, or otherwise restoring as may be required or directed by the County, or shall make good such damage in a satisfactory and acceptable manner. In case of failure on the part of the Contractor to promptly restore such property or make good such damage, the County may, upon two (2) calendar days written Notice, proceed to repair, replace, rebuild or otherwise restore such property as may be necessary and the cost thereof, or a sum sufficient in the judgment of the County to reimburse the owners of property so damaged, will be deducted from any monies due or to become due the Contractor under the Contract.

10.2.7 The Contractor shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents and the protection of material, equipment and other property. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the County.

10.2.8 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger the safety of any portion of the Work.

10.2.9 The Contractor shall give notice in writing at least forty-eight (48) hours before breaking ground, to all persons, public utility companies, owners of property having structures or improvements in proximity to Site of the Work, superintendents, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise, who may be affected by the Contractor's operation, in order that they may remove any obstruction for which they are responsible and have representative(s) on-site to see that their property is properly protected. Such notice does not relieve the Contractor of responsibility for any damages and claims. Nor does such notice relieve the Contractor from his responsibility to defend and indemnify the County from actions resulting from the Contractor’s performance of such Work in connection with or arising out of the Contract.

10.2.10 The Contractor shall protect all utilities encountered while performing its Work, whether indicated on the Contract Drawings or not. The Contractor shall maintain utilities in service until moved or abandoned. The Contractor shall exercise due care when excavating around utilities and shall restore any damaged utilities to the same condition or better as existed prior to starting the Work, at no cost to the County. The Contractor shall maintain operating utilities or other services, even if they are shown to be abandoned on the Contract Drawings, in service until new facilities are provided, tested and ready for use.

10.2.11 The Contractor shall return all improvements on or about the Site and adjacent property which are not shown to be altered, removed or otherwise changed to conditions which existed prior to starting Work.

10.2.12 The Contractor shall protect the Work, including but not limited to, the Site, stored materials and equipment, excavations, and excavated or stockpiled soil or other material, intended for use in the Work, and shall take all

necessary precautions to prevent or minimize damage to same and to prevent detrimental effect upon its performance or that of its subcontractors, caused by or due to rain, snow, ice, run-off, floods, temperature, wind, dust, sand, and flying debris. For example, but not by way of limitation, Contractor shall, when necessary, utilize temporary dikes, channels or pumping to carry-off, divert or drain water, and shall as necessary tie-down or otherwise secure the Work and employ appropriate covers and screens.

10.3 OBLIGATION OF CONTRACTOR TO ACT IN AN EMERGENCY

10.3.1 In case of an emergency that threatens immediate loss or damage to property and/or safety of life, the Contractor shall act to prevent threatened loss, damage, injury or death. The Contractor shall notify the County of the situation and all actions taken immediately thereafter. If the Contractor fails to act and any loss, damage, injury or death occurs that could have been prevented by the Contractor's prompt and immediate action, the Contractor shall be fully liable to the County or any other party for all costs, damages, claims, actions, suits, costs of defense, and all other expenses arising therefrom or relating thereto.

10.3.2 Prior to commencing Work and at all times during the performance of the Work, the Contractor shall provide the County two (2), twenty-four hour (24) emergency phone numbers where his representatives can be contacted.

ARTICLE 11: INSURANCE

11.1 CONTRACTOR'S INSURANCE REQUIREMENTS

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

11.1.2 The Contractor shall, during the continuance of all Work under the Contract provide, and require that its subcontractors provide, the following:

11.1.2.1 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.

11.1.2.2 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 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.

11.1.2.3 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 Work, will be insured under either a standard Automobile Liability policy, or a Comprehensive General Liability policy.

11.1.2.4 Builder's Risk Policy:

The Contractor shall provide Builder's Risk and Fire and Extended Coverage insurance to protect the County and Contractor and subcontractors. Such insurable value shall reflect any increases to the Contract amount through Change Orders. Policy to be in Builder's Risk Completed Value forms, including the following:

a. Policies shall be written to include the names of Contractors and County and the words "as their interest may appear";

b. All insurance shall be in effect on or before the date when construction Work is to commence; and

c. All insurance shall be maintained in full force and effect until the final acceptance of the project by the County.

11.1.2.5 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.

11.1.3 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.

