

**GENERAL CONDITIONS OF THE  
CONSTRUCTION CONTRACT**

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are the Contract Documents.
  3. *Amendment to the Agreement*—A change to the Agreement, General Conditions, or Supplementary Conditions signed by the Contractor and Owner.
  4. *Application for Payment*—The form acceptable to Owner which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents. The cover form for the Application for Payment is included as an appendix to the Supplementary Conditions.
  5. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  6. *Authorized Changes in the Work*—A term used to include Change Orders, Work Change Directives, and Field Orders issued under the Contract.
  7. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  8. *Bidder*—The individual or entity who submits a Bid directly to Owner.
  9. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  10. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
  11. *Change Order*—A document which is signed by (i) Contractor and Owner, or (ii) the Owner only if issued unilaterally, and authorizes an addition, deletion, or revision in the Work and/or an adjustment in the Contract Price and/or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Agreement. A Change Order issued unilaterally is known as a Unilateral Change Order (“UCO”).

12. *Claim*—A demand or assertion by Contractor for a specific adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
13. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
14. *Construction Manager* – A person or entity designated as a construction manager by Owner who provides professional management services, which contribute to the control of time and the cost and quality of a public construction project, and who performs those services concurrent with architectural and engineering services rendered during the design and construction phases of the Project.
15. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
16. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor Submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
17. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
18. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment.
19. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
20. *Cost of the Work*—See Paragraph 11.01 for definition.
21. *Day* – Unless otherwise specifically stated, the term “day” will be understood to mean a calendar day of twenty-four hours, measured from midnight to the next midnight. Business day, working day, or words of similar import means any day other than Saturday, Sunday, or the following minor and major holidays:
  - a. Minor Holidays - Martin Luther King Day; Presidents’ Day; Columbus Day; Veterans Day;
  - b. Major Holidays – New Year’s Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day after Thanksgiving; Christmas Eve Day; and Christmas Day.

Holidays that occur on a Saturday shall be observed the preceding Friday, and holidays that occur on a Sunday shall be observed the following Monday. In addition to the holidays listed

above, Loudoun Water may observe additional days associated with a holiday, which will be listed on the organization's calendar at [www.loudounwater.org](http://www.loudounwater.org).

22. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, dimensions, location, and character of the Work to be performed by Contractor. Drawings may either be bound in the same book as the balance of the Contract Documents or bound in separate sets, and are a part of the Contract Documents, regardless of the method of binding. Shop Drawings and other Contractor Submittals are not Drawings as so defined.
23. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
24. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, Drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
25. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
26. *Engineer*—The individual or entity that prepared the Drawings and/or Specifications for the Project. The Engineer is named as such in the Supplementary Conditions. The Engineer may serve as the Owner's consultant during construction.
27. *Equipment* – All devices or components to be incorporated into the Work requiring servicing or maintenance or containing parts requiring instruction for replacement. The term "Equipment" as herein defined is not intended to apply where the context in which the word "equipment" is used refers to devices such as tools, machinery, or mechanized apparatus used in the performance of the Work but not incorporated into the Work. The identification of items is not intended to be an all-inclusive list of Equipment as that term is used in the Contract Documents.
28. *Field Order*— An agreement between the Owner and Contractor which incorporates changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
29. *Final Completion, Finally Complete* –Total completion of all Work, or a defined portion thereof, required by or reasonably contemplated by the Contract Documents, which includes all changes incorporated by Change Orders, Field Orders, etc.
30. *Final Decision* – a decision issued by Owner in response to a Notice of Claim. The Final Decision shall be final and binding upon Contractor, and Contractor shall not be entitled to seek any further relief regarding the subject of the Final Decision under the Contract and/or

applicable Laws and Regulations unless Contractor timely and properly initiates the dispute resolution procedure set forth in Article 17. No purported waiver of this condition precedent shall be valid unless it is clearly stated in writing signed by the Owner.

31. *General Requirements*— All Sections of Division 1 of the Specifications.
32. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
  - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site is not a Hazardous Environmental Condition.
33. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
34. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
35. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
36. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
37. *Notice* – A written communication delivered to the individual, or to a member of the firm, or to an officer of the corporation, for whom it is intended. Any Notice not given in compliance with the requirements of the Contract Documents shall be deemed of no effect. Notice provided to the Engineer shall not be deemed Notice to the Owner.
38. *Notice of Award*—The Notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
39. *Notice of Intent to Claim* – A Notice by Contractor that states Contractor’s intent to give Notice of Claim.
40. *Notice to Proceed*—A Notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
41. *Owner*—The Loudoun County Sanitation Authority, also known as Loudoun Water, whose address is 44865 Loudoun Water Way, Ashburn, Virginia 20146. The General Manager (GM)



- shall have the authority to act on behalf of Owner for all purposes under the Contract. In the absence or incapacity of the GM, any of the Deputy General Managers shall have all the power and authority of the GM. The GM may designate by Notice to Contractor of an Owner's Representative authorized to act on behalf of Owner for all purposes under the Contract. Such representative may include the Engineer, the Project Manager, or the Construction Manager.
42. *PCBs*—Polychlorinated biphenyls.
  43. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
  44. *Project Schedule; Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times, and also known as a Baseline Schedule. Monthly updates of the Project Schedule that are submitted by the Contractor shall be known as Schedule Updates.
  45. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
  46. *Project Manager* – Any individual or entity designated by Owner to provide the project management services for the Project.
  47. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
  48. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
  49. *Request for Clarification* – A written request by Contractor to Owner seeking clarification or interpretation of any aspect of the Contract Documents. Unless otherwise provided by the Contract Documents, a Request for Clarification shall be submitted within seven (7) days of the event giving rise to the request. RFCs are commonly known in the industry as “requests for information” or “RFIs”, and the term RFC may be used synonymously with RFI.
  50. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
  51. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required Submittals and the time requirements to support scheduled performance of related construction activities, and is also known as the Submittal Log.
  52. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

53. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
54. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
55. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, Equipment, products, devices, fixtures, forms, systems, types of construction, standards, workmanship, and other items as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
56. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
57. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
58. *Substantial Completion*—The time at which the Work (or defined portion thereof) has progressed to the point where, in the opinion of Owner, the Work (or defined portion thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or defined portion thereof) can be fully utilized by the Owner for the purposes for which it is intended (in all manners and modes of operation); includes all safety and security features; and provides the Owner with complete, free, clear, and safe access for operation and maintenance. Notwithstanding the foregoing, Substantial Completion may be defined more specifically in the Supplementary Conditions and/or Specifications. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof. The specific tasks required to accomplish Substantial Completion of the Work (or defined portion thereof) may be set forth in more particular detail in the Supplementary Conditions and/or Specifications.
59. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
60. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.

61. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or Equipment to be incorporated in the Work by Contractor or Subcontractor.
62. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
63. *Unit Price Work*—Work to be paid for on the basis of unit prices.
64. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, tools, equipment, appurtenances, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and Equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
65. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following Notice, negotiations, and/or Submittals by the Contractor as to its effect, if any, on the Contract Price and/or Contract Times. In certain cases so designated by Owner, Owner’s written determination issued pursuant to Article 12 may serve as a Work Change Directive.

## 1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B through the remainder of this Article are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. Intent of Certain Terms or Adjectives:
  1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Owner or Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Owner or Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless

there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 8, Article 9, or any other provision of the Contract Documents.

C. *Defective; Non-Conforming:*

1. The words “defective” and “non-conforming,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - a. does not strictly conform to the intent or requirements of the Contract Documents; or
  - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - c. is missing or incomplete; or
  - d. has been damaged prior to final payment.

D. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or Equipment, shall mean to supply and deliver said services, materials, or Equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  2. The word “install,” when used in connection with services, materials, or Equipment, shall mean to put into use or place in final position said services, materials, or Equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or Equipment, shall mean to furnish and install said services, materials, or Equipment complete and ready for intended use.
  4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or Equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- E. The words “will” or “shall” are used interchangeably and denote mandatory, non-discretionary conduct or intent.
- F. The phrases “or a defined portion thereof”, “defined portion”, “defined portions”, and “defined portions thereof” or words of similar import shall be deemed to mean only such portion of the Work as may be designated by the Owner in its sole discretion. The phrases “or a defined portion thereof”, “defined portion”, and “defined portions” and “defined portion thereof”, when used in conjunction with Substantial Completion, Final Completion, or Partial Utilization, shall not affect the determination of Substantial Completion, Final Completion, or of Partial Utilization of the Work as a whole, all of which are understood to be indivisible, nor shall such determination have any impact on the ability of the Owner to assess and deduct liquidated damages for failure to achieve Substantial Completion, or Final Completion, of the Work.

- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.
- H. Omission of words such as “all” or “any” or “the” or “and” is not intended to affect the interpretation of any statement. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or similar items or matters, whether or not non-limiting language (such as “without limitation,” “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.
- I. Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust or other legal entity, whenever the context so requires.

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 *Delivery of Bonds and Evidence of Insurance; Contract Execution; Administrative Forms*

- A. When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds and evidence of insurance as Contractor may be required to furnish.
- B. Within 14 days of receipt of the signed counterparts of the Agreement, and the bonds and evidence of insurance, all in conformance with the requirements of the Contract, Owner will sign the Contract and transmit same to the Contractor for its files. Signature by the Owner constitutes execution of the Contract and establishes the Effective Date of the Agreement.
- C. *Administrative Forms.* Within 14 days of the Effective Date of the Agreement, Owner will transmit the administrative forms listed below to Contractor, some of which require information from Contractor. These administrative forms are not Contract Documents.
  - 1. Vendor Application Form. If the Contractor has not previously provided the information required by this form or if the information required by this form has changed, Contractor shall fill out the form and transmit back to Owner prior to submission of its first Application for Payment.
  - 2. IRS Form W-9, Request for Taxpayer Identification Number and Certification. Contractor shall fill out the form and transmit back to Owner prior to submission of its first Application for Payment.
  - 3. Purchase Order
  - 4. Application for Electronic Fund Transfer. Contractor shall fill out the form and transmit back to Owner prior to submission of its first Application for Payment.

## 2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

## 2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence on the day specified in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement.

