

GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS

Index to General Conditions for Construction Contracts

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GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS

ARTICLE I - INTERPRETATION

GC.1.01 - Definitions:

Where used in these General Conditions and in the other documents forming part of the contract:

- (1) "Architect, Engineer, Architect/Engineer or A/E" means the term used to designate the Architect and/or the Engineer that contracts with the Owner to provide the Architectural and Engineering services for the Project. The A/E is a separate contractor and not an agent of the Owner. The term includes any associates or consultants employed by the A/E to assist in providing the A/E services.
- (2) "Beneficial Occupancy" means the condition after Substantial Completion but prior to Final Completion of the Project at which time the Project, or portion thereof, is sufficiently complete and systems operational such that the Owner could, after obtaining necessary approvals and certificates, occupy and utilize the space for its intended use. Guarantees and warranties applicable to that portion of the Work begin on the date the Owner accepts the Project, or a portion thereof, for such Beneficial Occupancy, unless otherwise specified in the Supplemental General Conditions or by separate agreement.
- (3) "Bid" or "Tender" means the offer as proposed by the Bidder submitted on the Invitation for Bid. The terms "Bid" or "Tender" are used interchangeably herein.
- (4) "Bidder" means any person submitting a bid for the work.
- (5) "Bid Form" means the portion of the Invitation for Bid that must be returned to constitute a formal Bid.
- (6) "Calendar Day" means the period from one midnight to the following midnight.
- (7) "Contract" or "Contract Documents" means the combined documents consisting of the Agreement; Addenda; the Bidding Interactions; these General Conditions; any Supplemental Conditions; the Drawings; the Specifications; the Invitation for Bid; Shop Drawings; Performance Security and all other exhibits mentioned in the Contract Documents as forming part thereof.
- (8) "Contract Administrator" means a person duly authorized by the Owner in writing to represent the Owner in the work pertaining to this contract.
- (9) "Contract Time" means the time stipulated in the Contract Documents for Substantial Completion of the work.
- (10) "Contractor" means the person undertaking the execution of the work under the terms of the Contract.
- (11) "Day(s)" means calendar day(s) unless otherwise noted.
- (12) "Drawings" or "Plans" means drawings or plans which show the character and scope of the work to be performed and which have been prepared or approved by the Contract Administrator and are referred to in the Contract Documents. The terms "Drawings" or "Plans" are used interchangeably herein.
- (13) "Extra Work" means the furnishing of labor, services, materials, plant, equipment and/or the performance of any work not directly or by implication called for by the Contract.
- (14) "Invitation For Bids (IFB)" means the Bidding Instructions; these General Conditions; any Supplemental Conditions; the Drawings; the Specifications; the Bid; Performance Security, and all Addenda.
- (15) "Notice to Proceed" means a written notice given by the Owner to the Contractor (with a copy to A/E) fixing the date on which the Contract time will commence for the Contractor to begin the prosecution of the Work in accordance with the requirements of the Contract Documents. The Notice to Proceed will customarily identify a Contract Completion Date.
- (16) "Other Contractor" means any person employed by or having a contract directly or indirectly with the Owner otherwise than through the Contractor.

- (17) "Owner" means the Board of Supervisors of Fauquier County
- (18) "Person" means an individual, firm, partnership, association or corporation, or any combination thereof, and includes heirs, administrators, executors or legal representatives of a person.
- (19) "Plant" means all material and/or equipment and/or things brought to or constructed upon the Site by the Contractor for the performance of the Work, but does not include materials, equipment or other things which are to form part of the permanent Work.
- (20) "Board of Supervisors" means the Board of Supervisors of Fauquier County
- (21) "Shop Drawings" means all drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data which are prepared by the Contractor, Sub-contractor, manufacturer, supplier or distributor, and which illustrates the equipment, material or some portion of work.
- (22) "Site" means the lands and other places on, under, in or through which the work is to be executed and any other lands for places authorized by the Commissioner for the purposes of the Contract.
- (23) "Specification" means the written description of the physical or functional characteristics of the supplies, services and construction, or any part thereof, including without limitation any requirement for testing or inspection.
- (24) "Street" means any public or private highway, lane, square, bridge, thoroughfare, right-of-way, or any part thereof as same.
- (25) "Sub-Contractor" means a person contracting with the Contractor or another Sub-Contractor of the Contractor for the execution of a part or parts of the Work or for the furnishing of material.
- (26) "Substantial Completion" means the condition when the Owner agrees that the Work, or a specific portion thereof, is sufficiently complete, in accordance with the Contract Documents, so that it can be utilized by the Owner for the purposes for which it was intended. The Owner at its sole discretion may, after obtaining the necessary approvals and certificates, take Beneficial Occupancy at this time or choose to wait to occupy until after Total Completion is achieved.
- (27) "Contract Administrator" means a person duly authorized by the County in writing to represent the County in work pertaining to the contract.
- (28) "Supplemental General Conditions" means that part of the Contract Documents which amends or supplements the General Conditions.
- (29) "Surety" means the person who executed the Bond guaranteeing the fulfillment of the Contract, all as required by the Contract Documents, to be furnished by the Contractor.
- (30) "Total Completion" of the Work means when the entire Work, except those items arising from the provisions of Article X - Warranty, have been performed to the requirements of the Contract Documents and is so certified in writing by the Contract Administrator.
- (31) "Work" means the carrying out and the doing of all things, whether of a temporary or permanent nature, that are to be done by the Contractor, pursuant to the terms and conditions of the Contract and in particular, but without limiting the generality of the foregoing, includes the furnishing of all labor, services, materials, Plant and/or equipment necessary or incidental to the performance of the Contract, including all Extra Work or Changes in the Work which may be ordered as herein provided.
- (32) "Working Day" means any Calendar Day, other than Sunday or a Statutory or Civic Holiday, on which, in the opinion of the Contract Administrator, atmospheric and/or site conditions are such that the contractor is able to work at least seven (7) hours during the period between 7:00 a.m. E.S.T., or the time the Contractor's operations normally commence, whichever is the earlier, and 7:00 p.m. E.S.T.

GC.1.02 - Interpretation:

- (1) This Contract shall inure to the benefit of and be binding on the respective executors, administrators, successors and assigns of the Owner and the Contractor.
- (2) Where the "Contractor" as defined herein consists of more than one person or corporation, their liability to perform the covenants herein contained to be performed by the Contractor shall be joint and several.
- (3) Wherever the singular or masculine are used, the same shall be constituted as meaning the plural or the feminine or the neuter as the context may reasonably require.
- (4) This Contract has been entered into and shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia.

GC.1.03 - Headings for Convenience Only:

Headings, titles and marginal notes in the Contract are inserted for convenience only and are not explanatory of the Articles or Clauses with which they appear.

GC.1.04 - Inconsistencies:

In the event of conflicts between Contract Documents, the following shall apply:

- (a) figured dimensions shown on a drawing shall govern over scaled or implied dimensions on the same Drawing;
- (b) Drawings of larger scale shall govern over those of smaller scale of the same date.
- (c) Specifications shall govern over drawings of the same date;
- (d) The General Conditions shall govern over Specifications;
- (e) The Supplemental Conditions shall govern over the General Conditions;
- (f) The executed Agreement between the Owner and Contractor shall govern over all documents; and
- (g) Notwithstanding the foregoing, documents of a later date shall always govern over documents of the same category of an earlier date.

ARTICLE II - DECLARATIONS BY CONTRACTOR

GC.2.01 - Investigating the Site:

The Contractor declares that in bidding for the Work and in entering into the Contract, he has investigated the Site, the character of the Work to be done and all local Conditions including the location of any utility which can be determined from the records or other information available at the offices of any public authority or person, including a municipal corporation and any board or commission thereof, having jurisdiction or control over the utility, that might affect his Bid or his acceptance of the Work, or that, not having so investigated, and except as hereinafter provided he is willing to assume and does assume, all risk of conditions now existing or arising in the course of the Work which might or could make the Work, or any items thereof more expensive in character, or more onerous to fulfill, than was contemplated or known when the bid was completed or the Contract signed. The Contractor also declares that in bidding for the Work and in entering into the Contract he did not and does not rely upon information furnished by the Owner or any of its servants or agents respecting the character or nature of the surface and sub-surface conditions at the site, or the location, character, quality or quantity of the materials to be removed, or to be employed in the construction of the Work, or the character of the plant needed to perform the Work or the general and local conditions and shall verify all matters concerning access to the Site, power supplies, location of existing services, utilities, materials necessary for the completion of the Work and all other matters which could in any way affect the performance of the Work under the contract other than information furnished in writing for or in connection with the Bid or the Contract by the Contract Administrator.

GC.2.02 - Change in Site Conditions:

Notwithstanding the generality of the foregoing, the Contractor shall refer any substantial difference in the character or nature of the surface or sub-surface conditions at the Site, or the location, character, quality or quantity of the materials to be removed than the Conditions set out in the Plans, Specifications or other information furnished in writing for or in connection with the Bid or the Contract by the Contract Administrator for use by the Contractor in preparing his Bid, for resolution in the manner prescribed in GC.4.06.

GC.2.03 - Good Faith:

The Contractor declares that he has submitted his bid and entered into the Contract with the Owner in good faith and that to the best of his knowledge no member of the Owner, or any officer or employee of the Owner has any pecuniary interest, direct or indirect, in the same Contract, and further that the said Contractor shall forfeit all claims under this Contract for Work done beyond the actual proven expenses of the Contractor if any member of the Owner, or any officer or employee of the Owner is at any time interested therein or if any interest therein is given or agreed to be given to him and as well shall refund to the Owner any monies paid to the Contractor by the Owner under this Contract beyond the actual expenses of the Contractor. The Contractor declares that he has not participated in any collusive scheme or combine in connection with his bid or contract.

GC.2.04 – Laws and Regulations:

- (1) This contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, Code of Virginia, relating to the labor unions and the "right to work." The Contractor and its Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any work related to the project shall comply with all of the said provisions.
- (2) IMMIGRATION REFORM AND CONTROL ACT OF 1986: By signing this Contract, the Contractor certifies that it does not, and will not during the performance of this contract, violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.
- (3) NONDISCRIMINATION: The following requirements of Section 2.2-4311 of the Code of Virginia shall be applicable:
 - (a) During the Performance of this Contract, the Contractor agrees as follows:
 - (i) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, handicap, sex or national origin, except where religion, sex or national origin is a bonafide 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.
 - (ii) 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.
 - (iii) 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 Section.
 - (b). The Contractor will include the provisions of (I), (ii) and (iii) in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- (4) PROHIBITION OF ALCOHOL AND OTHER DRUGS AT JOB SITE:
 - (a) §2.2-4312 of the Code of Virginia shall be applicable. It provides as follows:

"During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the

foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract."

- (b) The Contractor shall also establish, maintain and enforce policies which prohibit the following acts by all Contractor, Subcontractor and Supplier personnel at the Site:
 - (1) the manufacture, distribution, dispensation, possession, or use of alcohol, marijuana or other drugs, except possession and medically prescribed use of prescription drugs; and
 - (2) the impairment of judgment or physical abilities due to the use of alcohol, marijuana or other drugs, including impairment from prescription drugs.

(5) **SEX OFFENDER REGISTRY NOTIFICATION:**

The Contractor shall not employ on school property any employee who is a registered sex offender and shall enforce the same restriction upon all sub-contractors and agents of Contractor.

Prior to starting work and quarterly during performance of the work, the Contractor shall check the Virginia State Police Sex Offender Registry to verify sex offender status of all employees and agents of Contractor and Sub-Contractor's who are employed on school property by the Contractor or Sub-Contractor.

The Contractor shall furnish the Owner with evidence verifying compliance with the services.

Prior to starting work on-site, the Contractor shall submit a completed Fauquier County Public Schools "CERTIFICATION OF NO CRIMES AGAINST CHILDREN" form, a copy of which is included in this solicitation.

- (6) **VIRGINIA STATE CORPORATION COMMISSION:** If required by law, the Contractor shall maintain a valid certificate of authority or registration to transact business in Virginia with the Virginia State Corporation Commission as required by Section 13.1 or Title 50 of the Code of Virginia, during the term of the Contract or any Contract renewal. The Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the terms of the contract. If the Contractor fails to remain in compliance with the provisions of this section, the contract may become void.