11.1.3.1	Workers' Compensation	
	Coverage A:	Statutory
	Coverage B:	$100,000
11.1.3.2	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

11.1.3.3 Automobile Liability:

Combined Single Limit:	$1,000,000

11.1.3.4 Builders' Risk 100% of Value*

*100% of the insurable value of the Contract. Insurable value does not include Site acquisition, Site work, grading, infrastructure etc.

11.1.3.5 Boiler & Machinery: (If Applicable) $1,000,000

11.1.4 The following provisions shall be agreed to by the Contractor:

11.1.4.1 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.

11.1.4.2 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:

a. Agree to provide, prior to commencing work under the Contract, certificates of insurance evidencing the above coverage for a period of five (5) years after final payment for the Contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's or subcontractor's work under this Contract, or

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.

11.1.4.3 a. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A: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.

11.1.4.4 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.

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

11.1.4.6 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.

11.1.5 Contractual and other Liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the 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.

11.1.6 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.

11.1.7 Precaution shall be exercised at all times for the protection of persons (including employees) and property. 11.1.8 The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act

of 1970, Public Law 91-956, as it may apply to this Contract.

11.1.9 Any loss insured under subparagraph 11.1.2.4 is to be adjusted with 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.

11.1.10 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.

11.1.11 If an "ACORD" Insurance Certificate form is used by the Contractor's insurance agent, the words "endeavor to" and ". . . but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted.

11.1.12 The Contractor agrees to waive all rights of subrogation against the County, its officers, employees, and agents.

ARTICLE 12: CHANGES AND MODIFICATIONS IN THE WORK

12.1 CHANGES IN THE WORK

12.1.1 The County, without invalidating the Contract and without Notice to the surety, may order a Change or Modification in the Work consisting of additions, deletions or other revisions to the general scope of the Contract, or changes in the sequence of the performance of the Work. The Contract Price and the Contract Times shall be adjusted accordingly. All such Modifications in the Work shall be authorized by written Change Order, and all Work involved in a Change shall be performed in accordance with the terms and conditions of this Contract. If the Contractor should proceed with a Change in the Work upon an oral order, by whomsoever given, it shall constitute a waiver by the Contractor of any claim for an increase in the Contract Price and/or Contract Times, on account thereof.

12.2 FIELD ORDER

12.2.1 A Field Order may be issues to interpret or clarify the Contract Documents

or to direct the Contractor to perform minor changes in the Work. A minor change in the Work is a change not involving adjustment in the Contract Price or an extension of the Contract Times and is not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the County and the Contractor. The Contractor shall carry out such orders promptly. Any Work relating to the issuance of a Field Order shall be performed promptly and expeditiously and without additional cost to the County and within the Contract Times, unless the Contractor submits a Proposed Change Order, defined below, which is approved by the County. Field Orders shall be numbered consecutively by date of issuance by the County.

12.3 REQUEST FOR PROPOSAL

12.3.1 A Request for Proposal may be submitted by the County to the Contractor to propose a Change in the Work. The Contractor is required to submit a complete proposal for the total cost and additional time, if any, necessary to perform the proposed Change in the Work. Requests for Proposals shall be numbered consecutively by date of issuance by the County.

12.3.1.1 A Request for Proposal may request that the Contractor provide a lump sum proposal for the County's consideration.

12.3.1.2 A Request for Proposal may request that the Contractor provide a unit price proposal for the County's consideration.

12.3.1.3 A Request for Proposal may authorize the Contractor to proceed with a change in scope on a Time and Material basis.

12.4 PROPOSED CHANGE ORDER

12.4.1 A Proposed Change Order is a written request from the Contractor to the County requesting a change in the Contract Price and/or Contract Times. A Proposed Change Order is submitted as a proposal in response to a Request for Proposal or as a claim for an increase in the Contract Price or Contract Times pursuant to the issuance of a Field Order, or as a result of unforeseen circumstances, such as an unknown Site conditions. Upon discovery of any potential changed conditions the Contractor shall notify the County in writing within three (3) calendar days. Change Orders for unforeseen Site conditions will only be entertained if the Contractor has not accepted responsibility for the unforeseen Site conditions pursuant to other provisions in the Contract Documents. A Proposed Change Order must be submitted within twenty (20) calendar days of the issuance of a Request for Proposal or a Field Order or the discovery of a potential changed condition and must bear the signature of the Proposed Change Order preparer. The Contractor shall not be entitled to time and/or costs of any nature from the County as a result of its failure to comply with this provision. Proposed Change Orders shall be numbered consecutively by date of issuance by the Contractor. The Contractor shall also indicate on the Proposed Change Order the number of the Request for Proposal or the Field Order to which it

responds.