## 2.04 *Work at the Site*

- A. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.
- B. Contractor shall contact, and coordinate with, Miss Utility (800-552-7001) to have the existing utilities located and marked prior to performing any Work at the Site.

## 2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 15 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Owner for timely review:
  - 1. a preliminary Project Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
  - 2. a preliminary Schedule of Submittals that provides a comprehensive list of all Submittals required under the Contract; and
  - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.
- B. *Site Inspection:* The Contractor is responsible for all conditions that exist at the Site. Contractor has represented in its Bid that Contractor has visited the Site and made a reasonable and thorough investigation of the Site. Contractor has undertaken all studies, inspections, review of available record documents, or other actions the Contractor deems necessary to discover any differing subsurface or physical conditions referenced in Paragraph 4.03A, any Underground Facilities referenced in Paragraph 4.04B, and any Hazardous Environmental Conditions referenced in Paragraph 4.06C.

## 2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, and others as appropriate, which may include the Engineer, shall be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A,

procedures for handling Shop Drawings and other Submittals, processing Applications for Payment, and maintaining required records.

- B. If not designated in writing prior to the conference, Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

#### 2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Owner and others as appropriate, if Owner deems necessary in Owner's sole discretion, shall be held to review for acceptability to Owner as provided below the preliminary schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. With the exception of payment for bonds and insurance, acceptance of the Project Schedule, Schedule of Submittals, and Schedule of Values by the Owner is a condition precedent to the Owner's processing and payment of the Contractor's Payment Applications.
  - 1. The Project Schedule will be acceptable to Owner if, in the Owner's sole discretion, the Project Schedule provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Owner responsibility for the Project Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  - 2. Contractor's Schedule of Submittals will be acceptable to Owner if, in the Owner's sole discretion, the Schedule of Submittals is comprehensive and provides a workable arrangement for reviewing and processing the required Submittals.
  - 3. Contractor's Schedule of Values will be acceptable to Owner, as to form and substance only, if in the Owner's sole discretion, the Schedule of Values provides a reasonable allocation of the Contract Price to component parts of the Work.

#### 2.08 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

## ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall only be issued by Owner or Engineer as provided in Paragraphs 3.03.A, 8.14 and 9.01.J.
- D. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed versions, the printed record version will govern.

### 3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
  1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents. Provided, however, that the Contractor shall comply with all subsequent amendments to applicable Laws or Regulations.
  2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.
  3. All Work shall conform to Loudoun Water's *Engineering Design Manual* (EDM), which is available at [www.loudounwater.org](http://www.loudounwater.org).

### 3.03 *Reporting and Resolving Discrepancies*

- A. Reporting Discrepancies:
  1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify all figures therein and all field measurements. Contractor shall promptly give



Notice to Owner and Engineer of any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby by timely submitting a Request for Clarification. Contractor's strict compliance with this Paragraph is a condition precedent to the Contractor's right to make a Claim as provided in Article 12 that arises from any claimed conflict, error, ambiguity, or discrepancy described in this Paragraph, or to seek any other remedy for the same that arises under the Contract Documents or any applicable Law or Regulation. If the Contractor fails to comply with this Paragraph, the Contractor shall be solely responsible for all costs and delays arising from or related to the conflict, error, ambiguity, or discrepancy at issue.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly provide Notice to Owner and Engineer in writing of the same. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.17.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04. Contractor's strict compliance with this Paragraph is a condition precedent to the Contractor's right to make a Claim as provided in Article 12 that arises from any claimed conflict, error, ambiguity, or discrepancy described in this Paragraph, or to seek any other remedy for the same that arises under the Contract Documents or any applicable Law or Regulation. If the Contractor fails to comply with this Paragraph, the Contractor shall be solely responsible for all costs and delays arising from or related to the conflict, error, ambiguity, or discrepancy at issue.
3. *Contractor's Failure to Discover:* If the Contractor fails to discover any such conflict, error, ambiguity, discrepancy, omission, or inconsistency which, in the exercise of reasonable care and diligence it should have discovered, the Contractor shall be solely responsible for all costs and delays arising from or related to the conflict, error, ambiguity, discrepancy, omission, or inconsistency at issue.

#### B. Resolving Discrepancies:

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
  - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
2. In resolving inconsistencies or discrepancies among two or more sections of the Contract Documents, precedence shall be given in the following order:

- a. Amendments to the Agreement
  - b. The Agreement
  - c. Authorized Changes in the Work
  - d. Supplementary Conditions
  - e. General Conditions
  - f. Specifications
  - g. Drawings
  - h. Loudoun Water's EDM
  - i. Escrow Agreement (if any)
3. Authorized Changes in the Work shall take precedence over any provisions of the Contract Documents addressed therein. Figure dimensions on Drawings shall take precedence over scale dimensions. When a portion of the Work is depicted on more than one Drawing, the Drawing having the greater detail shall have precedence.
4. The Contractor agrees that, in the event of any ambiguity or conflict in the Contract Documents, the language in the Contract Documents shall not be construed against the Owner.

#### 3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work only by either a Change Order or a Work Change Directive. Changes in Contract Price or Contract Times shall be permitted only by a Change Order executed or otherwise issued in accordance with the Contract. The Contract terms and conditions may be amended only by an Amendment to the Agreement.
- B. The requirements of the Contract Documents may be supplemented or changed, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
1. A Field Order;
  2. Owner's written approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.18 and the Specifications); or
  3. Owner's written interpretation or clarification.

No change in Contract Price or Contract Times shall be permitted in connection with any of these methods of revision specified in Paragraph 3.04.B.

#### 3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
  3. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.
- C. All portions of the Contract Documents are instruments of service for the Project. Any reuse of these materials by the Contractor or a Subcontractor without specific written authorization, verification or adaptation by the Engineer will be at the risk of the user and without liability or legal expense to the Engineer or the Owner. Such user shall hold the Engineer and the Owner harmless from any and all damages, including reasonable attorneys' fees, from any and all claims arising from any such reuse.

#### **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

##### *4.01 Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If the Contractor believes the Owner has not furnished the Site or a part thereof, then Contractor shall provide Notice to the Owner, in writing, no later than three (3) days after occurrence of the event giving rise to the Contractor's belief. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Article 12, provided however that Contractor's strict compliance with the above Notice provision is a condition precedent to any Claim for adjustment of the Contract Times and/or the Contract Price due to any delay in Owner's furnishing the Site or a part thereof. If the Contractor fails to timely provide the required written Notice, then the Contractor shall be solely responsible for all costs and delays arising from or related to the claimed delay in furnishing the Site or a part thereof.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary.
- C. If Contractor believes that additional lands or access thereto are desirable as temporary construction facilities or for storage of materials and equipment beyond the Site furnished by Owner, then Contractor, at its sole expense, shall obtain written evidence of permission from the

fee simple owner(s) of such lands for Contractor to use such lands and provide the written evidence, signed by the fee simple owner(s) of the property and including the fee simple owner(s)'s terms for Contractor's use of the lands, to Owner prior to Contractor's use of such lands. Owner shall bear no responsibility in any regard whatsoever for Contractor's use of such other lands. Contractor's failure to obtain and provide this written evidence shall be a breach of the Contract and basis for Owner to undertake any remedy available to it, including but not limited to ordering Contractor to cease use of such additional lands until it provides Owner with the evidence required by this paragraph. Such an order of Owner, if given, shall not be a basis for a delay Claim by Contractor.

4.02 *Not Used*

4.03 *Differing Subsurface or Physical Conditions*

- A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed could not have been discovered previously in the exercise of due diligence, and either:
1. is of such a nature as to require a change in the Contract Documents; or
  2. differs materially from that shown or indicated in the Contract Documents; or
  3. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, at the time the condition is uncovered or revealed, and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.17.A), give Notice of Intent to Claim pursuant to the provisions of Article 12. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid in cases of emergency) until receipt of written order to do so. If Contractor disturbs such condition or performs any Work in connection therewith before receiving a written order to do so, then Contractor waives any Claim arising from or related to such condition and shall be solely responsible for all costs and delays arising from or related to the same. Contractor's strict compliance with the Notice provisions is a condition precedent to any Claim for adjustment of either the Contract Times or of the Contract Price due to such conditions.

- B. After receipt of Notice as required by Paragraph 4.03.A and Article 12, Owner will act pursuant to the provisions of Article 12. Contractor's response and actions thereto shall be governed by the provisions of Article 12.
- C. If the Contractor failed to conduct the Site Inspection pursuant to paragraph 2.05B, then the Contractor waives any Claim arising from or related to any subsurface or physical conditions that would be otherwise covered under Paragraph 4.03A, and the Contractor shall be solely responsible for all costs and delays arising from or related to the same.

#### 4.04 *Underground Facilities*

- A. *Shown or Indicated*: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data (i) furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or others, and/or (ii) obtained by Owner or Engineer. Unless it is otherwise expressly provided in the Supplementary Conditions:
1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
  2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all such information and data;
    - b. locating all Underground Facilities shown or indicated in the Contract Documents;
    - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
    - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- B. *Not Shown or Indicated*: If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, Contractor shall, at the time the Underground Facility is uncovered or revealed, and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.17.A), identify the owner of such Underground Facility and give Notice to that owner and to Owner. If Contractor determines the presence of the Underground Facility will require a change to the Contract Documents, Contractor shall give Notice pursuant to the provisions of Article 12. Owner's and Contractor's actions thereafter shall be governed by the provisions of Article 12. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility. Contractor shall not further disturb the Underground Facility or perform any work in connection therewith until receipt of a written order to do so. If Contractor disturbs such condition or performs any work in connection therewith before receiving a written order to do so, then Contractor waives any Claim arising from or related to the Underground Facility and shall be solely responsible for all costs and delays arising from or related to the same. Contractor's strict compliance with the Notice requirements in this Paragraph is a condition precedent to the Contractor's right to make a Claim as provided in Article 12 that arises from the Underground Facility at issue, or to seek any other remedy for the same that arises under the Contract Documents or any applicable Law or Regulation. If the Contractor fails to comply with this Paragraph, the Contractor shall be solely responsible for all costs and delays arising from or related to the Underground Facility at issue.
- C. If the Contractor failed to conduct the Site Inspection pursuant to Paragraph 2.05B, then the Contractor waives any Claims arising from or related to the Underground Facilities otherwise covered under Paragraph 4.04B, and the Contractor shall be solely responsible for all costs and delays arising from or related to the same.