(7) ARTICLE III - AWARD AND EXECUTION OF THE CONTRACT

GC.3.01 - Execution of Contract:

The successful bidder shall, upon notification of award of the Contract by the Owner:

- (1) Execute and return the contract documents in the manner stipulated by the Procurement Office within Seven (7) calendar days of receipt of the contract documents together with written notice signed by the Procurement Office to the contractor in the manner provided in GC.7.06 hereof;
- (2) Provide the Performance Security specified in the Bidding Instructions to the Purchasing Agent prior to the commencement of Work but in no event later than the time specified in GC.3.01(1) above for the return of the executed Contract Documents.
- (3) Provide evidence of the Insurance Coverage specified in these General Conditions, in a form satisfactory to the Purchasing Agent prior to the Commencement of the Work but in no event later than the time specified in GC.3.01(1) above for the return of the executed Contract Documents.

GC.3.02 - Failure to Sign Contract:

In the event that the bidder does not meet all the requirements of GC.3.01 hereof, the Owner shall consider that the Bidder has abandoned the contract, whereupon the acceptance of the bid by the Owner shall be null and void and the Owner shall be entitled to retain the Bid Security accompanying the bid as liquidated damages.

GC.3.03 - Commencement of Work:

The Contractor shall not procure material or commence Work until he is in receipt of a letter to commence from the Procurement Office authorizing the commencement of work and has provided the Procurement Office with the required Performance Security and Insurance Coverage.

GC.3.04 - Bar to Payment:

No payments will be made by the Owner to the Contractor until the Contractor has met all the requirements of GC.3.01 hereof.

GC 3.05 – Separate Contracts:

- (a) The Owner reserves the right to let other contracts in connection with the Project, the Work under which may proceed simultaneously with the execution of this Contract. The Contractor shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work. The Contractor shall cooperate with them and shall take all reasonable action to coordinate his Work with theirs. If the Owner has listed other separate contracts in the Invitation for Bids which it expects to proceed simultaneously with the Work of the Contract, and has included the estimated timing of such other Contracts in the Invitation for Bids, the Contractor shall integrate the schedule of those separate contracts into his scheduling. The Contractor shall make every reasonable effort to assist the Owner in maintaining the schedule for all separate contracts. If the work performed by the separate contractor is defective or performed so as to prevent or threaten to prevent the Contractor from carrying out his Work according to the Contract, the Contractor shall immediately notify the Owner and the Architect/Engineer upon discovering such conditions.
- (b) If a dispute arises between the Contractor and any separate contractor(s) as to their responsibility for cleaning up as required by Section GC 4.09 of these General Conditions, the Owner may clean up and charge the cost thereof to the respective contractors in proportion to their responsibility. If a Contractor disputes the Owner's apportionment of clean-up costs, it shall be that contractor's burden to demonstrate and prove the correct apportionment.

ARTICLE IV - SCOPE OF WORK

GC.4.01 - Work to be Done According to Contract:

The Contractor shall execute, complete and maintain the Work in strict accordance with the Contract Documents.

GC.4.02 - Contractor to Furnish Labor, Plant and Materials

- (1) The Contractor shall provide and pay for competent, suitably qualified personnel to execute the Work. He shall at all times maintain good discipline and order at the Site.
- (2) The Contractor shall provide and pay for all plant, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, operation, completion and maintenance of the Work.
- (3) Unless otherwise specified in the Specifications, all materials and equipment to be incorporated in the Work shall be new, fit for the purpose intended, and shall meet or exceed the kind, quality and quantity of same specified in the Contract Documents. If required, the Contractor shall provide at his own expense evidence satisfactory to the Contract Administrator that the foregoing requirements have been met.
- (4) The Contractor shall certify in writing that no materials used in the work contain asbestos material in them. The Contractor shall provide this written certification as part of submittals under GC.9.03.

GC.4.03 - Documents Supplement Each Other:

- (1) The Contract Documents are complementary and what is called for by any one shall be binding as if called for by all.
- (2) If the Contract Documents or any part thereof appear indefinite, not clear or contradictory, the Contractor shall refer such feature or features to the Contract Administrator for interpretation or clarification.
- (3) The Contract Administrator shall have the right at any time to correct errors or omissions in the Contract Documents or to issue additional Drawings and Specifications at any time further detailing, explaining or modifying the Work. Such Drawings and Specifications shall either supplement or supersede those signed at the time the Contract is executed.
- (4) The Contractor shall be responsible for conveying the interpretation or clarification of the Contract Documents, as given by the Contract Administrator, to Sub-Contractors.
- (5) The Contractor shall be responsible for any work not explicitly set out in the Contract Documents but which may be reasonably implied for the proper completion of the Work.

GC.4.04 - Shop Drawings:

- (1) The Contractor shall arrange for the preparation of Shop Drawings required by the Contract Documents or as may reasonably be required by the Contract Administrator.
- (2) The Contractor shall review all Shop Drawings prior to submitting same to the Contract Administrator. By this review, the Contractor represents that he has determined and verified all field measurements, field construction criteria, materials, catalogue numbers and similar data and that he has checked and coordinated each Shop Drawing with the requirements for the work and of the Contract. The Contractor's review of each Shop Drawing shall be certified.
- (3) The Contractor shall promptly submit to the Contract Administrator the required number of copies of the Shop Drawings and in an orderly sequence to prevent delay in the work or in the work of other contractors, shop drawings shall be submitted in the form of a reproducible transparency or prints as the Contract Administrator may direct. At the time of submission, the Contractor shall notify the Contract Administrator of any deviations in the Shop Drawings from the requirements of the Contract.
- (4) The Contract Administrator shall review the Shop Drawings promptly or in accordance with a schedule agreed upon in writing. The Contract Administrator, upon completion of the review, shall communicate either his acceptance or rejection of same to the Contractor. The Contract Administrator's review and acceptance shall be for conformity to the design concept of the Work and for compliance with the Contract Documents. The acceptance of a component or a sub-assembly shall not constitute acceptance of the assembly of which it is a part. The review shall not relieve the contractor of responsibility for errors and omissions in the Shop Drawings or of responsibility for meeting all requirements of the contract unless a deviation on the Shop Drawings has been approved by the Contract Administrator in writing. No Work called for by Shop Drawings shall be undertaken by the Contractor until the Contract Administrator's review is completed and the acceptance of same has been communicated to the Contractor.
- (5) The Contractor shall promptly make any changes in the Shop Drawings which the Contract Administrator may require and which are consistent with the Contract Documents and shall promptly resubmit same to the Contract Administrator for review and acceptance unless otherwise directed by the Contract Administrator. When resubmitting the Shop Drawings, the Contractor shall notify the Contract Administrator in writing of any revisions other than those requested by the Contract Administrator.

GC.4.05 - Changes in the Work: Owner

- (1) The Owner shall have the right at any time before or after the execution of the Contract or after the commencement of the Work or during the prosecution of the Work, to alter, deduct from, add to or omit (referred to collectively herein as a "Change in Work") any part of the Work, or to change the lines or grades or the location of any part of the Work, all without in any way affecting or vitiating the Contract, and the Contractor shall carry out all such alterations or additions upon receipt of written notice from the Contract Administrator.

- (2) The Contract Administrator shall make a determination at the time of issuing the written notice referred to in GC.4.05 (1) above and shall set out his determination in the said notice as to whether:
 - (a) the Change in Work so ordered falls within the scope of the Work required to be performed under the Contract with no adjustment to Contract Time and/or Contract Price; or
 - (b) the Change in Work so ordered amounts to Extra Work with a corresponding adjustment to the Contract Time and or Contract Price; or
 - (c) the Change in Work so ordered amounts to a diminution in the scope of the Work required to be performed under the Contract with a corresponding adjustment to the Contract Time and/or Contract Price.
- (3) In the event that the Contractor disputes a determination made by the Contract Administrator, regarding changes, the Contractor shall act in accordance with the Contract Administrator's determination, provided however that the Contractor shall have the right to appeal the determination of the Contract Administrator to the County Administrator as provided in GC.4.05(4) below on work or any request by the Contractor for increased compensation.
- (4) If the Contractor disagrees with the determination of the Contract Administrator he must, within Seven (7) Calendar days after receiving notice of the Contract Administrator's determination, notify the County Administrator in writing of his contention with respect thereto and request a determination thereon from the County Administrator.
- (5) If the Contractor fails to so appeal to the County Administrator for a determination within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with the provisions of this Clause.
- (6) If the Contractor disagrees with the determination of the County Administrator, he must within Seven (7) Calendar Days after receiving Notice of the County Administrator's determination, notify the Owner in writing of his contention with respect thereto in accordance with GC.11.01. In order to invoke the procedures of this section, the Contractor's request must (i) refer specifically to this section by number; (ii) in the case of the Owner, be hand-delivered to the office of the County Administrator; and (iii) contain a full explanation of the basis of the contractor's position and the rationale for its request.
- (7) In the case of the Contractor's neglect or failure to observe fully and faithfully the above conditions, he shall forfeit all right to payment therefore which he otherwise might have had, and shall not make any claim in respect thereof, and if made, the Owner may reject the same as invalid and he shall not have any right of recovery in respect thereof, at law or otherwise.
- (8) It is intended in all matters referred to above that both the Contract Administrator and the Contractor shall act promptly.

GC.4.06 - Changes in the Work: Contractor

- (1) If the Contractor is of the opinion that it is necessary at any time before or after the execution of the Contract or after the commencement of the Work or during the prosecution of the Work, to alter, deduct from, add to or omit any part of the Work to accomplish the result intended by this Contract, he shall provide written notice of this requirement and details of same to the Contract Administrator for a determination as set out in GC.4.05(2) above prior to undertaking the proposed change in Work.
- (2) GC.4.05(3) through (8) shall apply mutatis mutandis herein.

GC.4.07 - Valuation and Certification of Extra Work:

- (1) The value of Extra Work shall be determined by one or more of the following methods selected by the Owner:

- (a) by estimate in a lump sum;
 - (b) by the unit prices set out in the Contract or subsequently agreed upon;
 - (c) by the actual cost of the Work to the Contractor plus a fixed fee;
- (2) Where the value of Extra Work is proposed or required to be determined by either method (a) or (b) of GC.4.07(1), the Contractor shall present his proposed change in the Contract Time and/or Contract Price to the Contract Administrator supported by appropriate documentation in a form acceptable to the Contract Administrator prior to the commencement of the proposed Extra Work. The Contract Administrator shall evaluate and verify the acceptability of such claim and, if approved by the Owner, a change order shall be issued to the Contractor by the Purchasing Agent as approved by the Contract Administrator, amending the Contract Time and/or Contract Price.
- (3) Where the value of Extra Work is determined by method (c) of GC.4.07(1) the actual cost permitted to be claimed by the Contractor shall be deemed to include all amounts whether direct, indirect or consequential resulting from the performance of the Extra Work, including, but not limited to, Owner approved overhead.
- (4) In the case of Extra Work to be paid for under methods (b) or (c) of GC.4.07(1), the form of presentation of costs and methods of measurement shall be stipulated in writing by the Contract Administrator prior to the Contractor undertaking the Extra Work. The Contractor shall keep accurate records of quantities and costs and present an account of the costs of the Extra Work, together with all vouchers supporting such costs where applicable.
- (5) Notwithstanding the generality of the foregoing, the Contractor shall keep a detailed daily record for each part of the Extra Work showing the names and times of the workmen engaged thereon and number of hours each day when Plant and equipment are employed thereon. This daily record shall be submitted to the Contract Administrator each day for the review and approval of the Contract Administrator.
- (6) If the method of valuation, measurement, change in Contract Time and/or Contract Price cannot be promptly agreed upon prior to the commencement of the Extra Work and the Contract Administrator requires the Extra Work to proceed, then the Contract Administrator in the first instance will determine the method of valuation, measurement and the change in Contract Time and/or Contract Price. The Contract Administrator shall issue a written authorization for the Extra Work setting out the method of valuation, measurement, and any approved change in the Contract Time and/or Contract Price.
- (7) In the case of a dispute in the method of valuation, measurement, change in Contract Time and/or Contract Price for the Extra Work authorized in writing by the Contract Administrator and pending determination thereof in accordance with GC.4.07(8) or GC.4.07(10) hereof, the Contract Administrator shall certify the value of the Extra Work performed in accordance with the Contract Administrator's own valuation and measurement of the Extra Work and shall also certify any change in Contract Time and/or Contract Price. The Contractor shall keep accurate records of quantities and cost of such Extra Work.
- (8) If the Contractor disagrees with the Contract Administrator's method of valuation, measurement, change in Contract Time and/or Contract Price, he must within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination, notify the County Administrator in writing of his contention with respect thereto and request a determination thereon from the County Administrator.
- (9) If the Contractor fails to so appeal to the County Administrator for a determination within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with the provisions of this Clause.
- (10) If the Contractor disagrees with the determination of the County Administrator he must within Seven (7) Calendar Days after receiving Notice of the County Administrator's determination, notify the Owner in writing of his contention with respect thereto in accordance with GC.11.01. In order to invoke the procedures of this section, the Contractor's request must (i) refer specifically to this section by number; (ii) in the case of the Owner, be hand-delivered to the office of the County Administrator; and (iii) contain a full explanation of the basis of the contractor's position and the rationale for its request.