12.4.2 In the case of unit price items, it is understood and agreed by the Contractor that the estimates of the quantities in unit price items are approximate only and presented solely for the purpose of comparing bids and may not represent the actual amount of work to be performed. The Contractor, therefore, understands and agrees that the County reserves the right to increase, decrease, or eliminate entirely the quantity of work to be done under any item. If called upon to do more work under any unit price item named in the Bid Documents, the Contractor will perform all such additional work and accept as payment the unit price named in the proposal, subject to the twenty percent (20%) deviation limitations specified in subparagraph

12.4.2.1 The Contractor's Proposed Change Order shall be determined by applicable unit prices, if any, as set forth in the Contract.

12.4.2.2 However, if changes in quantities are greater or lesser than twenty percent (20%) of the original bid quantity the County or the Contractor shall have the right to request a decrease or an increase in the unit price for the quantity greater than one hundred twenty percent (120%) or less than eighty percent (80%) of the original bid quantity.

12.4.2.3 It shall be understood that such unit prices shall constitute full payment for the extra work performed, including, but not limited to, “general conditions” costs, plant, materials, labor, equipment, overhead, profit, and safety requirements.

12.4.3 If no such unit prices are set forth, the Contractor's proposal shall be on a lump sum basis and shall be itemized and segregated by labor, equipment, and materials for the various components of the Change in the Work (no aggregate labor total will be acceptable) and shall be accompanied by signed proposals of any subcontractors who will perform any portion of the Change in the Work and of any persons who will furnish materials or equipment for incorporation therein.

12.4.3.1 The portion of the proposal relating to labor, whether by the Contractor's forces or the forces of any of its subcontractors, may include reasonably anticipated gross wages of Job Site labor, including foremen, who will be directly involved in the Change in the Work (for such time as they will be so involved), plus separately identified payroll costs (including premium costs of overtime labor, if overtime is authorized, Social Security, Federal or State unemployment insurance taxes and fringe benefits required by collective bargaining agreements entered into by the Contractor or any such subcontractor in connection with such labor).

12.4.3.2 The portion of the proposal relating to materials may include the reasonably anticipated direct costs to the Contractor or to any of its subcontractors of materials to be purchased for incorporation in the Change in the Work, plus transportation

and applicable sales or use taxes.

12.4.3.3 The proposal may further include the Contractor's and any of its subcontractor's reasonably anticipated equipment rental costs, except small hand tools, in connection with the Change in the Work.

12.4.4 Base Cost is defined as the total of labor, material and equipment rentals as described in subparagraphs 12.4.3.1, 12.4.3.2 and 12.4.3.3. The actual net cost in money to the County for the Change in the Work shall be computed as follows:

12.4.4.1 If the Contractor performs the Change in the Work without use of subcontractors or sub-subcontractors, its compensation will be the Base Costs as described above, plus a maximum mark-up of fifteen percent (15%) for overhead and profit.

12.4.4.2 If the Work is performed by a bona fide subcontractor, its compensation will be the Base Costs as described above plus a maximum mark-up of fifteen percent (15%) for overhead and profit. The Contractor's compensation will be a maximum mark-up of five percent (5%) of the subcontractor's Base Costs for its overhead and profit.

12.4.4.3 If the Work is performed by a bona fide sub-subcontractor, its compensation will be the Base Costs as herein described plus a maximum mark-up of fifteen percent (15%) for overhead and profit. The mark-up for overhead and profit of any sub-subcontractor's work by the Contractor and all intervening tiers of subcontractors shall not exceed a total of ten percent (10%) of the sub-subcontractor's Base Costs.

12.4.5 The mark-up on the cost of labor, materials, and equipment described in Paragraphs 12.4.4.1, 12.4.4.2, and 12.4.4.3 shall compensate the Contractors, subcontractor and sub-subcontractor for all indirect costs associated with or relating to the Change in the Work including, but not limited to, labor and/or equipment inefficiency, changes in sequence, delays, interferences, impact on unchanged work, gross receipts tax, superintendent, small tools, reproduction, administration, insurance, unrelated safety requirements, estimating, scheduling, preparation of Proposed Change Order documents, project management, quality control management, temporary structures and offices, all other general and administrative, home office and field office expenses.