#### 4.05 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Owner's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any Claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. If a Hazardous Environmental Condition is uncovered or revealed at or contiguous to the Site which was not shown or indicated Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.17.A); and (iii) notify Owner (and promptly thereafter confirm such Notice in writing). Owner shall determine the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the Notice required by Paragraph 4.06.D. If the Contractor determines the Hazardous Environmental Condition will require a change to the Contract Documents, Contractor shall give Notice pursuant to the provisions of Article 12. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, related to the Hazardous Environmental Condition, Contractor may make a Claim therefor as provided in Article 12. Owner's and Contractor's actions thereafter shall

continue to be governed by the provisions of Article 12. During such time, Contractor shall be responsible for the safety and protection of such Hazardous Environmental Condition. Contractor shall not disturb the Hazardous Environmental Condition or perform any work in connection therewith (except as foresaid in cases of emergency) until receipt of written order to do so. If Contractor disturbs such condition or performs any work in connection therewith before receiving a written order to do so, then Contractor waives any Claim arising from or related to the Hazardous Environmental Condition and shall be solely responsible for all costs and delays arising from or related to the same. Contractor's strict compliance with the Notice requirements in this Paragraph is a condition precedent to the Contractor's right to make a Claim as provided in Article 12 that arises from the Hazardous Environmental Condition at issue, or to seek any other remedy for the same that arises under the Contract Documents or any applicable Law or Regulation. If the Contractor fails to comply with this Paragraph, the Contractor shall be solely responsible for all costs and delays arising from or related to the Hazardous Environmental Condition at issue. Contractor shall be solely responsible for a Hazardous Environmental Condition created by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

- D. Contractor shall not be required to resume Work in connection with such condition specified in Paragraph 4.06.C or in any affected area until after Owner has obtained any required permits related thereto and delivered Notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. Any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor shall be included in a Change Order. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in the Contract Price or Contract Times, or both, Contractor may make a Claim therefore as provided in Article 12, provided however that Contractor's strict compliance with the Notice requirements in Paragraph 4.05C is a condition precedent to any such Claim. If the Contractor fails to timely provide the required Notice, then the Contractor shall be solely responsible for all costs and delays arising from or related to the Work stoppage or such special conditions under which Work is agreed to be resumed.
- E. If after receipt of such Notice given pursuant to Paragraph 4.06.D Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. Any adjustment in Contract Price or Contract Times, or both, as a result of deleting the portion of the Work that is in the area affected by such condition shall be included in a Change Order. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- F. If Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.17.A); and (iii) notify Owner (and promptly thereafter confirm such Notice in writing). Contractor shall develop a plan for removal or remediation of the Hazardous Environmental Condition created by the presence of any such Constituent of Concern in conformance with Laws and Regulations and submit same to Owner for review and

approval. By approving such plan, Owner assumes no responsibility or liability for the sufficiency of the plan. Contractor shall be solely responsible to remove or remediate the Hazardous Environmental Condition promptly to allow Contractor to resume Work, and Contractor shall not be entitled to any changes to Contract Price and/or Contract Times in connection therewith.

- G. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, sub-consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. The provisions of Paragraphs 4.03 and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.
- I. If the Contractor failed to conduct the Site Inspection pursuant to Paragraph 2.05B, then the Contractor waives any Claims arising from or related to Hazardous Environmental Conditions otherwise covered under Paragraphs 4.06C, and the Contractor shall be solely responsible for all costs and delays arising from or related to the same.

## **ARTICLE 5 – BONDS AND INSURANCE**

### **5.01 *Performance, Payment, and Other Bonds***

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 14.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents.
- B. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- C. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required



amounts. Contractor shall include with the executed bonds proof of the issuer's ability to do business in the Commonwealth of Virginia.

- E. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.C, Contractor shall promptly notify Owner and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.C and 5.02.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 5.02 *Insurance—General Provisions*

- A. Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions. The Contractor shall furnish a new certificate evidencing continuation of coverage prior to any change or cancellation date. Contractor's failure to do so shall result in suspension of all payments until the new certificate is furnished.
- B. All insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized to do business in Virginia. Insurance companies providing insurance pursuant to the Contract provisions shall have a rating in the most recent issue of A.M. Best Key Rating Guide of A-VII or better, and Contractor shall advise Owner of its insurer's A.M. Best rating.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Failure of Owner to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- G. Contractor shall require:
  - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
  - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- H. The Contractor shall secure and maintain all insurance certificates of its Subcontractors which shall be made available to Owner upon demand.
- I. If Contractor does not maintain the insurance required by the Contract, the Contractor shall notify the Owner in writing of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if the Contractor has failed to obtain or maintain required insurance, the Owner may elect (but is in no way obligated) to obtain equivalent insurance to protect such Owner's interests at the Contractor's expense, and the Contract Price will be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 45 days prior Notice has been given to Owner and Contractor and to each

other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide).

- O. If an “Acord” insurance certificate is used to evidence Contractor’s insurance, the words “endeavor to” and “but failure to mail such Notice shall impose no obligation or liability of any kind upon the company”, or other words of similar import, in the “cancellation” block on the form shall be deleted.
- P. Compliance by the Contractor and all Subcontractors with the requirements of Article 5 and any related Supplementary Conditions shall not relieve the Contractor and all Subcontractors of their liabilities under this Contract. No liability insurance provided by Contractor or Subcontractors shall contain a supervision, inspection or engineering services exclusion that would preclude Owner from supervising and/or inspecting the Project as to the end result.

### 5.03 *Contractor’s Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker’s Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of this Article 5 and the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 5.03 as supplemented shall:
  - 1. include at least the specific coverages required;
  - 2. be written for not less than the limits specified, or those required by Laws or Regulations, whichever is greater;
  - 3. cover claims under workers’ compensation, disability benefits, and other similar employee benefit acts;
  - 4. cover claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor’s employees;
  - 5. cover claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor’s employees;
  - 6. cover claims for damages insured by personal injury liability coverage which are sustained:
    - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
    - b. by any other person for any other reason;
  - 7. cover claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;
  - 8. cover claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and
  - 9. cover claims arising out of operation of Laws or Regulations for damages because of bodily injury or death or any person or for damage to property

10. be written on an occurrence basis, stating that coverage is primary to all other coverage Owner may possess;
  11. for automobile liability insurance, be written with a symbol "1" to provide for owned, hired, and non-owned coverage;
  12. for excess liability insurance, be written such that the insurance is excess over automobile liability, general liability, and employer's liability, and shall, at a minimum, follow the coverage form in the underlying primary policies;
  13. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.B), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
  14. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable;
  15. include all necessary endorsements to support the stated requirements; and
  16. include completed operations coverage:
    - a. Such insurance shall remain in effect for two years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.
- C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
  3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
  4. not seek contribution from insurance maintained by the additional insured; and
  5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

5.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.05 *Builder's Risk and Other Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions as their interest may appear, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
  2. be written on a Builder's Risk "all-risk", completed value policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. Coverage may exclude the costs of excavations, infrastructure, backfills, foundations, underground utilities, and sitework.
  3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
  4. cover materials and Equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and Equipment have been included in an Application for Payment;
  5. allow for partial utilization of the Work by Owner;
  6. include testing, startup, and commissioning; and
  7. be maintained in effect on or before the date of the Notice to Proceed and until final payment is made unless otherwise agreed to in writing by Owner and Contractor with 30 days written Notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall not be responsible for purchasing and maintaining any property insurance to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such

identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss.

- C. *Insurance of Other Property; Additional Insurance:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 5.05, it may do so at Contractor's expense.

#### 5.06 *Property Losses; Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 5.05 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Contractor hereby agrees to waive any rights Contractor may have against the Owner, Engineer, Subcontractor(s), suppliers of any portion of the Work, and any bondholders, for any damage to the Work, even if caused by the negligence of the Owner, Engineer, Subcontractor(s), suppliers of any portion of the Work, or any bondholders.
- B. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

#### 5.07 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.05 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.07.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. The Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor and by appropriate agreement, written where legally required for validity, and shall require each Subcontractor to make payments to each sub-Subcontractor in a similar manner. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with

the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.08 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a defined portion or defined portions of the Work prior to Substantial Completion of all the Work as provided in Paragraphs 15.04 or 15.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.05 have acknowledged Notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy. Any policy requirement to report 'permission to occupy' or other restrictions of occupancy by the Owner shall be deleted. The property insurance shall contain no exclusions or restrictions of coverage based upon 'vacant or unoccupied' buildings or structures.

**ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES**

6.01 *Contractor’s Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, unless such means, methods, techniques, sequences (including constraints), or procedures are specified in the Contract Documents.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

6.02 *Independent Contractor; Supervision and Superintendence*

- A. *Independent Contractor:* The Contractor shall perform or cause to be performed all Work under the Contract as an independent contractor and shall not be considered either an agent or employee of Owner or of Engineer, nor shall the Contractor's Subcontractors or their employees be considered subagents or employees of Owner or of Engineer.
- B. *Supervision:* Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in strict accordance with the Contract Documents. Except as otherwise provided by the Contract Documents, Contractor shall be solely responsible for the means,

methods, techniques, sequences, and procedures of construction. Contractor shall be solely responsible for any costs and delays caused by or related to the means, methods, techniques, sequences, and procedures of construction selected by the Contractor.

- C. *Superintendence*: At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without Notice to Owner except under extraordinary circumstances. Before starting any Work at the Site, Contractor shall identify the resident superintendent and provide his/her business address, office phone number, business e-mail address, and business mobile phone number to Owner by written Notice. Requirements regarding the superintendent's presence at the Site during the performance of the Work, if there are any, are addressed in the Supplementary Conditions. The superintendent shall be fluent in English and in such other languages as may be necessary to communicate effectively and efficiently with all employees and Subcontractors engaged in the performance of the Work. Provided, however, the requirement for fluency in languages other than English may be satisfied by the presence at the Site of a competent foreign language to English interpreter. The cost of such interpreter or interpreters as may be needed shall be borne by the Contractor and shall not be the basis for any additional compensation from the Owner.