- (11) In the case of the Contractor's neglect or failure to observe fully and faithfully the above conditions, he shall forfeit all right to any claim for additional payment therefore over and above that approved by the Contract Administrator which he otherwise might have had, and shall not make any claim in respect thereof, and if made, the Owner may reject the same as invalid and he shall not have any right of recovery in respect thereof, at law or otherwise.
- (12) It is intended in all matters referred to above that both the Contract Administrator and Contractor shall act promptly.
- (13) Maximum Adjustment for Overhead and Profit: If the Contract Price is adjusted in accordance with this section, the maximum adjustment for overhead and profit combined (regardless of the extent of the adjustment to the Contract Time, if any) shall be as follows:
- (a) For the Contractor, for any work performed by its own forces, 12% of actual field cost;
 - (b) For each Subcontractor involved, for any work performed by its own forces, 12% of the actual field cost;
 - (c) For the Contractor, for work performed by each Subcontractor, 5% of the sum of Subcontractor's actual field cost plus Sub-subcontractor costs plus the Subcontractor's allowance for overhead and profit as defined above.
 - (d) "Actual field cost" shall include the cost to the Contractor of all workmen, such as foreman, timekeepers, mechanics and laborers, and materials, supplies, and teams for the time actually employed or used on such work, plus actual transportation charges necessarily incurred, together with all power, water and similar operating expenses, also all necessary incidental expenses incurred directly on account of such work, including Social Security Old Age Benefits and other payroll taxes, and, a retable proportion of premiums on Performance and Payment Bonds and Maintenance Bonds, Public Liability and Property Damage and Workmen's Compensation, and all other insurance as may be required by any law or ordinance, or directed by the Owner, or by them agreed to. The Owner may direct the form in which accounts of the "actual field cost" shall be kept and the records of these accounts shall be made available to the Owner.
 - (e) "Cost of machinery and equipment" shall be charged separately for "actual field cost", shall not be subject to markup for overhead or profit, and shall be based on actual rentals, unless the machinery or equipment is owned by the Contractor. Machinery and equipment owned by the Contractor shall be charged according to the latest edition of the Associated General Contractors (AGC) Contractors Equipment Manual. The Contractor shall be responsible for providing the information necessary to compute AGC equipment rates. Equipment supplied by separate divisions of the Contractor's organization shall be considered rental equipment.
 - (f) The allowance for "overhead and profit" to be paid the Contractor shall cover and compensate him for his profit, overhead, general superintendence and field office expense, general and administrative home office expense, and all other elements of cost and expense not included within the "actual field cost" or "cost of machinery and equipment" as herein defined.
 - (g) Changes in the work resulting in additions to and deductions from the Contract Sum not covered by unit price shall be determined and submitted in accordance with the Owner's Change Order form.

GC.4.08 - Diminution of Work:

- (1) Should the amount of the Work originally intended to be done under the Contract be diminished, no claim shall be made for damages on the ground of loss of anticipated profit on Work so diminished or on any other ground. In the case of a Unit Price Contract where a change is made involving diminution of the Work, only the Work actually done shall be paid for and such payment shall be based on the Prices in the Bid. In the case of a Lump Sum Contract where a change is made involving diminution of Work and the parties cannot agree on the reduction in Contract Price which should properly be made as a result thereof, the matter in dispute shall be decided by the Contract Administrator. If the Contractor disagrees with the Contract Administrator's determination, he must within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination notify the County Administrator in writing of his contention with respect thereto and request a determination thereon from the County Administrator.
- (2) If the Contractor fails to so appeal to the County Administrator for a determination within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with the provisions of this Clause.

- (3) If the Contractor disagrees with the determination of the County Administrator, he must within Seven (7) Calendar Days after receiving Notice of the County Administrator's determination, notify the Owner in writing of his contention with respect thereto in accordance with GC.11.02. In order to invoke the procedures of this section, the Contractor's request must (i) refer specifically to this section by number; (ii) in the case of the Owner, be hand-delivered to the office of the County Administrator; and (iii) contain a full explanation of the basis of the contractor's position and the rationale for its request.
- (4) Where a change results in a diminution of Work after commencement of work or any part thereof resulting in extra cost to the Contractor, for which he would not be entitled to payment on a unit price basis or in loss of Work already completed but not paid for, or loss to the Contractor in respect of material or equipment purchased by him for the Work but not used thereon as required by the Owner, compensation shall be made to the Contractor by the Owner in the sum or sums to be fixed by the Contract Administrator. If the Contractor disagrees with the Contract Administrator's decision, he must within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination notify the County Administrator in writing of his contention with respect thereto and request a determination thereon from the County Administrator.
- (5) If the Contractor fails to so appeal to the County Administrator for a determination within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's determination, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with the provisions of this Clause.
- (6) If the Contractor disagrees with the determination of the County Administrator he must within Seven (7) Calendar Days after receiving Notice of the County Administrator's determination, notify the Owner in writing of his contention with respect thereto in accordance with GC.11.02. In order to invoke the procedures of this section, the Contractor's request must (i) refer specifically to this section by number; (ii) in the case of the Owner, be hand-delivered to the office of the County Administrator; and (iii) contain a full explanation of the basis of the contractor's position and the rationale for its request.
- (7) In the case of the Contractor's neglect or failure to observe fully and faithfully the above conditions, he shall forfeit all right to any claim for additional payment therefor over and above that approved by the Contract Administrator which he otherwise might have had, and shall not make any claim in respect thereof, and if made, may reject the same as invalid and he shall not have any right of recovery in respect thereof, at law or otherwise.
- (8) It is intended in all matters referred to above that both the Contract Administrator and Contractor shall act promptly.

GC.4.09 - Cleanup and Final Cleaning of the Work:

- (1) The Contractor shall broom sweep daily and maintain the site and the Work in a tidy condition and free from the accumulation of waste products and debris, other than that caused by the Owner or Other Contractors. Upon attaining Substantial Completion of the Work, the Contractor shall remove any products, tools, construction machinery and equipment not required for the performance of the remaining Work. He shall also remove waste products and debris other than that caused by the Owner or Other Contractors and leave the site and the Work clean and suitable for occupancy by the Owner unless otherwise specified.
- (2) Total Completion of the Work shall not be attained until the Contractor has cleaned up the Site and has removed all Plant and surplus products, tools, construction materials and equipment. The Contractor shall also have removed waste products and debris, other than that left by the Owner or Other Contractors.

GC. 4.10 – Substantial Completion & Punchlist:

- (1) When the Work is substantially complete as defined by the Contract, the Contractor shall so notify the Owner and the Architect/Engineer in writing. Said notice shall be accompanied by an itemized Final Punch List listing all Work which is incomplete. Unless agreed otherwise by the Owner or Architect/Engineer, this list of work shall refer specifically to individual items and may not be general or collective in nature. Upon receipt of this notice along with the Final Punch List, the Owner will schedule an inspection. The failure to include any items on such Final Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents; however, defects, which occur or are observed after the completion of the Final Punch List shall be corrected as set forth. If the Owner and the Architect/Engineer determine that any items on the Final Punch List

must be completed prior to the Work or designated portion thereof being accepted as substantially complete, the Contractor will be promptly notified. The Contractor shall complete said Work, without delay, notifying the Owner in writing when completed.

- (2) When the Owner and Architect/Engineer determine, based on information available to them, that the Work or designated portion thereof is substantially complete, the Architect/Engineer will then prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.
- (3) Upon Substantial Completion of the Work and upon application by the Contractor and certification by the Architect/Engineer, the Owner shall make payment, if any for such Work or portion thereof as provided in the Contract Documents. The Contractor's Application shall be accompanied by the Final Punch List, which shall be revised as of the date of the Application to indicate all work, which remains incomplete. This revised Final Punch List shall have an accurate dollar value assigned to each item of work. If any items on the Final Punch List referenced in Subparagraph 4.6.1 are omitted from the revised Final Punch List accompanying the Application and the Owner or Architect/Engineer are not assured that these omitted items have been satisfactorily completed, they shall add such items to the list accompanying the Application and assign dollar values to each item to cover the cost of the Work involved. The Owner and Architect/Engineer shall also adjust the dollar values assigned by the Contractor if, in their reasonable opinion, the Contractor's assignment is insufficient to cover the cost of the Work. The total of all final dollar value assignments will be deducted from the Contractor's Application prior to payment by the Owner. This deduction shall be in addition to any percentage of retainage provided for elsewhere in the Contract Documents. After the issuance of the Certificate of Substantial Completion, no payment will become due until all required as-built drawings, maintenance manuals, bonds, guarantees, warranties, certificates and the like have been submitted and accepted by the Owner. No subsequent payment will be made until the Final Payment, unless authorized by the Owner. If, in the sole opinion of the Owner, the Contractor is diligently pursuing the remaining Work as itemized on the revised Final Punch List, and the Contractor is also correcting with dispatch, defects occurring after the preparation of the Final Punch List, then he may, at his option, authorize payment prior to Final Payment.
- (4) Final Punch List: Except for items specifically exempted by the Owner, the Final Punch List shall be corrected within thirty (30) days of the date of Substantial Completion. For each day beyond thirty (30) days of the date of Substantial Completion for each day beyond thirty (30) days that the Final Punch List remains uncorrected, the Contractor shall pay to the Owner liquidated damages as set in the Contract Documents. Contractor must coordinate such work with the Owner.
- (5) Acceptance of the Work: The Contractor shall request of the Architect/Engineer, in writing, a final inspection when the Work has been completed in all respects in accordance with the contract Documents. Upon receipt of the Contractor's written request, the Architect/Engineer will perform a final inspection and determine that the Work has been completed as specified. If the Work has not been completed, the Architect/Engineer will inform the Contractor in writing of the remaining Work to be completed. If the Work has been completed, the Architect/Engineer will formally accept the Work. Immediately upon and after such final written acceptance by the Architect/Engineer, the Contractor will be relieved of the duty of maintaining and protecting the Work as a whole, and it will not be required to perform any further work thereon except as provided in GC 4.08 Warranty of Construction, and the Contractor shall be relieved of this responsibility for injury to persons or property or damage to the Work which occurs after the final acceptance by the Owner, except that the Contractor shall not be relieved of its responsibility for injury to persons or property arising from the Contractor's duties and obligations under GC. 4.11, "Hold Harmless". Unless otherwise provided for elsewhere in the Contract Documents, no payments will be made for any materials or equipment stored off or away from the Work Site.

ARTICLE V - CONTROL OF WORK

C.5.01 - Authority of Contract Administrator:

- (1) The Contract Administrator shall be the Owner's representative throughout the duration of the Contract and shall have authority to act on behalf of the Owner to the extent expressly provided in the Contract Documents.
- (2) The Contract Administrator shall be responsible for the interpretation or clarification of the Contract Documents or any part thereof which appear indefinite, not clear or contradictory to the Contractor.