12.4.6 The Proposed Change Order may also include the cost of increases in premiums for the Standard Labor and Material Payment Bond and the Standard Performance Bond, provided coverage for the cost of the Change in Work results in such increased costs. At the County's request, the Contractor shall provide proof of its notification to the Surety of the change in the Work and of the Surety's agreement to include such change in its coverage. The cost of the increase in premiums shall not be marked up.

12.4.7 In the event that it is necessary to increase the Contract Times in order to perform the Change in the Work, the Contractor shall provide an estimate

of the increase in the Contract Times as part of the Proposed Change Order. The Contractor's request for a time extension shall be evaluated in accordance with the criteria described in Article 8.3 Claims for Time Extensions.

12.4.8 If the Contractor's Proposed Change Order is rejected by the County as being within the scope of the Work required by the Contract Documents the County may, at its sole option and discretion, direct the Contractor to perform the Work which is the subject of the said Proposed Change Order; the Contractor shall then promptly proceed with said Work. Nothing herein shall excuse the timely performance by the Contractor of the Work because any Proposed Change Order is pending.

12.5 CHANGE ORDER

12.5.1 A Change Order is a written order to the Contractor signed by the County, issued after execution of the Contract, authorizing a Change in the Work or an adjustment in the Contract Price and/or the Contract Times. The Contract Price and the Contract Times may be changed only by Change Order. A Change Order signed by the Contractor indicates its agreement therewith, including the adjustment in the Contract Price and/or the Contract Times. Change Orders shall be numbered consecutively by date of issuance by the County and shall, if applicable, indicate the number of the Field Order(s), Request for Proposal(s) and/or Proposed Change Order(s) to which it relates.

12.5.1.1 If the County determines that the Contractor's Proposed Change Order, submitted pursuant to Article 12.4 for a change in the Contract Price or Contract Times, is acceptable, the County shall prepare and issue a Change Order which will authorize the Contractor to proceed with the Change in the Work for the cost and time stated in the Proposed Change Order, or as otherwise may be agreed upon by the parties. The amounts stated in the Change Order for the cost and time to perform the Change in the Work shall be binding on the parties.

12.5.2 After issuance of the Change Order, the Contractor shall ensure that the amount of the Performance and Payment Bond coverage has been revised to reflect the increase in the Contract Price due to the Change Order.

12.5.3 If the Contractor's Proposed Change Order is not acceptable to the County or if the parties are unable to otherwise agree as to the cost and time necessary to perform the Change in the Work, the County may, at its sole option and discretion, direct the Contractor to perform the Work on a time and material basis. The Contractor shall then promptly proceed with the Work.

12.5.4 If the County elects to have the Change in the Work performed on a time and material basis, the same shall be performed, whether by the Contractor's forces or the forces of any of its subcontractors or

sub-subcontractors, at actual cost to the entity performing the Change in the Work (without any charge for administration, clerical expense, supervision or superintendent of any nature whatsoever). The percent mark-ups for the Contractor, subcontractors and sub-subcontractor's shall be as described in subparagraphs 12.4.4 and 12.4.5.

12.5.4.1 Prior to starting the Work on a time and material basis, the Contractor shall notify the County in writing as to what labor, materials, equipment or rentals are to be used for the Change in the Work. During the performance of the Change, the Contractor shall submit to the County daily time and material tickets, which shall list the categories and amounts of labor and equipment for which Change Order compensation is to be charged for the previous work day. Such tickets shall specifically include the following information: location and description of the Change in the Work, the classification of labor employed, including names and social security numbers of laborers, labor trades used, man hours, wage rates, insurance, taxes and fringe benefits, equipment and materials suppliers' quotations with detailed break-out and pricing, rental equipment hours and rates, and materials quantities and unit prices and such other evidence of cost as the County may require.

12.5.4.2 The Contractor shall commence submission of daily time and material tickets immediately upon commencement of the Change Order Work and continue to submit them until completion of the Change Order Work. The County may require authentication of all time and material tickets and invoices by persons designated by the County for such purpose.

12.5.4.3 No payment shall be made to the Contractor for any portion of the Change in the Work unless and until such daily time and material tickets and invoices are submitted. The submission of any such ticket or invoice shall not constitute an acknowledgment by the County that the items thereon were reasonably required for the Change in the Work.