#### 6.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed on business days during regular working hours, as defined in the Supplementary Conditions. Contractor shall not perform Work on a Saturday, Sunday, or any holiday listed herein without Owner's prior written consent (which will not be unreasonably withheld) given after prior Notice to Owner. Owner is under no obligation to approve Contractor's request to perform Work outside regular working hours. If the Contractor performs Work outside regular working hours, or on a Saturday, Sunday, or any holiday listed herein, Owner will deduct from the Contractor's payment application, or invoice the Contractor separately, the Owner's inspection time at the hourly rate specified in the Supplementary Conditions. For Work performed on a Saturday, Sunday, or any holiday listed herein, the minimum amount deducted from the Contractor's payment application will be the inspection labor charge for four hours.

#### 6.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, Equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and Equipment incorporated into the Work shall be as specified or, if not specified, shall be of excellent quality and new, except as otherwise provided in the Contract Documents.



All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Owner, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and Equipment.

- C. All materials and Equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 6.05 *Project Schedule*

- A. Contractor shall adhere to the Project Schedule established in accordance with Paragraph 2.07. The Project Schedule shall be maintained, and may be adjusted, pursuant to the General Requirements and as provided below:
  - 1. Contractor shall submit to Owner for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Project Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
  - 2. Proposed adjustments in the Project Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Articles 12 and 13, and the General Requirements. Adjustments in Contract Times may only be made by a Change Order.
  - 3. Contractor shall be responsible for updating and maintaining the Project Schedule, including the incorporation of all Authorized Changes in the Work, regardless of whether Contractor is claiming, or has claimed, an adjustment to Contract Times as a result of the incorporation of Authorized Changes in the Work.
- B. Contractor has the right to complete the Work, or a specified part thereof, prior to the expiration of the performance period allowed for by the Contract Documents. Such early completion is encouraged. However, and notwithstanding the foregoing, neither Owner nor Engineer nor any other separate contractor or supplier of the Owner shall have any obligation to facilitate or otherwise accommodate the Contractor's actual ability to perform in accordance with any such early completion schedule by performing any action required of either or any of them at an earlier point in time or in less time than is either expressly provided for by the Contract Documents or, where no such time is so stated, that is reasonable for the performance of any such action. Provided further, that no such earlier performance date or lesser period of time for the performance(s) by the Owner, Engineer, or other contractor or supplier of the Owner shall be included by Contractor in any Project Schedule without prior written consent of Owner. Approval by Owner of any Project Schedule which includes any such earlier performance date or any such lesser period of time for such performance(s) without such prior written consent shall not be deemed binding upon Owner, and upon discovery thereof, Owner shall have thirty (30) days within which to approve such Project Schedule or in Owner's sole discretion to direct that the Project Schedule be adjusted by replacing all such earlier performance dates and all such lesser periods of time for performance(s) with those times provided by the Contract Documents or where no such time is so provided then with a time that is reasonable for the performance of any such action. The Contractor shall have no Claim for additional time nor for additional compensation for increased or additional costs which are asserted by Contractor to have arisen from or to be related in any

way to any such act or failure to act on the part of the Owner, Engineer, or contractor or supplier of the Owner which is asserted by Contractor to have prevented the Contractor from completing, or adversely affected the ability of Contractor to complete, the Work, or a specified part thereof, prior to the expiration of the performance period allowed for by the Contract Documents for Substantial Completion and/or Final Completion.

- C. Notwithstanding the foregoing, Owner may direct the Contractor to revise its Project Schedule if the Owner determines, in the Owner's sole discretion and opinion, that (i) the Contractor is not adhering to the Project Schedule; (ii) the Contractor will likely not meet a Milestone or otherwise complete the Work or a defined portion thereof within the Contract Time; or (iii) the Project Schedule is deficient, including but not limited to, omissions, unrealistic durations, and faulty logic. If Owner provides Notice to Contractor to revise its Project Schedule, Contractor shall revise its Project Schedule per the Owner's Notice.

#### 6.06 *Substitutes and "Or Equals"*

A. Whenever an item of material or Equipment, product, device, fixture, form, system, type of construction, standard, or other item (collectively known hereafter as "item") is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item or no substitution is permitted, other items of other Suppliers may be submitted to Owner for review under the circumstances described below. Notwithstanding the foregoing, no requests for substitution may be submitted more than 90 days after the Notice to Proceed, unless Owner waives this requirement in writing.

1. *"Or-Equal" Items:* If in Owner's sole discretion an item proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, and if it provides a benefit to Owner in terms of cost, quality, and time, it may be considered by Owner as an "or equal" item, in which case review and approval of the proposed item may, in Owner's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. The Contractor shall not be entitled to any adjustment of the Contract Times for the period of time during which the Owner and/or the Engineer reviews the proposed item. For the purposes of this Paragraph 6.06.A.1, a proposed item will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Owner determines that:

- 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
- 3) it has a proven record of performance and availability of responsive service; and
- 4) is not objectionable to Owner.

- b. Contractor certifies that, if approved and incorporated into the Work:
  - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
2. *Substitute Items*: If in Owner's sole discretion an item proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.06.A.1, Owner will advise Contractor in writing of Owner's determination. Owner may, in its sole discretion and upon receipt of the information and application required herein, consider the item as a proposed substitute item. The Owner is under no obligation to consider substitute items. To the extent possible, when the Owner is considering a proposed substitute item, the Owner's written determination will also provide an estimate of the consequential costs, including operational costs, and review and redesign costs, all associated with the substitute item. The Contractor shall be responsible for all costs and delay associated with the acceptance of substitute items.
  - a. Contractor shall submit sufficient information as provided below to allow Owner to determine if the item proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items will not be accepted by Owner from anyone other than Contractor.
  - b. The requirements for review by Owner will be as set forth in Paragraph 6.06.A.2.c, as supplemented by the General Requirements, and as Owner may decide is appropriate under the circumstances.
  - c. Contractor shall make written application to Owner for review of a proposed substitute item that Contractor seeks to furnish or use. The application:
    - 1) shall certify that the proposed substitute item will:
      - a) perform adequately the functions and achieve the results called for by the general design,
      - b) be similar in substance to that specified, and
      - c) be suited to the same use as that specified;
    - 2) will state:
      - a) the Contractor agrees that any delay or any cost incurred as a result of the Contractor's request for a substitute item, including redesign efforts, shall not constitute grounds for any increase in Contract Price or Contract Times and waives any and all Claims arising from or related to the request for the use of such substitute item;
      - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

- c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
  - 3) will identify:
    - a) all variations of the proposed substitute item from that specified, and
    - b) available engineering, sales, maintenance, repair, and replacement services; and
  - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
  - 5) The Contractor shall not be entitled to any adjustment of the Contract Times for the period of time during which the Owner and/or the Engineer reviews the proposed substitute item.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved in writing by Owner. Contractor shall submit sufficient information to allow Owner, in Owner's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Owner will be similar to those provided in Paragraph 6.06.A.2. The Contractor shall not be entitled to any adjustment of the Contract Times for the period of time during which the Owner and/or the Engineer reviews the proposed substitute means, method, technique, sequence, or procedure of construction.
- C. *Owner's Evaluation:* Owner, who in its discretion may delegate the review of each proposal or Submittal under Paragraphs 6.06.A and 6.06.B to the Engineer, will be allowed a reasonable time within which to evaluate each proposal or Submittal made pursuant to Paragraphs 6.06.A and 6.05.B. Owner may require Contractor to furnish additional data about the proposed substitute item. Owner will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Owner's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Owner will advise Contractor in writing of any determination. The Contractor shall not be entitled to any adjustment of the Contract Times for the period of time during which the Owner and/or the Engineer reviews a proposal or Submittal under Paragraphs 6.06A or 6.06B.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Owner's Cost Reimbursement:* Owner will record Owner's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.06.A.2 and 6.06.B. Whether or not Owner approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges incurred by Owner for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the

acceptance of each proposed substitute. Reimbursement costs due to the Owner will be deducted from the Contractor's Application for Payment.

- F. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

#### 6.07 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.07.C), whether initially or as a replacement, against whom Owner may have reasonable objection. If the Specifications require the use of a specific Subcontractor or Supplier, the Contractor shall be required to use the Subcontractor or Supplier specified, without regard to any objection the Contractor may have.
- B. On a monthly basis, Contractor shall submit to Owner a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- C. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner to reject defective Work.
- D. Contractor shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
  - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
  - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- E. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

- F. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Owner through Contractor.
- G. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- H. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.05, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.
- I. The Contractor shall require Subcontractors to obtain and continue to maintain for the duration of the Work a workers' compensation insurance policy in at least the statutory amounts required in the Commonwealth of Virginia. A waiver of subrogation is not required for the Subcontractor's workers' compensation insurance policy. The Contractor shall provide a copy of the Subcontractor's insurance certificate to the Owner prior to the Subcontractor performing any Work at the Site.
- J. Contractor shall include in all contracts and orders with Subcontractors and Suppliers a provision stating that, in the event the Owner terminates the Contract for cause, the Subcontractors and Suppliers agree to reassignment of the contract or order to the Owner to complete the Work.

#### 6.08 *Patent Fees and Royalties*

- A. *License Fees and Royalties:* Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys,

and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

- C. *Proprietary Information*: Contractor shall provide prior to Substantial Completion any proprietary information necessary for Owner operation. Proprietary information shall not be published, copied, or otherwise disclosed to others without prior written approval from all parties.