- (3) The Contract Administrator shall have full authority to examine, inspect, approve or reject the Plant, materials, methods of procedure and workmanship without in any way relieving the Contractor from his responsibilities under GC.5.02. The Contract Administrator shall be the sole judge of determining whether the kind, quantity and quality of the Plant, materials, methods of procedure and workmanship meet or exceed the requirements of the Contract Documents.
- (4) The Contract Administrator shall have the authority to object to any person employed or retained by the Contractor in the execution of the Work who is in the opinion of the Contract Administrator incompetent, negligent or guilty of misconduct. The Contractor shall forthwith remove the person so objected to. The Contract Administrator may recommend to the County Administrator that the County Administrator refuse to issue any Progress Estimate and/or Certificate to the Contractor while such person remains engaged upon the Work.
- (5) The Contract Administrator may order the Contractor to stop work or to take such remedial measures as the Contract Administrator considers necessary, if, at any time, the Contract Administrator is of the opinion that a danger to life or to property exists. The Contractor shall comply with such orders immediately. Neither the giving or carrying out of such orders shall thereby entitle the Contractor to any extra payment, nor shall the Contractor be relieved of his responsibilities under GC.5.02.
- (6) The Contract Administrator shall have the authority to order the Contractor to stop the Work whenever such stoppage may be necessary, in the Contract Administrator's reasonable opinion, to ensure the proper execution of the Work in accordance with the requirements of the Contract Documents. The Contractor shall comply with such orders immediately. Neither the giving or carrying out of such orders shall thereby entitle the Contractor to any extra payment or relieve the Contractor of his responsibilities under GC.5.02.
- (7) In the event that the Contractor disputes a determination made by the Contract Administrator on any of the foregoing matters, the Contractor shall act in accordance with the Contract Administrator's decision. If the Contractor disagrees with the Contract Administrator's decision, he must within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's decision notify the County Administrator in writing of his contention with respect thereto and request a determination thereon from the County Administrator.
- (8) If the Contractor fails to so appeal to the County Administrator for a decision within Seven (7) Calendar Days after receiving Notice of the Contract Administrator's decision, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with the provisions of this Clause.
- (9) If the Contractor disagrees with the determination of the County Administrator he must within Seven (7) Calendar Days after receiving Notice of the County Administrator's determination notify the Owner in writing of his contention with respect thereto in accordance with GC.11.01. In order to invoke the procedures of this section, the Contractor's request must (i) refer specifically to this section by number; (ii) in the case of the Owner, be hand-delivered to the office of the County Administrator; and (iii) contain a full explanation of the basis of the contractor's position and the rationale for its request.
- (10) It is intended in all matters referred to above that both the County Administrator and Contractor shall act promptly.

GC.5.02 Responsibilities of Contractor:

- (1) The Contractor shall be responsible for ensuring that all Work is carried out in accordance with and within the time limits set out in the Schedule of Work which is required to be provided by the Contractor and approved by the Contract Administrator under GC.8.01 and any approved amendments thereto. Further, the Contractor shall be responsible for obtaining the prior written consent of the Contract Administrator for any changes in the approved Schedule of Work or any approved amendments thereto in a timely fashion.
- (2) The Contractor shall have complete control over the methods of prosecuting the Work except as otherwise provided in the Contract Documents and shall direct and supervise the Work so as to ensure conformance with the Contract Documents. The Contractor shall be solely responsible for construction means, methods, techniques, sequences and procedures and for coordinating the various parts of the Work under the Contract so as to ensure its proper completion in accordance with the approved Schedule of Work.
- (3) All Contractor personnel shall wear identification while on Owner property to properly identify themselves to Fauquier County Owner employees and the public.

- (4) The Contractor shall obey, perform and comply with the Contract Administrator's orders or instructions with respect to the Work or concerning the conduct thereof promptly, efficiently, and to the satisfaction of the Contract Administrator.
- (5) The Contractor shall carry out such rules and regulations as may from time to time be issued by the Contract Administrator for the securing and maintaining of good order on the Site and he will assist Other Contractors, their employees and agents, and those of the Owner, to do the same.
- (6) The Contractor shall employ and keep on the Work during its progress a competent Supervisor and any necessary assistants, all satisfactory to the Contract Administrator, both on the commencement and at all times during the prosecution of the Work. The Contractor shall inform the Contract Administrator in writing of the name of such Supervisor prior to the commencement of the Work. If at any time the Contract Administrator requires such Supervisor to be replaced the Contractor shall arrange for him to vacate his position and be removed from the Site within forty-eight (48) hours after receiving notice in writing from the Contract Administrator to replace the Supervisor with another Supervisor. Any person so removed shall not be re-employed on the Work by the Contractor or by a Sub-contractor. The Supervisor shall not be replaced except with the prior written consent of the Contract Administrator unless the Supervisor proves to be unsatisfactory to the Contractor and ceases to be in his employ. The Supervisor shall represent the Contractor in his absence and directions on matters given to him shall be held to be given to the Contractor.
- (7) Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.
- (8) The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.
- (9) If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable or performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsibly in submitting names as required.
- (10) The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitute.

The Contractor, with respect to Work to be performed under sub-contract, shall:

- (a) enter into contracts or written agreements with his Sub-contractors to require them to perform their work in complete conformance with and subject to the terms and conditions of the Contract Documents, and,
- (b) be as fully responsible to the Owner for acts and omissions of his Sub-contractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by him.

The Contractor shall incorporate the terms and conditions of the Contract documents into all sub-contract agreements he enters into with his Sub-contractors.

- (8) The Contractor shall keep one set of the Contract Documents and approved Shop Drawings at the Site. These Contract Documents and Shop Drawings shall be available at all reasonable times for the inspection and use of the Contract Administrator.

- (9) The Contractor must arrange and carry on his Work so as not to conflict with the Work being carried on or to be carried on for the Owner by other contractors or by the Owner's employees. Should he find it difficult to work in harmony with such parties he shall notify the Contract Administrator who will deal with the matter as he in his judgment may deem best, and the Contractor shall abide by the decision and directions of the Contract Administrator.
- (10) The Contractor shall be solely responsible for construction safety at the Site and for compliance with all laws, rules, regulations and practices required by the applicable construction and safety legislation.
- (11) The Contractor shall be solely responsible for securing the Site, any existing facility thereon and for the proper care and protection of the Work already performed.
- (12) The Contractor shall, at his own expense, do whatever is necessary to ensure that:
 - (a) no person, property, right, easement or privilege is injured, damaged or infringed by reason of the Contractor's activities in performing the Contract;
 - (b) pedestrian and other traffic on any public or private road is not unduly impeded, interrupted or endangered by the performance or existence of the Work or Plant;
 - (c) fire hazards in or about the Work or its Site are eliminated;
 - (d) the health and safety of all persons employed in the performance of the Work or otherwise is not endangered by the performance or existence of the Work or Plant;
 - (e) adequate medical services are available to all persons employed on the Work or its Site at all times during the performance of the Work.
 - (f) adequate sanitation measures are taken and facilities provided with respect to the Work and its Site.
 - (g) all survey posts, monuments or bars are protected and are not removed, defaced, altered or destroyed; and
 - (h) all stakes and marks placed on the Work or its Site by or under the authority of the Contract Administrator are protected and are not removed, defaced, altered or destroyed.

GC.5.03 - Inspection:

- (1) All Plant to be provided, work to be performed, materials to be supplied, and equipment or machinery to be installed or erected under this Contract shall be subject to inspection by the Contract Administrator. The Contractor shall afford to the Contract Administrator every facility, whether at the Site of the Work, or at the premises of the Contractor or any Sub-Contractor, for the observation of the methods and progress of the Work, and to give the Contract Administrator free of cost to the Owner any and all assistance which he may require in the performance of his duties; also to furnish the Contract Administrator, free of cost, with sufficient office facilities for keeping Drawings and for correspondence as specified in the Supplemental Conditions.
- (2) The Contractor shall, before beginning or resuming operations upon any portion of the Work, formally notify the Contract Administrator in writing so as to enable the Contract Administrator to arrange for proper inspection. In the event that the Contractor does not so notify the Contract Administrator in order that the Contract Administrator can arrange for proper inspection, the Contractor shall, if and when required by the Contract Administrator, forthwith take down or expose and rebuild that portion of the Work, at the Contractor's own cost and expense, in order that the Contract Administrator can inspect the Work.
- (3) The Contractor shall not proceed to prosecute any portion of the Work, against the orders of the Contract Administrator. In the case of any portion of the Work prosecuted contrary to the orders of the Contract Administrator, the cost of such taking down or exposure and re-building, if any, shall fall upon the Contractor.
- (4) The Contractor shall, if and when required by the Contract Administrator, forthwith take down or expose any portion of the Work where the Contract Administrator is of the opinion that the Work is not in accordance with the Contract Documents. The cost of such taking down or exposure and rebuilding, if any, shall fall upon the Owner if

the taking down of exposure indicates that the part exposed is properly constructed and of satisfactory materials, but if otherwise the cost shall be borne by the Contractor.

- (5) In case the Contract Administrator observes improper workmanship or the use of defective materials in the course of construction or manufacture, he will call the same to the attention of the Contractor or the Supervisor in charge of the Work, but should such Supervisor be inaccessible at the time, the Contract Administrator shall order the workmen to stop such improper Work until a Supervisor or the Contractor remedies the defects.
- (6) Orders given by the Contract Administrator in accordance with the above powers shall be obeyed by the Contractor without delay.
- (7) The inspection herein provided for shall in no way relieve the Contractor of full responsibility for the quality, character, proper operation and performance of the completed Work.
- (8) **Final Inspection:**
 - a. All work and materials shall be subject to a final inspection by the Contract Administrator. Any omission or failure on the part of the Contract Administrator to disapprove or reject interior or defective work or materials shall not be construed to be an acceptance of any such work or material. If any defective work or material is found during inspection the Contractor shall remove or repair, at his own expense. Such defective work or material that is rejected shall be rebuilt and/or replaced without extra charge.
 - b. If the contract documents, the Owner's or his agent's instructions, or laws, ordinances or regulations of any public authority or utility company require any work to be tested or approved, the Contractor shall give the Owner or his agent timely notice of its readiness for inspection by the proper authorities. If any such work shall be covered up without approval or consent, it must, if required by the Owner or his agent or other proper authorities, be uncovered for examination at Contractor's expense.

GC.5.04 - Defective Work:

The Owner shall have the right to any one or all of the following options in addition to those provided elsewhere in these Contract Documents and to its ordinary remedies at law if, in the opinion of the Contract Administrator, there is any defect in the Work or in any part thereof attributable to the Contractor or if same fails to meet the requirements of the Contract:

- (1) The Contract Administrator shall direct the Contractor to remedy the defect or to repair, reconstruct, or replace the faulty Work or Work which fails to meet the requirements of the Contract and the Contractor shall, without delay and at the Contractor's own expense, carry out the orders of the Contract Administrator in that respect, all according to the terms and requirements of the Contract. In addition, the Contractor shall be required to reimburse the Owner and the Owner shall be entitled to deduct its cost of any additional inspections necessitated thereby from the Contract Price.
- (2) If the Contractor fails or neglects to act as set out in GC.5.04(1), the Owner may correct or replace the defective or faulty Work or Work which fails to meet the requirements of the Contract either by the Owner's own forces or by an Other Contractor or Contractors. The cost of correcting or replacing same shall be paid to the Owner immediately by the Contractor upon receipt of written Notice from Contract Administrator setting out the amount to be so paid. In the event that the Contractor fails to make payment to the Owner as required hereby, the Owner shall deduct the amount of such payment from any payment required to be made to the Contractor under this Contract. If, in the opinion of the Owner, the Contractor has received all payments due to him under the Contract, the Surety shall make such payment immediately upon receipt of written Notice from the Contract Administrator setting out the amount to be so paid.
- (3) If, in the opinion of the Contract Administrator, it is not expedient to correct defective or faulty Work or Work not done in accordance with the Contract, the Owner may deduct from the Contract Price the difference in value between the Work as done and that called for by the Contract, setting out the amount to be so paid.
- (4) Pending action under GC.5.04 (1) and (2) above, the Owner shall have the right to use the Work or any portion thereof, without in any way affecting its right of rejection of any such faulty or defective work or relieving the Contractor of responsibility to complete the Work.

GC.5.05 - Right of Entry:

- (1) The Contractor shall not be entitled to exclusive possession of the Site.
- (2) The Owner shall have the right, for itself, its agents, representatives and Other Contractors, to occupy any portion of the Site or the Work, at any time and for so long a time as the Contract Administrator may by notice in writing to the Contractor require, provided such entry, occupation and use does not prevent or otherwise interfere with the Contractor's performance of the Work.
- (3) Such entry, occupation and use shall not be considered to be an acceptance of the Work by the Owner nor shall it relieve the Contractor of responsibility to complete the Work.

ARTICLE VI - CONTROL OF PLANT AND MATERIAL

GC.6.01 Risk and Responsibility:

- (1) The Plant, material and equipment brought to the Site and/or the Work by the Contractor or provided to the Contractor by the Owner shall remain at the risk and the responsibility of the Contractor from the commencement of the Work (and all matters incidental thereto) and until the Total Completion thereof has been certified by the Contract Administrator unless otherwise specified in the Supplemental Conditions.
- (2) The Contractor shall be liable to the Owner for any loss of or damage to the Plant, material or equipment that is supplied or placed in the care, custody and control of the Contractor by the Owner for use in connection with the Contract, whether or not that loss or damage is attributable to causes beyond the Contractor's control, from the commencement of the Work (and all matters incidental thereto) and until the Total Completion thereof has been certified by the Contract Administrator.