12.5.4.4 For any Work performed on a time and material basis, the Contractor shall submit its complete submission of the reasonable actual cost and time to perform the Change in the Work within twenty (20) days after such Work has been completed. The County shall review the costs and time submitted by the Contractor on the basis of reasonable expenditures and savings of those performing the Change in the Work. If such costs and time are acceptable to the County, or if the parties otherwise agree to the actual reasonable cost to perform the Change in the Work, a Change Order will be issued for the cost and time agreed upon. The amounts stated in the Change Order for the cost and time to

perform the Change in the Work shall be binding upon the parties.

12.6 UNILATERAL CHANGE ORDER

12.6.1 In the event that the parties are unable to agree as to the reasonable cost and time to perform the Change in the Work and the County does not elect to have the Change in the Work performed on a time and material basis, the County may issue a unilateral Change Order based on the reasonable cost and time to perform the Change in the Work as determined by the County. Failure of the parties to reach agreement regarding the cost and time of performing the Change in the Work shall not relieve the Contractor from performing the Change in the Work promptly and expeditiously. Any unresolved dispute resulting from the Unilateral Change Order shall be resolved pursuant to the procedure outlined in Article 13 Claims and Dispute Procedure.

12.7 DECREASES AND WORK NOT PERFORMED (Deductive Change Orders)

12.7.1 Should it be deemed expedient by the County to decrease the dimensions, quantity of material or Work, or vary in any other way the Work herein contracted for, the County may direct by written Change Order, such decreases to be made or performed without in any way affecting the validity of the Contract. The Contractor shall, comply with the Change Order from the County. The difference in expense occasioned by such decrease shall be deducted from the amount payable under this Contract.

12.7.2 When work is deleted from the Contract by County, the amounts to be credited to the County shall reflect the same current pricing as if the Work were being added to the Contract at the time the deletion is ordered, and documentation will be required for a credit as specified in Article 12.5.4. If such deleted materials and equipment shall have already been purchased and stored on Site and cannot be used in other projects, returned for credit or cannot be returned for credit at the price paid by the Contractor at the time of purchase, the Contractor shall be entitled, upon proper documentation and certification, to an adjustment in the pricing of the credit to avoid hardship to the Contractor. If necessary in order to establish such reasonable value, the Contractor may be required to submit a detailed breakdown of its original bid for the items or Work involved.

12.7.3 If Work is not performed, and such deletion of Work was not directed or approved by the County, the County shall ascertain the amount of the credit due.

12.7.4 The mark-up for a Deductive Change Order shall be fifty percent (50%) of the mark-up outlined in Article 12.4.4, as applicable.

12.7.5 If a Change Order includes both additions and deletions, the net Base Cost will dictate the mark-up for overhead and profit.

12.8 CHANGES IN LINE AND GRADE

12.8.1 The County reserves the right to make such alterations in the line and grade of various structures or pipe lines shown on the drawings, as may be necessitated by conditions found during construction or that in the judgment of the County appears advisable. Such alterations shall in no way affect the validity of the Contract

12.8.1.1 In case of a unit price contract, if such changes increase the amount of the Work or materials, the Contractor will be paid according to the quantity of Work actually done at the prices established for such Work under the Contract.

12.8.1.2 In case of a lump sum contract, the price for the Work shall be determined as specified in Article 12.4 Proposed Change Order.

12.9 SUBSURFACE CONDITIONS FOUND DIFFERENT

12.9.1 Should the Contractor encounter (a) subsurface and/or latent conditions at the Site materially differing from those shown on the drawings or indicated in the specifications, or (b) unusual physical conditions at the Site of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract and which were not reasonably anticipated, he shall immediately give Notice to the County of such conditions before they are disturbed. The County shall thereupon promptly investigate the conditions and if it finds that they materially differ from those shown on the drawings or indicated in the specifications, it shall at once make such changes in the drawings and/or specifications as he may find necessary. Any increase or decrease of cost resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional work and changes.

12.10 OTHER CLAIMS

12.10.1 If the Contractor claims that additional cost or time is involved because of, but not limited to, (a) any written interpretation pursuant to Article 2 Architect/Engineer, (b) any order by the County to stop the Work pursuant to Article 3 County where the Contractor was not at fault, (c) failure of payment by the County pursuant to Article 9 Payments and Completion, or (d) any written order for a minor change in the Work issued pursuant to Article 12.8. Changes in Line and Grade; the Contractor shall make such claim as provided in this Article 12 Changes and Modification in the Work.