#### 6.09 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Contractor shall pay all charges of utility owners for connections for providing permanent service to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

#### 6.10 *Laws and Regulations*

- A. Contractor shall give all Notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, fines, penalties, fees and charges of any regulatory or governmental body, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. The Contractor shall not be responsible for ensuring that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. This Contract and all subcontracts are subject to the provisions of Articles 3 and 5, Title 40.1, Code of Virginia, relating to the labor unions and the "right to work." The Contractor and its Subcontractors, whether residents or non-residents of the Commonwealth, who perform any Work related to the Project shall comply with all said provisions.
- D. *Employment of Aliens*: It shall be the responsibility of the Contractor to comply and to require compliance by others on the Project with all federal, state and local laws dealing with employment of aliens, including, but not limited to, the requirements and prohibitions provided in the Immigration and Nationality Act (INA) of 1952, as amended, and the Immigration Reform and Control Act (IRCA) of 1986, as amended, which control employment of unauthorized aliens.
- E. *Employment Discrimination*
  - 1. During the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this subparagraph.
2. The Contractor will include the provisions of the foregoing Paragraphs a, b and c in every Subcontract or purchase order of over \$10,000.00, so that the provision will be binding upon each Subcontractor or vendor.
- F. *Drug-Free Workplace:* During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each Subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of Work done in connection with the Contract awarded to the Contractor in accordance with Virginia Code Section 2.2-4312, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, possession, or use of any controlled substance or marijuana during the performance of the Contract. The Contractor shall also establish, maintain and enforce policies which prohibit the following acts by all 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.
- G. *Virginia State Corporation Commission:* 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 of 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.



- H. If Contractor determines that changes in Laws or Regulations enacted since the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) will have an effect on the Contract Price or Contract Times, Contractor shall give its Notice of Claim pursuant to the provisions of Article 12.

6.11 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work, which includes local business taxes. For questions regarding Loudoun County's local business tax, contact the Loudoun County Commissioner of the Revenue's office at 703-777-0260.

6.12 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas:

1. Contractor shall confine construction equipment, the storage of materials and Equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or Equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant arising from or related to the performance of the Work by Contractor or by anyone for whom the Contractor is responsible, Contractor shall promptly act to correct the claimed damages, or settle with such owner or occupant by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. Contractor shall regularly report the status of any such claim to the Owner in writing (in no case less than once per month) until the claim is settled or resolved. If (a) Contractor fails to regularly report the status to the Owner, or (b) if at any time Owner otherwise determines, in the Owner's sole discretion, that the Contractor is not using Contractor's best efforts to settle or resolve the claim, the Owner may act to correct the damages at issue, or otherwise settle or resolve the claim. If Owner takes such action, Contractor shall be liable to fully reimburse Owner for all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals or contractors Owner determines are necessary, in Owner's sole discretion, and all court or arbitration or other dispute resolution costs) arising out of or relating to the claim.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

- B. *Removal of Debris during Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations. In the event Contractor fails to satisfy the requirement to remove debris during the performance of the Work, Owner will provide Notice to the Contractor, advising the Contractor of this deficiency, and providing four hours to the Contractor to remove debris as required herein. If Contractor fails to remove the debris as required, Owner may undertake such cleaning and charge all costs thereof to the Contractor, or deduct such costs from any payments that may be or become due to the Contractor, plus a \$500 administrative fee.
- C. *Cleaning:* Prior to, and as a condition precedent to Substantial Completion of the Work, or defined portion thereof, Contractor shall clean the Site and the Work, or defined portion thereof, and make it ready for utilization by Owner. As a condition precedent to Final Completion of the Work, or defined portion thereof, Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials; shall clean the Site and the Work required because of Contractor's performance after having achieved Substantial Completion of the Work, or defined portion thereof; and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Restoration:* Contractor shall restore to original condition all property not designated for alteration by the Contract Documents. This restoration requirement includes, but is not limited to, establishing permanent vegetation, replacing existing landscaping features and sidewalks, and removal of erosion control measures.
- E. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.
- F. *Smoking:* Except where expressly permitted, smoking of tobacco products of any kind is prohibited at Owner's enclosed facilities, including but not limited to the Dale C. Hammes Administration Building, Operations and Maintenance Facility, Broad Run Water Reclamation Facility (BRWRF), Goose Creek Water Treatment Facility, and the Trap Rock Water Treatment Facility. This smoking prohibition includes but is not limited to all existing buildings, structures and facilities; all new construction within Owner-occupied areas; and all new construction once it has been occupied by Owner. For work performed at certain facilities, Contractor acknowledges that this smoking prohibition is a critical safety requirement because of the potential presence of explosive gases. The Owner may request removal of Contractor employees from Site for violation of Owner's smoking prohibition policy.

### 6.13 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer and Owner for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered

to Owner. With the exception of the payment for bonds and insurance, the Owner's or Engineer's verification of the Contractor's monthly update of the record documents shall be a condition precedent to the Owner's processing of each Application for Payment. Delivery of the final record documents to the Owner is a condition precedent to final payment.

#### 6.14 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations, including, but not limited, to the Occupational Safety and Health Administration (OSHA) and the Virginia Occupational Safety and Health (VOSH) Compliance Program. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on the Site or who may be affected by the Work;
  2. all the Work and materials and Equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations, including, but not limited to, OSHA and the VOSH Compliance Program, relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall provide to Owner and Engineer a copy of Contractor's safety program with which Owner's and Engineer's employees and representatives shall, to the extent reasonably possible, comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.14.A.2 or 6.14.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied immediately by Contractor. If Owner, in its sole discretion, determines that repairing the damaged property is an emergency or otherwise vital to Owner's operations and security, or the operations and security of others, the Owner may have the property repaired by whatever means the Owner determines is most expeditious, and Contractor shall be responsible for the costs incurred by Owner. When exercising

any rights and remedies under this Paragraph, Owner shall not be required to obtain the lowest price for repairing the damaged property.

- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Owner has issued Notice to Contractor in accordance with Paragraph 15.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor shall coordinate its safety program and procedures with the Owner's facilities and other contractors performing work on adjacent sites on behalf of the Owner.
- H. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- I. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 6.15 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.

#### 6.16 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### 6.17 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Owner prompt Notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Owner determines that a change in the Contract Price and/or Contract Time is justified because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 6.18 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Owner and Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07) and the Specifications.

- B. By submitting Shop Drawings and Samples, Contractor certifies that the Shop Drawings and Samples meet the requirements of the Contract Documents and all field measurements and existing conditions have been accounted for, unless otherwise noted per Paragraph 6.06.
- C. In the event that Contractor requests a change of a previously approved item, Contractor shall reimburse Owner for Owner's costs for the additional review unless the need for such change is beyond the control of Contractor.
- D. Owner's or Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has provided Notice of the variation, as may be required by the Specifications, and Owner or Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Owner's or Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
- E. Owner's or Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
- F. *Resubmittals*: If more than one resubmittal of any item is required, Contractor shall be charged \$1,000.00 review fee for each resubmittal beyond the first resubmittal. This submittal review fee shall be deducted from any payments that may be or become due to Contractor.
- G. Where a Shop Drawing or Sample is required by the Contract Documents, Contractor shall obtain approval of the Shop Drawing or Sample prior to performing Work related to the Shop Drawing or Sample. Any Work performed by Contractor prior to approval of a Shop Drawing or Sample shall be considered defective, even if the Work is subsequently found to conform with the Contract requirements.
- H. Neither Owner's or Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.

#### 6.19 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Project Schedule during all Claims, disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any Claims, disputes or disagreements, except as permitted by Paragraph 16.04 or as Owner and Contractor may otherwise agree in writing.

#### 6.20 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in strict accordance with the Contract Documents and will not be defective. Owner and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Owner;
2. payment by Owner of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Owner or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a Shop Drawing or Sample or the issuance of a Notice of acceptability by Owner or Engineer;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

#### 6.21 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.21.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The Contractor agrees that all indemnification obligations of the Contractor set forth in the Contract Documents will be an insured occurrence under Contractor's insurance as required in Paragraph 5.03; provided, however, that the failure of such insurance to cover such obligations in

full shall not relieve the Contractor in any way from its indemnification obligations set forth herein.

- D. The indemnification obligations of Contractor under Paragraph 6.21.A shall not extend to the liability of Owner, Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
  - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### 6.22 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or Equipment are specifically required of Contractor by the Contract Documents, Owner or Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other Submittals prepared by such professional. Shop Drawings and other Submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Owner.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.
- D. Pursuant to this Paragraph 6.22, Owner's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Owner's review and approval of Shop Drawings and other Submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.18 and the Specifications.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.
- F. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

## ARTICLE 7 – OTHER WORK AT THE SITE

### 7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Owner and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

### 7.02 *Coordination*

- A. If Owner contracts with others for the performance of other work on the Project at the Site, or an adjacent property, the Owner will be responsible for coordination of the various contractors. However, Contractor shall cooperate with Owner and Owner's requests relating to coordination. In all other events, Contractor is responsible for coordinating its own labor, subcontractors, and suppliers.

### 7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for any reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for any reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.
- D. There are no third-party rights under this Contract.



7.04 *Unrelated Work at the Site by Others*

- A. Other contractors, not under the control of the Owner, may be performing unrelated work at the Site. Contractor shall coordinate with such contractors and, inasmuch as possible, provide safe access and prevent delays to the unrelated work. Such other unrelated work and contractors may be identified in the Supplementary Conditions.

**ARTICLE 8 – OWNER’S RESPONSIBILITIES AND CONTRACT ADMINISTRATION**

8.01 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.02 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 15.02.B and 15.07.C.

8.03 *Insurance*

- A. Owner’s responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.04 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.04.

8.05 *Inspections, Tests, and Approvals*

- A. Owner’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.03.B.

8.06 *Limitations on Owner’s Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.
- B. Neither Owner’s authority or responsibility under this Article 8 or under any other provision of the Contract Documents nor any decision made by Owner either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Owner shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Owner to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- C. Owner will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

8.07 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility with respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.08 *Owner's Representatives*

- A. The Owner will, with its own forces, administer the Contract. The Owner will appoint a Project Manager for administration of the Contract, and to receive and issue Notices on behalf of Owner. The Owner, with its own personnel, may observe the Work as described below. The Owner may designate Engineer to represent Owner as described under Article 9.

8.09 *Visits to Site*

- A. Owner may make visits to the Site at intervals appropriate to the various stages of construction as Owner deems necessary in order to observe the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Owner will determine, in general, if the Work appears to be proceeding in accordance with the Contract Documents. Owner will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.
- B. Notwithstanding the foregoing, Contractor shall coordinate its schedule with Owner for the Owner to provide full-time inspection of subsurface utility Work. Such subsurface utility Work includes waterline, sanitary sewer, sanitary force main construction, and related appurtenances and Equipment.

8.10 *Authorized Variations in Work*

- A. Owner and Contractor may agree to incorporate changes and minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly.