GC.6.02 - Contractor to Keep Records:

The Contractor shall keep such records of all Plant, material and equipment supplied or placed in the care, custody and control of the Contractor by the Owner as the Contract Administrator may from time to time require and shall satisfy the Contract Administrator, when requested, that such material and Plant are at the place and in the condition required by the Owner

GC.6.03 - Material to Remain on Site:

- (1) The contractor shall not remove any Plant, material or equipment that he has brought to the Site and/or the Work and which is required to complete the Work without the prior written consent of the Contract Administrator until the Total Completion of the Work has been certified by the Contract Administrator.
- (2) Plant, material or equipment that is the property of the Owner shall not be taken away from the Site and/or the Work, disposed of or used except for the purposes of the Work without the prior written consent of the Contract Administrator.

GC.6.04 - Defective Material:

- (1) The Contractor shall, at his own expense, and in the manner and within the time and period specified in the written Notice from the Contract Administrator:
 - (a) remove from the Site and/or the Work any materials brought onto the Site, whether incorporated in the Work or not, which the Contract Administrator has determined to be inferior, unfit for the purpose intended, or does not comply with the requirements of the Contract Documents; and
 - (b) promptly replace such interior or unfit material with material which is for the purpose intended and which does meet the requirements of the Contract Documents.
- (2) If the Contractor fails to remove or replace the said materials in the manner and within the time period specified in the said Notice, the Contract Administrator may take all steps necessary to have the said materials removed or

replaced by the Owner's own forces or by an Other Contractor or Contractors. The cost of correcting or replacing the said materials shall be paid to the Owner by the Contractor immediately upon receipt of written Notice from the Owner setting out the amount to be so paid. In the event that the Contractor fails to make payment to the Owner as required hereby, the Owner shall deduct the amount of such payment from any payment required to be made by the Owner to the Contractor under this Contract. If in the opinion of the Contract Administrator the Contractor has received all payments due to him under the Contract and the Contractor refuses or fails to make payment immediately upon receipt of the Contract Administrator's written Notice as required hereby, the Surety shall make such payment immediately upon receipt of written Notice from the Contract Administrator setting out the amount to be so paid.

ARTICLE VII - LEGAL RELATIONS

GC.7.01 - Laws, Notices, Permits and Fees:

- (1) The Contractor shall, at his own expense, procure permits, licenses and certificates required by law, any ordinances, rules, regulations, codes and orders of the authorities having jurisdiction for the execution of the Work, but this shall not include the obtaining of permanent easements or rights of servitude. The Contractor shall give the required Notices and comply with the laws, ordinances, rules, regulations, codes and orders of the authorities having jurisdiction which are or become in force during the performance of the Work and which relate to the Work, to the preservation of the public health, and to construction safety. Where there are two or more laws, ordinances, rules, regulations or codes applicable to the Work, the most restrictive shall apply.
- (2) The Contractor shall not be responsible for verifying that the Contract Documents are in compliance with the applicable laws, ordinances, rules, regulations, codes and orders relating to the Work. If the Contract Documents are at variance therewith, or if changes which require modifications to the Contract Documents are made to any of the laws, ordinances, rules, regulations and codes by the authorities having jurisdiction subsequent to the date of Bid closing, any resulting change in the cost shall constitute a corresponding change in the contract price. The Contractor shall notify the Contract Administrator in writing requesting direction immediately if any such variance or change is observed by the Contractor.
- (3) If the Contractor fails to notify the Contract Administrator in writing to obtain direction and performs any Work knowing it to be contrary to any laws, ordinances, rules, regulations, codes, and orders of any authority having jurisdiction, the Contractor shall be responsible for and shall correct any violations thereof and shall bear all costs, expenses and damages attributable to his failure to comply with the provisions of such laws, ordinances, rules, regulations, codes and orders.
- (4) The Contractor shall provide proof of approved final building inspection(s) by all applicable authorities and utility companies during final walk through/inspection with Owner's Representative.

GC.7.02 - Patents and Royalties:

- (1) If the Contract requires or the Contractor desires the use of any design, device, material or process covered by letters patent or copyright, trade mark or trade name, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner and a copy of the said agreement shall be filed with the Owner upon request.
- (2) The Contractor shall indemnify and save harmless the Owner from any and all claims for infringement by reason of the use of any such patent, design, device, material or process, or any trade mark or trade name or copyright in connection with the Work agreed to be performed under the Contract, and shall indemnify the Owner in respect of any costs, expenses and damages which it may be obliged to pay including solicitor's fees and other legal expenses incidental to litigation by reason of a claim for any such infringement at any time during the prosecution or after the Total Performance of the Work.
- (3) If the Owner or the Contractor is served with a claim or Notice of an infringement or alleged infringement of any patent, design, device, material or process, or any trade mark, trade name or copyright, the party so served shall immediately inform the other party with Notice in the manner provided herein.
- (4) If the Owner or the Contractor is prevented by injunction from using any patent, design, device, material or process, or any trade mark, trade name or copyright, the Contractor shall, at his own cost, substitute an equally

suitable product, part or method of carrying out the Work, all subject to the prior written approval of the Contract Administrator.

GC.7.03 Contractor's Risk:

- (1) The Work shall remain at the risk and the responsibility of the Contractor from the commencement of the Work (and all matters incidental thereto) and until the Substantial Completion thereof has been certified by the Contract Administrator.
- (2) The Work not completed as of the date of Substantial Completion shall remain at the risk and responsibility of the Contractor until the Total Completion of the Work has been certified by the Contract Administrator.
- (3) The Contractor shall, at his own cost, be required to maintain the Work, make good all damage thereto and imperfections therein and to deliver the completed work to the Owner in accordance with the provisions of the Contract.

GC.7.04 - Indemnity:

- (1) The Contractor covenants to save harmless and indemnify the Owner against all actions and proceedings, costs, damages, expenses including attorney's fees, claims and demands whatsoever committed by the Contractor, his Sub-contractor, employees or agents and by whomsoever brought by reason of the performance of the said Work including but not limited to:
 - (a) accidental injury (including death) to any person whether retained by or in the employ of the Contractor or not, arising directly or indirectly by reason of the performance of the Work, or by reason of any trespass on or damage to property;
 - (b) damage to any property owned in whole or in part by the Owner or which the Owner by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain;
 - (c) trespass or damage to private property or properties owned by person other than the Owner;
 - (d) failure to pay and obtain a discharge of a Notice of Claim for Lien or notice of bond claim served upon the Owner in accordance with the requirements of Title 43 of the Code of Virginia; non-payment of a Worker's Compensation assessment, Unemployment, Insurance, Federal or State Tax, and for encroachments owing to errors in the Contractor's survey;
 - (e) inaccuracies in any information provided to the Owner by the Contractor.
- (2) The Owner has the right, acting reasonably and upon Notice to the Contractor, to settle any such action, proceedings, claim or demand and charge the Contractor with the amount so paid or to be paid in effecting a settlement or which may be adjudged due to the Owner by the County Administrator.
- (3) The Contractor shall pay to the Owner the value of all legal fees and disbursements required to defend the Owner against any such claim, action, proceeding, claim or demand arising out of the Contract notwithstanding that the defense of the said action, proceeding, claim or demand was undertaken on behalf of the Owner by a salaried employee of the Owner.
- (4) The Contractor shall pay to the Owner all costs taxed against the Contractor in any litigation between the Contractor and the Owner arising out of this Contract.
- (5) If the Contractor fails to make any payment required to be made to the Owner hereunder, the Owner shall be entitled to deduct the amount of such payment from any payment required to be made by the Owner to the Contractor under this Contract or take whatever other remedies against the Contractor that the Owner may have at law.

GC.7.05 - Rights and Remedies:

- (1) The duties and obligations imposed upon the Contractor by the Contract Documents and the rights and remedies available to the Owner hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed upon the Contractor or available to the Owner at law or in equity.
- (2) No acceptance of Work or payment of money and no failure on the part of the Owner to enforce compliance by the Contractor with any term of this Contract and no other act or omission whatever on the part of the Owner, and no act or omission of the Contract Administrator or Owner or of any officer or employee of the Owner shall be taken as a waiver of any of the provisions of this Contract, it being understood that any provision hereof may only be waived by express waiver in writing authorized by the proper officers of the Owner. No express waiver of any provision shall impliedly waive any other provision.

GC.7.06 - Notices:

- (1) Except as provided in GC.5.02(5) hereof, all notices, consents, approvals, statements, authorizations, documents or other communications required or permitted to be given under this Contract shall be in writing and shall be delivered personally or mailed by registered mail, postage pre-paid, to the Owner at the address set out in the Supplemental Conditions and to the Contractor at the address set out in the Proposal; or at such other address or addresses as the party to whom such notice, consent, approval, statement, authorization, document or other communication is to be given may designate by Notice in writing so given to the other party hereto as provided herein.
- (2) Any notice, consent, approval, statement, authorization, document or other communication given as provided herein shall:
 - (a) in the case of personal delivery, be deemed to have been received on the day of delivery, if a business day, or if not a business day, on the business day next following the day of delivery; and
 - (b) in the case of delivery by registered mail, be deemed to have been received on the second business day on which mail is delivered following the date of mailing. In the event of a postal dispute or threat of a postal dispute, all notices required to be given hereunder shall be personally delivered.

GC.7.07 - Independent Contractor:

The Owner and the Contractor acknowledge and agree that the Contractor is an independent contractor and neither the Contractor, nor any officer, servant or agent of the Contractor, shall be deemed to be an employee, agent, representative or servant of the Owner.

GC. 7.08 - COMPLIANCE WITH FEDERAL, STATE, LOCAL LAWS AND FEDERAL IMMIGRATION LAW:

During the term of any contract, the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth of Virginia, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

ARTICLE VIII - PROSECUTION AND PROGRESS

GC.8.01 - Schedule:

- (1) The Contractor shall, immediately after the award of the Contract, prepare and submit for the Contract Administrator's approval, a Schedule of activities for the work confirming the commencement date, the completion date, which date shall be no later than the date specified in the Proposal required to complete the various phases or parts of the Work, in relation to both the Contract Time stated in the Contract Document and the Schedule of Work submitted by the Contractor in his proposal unless otherwise specified in the Supplemental Conditions. The Contractor shall provide any additional details required by the Contract Administrator. After approval has been given, the Schedule shall not be changed by the Contractor without the prior written consent of the Contract Administrator.
- (2) The Owner reserves the right to withhold payment from the Contractor if:
 - (a) such Schedule has not been submitted or has not received the approval of the Contract Administrator prior to or with the first application for payment; or

- (b) a revised Schedule has not been submitted or has not received the approval of the Contract Administrator prior to the first application for payment or any subsequent application for payment in the event of a change in the aforementioned Schedule; or
 - (c) a revised Schedule has not been submitted or has not received the approval of the Contract Administrator after an extension of time has been granted.
- (3) The Contractor shall comply with the approved Schedule and shall bear all costs to meet the Schedule. If the progress of the Work falls behind the most recent Schedule or is delayed for any reason other than one for which extra time is provided for in GC.8.06 - Delay in Completing Contract, the Contractor shall immediately adopt such measures including but not limited to engaging such additional labor and equipment, and work such additional hours as the Contract Administrator may order to bring the Work back on schedule, at the Contractor's expense.
- (4) If at any time the Contractor has been granted additional time under the provisions of GC.8.06 - Delay in Completing Contract or GC.4.05 - Changes in the Work: Owner, he shall forthwith submit a revised Schedule for the Contract Administrator's approval.