ARTICLE 13: CLAIMS AND DISPUTE PROCEDURE

13.1 NOTICE OF CLAIM

13.1.1 No claim shall be made under this Contract until and unless the Contractor has failed to obtain a Change Order pursuant to Article 12, except for a claim based upon a Notice of Termination. The Contractor shall give the County written Notice of its intent to file a claim within ten (10) calendar days of the occurrence giving rise to the claim or at the beginning of the Work upon which the claim is to be based, or the rejection of its Proposed Change Order, or upon receipt of a Notice of Termination, whichever is earlier.

13.1.2 **No claim shall be allowed and no amounts paid for any and all costs incurred if Notice of intent to file a claim is not given to the County as herein provided.**

13.2 CLAIM SUBMISSION AND REVIEW PROCESS

13.2.1 The **complete** written claim, with all supporting documentation, shall be submitted to the Purchasing Agent no later than sixty (60) days after final payment or receipt of the Notice of Termination, whichever is earlier ("60-Day Claim Submission Period"). No additional documentation or arguments in support of a claim will be considered if not submitted within the 60-Day Claim Submission Period. If the claim is not disposed of by agreement, the Purchasing Agent shall reduce its decision to writing and mail or otherwise forward a copy thereof to the Contractor within sixty (60) days of the expiration of the 60-Day Claim Submission Period.

13.2.2 The Purchasing Agent's decision shall be final unless the Contractor appeals within thirty (30) days of receipt of the Purchasing Agent's decision 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.

13.2.3 A failure by the Purchasing Agent or the County Administrator to render a decision within the time periods set forth above shall be deemed a denial of the claim and shall not result in the Contractor being awarded the relief claimed. The sole remedy for the County's failure to render a decision as set forth above shall be the Contractor's right to institute legal action. No litigation shall be instituted prior to the exhaustion of the claim submission and review process set forth in this Article 13. The Contractor may not introduce factual matters in such litigation that were not part of Contractor's submitted claim under this Article 13 claims process. Each party shall bear its own costs and expenses resulting from any litigation, including attorney's fees.

ARTICLE 14: UNCOVERING AND CORRECTION OF WORK

14.1 UNCOVERING OF WORK

14.1.1 If any portion of the Work should be covered contrary to: (a) the request of the A/E or County; (b) requirements specifically expressed in the Contract Documents; or (c) the requirements of applicable Construction Permits, it must, if required in writing by the County, be uncovered for their observation and shall be replaced at the Contractor's expense.

14.1.2 If any other portion of the Work has been covered which the County has not specifically requested to observe prior to being covered, the County may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the County. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused solely by the County, in which event the County shall be responsible for the payment of such costs. If such Work be found not in accordance with the Contract Documents and the condition was caused by a separate contractor, Contractor may proceed against said separate contractor as provided in Article 6 Work by County or by Separate Contractors.

14.2 WARRANTY AND CORRECTION OF WORK

14.2.1 The Contractor guarantees and warrants to the County all Work as follows:

14.2.1.1 That all materials and equipment furnished under this Contract will be new and the best of its respective kind unless otherwise specified;

14.2.1.2 That all Work will be of first-class quality and free of omissions and faulty, imperfect or defective material or workmanship;

14.2.1.3 That the Work shall be entirely watertight and leak proof in accordance with all applicable industry customs and practices, and shall be free of shrinkage and settlement which are attributable to defective materials or workmanship;

14.2.1.4 That the Work, including but not limited to, mechanical and electrical machines, devices and equipment shall be fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care;

14.2.1.5 That consistent with requirements of the Contract Documents the Work shall be installed and oriented in such a manner as to facilitate unrestricted access for the operation and maintenance of fixed equipment; and

14.2.1.6 That the Work will be free of abnormal or unusual deterioration which occurs because of poor quality materials or

workmanship.

14.2.2 All Work not conforming to guarantees and warranties specified in the Contract Documents, including substitutions not properly approved and authorized, may be considered defective. If required by the County, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment furnished and installed.

14.2.3 The Contractor shall within five (5) working days after receipt of written notice from the County during the performance of the Work, reconstruct, replace or correct all Work rejected by the A/E or County as defective, as failing to conform to the Contract Documents, or as not in accordance with the guarantees and warranties specified in the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of reconstructing, replacing or correcting such rejected Work, including compensation for the A/E's additional services made necessary thereby.