8.11 *Rejecting Defective Work*

- A. Owner will have authority to reject Work which Owner believes, in Owner's sole discretion, to be defective, or that Owner believes will not produce a completed Project that conforms to the Contract Documents, or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract. Owner will also have authority to require special inspection or testing of the Work as provided in Paragraphs 14.03 and 14.04, whether or not the Work is fabricated, installed, or completed.

8.12 *Shop Drawings, Change Orders, Claims and Payments*

- A. In connection with Owner's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.18.

- B. In connection with Owner's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.22.
- C. In connection with Owner's authority as to Change Orders, see Articles 10 and 11.
- D. In connection with Owner's authority as to Claims, see Article 12.
- E. In connection with Owner's authority as to payments, see Article 15.

8.13 *Determinations for Unit Price Work*

- A. Owner will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Owner will review with Contractor the Owner's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Owner's written decision thereon will be final and binding (except as modified by Owner to reflect changed factual conditions or more accurate data as may be determined by the Owner in the Owner's sole discretion) upon Owner and Contractor, subject to the provisions of Article 12. The date of the Owner's written decision is the time of the occurrence of the event giving rise to the Notice of Intent to Claim for the purposes of Article 12.

8.14 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Owner will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. The Owner may elect to consult with the Engineer on these matters. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Owner in writing as a Request for Clarification submitted within seven (7) days of the event giving rise to the question. Timely compliance with the seven (7) day requirement is a condition precedent to the Contractor's right to seek any further relief related to the event giving rise to the question.
- B. Owner will render a written decision on the issue referred. If Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Article 12, provided that the Contractor timely complied with the condition precedent stated in Paragraph 8.14A. The date of the Owner's written decision is the time of the occurrence of the event giving rise to the Notice of Intent to Claim for the purposes of Article 12.
- C. Owner's written decision on the issue referred will be final and binding on Contractor, subject to the provisions of this Paragraph 8.14 and Article 12.
- D. When functioning as interpreter and judge under this Paragraph 8.14, Owner will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

## ARTICLE 9 – ENGINEER’S ROLE DURING CONSTRUCTION

### 9.01 *General Duties*

- A. *Consultant and/or Representative.* The Owner may consult with Engineer regarding Contractor’s performance. Further, if designated by the Owner, in addition to Owner’s personnel involved in the Project, the Engineer may serve as Owner’s representative during construction, and perform certain activities designated as Owner responsibilities under Article 8. Where Owner designates the Engineer to perform such activities, Contractor shall comply with the Engineer’s requests, and provide to Engineer the same access and response as Contractor is required to provide to Owner.
- B. *Periodic Visits.* The Engineer may periodically visit the Site to review the progress and quality of the Work for conformance with the Contract requirements. The Contractor shall afford the Engineer access to the Site as needed or directed by Owner.
- C. *Tests and Inspections.* The Engineer may perform certain tests and inspections described under Paragraph 14.03. Contractor shall comply with direction provided by Engineer related to the tests and inspections, which includes replacement of defective Work.
- D. *Rejecting Defective Work.* Engineer shall have the authority to reject defective Work as described in Paragraph 8.11.
- E. *Reviews.* The Engineer may review Shop Drawings and Samples for compliance with the Contract requirements, including determination of “or Equal” or substitution pursuant to Paragraph 6.06. Where the Engineer has been assigned to review Shop Drawings and Samples, the Contractor shall submit Shop Drawings directly to the Engineer, with a copy to Owner. The Engineer shall act as the approving authority on such Submittals.
- F. *Applications for Payment.* The Engineer may review the Contractor’s Application for Payment in accordance with Paragraph 15.02.B and make recommendations to Owner regarding payment to Contractor. Contractor shall coordinate with Engineer, which includes promptly providing information requested by Engineer.
- G. *Claims.* The Engineer may review certain Notices of Intent to Claim and Notices of Claim for the Owner, and provide information and opinions related to these Notices to the Owner. Where the Engineer has been assigned to review such Notices, the Contractor shall submit Notices directly to both Owner and Engineer.
- H. *Meetings.* The Engineer may conduct periodic meetings and distribute meeting minutes. The Contractor or his representative shall attend all such meetings.
- I. *Communications.* The Engineer may provide written communication to the Contractor as the Owner’s Representative.
- J. *Interpretation or Clarification.* The Engineer may provide interpretation or clarification as required under Paragraph 3.03.

### 9.02 *Limitations on Engineer’s Responsibilities*

- A. The Engineer shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety

precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

- B. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

## **ARTICLE 10 – CHANGES IN THE WORK**

### *10.01 Authorized Changes in the Work*

- A. Without invalidating the Contract and without Notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions to the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. Owner may issue Field Orders pursuant to Paragraph 8.10.

### *10.02 Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.17 or in the case of uncovering Work as provided in Paragraph 14.04.C. Notwithstanding anything in the Contract Documents to the contrary, in no event shall Contractor be entitled to an increase in the Contract Price or an extension of the Contract Times unless Owner approves such increase or extension in a Change Order.

### *10.03 Requests for Proposal*

- A. At any time Owner may request Contractor to submit a proposal, by issuing to Contractor a request for proposal (RFP), for proposed changes in the Work. The RFP is not authorization to perform the changes described in the RFP. Contractor shall provide its detailed proposal to Owner for the changes set forth in the RFP within 14 days of receipt of the RFP. Submission of the Contractor's proposal within this time is a condition precedent to the Owner's obligation to process the Contractor's payment application for the period in which the Contractor's proposal is due. Contractor's detailed proposal shall include the following, as well as other items specified in the RFP:

1. an itemized estimate of all costs that will result directly or indirectly from the proposed change(s), priced pursuant to Paragraph 11.01. Proposals shall be sufficiently detailed to allow an analysis by Owner of all material, labor, Equipment, subcontracts, and fees, and shall cover all Work involved in the change, whether such work was added, deleted, changed or impacted. Each cost category shall be supported with substantiating documentation which may include, but is not limited to, quantity take-offs, quotations, invoices, cost records, certified payrolls, and identification of estimating guidelines and resources. The subcontract portions of each proposal shall be similarly supported.
  2. a proposed schedule revision showing the incorporation of the proposed change into the Project Schedule, and the time extension required as a result of the incorporation of the proposed change, assuming the proposed change is incorporated into a Change Order within 14 days after the Owner receives the Contractor's proposal for the proposed change. Contractor's proposed schedule revision shall provide sufficient detail to allow an analysis of the impact of the proposed change. If the Contractor's proposal does not include a schedule revision or a request for a time extension as required herein, or otherwise does not provide enough detail to allow for an analysis of the impact of the proposed change, Contractor waives any Claim for a time extension related to the proposed changes.
- B. If, upon review of the Contractor's Submittal under Paragraph 10.03.A above, the Owner:
1. and Contractor are in agreement with the changes in Contract Price and Contract Times included in the Contractor's proposal, and Owner elects to proceed with the change(s) set forth in the RFP, Owner will issue a Change Order to the Contractor pursuant to Paragraph 10.01.A.
  2. and Contractor are unable to agree with the changes in Contract Price and Contract Times included in the Contractor's proposal, and the Owner elects to proceed with the change(s) set forth in the RFP, the Owner, in its sole discretion, may convert the RFP to a Work Change Directive, and the Contractor shall submit its costs pursuant to the provisions of Paragraph 13.01.B.3.
  3. elects not to proceed with the proposed changes in the Work described in the RFP, no further action will be taken.
- C. *Contractor's Unsolicited Proposal:* At any time Contractor may submit an unsolicited proposal for proposed changes in the Work. Contractor's unsolicited proposal shall comply fully with the requirements of Paragraph 10.03.A to be considered by Owner. The Owner is under no obligation to accept the Contractor's unsolicited proposal, in whole or in part. If the Owner elects to incorporate the changes included in the Contractor's unsolicited proposal into the Work, the Owner will issue a Change Order or Field Order to the Contractor for the changes proposed by the Contractor, or as may be agreed to, by the Contractor and Owner.

#### 10.04 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 14.08.A or Owner's correction of defective Work under Paragraph 14.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive.
- B. By signing a Change Order, the Contractor agrees that the adjustments to Contract Price and Contract Times set forth in the Change Order constitutes full and complete compensation for the performance of all increased, additional or changed Work arising from or related to the change, including but not limited to the interruption of schedules, extended overhead of any sort, delay, and any other impact or ripple effect of the change on any portion of the Work. By signing such Change Order, Contractor specifically waives and is barred from asserting, or reserving any right to assert, a Claim for any further compensation or additional time extension arising from or related to the change addressed by the Change Order.
  - C. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, associated with an Authorized Change in the Work; or are unable to agree to the terms of a Change Order; or where the Contractor has expressed a reservation of rights beyond that included in the Change Order, the Owner may, in its sole discretion, modify unilaterally the Work, the Contract Price or Contract Times as it may deem appropriate through the issuance of a Unilateral Change Order (UCO). In such event, any assertion by Contractor for additional compensation or extension of time beyond that included in the UCO shall be subject to the provisions of Article 12, but only if the change described in the UCO was not previously processed pursuant to Article 12. Contractor shall at all times carry on the Work and adhere to the Project Schedule as provided in Paragraph 6.19A.

#### 10.05 *Notification to Surety*

- A. If the provisions of any bond require Notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such Notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

### **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

#### 11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, foremen and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and Equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and Equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of engineers, architects, testing laboratories, and surveyors employed for services specifically related to the Work.
5. The cost for construction equipment, whether owned by Contractor or rented under a rental agreement, shall be determined as given below.
  - a. *Costs.* Operating costs shall be based on the most recent edition of the *Rental Rate Blue Book* published by Equipment Watch (equipmentwatch.com). Contractor shall provide its equipment fleet and costs as published by Equipment Watch with each cost Submittal. Costs will be determined using the established FHWA rates adjusted for geographic region and equipment model year.
  - b. *Equipment operating time.* For Work that is performed in hours, an hourly cost for the equipment shall be used unless the daily cost for the equipment is a lower cost. Likewise for Work that is performed in days, a daily cost for the equipment shall be used unless a weekly cost for the equipment is a lower cost. For Work that is performed in weeks, a weekly cost for the equipment shall be used unless the monthly cost for the equipment is a lower cost.