GC.8.02 - Contract Administrator May Order Better and More Plant and Labor:

- (1) If at any time the Contractor's methods or Plant or the quality or quantity of labor employed or materials furnished be such, in the opinion of the Contract Administrator, that there is likelihood that the Work will not be constructed satisfactorily, or if progress will not be maintained to the extent guaranteed in the latest approved Schedule, then in every such case, the Contract Administrator may in writing order the Contractor so to alter and improve his methods, to increase or improve his Plant to employ additional or more qualified workmen, or otherwise to conform with the Contract as the Contract Administrator may deem fit and the Contractor shall within forty-eight (48) hours comply or take steps to comply with the requirements of the Contract Administrator in these respects, without in any way relieving the Contractor from his responsibilities under GC.5.02.
- (2) If, in the opinion of the Contract Administrator, the Contractor has not complied sufficiently with the immediately preceding sub-clause, the Contract Administrator may arrange, after the expiration of the forty-eight (48) hour period referred to in GC.8.02(1), for better and more Plant through other sources and the Contractor shall reimburse the Owner for the cost thereof immediately upon receipt of written Notice from the Contract Administrator setting out the amount to be so paid. In the event that the Contractor fails to make payment to the Owner as required hereby, the Owner shall deduct the amount of such payment from any payment required to be made by the Owner to the Contractor under this Contract. If, in the opinion of the Contract Administrator, the Contractor has received all payments due to him under the Contract and the Contractor refuses or fails to make payment immediately upon receipt of the Contract Administrator's written Notice as required hereby, the Surety shall make such payment immediately upon receipt of written Notice from the Contract Administrator setting out the amount to be so paid.

GC.8.03 - The Owner's Right to Suspend Work:

- (1) The Contract Administrator has the right and may, by an order in writing, at any time stop or suspend all or any part of the Work, or direct any portion to be commenced or completed in priority to any other part or portion, or may cancel the order to proceed with the Work, or with any part thereof, and the Contractor shall not thereby be entitled to any claim for loss of profit, or anticipated profit, or for damages or for any additional payment except as allowed under GC.8.03(3) by reason of such order.
- (2) Whenever in the opinion of the Contract Administrator for any reason it is deemed advisable to suspend the Work, or any part thereof, the Contractor shall, on notice from the Contract Administrator, forthwith place the Work and secure the Site and any existing facilities thereon in a proper and satisfactory condition for the safe accommodation of the public, and for the effectual protection of the Site and any existing facilities and the Work against damage from the weather, vandalism or other causes, and shall so maintain it.
- (3) In the event of such right being exercised to cause any delay to the Contractor, then an extension of time to be fixed by the Contract Administrator shall be allowed for the completion of the Contract, and the Owner shall pay to the Contractor all reasonable expenses arising from such suspension of the Work, unless such suspension be due to default on the part of the Contractor, subcontractor or supplier. The Contractor shall furnish the Contract

Administrator with proper vouchers for all items upon which a claim is made under this Clause, and the Contract Administrator's decision as to such expenses shall be final and binding upon both the Owner and the Contractor.

- (4) No such suspension shall vitiate this Contract or any part thereof, and at any time after such Work has been suspended, such Work may again be resumed in whole or in part at the option of the Contract Administrator and upon the Contractor receiving written Notice from the Contract Administrator that such Work or any part thereof is to be resumed he shall at once resume Work and diligently carry on the same.

GC.8.04 - Forfeiture of Contract:

- (1) The Contract Administrator shall have the full right and power to take the whole of the Work or any part or parts thereof, out of the hands of the Contractor, without process or action at law, upon giving the Contractor written Notice, a copy of which Notice shall be given to the Surety, or the Virginia agent of the latter, in the event that the Contractor:
- (a) abandons the Work; or
 - (b) is adjudged bankrupt or insolvent; or
 - (c) makes a general assignment for the benefit of his creditors; or
 - (d) should have a receiver or liquidator appointed in respect of his assets; or
 - (e) is in the judgment of the Contract Administrator not executing or has not executed the Work, or any part thereof, in a sound and workmanlike manner and to his satisfaction and in all respects in strict conformity with the Contract; or
 - (f) in the judgment of the Contract Administrator is not progressing with the Work or any part thereof continuously and in such a manner as to ensure the proper completion of the Work or any part thereof, within the time stipulated; or
 - (g) refuses or neglects forthwith, when so ordered, to conduct the Work so as to ensure its completion, in the opinion of the Contract Administrator within the time stipulated; or
 - (h) has not completed the Work within the time required; or
 - (i) refuses or neglects to take down, rebuild, repair, alter or amend any defective or unsatisfactory Work, or to remove any condemned material or workmanship, or to comply with any reasonable order in connection therewith which he may receive from the Contract Administrator; or
 - (j) fails to make prompt payment to his Sub-contractor or for the purchase or rental of material or Plant; or
 - (k) fails to promptly secure discharge of a lien claim, served upon the Owner, pursuant to Title 43 of the Code of Virginia within Thirty (30) Calendar Days after receipt of written Notice of the claim from the Contract Administrator; or
 - (l) disregards any laws, by-laws, and statutory regulations; or
 - (m) commits any other material breach of this Contract which in the opinion of the Contract Administrator indicates an unwillingness or inability upon the part of the Contractor to carry out the terms thereof.
- (2) Upon such Notice being given to the Contractor, he shall immediately discontinue the Work or any part or parts thereof specified in the said Notice.
- (3) The Surety may, at its option, assume this Contract in respect of the whole of the Work, or the portion thereof specified in the Notice on which the Contract Administrator has ordered the Contractor to discontinue the Work, as the case may be, and proceed to perform same, and may with the written consent of the Contract Administrator sublet the Work or portion of the Work so taken over; provided, however, that the Surety shall

exercise its option, if at all, within Fourteen (14) Calendar Days after written notice to discontinue the Work has been served upon the Contractor and a copy of same upon the Surety or the Virginia agent of the latter.

- (4) The Surety in such event shall take the Contractor's place in all respects, shall be bound by all terms and conditions of the Contract Documents and shall be paid by the Owner in accordance with the terms of the Contract for all Work performed by it.
- (5) In case the Surety does not within Fourteen (14) Calendar Days exercise its right and option to assume the Contract as aforesaid or in the event that there is no Surety, then the Owner shall have the power to complete by contract or otherwise as it may determine, the Work herein before referred to or such portion of it as the Owner may deem necessary, and the Contractor agrees that the Owner shall have the right to take possession of and use any of the materials, Plant, supplies and property of every kind provided by the Contractor for the purpose of the Work and to procure other Plant and materials for the completion of the same. The Owner shall not be required to obtain the lowest price for the Work taken over from the Contractor.
- (6) In case the cost to the Owner, as certified by the Contract Administrator, of completing the Work or portion thereof as aforesaid, be less than the amount to which the Contractor would have been entitled under the Contract for so doing, the Contractor shall have no claims in respect thereof against the Owner, but if such certified cost of the Work performed by the Owner is more than the amount to which the Contractor would have been entitled under the Contract for the same Work, then the Owner shall have a claim against the Contractor for all additional costs of the Work which have been incurred by the Owner in addition to the amount of any liquidated damages that the Owner is entitled to hereunder from the date fixed for the Total Completion of the work set forth in the Contract Documents and the Contractor shall pay the amount of such additional cost of the Work together with liquidated damages as provided for herein to the Owner upon Notice from the Contract Administrator setting out the amount so due. When any particular part of the Work is being carried on by the Owner, by contract or otherwise, under the provisions of this Clause, the Contractor shall continue the remainder of the Work in conformity with the terms and conditions of this Contract, and in such manner as in no way to hinder or interfere with the persons, Other Contractor, Contractors, or workmen employed by the Owner.

GC.8.05 - Effect of Taking the Work out of the Contractor's Control:

- (1) The taking of the Work or any part thereof out of the Contractor's control pursuant to GC.8.04 shall not relieve or discharge the Contractor from any obligation under the Contract or imposed upon him by law except the obligation to complete the performance of that part of the Work that was taken out of the Contractor's control.
- (2) If the Work or any part thereof is taken out of the Contractor's control pursuant to GC.8.04, all Plant and material and the interest of the Contractor on all licenses, powers and privileges acquired, used or provided by the Contractor under the Contract shall be assigned by the Contractor to the Owner without compensation to the Contractor.
- (3) When the Contract Administrator certifies that any Plant, material, or any interest of the Contractor referred to in GC.8.05(1) above is no longer required for the purpose of the Work, or that it is not in the best interest of the Owner to retain that Plant, material, or interest, it shall revert to the Contractor.

GC.8.06 Delay in Completing Contract:

- (1) Time shall be deemed to be of the essence for this Contract.
- (2) The Contractor shall be required to complete the Work in accordance with the Contract Documents and to the satisfaction of the Contract Administrator by the day fixed for the Total Completion of the Work in the Contract Documents.
- (3) Unless otherwise specified in the Supplemental Conditions, should the Contractor fail to complete the Work in accordance with the Contract Documents and to the satisfaction of the Contract Administrator by the day fixed for the Substantial Completion of the Work in the Contract Documents, the Contractor, subject to GC.8.05 hereof, shall pay the sum stipulated in the Solicitation Documents as liquidated damages for each and every Working Day following that day fixed for the Substantial Completion of the Work in the Contract Documents and ending on the day immediately preceding the day that Substantial Completion of the Work has been achieved and is so certified by the Contract Administrator.

- (4) Should the Contractor be delayed in the completion of the Work by reason of strikes, lock-outs (including lock-outs decreed by a recognized contractor's association for its members of which the Contractor is a member), an act of God, or any other cause which the Contractor satisfies the Contract Administrator to be totally beyond his control, or any cause within the Contractor's control which the Contract Administrator has determined justified the delay, then the time for completion shall be extended for a period of time equal to the time lost due to such delays.
- (5) No extension for delay shall be approved unless a written Notice of the claim is received by the Contract Administrator from the Contractor within Seven (7) Calendar Days of the date on which the cause of delay arose.
- (6) Any Notice or claim for extension must state the cause of delay and the length of extension requested.
- (7) In the case of a continuing cause of delay, only one claim for an extension shall be necessary.
- (8) Normal weather conditions shall be considered and included in the planning and scheduling of all work influenced by high or low ambient temperatures and/or precipitation to ensure completion of all work within the Contract Time. The Contractor shall anticipate the potential loss of the number of workdays listed below for each calendar month due to weather delays on Saturday, Sunday, or legal holidays with work was not scheduled in advance to occur.

January	8	July	4
February	8	August	4
March	8	September	4
April	6	October	4
May	4	November	4
June	4	December	6

- (9) Time extensions for weather delays during a given month will be allowed only for actual work days in excess of those numbers listed above and only when those excess days of delay affect the current critical path(s) leading to specified contract completion or milestone dates.

G.C.8.07 – Contractor's Right to Stop Work or Terminate the Contract:

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 of anyone employed by him, or if the Owner should fail to pay to the Contractor within forty-five (45) days any sum certified by the Contract Administrator when no dispute exists as to the sum certified, then the Contract may, upon ten (10) calendar days written notice to the Owner and the Contract Administrator, stop work or terminate the Contract and recover from the Owner payment for the cost of the Work actually performed, together with overhead and profit thereon, but profit shall be recovered only to the extent that the Contractor can demonstrate that he would have had profit on the entire Contract if he 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 cost of physically closing down the job site, but no other costs of termination. The Owner 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.

ARTICLE IX - MEASUREMENT AND PAYMENT

GC.9.01 - Contract Prices:

The Contract Price to be paid by the Owner to the Contractor shall be the sums certified by the Contract Administrator in the interim and final Progress Estimates; such sums to be ascertained and determined by the Contract Administrator as follows:

- (a) For Unit Price Contracts, upon the basis of the unit prices for the various classes of the Work included in the Schedule of Prices. These unit prices are gross prices including duty, freight, cartage, Local, State and Federal Taxes, if any, and all charges governmental or otherwise paid and including profit and all compensation which shall be due to the Contractor for supplying labor, materials, Plant and supervision, not only for the classifications expressly specified but for those which have been omitted such as the construction of drains, construction and removal of false work, backfilling excavations, drilling test holes, clearing the Site and all details necessarily connected with the completion of the Work and all risks and contingencies connected therewith. The total amount to be paid to the Contractor for the Work described in the Contract will be the amount arrived at by measuring the

net amount of each class of the Work listed in the Schedule of Prices, and pricing the same, in accordance with the unit prices therein.

- (b) For Lump Sum Contracts, upon the basis of the lump sum price included in the Schedule of Prices. The lump sum price shall be a gross price including duty, freight, cartage, Local, State and Federal taxes, if any, and all charges governmental or otherwise paid and including profit and all compensation which shall be due to the Contractor for supplying labor, materials, Plant and supervision, not only for the classifications expressly specified but for those which have been omitted such as the construction of drains, construction and removal of false work, backfilling excavations, drilling test holes, clearing the Site and all details necessarily connected with the completion of the Work and all risks and contingencies connected therewith.