14.2.4 If, within one (1) year after the Date of Substantial or Final Completion of the Work or designated portion thereof or within one (1) year after acceptance by the County of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective, not in accordance with the Contract Documents, or not in accordance with the guarantees and warranties specified in the Contract Documents, the Contractor shall correct it within five (5) working days after receipt of a written notice from the County to do so unless the County has previously given the Contractor a written acceptance of such condition pursuant to 14.3 Acceptance of Faulty, Defective or Non-Conforming Work. This obligation shall survive termination of the Contract. The County shall give such notice promptly after discovery of the condition.

14.2.5 Subject to limitation as prescribed by law, if at any time deficiencies in the Work are discovered which are found to have resulted from fraud or misrepresentation, or an intent or attempt to defraud the County by the Contractor, any subcontractor or Supplier, the Contractor will be liable for replacement or correction of such Work and any damages which County has incurred related thereto, regardless of the time limit of any guarantee or warranty.

14.2.6 Any materials or other portions of the Work, installed, furnished or stored on-site which are not of the character or quality required by the specifications, or are otherwise not acceptable to the County, shall be immediately removed and replaced by the Contractor to the satisfaction of the County, when notified to do so by the County.

14.2.7 If the Contractor fails to correct defective or nonconforming Work as required by Articles 14.2.3 and 14.2.4, or if the Contractor fails to remove defective or nonconforming Work from the Site, as required by Article 14.2.6, the County may elect to either correct such Work or remove and store materials and equipment at the expense of the Contractor. If the

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

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

14.2.9 Nothing contained in this Section 14.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year as described in 14.2.4 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

14.3 ACCEPTANCE OF FAULTY, DEFECTIVE OR NON-CONFORMING WORK

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

ARTICLE 15: TERMINATION OF THE CONTRACT

15.1 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

15.1.1 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.

15.2 COUNTY'S RIGHT TO TERMINATE CONTRACT FOR CAUSE

15.2.1 The County may terminate the Contract for cause if:

15.2.1.1 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;

15.2.1.2 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;

15.2.1.3 If the Contractor fails to make prompt payment to subcontractors or suppliers of material of labor as required herein;

15.2.1.4 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;

15.2.1.5 If the Contractor fails to Substantially Complete the Work within the Time for Completion;

15.2.1.6 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;

15.2.1.7 If the Contractor fails to complete preconstruction requirements as defined in the Contract Documents;

12.2.1.8 If the Contractor fails to employ Subcontractors that meet the minimum installer qualifications as defined in the Contract Documents;

15.2.1.9 If the Contractor fails to staff the project with personnel including a Project Manager, Superintendent and Construction Quality Control Manager who meet the minimum qualifications as defined in the Contract Documents;

15.2.1.10 If the Contractor fails to maintain the required insurance and bonds as set forth in the Contract Documents;

15.2.1.11 If the Contractor materially breaches any term or provision of the Contract Documents.

15.2.2 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.

15.2.3 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.

15.2.4 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.

15.2.5 Termination of the Contract for Cause is without prejudice to any other right or remedy of the County.

15.3 COUNTY'S RIGHT TO TERMINATE CONTRACT FOR CONVENIENCE

15.3.1 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:

15.3.1.1 Amounts due for Work performed in accordance with the Contract through the date of termination set forth in the Notice.

15.3.1.2 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.

15.3.2 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.

15.3.3 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 Article 13. Upon failure of the Contractor to submit its Notice of Claim and/or its complete written claim within the time period set forth in Article 13, 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.

15.4 CONTRACTOR'S RESPONSIBILITIES UPON TERMINATION

15.4.1 After receipt of a Notice of Termination pursuant to this Article 15, the Contractor shall mitigate any damages to the extent reasonably possible.

15.4.2 In addition to its duty to mitigate its damages, the Contractor shall:

15.4.2.1 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;

15.4.2.2 Transfer title and deliver to the County in the manner, at the times, and to the extent, if any, directed by the County:

a. 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

b. The completed or partially completed drawings, releases, information, manuals, and other property which, if the Contract had been completed, would have been required to be furnished to the County;

15.4.2.3 Complete performance of the part of the Work not terminated by the Notice of Termination; and

15.4.2.4 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.

15.4.2.5 Perform Site clean-up pursuant to the provisions of Section 4.19.

15.5 DISPUTES UPON TERMINATION

15.5.1 The provisions of Article 13, Claims and Dispute Procedures, shall be applicable to any claim, dispute, or other matter arising because of termination under this Article 15.