- c. Move-in, unloading, loading, and move-out costs will not be allowed unless approved by Owner. If the equipment is used at the Site for the performance of other Work, ownership and operating costs will be prorated accordingly.
  - d. All equipment shall be only for the time the construction equipment and machinery were actually used in the performance of the Work, and the rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work. Idle time for construction equipment, machinery, and parts is not compensable.
  - e. For purposes of this provision, only construction equipment, machinery and parts with a new value of \$1,000 or more will be considered. Construction equipment, machinery and parts with a new value less than \$1,000 are considered small tools, and the allowance for small tools shall be 5% of the labor cost performing the Work.
  - f. The equipment costs allowed for construction equipment, machinery or parts will, in all cases, be understood to cover all costs related to such construction equipment, including but not limited to all fuel, supplies, repairs, maintenance and depreciation, and no further allowances will be made for such costs unless approved by Owner.
  - g. Equipment not in good operating condition, or larger than required, may be rejected by the Owner or accepted at reduced rates.
  - h. If an equipment rate has not been established by the *Rental Rate Blue Book*, the Contractor may:
    - 1) Use the rate of the most similar model found, considering such characteristics as manufacturer, capacity, horsepower, age, fuel type, etc. Similar models are subject to approval by the Owner.
    - 2) Request Equipment Watch to furnish a written response for a rate on the equipment, which shall be presented to the Owner for approval.
6. Supplemental costs including the following:
- a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor. In establishing such costs, consideration will be given to the actual or the estimated life of the item for use on other projects, or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
  - c. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

- d. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- e. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.C), provided such losses and damages have resulted from causes other than the negligence, error, mistake, or willful or intentional misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- f. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. Costs Excluded: The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, project managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence, error, mistake, or willful or intentional misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or Equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind, including expenses incurred in preparing and advancing Claims, and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

C. *Contractor's Fee*: When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 13.01.C.

- D. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data that describes the Work performed each day, construction equipment and materials used, Equipment incorporated, and a complete listing of Contractor personnel involved in the Work. To be compensated for Work performed under a Work Change Directive, Contractor shall submit its Cost of the Work within 21 days of completion of the Work included in the Work Change Directive. Failure to provide the documentation as required by this Paragraph shall constitute a waiver of Contractor's right to compensation for the Work performed under the Work Change Directive at issue.
- E. Subject to prior written Notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

#### 11.02 *Allowances (if named in the Contract)*

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner.
- B. Contractor agrees that:
  - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and Equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs. Contractor shall not spend any contingency allowance without making a written request to Owner about the nature of the proposed expenditure and without receiving written approval as to the amount of the expenditure.
- D. Prior to final payment, an appropriate Change Order will be issued by Owner to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 11.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to

the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Owner subject to the provisions of Paragraph 8.13.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner, through the issuance of a Work Change Directive, or Contractor, by giving Notice of Claim pursuant to Article 12, may request an adjustment in the Contract Price if:
  - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - 2. there is no corresponding adjustment with respect to any other item of Work; and
  - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

## ARTICLE 12 – CLAIMS

### 12.01 *Claims, Generally*

- A. *Notice of Intent to Claim:* All Notices of Intent to Claim given as required under this Article shall:
  - 1. be given on the Notice of Intent to Claim Form, which is included as an appendix to the Supplementary Conditions;
  - 2. be sequentially numbered by Contractor for tracking purposes;
  - 3. contain a full explanation of the basis of the Contractor's position and the rationale for its request, including supporting documentation and Contract references; and
  - 4. be hand-delivered to the Owner's Project Manager and Manager of Capital Construction.
- B. *Notice of Claim:* All Notices of Claim given as required under this Article shall:
  - 1. be given on the Notice of Claim Form, which is included as an appendix to the Supplementary Conditions;
  - 2. refer to the Notice of Intent to Claim number, if applicable, assigned by Contractor for the Claim at issue;
  - 3. contain a full explanation of the basis of the Contractor's position and the rationale for its request, including supporting documentation and Contract references;
  - 4. include the Contractor's actual Claim for additional compensation and/or additional time associated with Work or delay upon which the Contractor's Claim is based; and

5. be hand-delivered to the Owner's Project Manager and Manager of Capital Construction.
- C. Unless otherwise provided in the Contract, Notices of Intent to Claim shall be given no later than three (3) days after the occurrence of the event giving rise to the potential Claim. Notices of Claim shall be given no later than fifteen (15) days after Owner's written determination in response to the relevant Notice of Intent to Claim submitted by Contractor. If the Contractor submits a Combined Notice pursuant to Paragraph 12.01.D, the Combined Notice shall be given at the time the Notice of Intent to Claim is required under the Contract.
- D. *Combined Notice.* For certain Claims under the Contract, Contractor may be in a position to give its Notice of Claim at the time the Notice of Intent to Claim is required under Paragraphs 12.02.A, 12.03.A, 12.04.A, and/or 12.05.A. For purposes of this Article, such Notice of Claim is deemed a "Combined Notice" (Notice of Intent to Claim – Notice of Claim). Such combined Notices benefit both parties by allowing, among other things, prompt resolution of Claims, and the proper updating and maintenance of the Project Schedule. Combined Notices shall be effective only if the Combined Notice:
1. complies strictly with all requirements for Notices of Intent to Claim in Article 12;
  2. complies strictly with the requirements for Notice of Claim in Paragraph 12.01.B (1)-(5);
  3. is given at the time the Notice of Intent to Claim is required under the Contract;
  4. is identified as a Combined Notice on the Notice of Intent to Claim form pursuant to this Article 12.
- Compliance with the requirements for Combined Notices shall not create any presumption of the validity of such Claim. Contractor shall submit Claims as Combined Notices whenever possible. Combined Notices will be administered in the same manner as Notices of Claim.
- E. The responsibility to substantiate a Claim shall rest solely and exclusively with Contractor. Strict compliance with the provisions of this Article, including all Notice and Submittal requirements, shall be a condition precedent to the assertion of any Claim, and any Claim not presented as required by the provisions of this Article shall be barred. Compliance with such requirements, however, shall not create any presumption of the validity of such Claim.
- F. The Contractor shall comply with Owner's written determination and shall proceed diligently with the performance of the Contract and with any Work upon which a Notice of Intent to Claim or Notice of Claim is based, pending final resolution of the Claim, whether for a change to the Contract Price or a change to Contract Time, or both.
- G. In the event that Owner does not issue its written determination in response to a Notice of Intent to Claim or a Final Decision in response to a Notice of Claim within the times set forth herein, the Contractor's assertion or demand for an Authorized Change in the Work, as stated in the Notice of Intent to Claim or Notice of Claim, shall be deemed denied.
- H. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

- I. *Dispute Resolution*: In order to preserve its right to Claim additional compensation or additional time for Claims denied pursuant to Owner's Final Decision issued pursuant to Article 12, or damages resulting from such compliance, the Contractor shall comply with the provisions of Article 17.
- J. Any Notice of Intent to Claim or Notice of Claim that does not strictly comply with the requirements stated in Paragraphs 12.01A(1)-(4) or 12.01B(1)-(5), or that does not strictly comply with additional requirements stated elsewhere in Article 12 that apply to Notices of Intent to Claim or Notices of Claim for specific circumstances, shall be void and null and of no legal effect.
- K. Contractor shall utilize the Notice of Intent to Claim and Notice of Claim forms included at the end of the Supplementary Conditions.
  - 1. For all Notices required of Contractor under Article 12, these forms shall be filled out completely to be considered valid Notices of Intent to Claim and Notices of Claim, though compliance with this requirement shall not create any presumption of the validity of such Claim.
  - 2. The Owner will provide these forms to Contractor in Adobe Acrobat or Microsoft Word form for the Contractor's use.
  - 3. Owner reserves the right to modify these forms for use on the Project. If Owner modifies these forms during the term of the Project, Owner shall provide the modified form or forms to Contractor, and Contractor shall use such modified forms for future Claims.

#### 12.02 *Claims for Additional Compensation*

- A. *Notice of Intent to Claim*: If the Contractor is of the opinion that (i) any Work required, necessitated, or otherwise ordered by Owner (exclusive of the issuance of Work Change Directives) is not included in the Work; or (ii) any action required or ordered by Owner to be taken or not taken violates the terms and provisions of the Contract; or (iii) any action taken by Owner is improper, incorrect, or one with which the Contractor disagrees; or (iv) otherwise deems it is due additional compensation beyond the Contract Price, the Contractor shall give Notice of Intent to Claim at the time of the occurrence of the event giving rise to the Notice of Intent to Claim. If the Notice of Intent to Claim is based upon the Work, Contractor shall also give its Notice of Intent to Claim before beginning any Work on which the Notice of Intent to Claim is based. In order to invoke the procedures of this section, the Contractor's Notice of Intent to Claim shall:
  - 1. comply with the provisions of Paragraph 12.01.A.;
  - 2. state the circumstances of the occurrence;
  - 3. specify the additional work contemplated as being required (if applicable); and
  - 4. include, to the extent reasonably foreseeable, an estimate of the anticipated change to Contract Price (prepared in accordance with the provisions of Article 11).
- B. *Owner's Written Determination in Response to Notice of Intent to Claim*: Owner will review each Notice of Intent to Claim given pursuant to Paragraph 12.02.A and, within 15 days after receipt of the Contractor's Notice of Intent to Claim, shall issue its written determination with regard to the

Notice of Intent to Claim. The Owner may consult with the Engineer as Owner deems necessary in the review of each Notice of Intent to Claim. The Owner's written determination shall either:

1. advise Contractor of Owner's concurrence with the Contractor's position, as asserted in the Notice of Intent to Claim, and that an Authorized Change in the Work will be issued pursuant to the Contract provisions, or will otherwise direct the Contractor to submit its claimed costs pursuant to Paragraph 11.01;
  2. advise Contractor that (i) Contractor's position otherwise lacks merit or (ii) Contractor failed to satisfy the requirements for Notice of Intent to Claim as specified in Paragraph 12.02.A. If applicable, Owner will provide Contract references that support the Owner's position, and that an Authorized Change in the Work will not be issued. If appropriate, the Owner will provide direction to Contractor to perform the Work described in the Notice of Intent to Claim; or
  3. advise Contractor that Owner concurs in part with Contractor's position, as asserted in the Notice of Intent to Claim, with Contract references that support the Owner's concurrence in part and disagreement in part. For the portion of the Contractor's position with which the Owner agrees Contractor is due additional compensation, Owner will issue an Authorized Change in the Work pursuant to the Contract provisions.
- C. *Contractor's Response to Owner's Written Determination.* Promptly upon receipt of the Owner's written determination issued pursuant to Paragraph 12.02.B, Contractor shall comply with the direction provided by Owner in Owner's written determination.
1. For written determinations which the Owner agrees to issue an Authorized Change in the Work pursuant to Paragraph 12.02.B.1 (in whole) or 12.02.B.3 (in part), the Contractor shall record and submit its costs pursuant to Paragraph 11.01 pending issuance of an Authorized Change in the Work.
  2. For written determinations which the Owner does not agree to issue an Authorized Change in the Work pursuant to Paragraph 12.02.B.2 (in whole) or 12.02.B.3 (in part), if, upon review of Owner's written determination, Contractor still demands issuance of an Authorized Change in the Work, Contractor shall give its Notice of Claim pursuant to Paragraphs 12.01.B and 12.01.C within fifteen (15) days of the Owner's written determination.
- D. *Owner's Final Decision.* Within 30 days of receipt of Contractor's Notice of Claim given pursuant to Paragraph 12.02.C.2, Owner will issue its Final Decision related to Contractor's Claim.