GC.9.02 - Increased or Decreased Costs:

- (1) The Contract Price shall not be increased or decreased by reason of any increase or decrease in the cost of the Work to the Contractor which arises as a result of an increase or decrease in the cost of labor, Plant, material or otherwise unless expressly provided for therein.
- (2) Notwithstanding GC.9.02(1) and subject to GC.9.04(2), the Contract Price shall be adjusted in the manner provided in Article IV - Scope of Work, if any change in a tax imposed under Local, State or Federal law
 - (a) occurs after the Time and Date set for Final receipt of bids;
 - (b) applied to material; and
 - (c) affects the cost to the Contractor which arises as a result of an increase or decrease in the cost of labor, plant, material or otherwise unless expressly provided for therein.

GC.9.03 - Measurement and Payment (Construction):

- (1) By the Fourteenth (14th) Calendar Day after the end of any month, or as soon thereafter as possible, the Contract Administrator shall, subject to receiving all necessary information from the Contractor, make and deliver to the Contract Administrator, or authorized designee, a monthly or Final Progress Estimate certified by the Contract Administrator and signed by the Contractor setting out the quantity and value of the Work performed during the preceding month. The signature of the Contract Administrator, or authorized designee thereon will make such Progress Estimate valid for payment.
- (2) By the Seventh (7th) Calendar Day after the end of any month following the month during which authorized Extra Work shall have been completed and before the Contract Administrator completes the Progress Estimate for that month, the Contractor shall furnish to the Contract Administrator a statement signed by the Contractor which shall set forth accurately all of the authorized Extra Work completed during that month and the amount claimed therefor in accordance with the valuation method set out in GC.4.07. Subject to GC.9.03(4), every such statement certified by the Contract Administrator shall be final and binding upon the Contractor.
- (3) With regard to the work specified in the Contract, a monthly Progress Estimate is not to be taken as an accurate setting forth of the state of the Work. With regard to any claim for payment for Extra Work, it is the intention that any such claim, whether consisting of labor performed or of material delivered or of both, shall be entirely included in the Progress Estimate for the month following the month during which such Work was performed.
- (4) Should the Contractor have reason to claim that an error has been made in the monthly or Final Progress Estimate or more particularly in the measurement and payment for Extra Work by the Contract Administrator, the Contractor shall notify the County Administrator in writing of his contention with respect thereto within Seven (7) Calendar Days of receiving the Progress Estimate, and request a determination thereon from the County Administrator. The Contractor shall be paid the amount certified by the Contract Administrator until a determination has been made by the County Administrator hereunder or in accordance with GC.9.06 hereof.
- (5) If the Contractor fails to so appeal to the County Administrator for a determination within Seven (7) Calendar Days of receiving the Progress Estimate, the Contractor shall be deemed to have waived any said claim. Oral appeals or oral protests shall not amount to substantial compliance with any of the provisions of this Article.

- (6) If the Contractor disagrees with the determination of the County Administrator, he must, within Seven (7) Calendar Days after receiving Notice of the County Administrator's determination, notify the Owner in writing of his contention with respect thereto and request that the dispute be resolved in accordance with GC.11.02.
- (7) In the case of the Contractor's neglect or failure to observe fully and faithfully the above conditions, he shall forfeit all right to any claim for additional payment therefor over and above that approved by the Contract Administrator which the Contractor otherwise might have had, and shall not make any claim in respect thereof, and if made, the Owner may reject the same as invalid and he shall not have any right of recovery in respect hereof, at law or otherwise.
- (8) It is intended in all matters referred to above that both the Contract Administrator and Contractor shall act promptly.
- (9) In accordance with the rules of procedure adopted by the Owner from time to time, any payment made by the Owner to the Contractor on account of a Progress Estimate shall be less any deduction required to be made by Title 43 of the Code of Virginia, and such other deductions as are authorized by the Contract.
- (10) Any payment made by the Owner to the Contractor on account of a Progress Estimate shall be less a Five Percent (5%) retainage to assure faithful performance of the Work required under the Contract. All amounts retained under this provision shall be included in the Final Payment upon Total Performance made pursuant to GC.9.07.
- (11) All the foregoing information shall be furnished by the Contractor on behalf of himself and all Sub-Contractors before payment shall be made by the Owner. The Owner may make payment to such persons as shall be entitled thereto for any or all amounts for which the Contractor or any Sub-Contractor is shown to be indebted or liable to pay in respect of labor, services, or materials furnished on the Work. Payment of such amounts shall discharge the Owner's liability to the Contractor to the same extent as payment directly to him.
- (12) Payment of monthly Progress Estimates or the Final Progress Estimate by the Owner to the Contractor shall not be transferable or assignable in any way as a debt or liability of the Owner to the Contractor.

GC.9.04 - Measurement and Payment: (Product, Supply and Installation)

- (1) Notwithstanding the provisions of GC.9.03 for contracts which include the supply and installation of a product including but not limited to equipment, pumps, pipes, cable, structural components, etc., payment for such product shall be governed by the payment schedule set out in the Supplemental Conditions. Such payment shall only be made upon title to the product being transferred to the Owner. Such payments shall not be transferable or assignable in any way as a debt or liability of the Owner to the Contractor.
- (2) Any Extra Work to be performed in connection with the supply and installation of any product requires the prior written approval of the Contract Administrator in accordance with Article IV hereof. Such Extra Work will be valued in accordance with the provision of GC.4.07.

GC.9.05 - Payment of Sub-Contractors.

- (1) Contractor is hereby obligated:
 - (a) To pay the Sub-Contractor(s) within Seven (7) days of the Contractor's receipt of payment from the Owner for the proportionate share of payment received for work performed by the Sub-Contractor(s) under the contract; or
 - (b) To notify the Owner and the Sub-Contractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
- (2) The Contractor is obligated to pay the Sub-Contractor(s) interest at a rate of One (1) Percent per month (unless otherwise provided under the terms and conditions of the contract) on all amounts owed by the Contractor that remain unpaid Seven (7) Days following receipt of payment from the Owner, except for amounts withheld as stated in (b) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary contract. A Contractor's obligation to pay an interest charge to a Sub-Contractor shall not be construed to be an obligation for the Owner.

GC.9.06 - Payment Withheld:

- (1) The Contract Administrator may withhold or retain the whole or part of any Progress Estimate to the extent necessary to protect the Owner from loss on account of one (1) or more of the following in the event that the Contractor:
 - (a) abandons the Work; or
 - (b) is adjudged bankrupt or insolvent; or
 - (c) makes a general assignment for the benefit of his creditors;
 - (d) should a receiver or liquidator be appointed in respect of his assets; or
 - (e) is in the judgment of the Contract Administrator not executing or has not been executing the Work, or any part thereof, in a sound and workmanlike manner and to his satisfaction and in all respects in strict conformity with the Contract; or
 - (f) in the judgment of the Contract Administrator, is not progressing continuously with the Work or any part thereof and in such a manner as to ensure the proper completion of the Work or any part thereof, within the time stipulated; or
 - (g) refuses or neglects forthwith, when so ordered, to conduct the Work so as to ensure its completion, in the opinion of the Contract Administrator within the time stipulated; or
 - (h) fails to meet Substantial Completion, where work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; or
 - (i) has not completed the work within the time required; or
 - (j) refuses or neglects to take down, rebuild, repair, alter or amend any defective or unsatisfactory Work, or to remove any condemned material or workmanship, or to comply with any reasonable order in connection therewith which he may receive from the Contract Administrator; or
 - (k) fails to make prompt payment to his Sub-Contractors, his employees or on account of the purchase or rental of material or Plant in accordance with GC.9.05; or
 - (l) fails to promptly secure a discharge of a lien or trust claim served upon the Owner pursuant to Title 43 of the Code of Virginia; or
 - (m) disregards any laws, by-laws and statutory regulations; or
 - (n) fails to sign either a monthly Progress Estimate or the Final Progress Estimate as required under GC.9.03(1); or
 - (o) fails to employ or keep a competent Supervisor and necessary assistant on the Work or to replace the Supervisor as required by GC.5.01(4); or
 - (p) fails to comply with the provisions of GC.8.01(2); or
 - (q) commits any other material breach of this Contract which in the opinion of the Contract Administrator indicates an unwillingness or inability upon the part of the Contractor to carry out the terms thereof.
- (2) Where the Contract Administrator deems it necessary to correct any portion of the Work, the Contract Administrator may deduct the difference in value between the Work done and that called for by the Contract from the Contract Price, said amount to be determined by the Contract Administrator.
- (3) The Contract Administrator will give the Contractor notice of withholding payment under the provisions of this General Condition within Twenty (20) Days of receipt of any Monthly or Final Progress Estimate.

GC.9.07 - Waiver of Claims:

Subject to GC.9.03(4), acceptance by the Contractor of payment of the Final Progress Estimate shall constitute a waiver and release by him of all claims against the Owner whether for payment for Work done, damages or otherwise arising out of the Contract.

GC.9.08 - Final Payment:

- (1) Payment of the Final Progress Estimate, including any retainage withheld pursuant to General Condition GC.9.03(10) shall be subject to all conditions herein before set forth with regard to the payment of Monthly Progress Estimates and upon compliance with the following additional conditions:
 - (a) completion of final inspection, both by the Owner and by the permitting entity, and issue of a Certificate of Total Completion of the Work by the Contract Administrator;
 - (b) production of a certificate from the Workers Compensation Board stating that full payment has been made to the Board with respect to all assessments owing;
 - (c) Submission of release or waiver of lien forms from the Contractor and all Sub-Contractors performing Work under this Contract in a form acceptable to the Contract Administrator
 - (d) Prior to final payment, Contractor shall provide proof of approved final inspection(s) by all applicable authorities and utility companies and issuance of a certificate of occupancy.
- (2) Payment on account of the Final Progress Estimate, including the holdback made by the Owner in compliance with Title 43 of the Code of Virginia shall be paid to the Contractor when the time for filing liens or trust claims has elapsed, unless the Owner is in receipt of a lien claim.
- (3) Payment of the Final Progress Estimate shall not be made by the Owner until all claims against the Contractor or any Sub-Contractor for wages, the purchase of material or rental of Plant, work or services performed for the Contractor or for damages, or howsoever otherwise arising out of or in connection with the Work shall have been paid, vacated or discharged.
- (4) Neither the issue of a Certificate of Completion or payment of the Final Progress Estimate shall relieve the Contractor from his responsibility either under Article X hereof or as a result of any breach of this Contract including but not limited to faulty or defective Work appearing after Total Completion, failure of the Work to comply with the Contract Documents or the requirement to comply with the terms of any special guarantees set out in the Supplemental Conditions, nor shall it conclude or prejudice any of the powers of the Contract Administrator or the County Administrator.

GC.9.09 - Cost Records:

- (1) The Contractor, at his sole cost and expense, shall provide the Contract Administrator, when a valuation is required pursuant to GC.4.07, GC.4.08 or GC.9.02, with every facility for the compilation of cost records, and when required, as aforesaid, shall supply all data necessary for such purpose from payrolls, time books, invoices, and all other sources from which the Commissioner may find it necessary to obtain information.
- (2) The Contractor, at his sole cost and expense, shall, when a valuation is required pursuant to GC.4.07 or GC.4.08, furnish the Contract Administrator with correct statements of number, name, rate and time for each of the person, and identifying description, rate and time for each of the trucks and other equipment, employed or used by him, including expenses for maintenance and operation.
- (3) The Contractor, at his sole cost and expense, shall provide to the Contract Administrator, when a valuation is required pursuant to GC.4.07, GC.4.08, or GC.9.02, all such information and evidence, including all necessary mathematical calculations of holdback and interest, as shall be reasonably necessary to ensure full and accurate compliance by the Owner with the requirements of Title 43 of the Code of Virginia with regard to the disbursement of holdback monies, and shall save harmless and keep indemnified the Owner against all claims and demands which may be made against it for losses, damages, or expenses of any kind whatsoever, resulting from inaccuracies in the said information or in payments made pursuant thereto inclusive of the value of all legal

services and disbursements required to defend such a claim without having regard to the fact that legal services have been performed by a salaried employee of the Owner.

GC.9.10 - Performance and Payment Bonds

- (1) The Contractor shall deliver the following bonds or security to the Procurement Division which shall become binding on the parties upon the execution of the contract:
 - (a) A performance bond in form satisfactory to the Owner, executed by a surety company acceptable to the Owner and authorized to do business in Virginia or otherwise secured in a manner satisfactory to the Owner, for the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. The bond shall be in an amount equal to 100% of the price specified in the contract; and
 - (b) A Labor and Material payment bond in form satisfactory to the Owner, executed by a surety company acceptable to the Owner authorized to do business in Virginia or otherwise secured in a manner satisfactory to the Owner, for the protection of all persons supplying labor and material to the contractor or its Sub-contractors for the performance of the work provided for in the contract. Labor and materials shall include public utility services and reasonable rentals of equipment, but only for the periods when the equipment rented is actually used at the site. The bond shall be in an amount equal to 100% of the price specified in the contract; and
 - (c) A Prime Contractor shall not be precluded from requiring each Sub-contractor to furnish a payment bond with surety thereon in an amount equal to 100% of the contract with such Sub-contractor.
- (2) No action against the surety on a performance bond shall be brought unless within one year after completion of the contract, including the expiration of all warranties and guarantees, or discovery of the defect or breach of warranty, if the action be for such or such longer period of time as may be provided by the bond. Every person who has furnished labor or material to the Contractor or its Sub-contractors for the work provided in the contract in respect of which a payment bond is furnished, and who has not been paid in full therefore before the expiration of a period of ninety (90) days after the day on which the last of the labor was done or performed by such person or material was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action to final judgment for the sum or sums justly due such person; provided, however, that any person having a direct contractual relationship with a Sub-contractor of the Contractor, but no contractual relationship express or implied with the Contractor furnishing said payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be personally served or served by mailing by registered or certified mail, postage prepaid, in any envelope addressed to the Contractor at any place the Contractor maintains an office or conducts its business. Every suit instituted upon a performance and payment bond shall be brought in a court of competent jurisdiction for the Owner in which the construction contract was to be performed, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.
- (3) In lieu of a payment or performance bond, the Contractor may furnish a certified check or cash escrow in the face amount required for the bond. The Contractor may furnish a letter of credit in a form acceptable to the Owner and from a bank or savings and loan institution acceptable to the Owner. Alternative forms of security provided under this subsection must afford the same protection to the Owner as equivalent to the corporate surety bond.

GC.9.11 - Insurance:

- (1) The Contractor shall not commence Work under this Contract until he has obtained all the insurance required hereunder from an insurer authorized to do business in Virginia and such insurance has been approved by the Owner; nor shall the Contractor allow any Subcontractor to commence Work on his subcontract until the same types of insurance in an appropriate amount have been obtained by the Subcontractor and approved by the Contractor. Approval of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

- (2) The Contractor shall take out and shall maintain at all times during the performance of the Work Workers' Compensation and Employers' Liability Insurance for all of his employees engaged in the Work in an amount not less than the minimum required by §2.2-4332 and §65.2-100 et seq. of the Code of Virginia, and, in case any of the Work is sublet, the Contractor shall require each Subcontractor similarly to provide Workers' Compensation and Employers' Liability Insurance for all of the latter's employees to be engaged in the Work. The Contractor shall submit an original, signed Certificate of Insurance and such endorsements as prescribed herein within ten (10) days of the Notice of Award. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five (45) day written Notice to the Owner. 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.
- (3) During the performance of the Work under this Contract, the Contractor shall maintain commercial general liability insurance to include Premises/Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability, and Personal Injury Liability, which shall insure him against claims of personal injury, including death, as well as against claims for property damage, which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of general liability insurance shall be not less than **\$1,000,000** per occurrence and **\$2,000,000** aggregate combined limit. The Owner, its officers, employees and agents, shall be named as an additional insured with respect to the Work being procured. The Supplemental General Conditions may require the Contractor to provide an Umbrella insurance policy in a specified amount for the Project.
- (4) During the performance of the Work under this Contract, the Contractor shall maintain automobile liability insurance which shall insure him against claims of personal injury, including death, as well as against claims for property damage, which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of automobile insurance shall be not less than **\$1,000,000** combined limit for bodily injury and property damage per occurrence.
- (5) The Asbestos Contractor or Subcontractor, as the case may be, shall provide occurrence-based liability insurance with asbestos coverages in an amount not less than **\$1,000,000** and shall name the following as additional insureds: The Fauquier County Owner, its officers, its employees and its agents; the Architect/Engineer (if not the Asbestos Project Designer); and the Contractor (where the asbestos work is being performed by the Asbestos Subcontractor).

"All Risk" Builder's Risk Insurance:

- (1) The Contractor, at his cost, shall obtain and maintain in the names of the Owner and the Contractor "all-risk" builder's insurance (or fire, extended coverage, vandalism and malicious mischief insurance, if approved by the Owner) upon the entire structure or structures on which the Work of this Contract is to be done and upon all material in or adjacent thereto which is intended for use thereon, to one hundred percent (100%) of the insurable value thereof. Such insurance may include a deductible provision if the Owner so Provides in the Supplemental General Conditions, in which case the Contractor will be liable for such deductions, whenever a claim arises. The loss, if any, is to made adjustable with and payable to the Owner, in accordance with its interests, as they may appear. The Fauquier County Owner, its officers, employees and its agents, shall be named as an additional insured in any policy of insurance issued. Written evidence of the insurance shall be filed with the Owner no later than thirty (30) days following the award of the contract. In the event of cancellation of this insurance, not less than thirty (30) days prior written notice must be sent to the Owner. A copy of the policy of insurance shall be given to the Owner upon demand.
- (2) The value of the builder's risk insurance shall exclude the costs of excavations, backfills, foundations, underground utilities and Sitework.
- (3) Certain projects, such as renovations and interior modifications of existing buildings, may be covered by the Owner's insurance and may not require the "all risk" insurance required by this section. In those instances, the Supplemental General Conditions for the project shall expressly exclude the project from the requirements of (1) above.

ARTICLE X - WARRANTY

GC.10.01 - Warranty:

- (1) The Contractor, unless specifically stated otherwise in the Contract Documents, shall, at his sole cost and expense, maintain the Work against any and all defects or deficiencies or otherwise which may arise for a period of one (1) year from the date of the Certificate of Total Completion.
- (2) Upon receipt of written Notice from the Contract Administrator, the Contractor shall, at his sole cost and expense, remedy any defect or deficiency or otherwise identified by the Contract Administrator, within the one (1) year period as aforementioned, in the manner and within the time periods specified in the said Notice. A copy of the said Notice shall be given to the Surety or its Virginia agent.
- (3) The Contractor shall also, at his sole cost and expense, remedy any and all damage that may arise or result from the defect, deficiency or otherwise referred to in the said Notice or as a result of the correction of same.
- (4) If the Contractor fails for any reason whatsoever to remedy the defects or deficiencies or otherwise in the manner and within the time periods specified in the said Notice, the Contract Administrator may take all steps necessary to have the defects, deficiencies or otherwise remedied either by the Owner's own forces or by another contractor or contractors. The cost of such remedial work shall be paid to the Owner by the Contractor within Seven (7) Calendar Days of receipt of written Notice from the Contract Administrator to the Contractor setting out the amount to be paid. In the event that the Contractor fails to make payment to the Owner as required hereunder, the Surety shall make such payment to the Owner within Seven (7) Calendar Days of receipt of written Notice from the Contract Administrator setting out the amount to be paid.
- (5) Notwithstanding the generality of the foregoing,
 - (a) in any case where repairs must be made immediately, by reason of an emergency existing or otherwise, the Owner shall have the right to undertake such repairs and charge the cost of making such repairs to the Contractor, except that the Contract Administrator shall immediately notify the Contractor and shall withdraw its forces as soon as the Contractor's forces assume performance of the repair.
 - (b) all costs resulting from the need to undertake remedial work during the warranty period as aforesaid, whether by the Contractor, his Sub-contractor, or by the Owner, as provided herein, shall be borne by the Contractor. In addition, the Contractor shall be liable to the Owner for all expenses, losses or damages incurred by the Owner as a result of such defects, deficiencies or otherwise referred to herein or as a result of the Contractor's failure to meet the warranty requirements specified herein, including, but without limiting the generality hereof, all costs of engineering, inspecting and testing.
- (6) Notwithstanding the provisions of this Article, if any statute in force in the Commonwealth of Virginia or in the jurisdiction where the material was manufactured or if a manufacturer's warranty extends beyond the warranty period specified in these Contract Documents, then the provisions of such statute or manufacturer's warranty shall apply.
- (7) In the event that the Contractor can prove, following completion and payment for the remedial work, that the defect, deficiency or otherwise was attributable to a design defect, deficiency or otherwise or resulted from third party damage not attributable to the Contractor or his Sub-contractors, the Owner shall promptly reimburse the Contractor for the cost of undertaking such remedial work. If the Contractor fails for any reason whatsoever to remedy the defect, deficiency or otherwise in the manner and within the time limit specified in GC.10.01(2), the Contractor shall not be entitled to repayment of the monies that he is required to pay to the Owner under GC.10.01(4) if the Contractor is later able to establish that the defect, deficiency or otherwise was due to a design defect, deficiency or otherwise or resulted from third party damage not attributable to the Contractor or his Sub-contractors.
- (8) Where, because of adverse weather or other conditions reasonably beyond the control of the Contractor, a component of the Work cannot be completed but that component does not prevent the balance of the Work from being put to its intended use, the Contract Administrator may permit the warranty period to commence prior to the Total Performance of the Contract in the manner set out in the Supplemental Conditions.

GC.10.02 - Acceptance of the Work:

- (1) The Contract Administrator shall issue a Certificate of Acceptance of the Work following the expiration of the warranty period upon:
 - (a) the satisfactory performance of the Work during the warranty period;
 - (b) the Contractor remedying all defects, deficiencies or otherwise identified by the Contract Administrator during the warranty period in the manner prescribed herein and to the satisfaction of the Contract Administrator.
 - (c) the successful conclusion of tests required by the Owner immediately preceding the conclusion of the warranty period.
- (2) No certificate other than the Certificate of Acceptance shall:
 - (a) be deemed to constitute acceptance of the Work or any part or parts thereof; or
 - (b) be taken as an acceptance of:
 - i) the due performance of any or all of the Contract; or
 - ii) the accuracy of any claim or demand by the Contractor; or
 - iii) additional or varied work having been ordered by the Owner.
- (3) The Certificate of Acceptance shall not, however, relieve the Contractor from his responsibilities as a result of any breach of this Contract by the Contractor, including, but not limited to, faulty or defective work appearing after the Certificate of Acceptance has been issued, failure of the Work to comply with the Contract Documents, or the requirement to comply with the terms of any special guarantees set out in the Supplemental Conditions.

ARTICLE XI - BIDDER/CONTRACTOR REMEDIES

GC.11.01 – Protest of Award or Decision to Award:

Any Bidder who desires to protest the award or decision to award a contract, by the Owner, shall submit such protest in writing to the County Administrator no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected Bidder is not a responsible Bidder. The written protest shall include the basis for the protest and the relief sought. The County Administrator shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the Bidder appeals within ten (10) days of the written decision by instituting legal action as provided in Section 7.8 C of the Procurement Policy. Nothing in this paragraph shall be construed to permit a Bidder to challenge the validity of the terms or conditions of the solicitation.

GC.11.02 - Contractual Disputes:

Contractual claims, whether for money or for other relief shall be submitted, in writing, no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the Work upon which the claim is based. The filing of a timely notice is a prerequisite to recovery under this Section. Although the Contractor may be required to submit certain classes of claims prior to final payment, and the Contractor is not prevented from filing claims during the pendency of the Work, the Owner shall not be obligated to render a final written decision on any claim until after final payment. All claims shall be submitted along with all practically available supporting evidence and documentation.

No written decision denying a claim or addressing issues related to the claim, if rendered prior to final payment, shall be considered a denial pursuant to this Section unless the written decision makes express reference to this Section and is signed by the Owner or his designee. The Contractor may not institute legal action prior to receipt of the Owner's final written decision on the claim unless the Owner fails to render such a decision within ninety (90) days of submission of the claim or within ninety (90) days of final payment, whichever is later.

The decision of the Owner shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim, initiates legal action as provided in §2.2-4364 of the Code of Virginia. Failure of the Owner to render a decision within 90 days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other

relief or penalty. The sole result of the Owner's failure to render a decision within 90 days shall be the Contractor's right to immediately institute legal action. No administrative appeals procedure pursuant to §2.2-4365 of the Code of Virginia has been established for contractual claims under this Contract.

END OF SECTION 00700