### 12.03 *Claims for Additional Time for Non-Weather Delays*

- A. *Notice of Intent to Claim:* If the Contractor contends that it is being prevented from completing any part of the Work due to delays described in Paragraph 12.06, exclusive of weather, or otherwise deems it is due additional time beyond the Contract Times, the Contractor shall give Notice of Intent to Claim at the time of the occurrence of the event giving rise to the Claim or within three (3) days thereafter if the resulting delay was not reasonably foreseeable. Contractor's strict compliance with this Notice requirement is a condition precedent to the Contractor's right to make a Claim as provided in Article 12 that arises from the event giving rise to the claimed non-weather delay, or to seek any other remedy for the same that arises under the Contract Documents or any applicable Law or Regulation. If the Contractor fails to comply with this Paragraph, the

Contractor shall be solely responsible for all costs and delays arising from or related to the event giving rise to the claimed non-weather delay at issue. The Contractor's Notice of Intent to Claim shall:

1. comply with the provisions of Paragraph 12.01.A.;
  2. state the circumstances of the occurrence; and
  3. include, to the extent reasonably foreseeable, an estimate of the additional time extension required as a result of the delay.
- B. *Owner's Written Determination:* Owner will review each Notice of Intent to Claim given pursuant to Paragraph 12.03.A. and, within fifteen (15) days after receipt of Contractor's Notice of Intent to Claim, shall issue its written determination with regard to the Notice of Intent to Claim. The Owner may consult with the Engineer as Owner deems necessary in the review of each Notice of Intent to Claim. The Owner's written determination shall:
1. advise Contractor of its concurrence with the Contractor, as asserted in the Notice of Intent to Claim, and that a Change Order will be issued pursuant to the Contract provisions once the Owner receives the Contractor's Notice of Claim;
  2. advise Contractor that (i) Contractor's position otherwise lacks merit; or (ii) Contractor failed to satisfy the requirements for Notice of Intent to Claim as specified in Paragraph 12.03.A. Owner will provide direction to Contractor regarding performance of the Work but will not issue a Change Order for an adjustment to Contract Times; or
  3. advise Contractor that Owner agrees in part and disagrees in part with the Contractor's position in its Notice of Intent to Claim. For the portion of the Contractor's position in the Notice of Intent to Claim with which the Owner does not agree to grant an adjustment to Contract Times, the Owner will provide Contract references or facts related to the Contractor's progress or performance, that support the Owner's position. For the portion of Contractor's position which the Owner agrees Contractor is due additional time, Owner agrees to issue a Change Order pursuant to the Contract provisions upon receipt of the Contractor's Notice of Claim.
- C. *Contractor's Response to Owner's Written Determination.* Contractor shall promptly comply with the direction provided in the Owner's written determination issued pursuant to Paragraph 12.03.B.
1. For written determinations which the Owner agrees to issue a Change Order pursuant to Paragraph 12.03.B.1 (in whole) or 12.03.B.3 (in part), the Contractor shall give its Notice of Claim pursuant to Paragraphs 12.01.B and 12.01.C.
  2. For written determinations which the Owner does not agree to issue a Change Order pursuant to Paragraph 12.03.B.2 (in whole) or 12.03.B.3 (in part), if, upon review of the Owner's written determination, Contractor demands issuance of a Authorized Change in the Work, Contractor shall give its Notice of Claim pursuant to Paragraphs 12.01.B and 12.01.C within fifteen (15) days of the Owner's written determination.
- D. *Owner's Final Decision.* Within 30 days of receipt of Contractor's Notice of Claim given pursuant to Paragraph 12.03.C, Owner will issue its Final Decision related to Contractor's Claim.



#### 12.04 *Claims for Additional Time for Weather Delays*

- A. *Notice of Intent to Claim:* If the Contractor contends that it was delayed as a result of abnormal or unusually severe weather pursuant to Paragraph 12.06.D, the Contractor shall give Notice of Intent to Claim within three (3) days after the end of the month in which the claimed delay is asserted to have occurred. Contractor's strict compliance with this Notice requirement is a condition precedent to the Contractor's right to make a Claim as provided in Article 12 that arises from the abnormal or unusually severe weather at issue, or to seek any other remedy for the same that arises under the Contract Documents or any applicable Law or Regulation. If the Contractor fails to comply with this Paragraph, the Contractor shall be solely responsible for all costs and delays arising from or related to the abnormal or unusually severe weather at issue. The Contractor's Notice of Intent to Claim shall:
1. comply with the provisions of Paragraph 12.01.A;
  2. advise which days it was delayed during the preceding month as a result of abnormal or unusually severe weather less the time specified in Paragraph 12.06.D and 12.06.E for anticipated adverse weather days;
  3. include the actual time claimed by Contractor as a result of weather; and
  4. fully document the conditions and circumstances as required by Paragraph 12.06.D and 12.06.E.
- B. *Owner's Written Determination:* Owner will review each Notice of Intent to Claim given pursuant to Paragraph 12.04.A. and within fifteen (15) days after receipt of Contractor's Notice of Intent to Claim, shall issue its written determination with regard to the Notice of Intent to Claim. The Owner may consult with the Engineer as Owner deems necessary in the review of each Notice of Intent to Claim. The Owner's written determination shall:
1. advise Contractor of its concurrence with the Contractor, as asserted in the Notice of Intent to Claim, and that a Change Order will be issued pursuant to the Contract provisions once the Owner receives the Contractor's Notice of Claim;
  2. advise Contractor that (i) Contractor's position otherwise lacks merit; or (ii) Contractor failed to satisfy the requirements for Notice of Intent to Claim as specified in Paragraph 12.04.A. Owner will provide direction to Contractor regarding performance of the Work but will not issue a Change Order for an adjustment to Contract Times; or
  3. advise Contractor that Owner agrees in part and disagrees in part with the Contractor's position in its Notice of Intent to Claim. For the portion of the Contractor's position in the Notice of Intent to Claim with which the Owner does not agree to grant an adjustment to Contract Times, the Owner will provide Contract references or facts related to the Contractor's progress or performance, that support the Owner's position. For the portion of Contractor's position which the Owner agrees Contractor is due additional time, Owner agrees to issue a Change Order pursuant to the Contract provisions upon receipt of the Contractor's Notice of Claim.
- C. *Contractor's Response to Owner's Written Determination.* Contractor shall promptly comply with the direction provided in the Owner's written determination issued pursuant to Paragraph 12.04.B.

1. For written determinations which the Owner agrees to issue a Change Order pursuant to Paragraph 12.04.B.1 (in whole) or 12.04.B.3 (in part), the Contractor shall give its Notice of Claim pursuant to Paragraphs 12.01.B and 12.01.C.
  2. For written determinations which the Owner does not agree to issue a Change Order pursuant to Paragraph 12.04.B.2 (in whole) or 12.04.B.3 (in part), if, upon review of the Owner's written determination, Contractor demands issuance of a Change Order, Contractor shall give its Notice of Claim pursuant to Paragraphs 12.01.B and 12.01.C within fifteen (15) days of the Owner's written determination.
- D. *Owner's Final Decision in Response to Contractor's Notice of Claim for Weather Delays:* Owner will review each Notice of Claim given pursuant to Paragraph 12.04.C and, within fifteen (15) days after receipt of Contractor's Notice of Claim, shall issue its Final Decision with regard to the Notice of Claim. The Owner's Final Decision shall:
1. advise Contractor of its concurrence with the Contractor's position, as asserted in the Notice of Claim, and that the additional time requested by Contractor will be included in a Change Order issued pursuant to the Contract provisions;
  2. advise Contractor that Contractor's position fails to satisfy the conditions set forth in Paragraph 12.06, or otherwise lacks merit and Owner will not be issuing a Change Order for an adjustment to Contract Times; or
  3. advise Contractor that the Owner agrees in part with the Contractor's position, as asserted in the Notice of Claim as determined solely by Owner. Owner will issue a Change Order to Contractor for any time granted by Owner.

#### 12.05 *Claims for Additional Time for Authorized Changes in the Work*

- A. *Notice of Intent to Claim:* Notwithstanding the foregoing, if the Contractor contends it is due a time extension for the performance of additional Work ordered by Owner via an Authorized Change in the Work, the Contractor shall give Notice of Intent to Claim which shall:
1. comply with the provisions of Paragraph 12.01.A;
  2. reference the Work Change Directive or Change Order by number;
  3. include (i) a schedule for the additional Work ordered by the Owner under an Authorized Change in the Work, (ii) an explanation of how this additional Work impacts the Project Schedule, and (iii) an estimate of the additional time required by the Contractor to perform the additional Work.
  4. in the case of Work Change Directives, be given within seven days of receipt of the Work Change Directive; and
  5. in the case of Change Orders which (i) incorporate Work addressed in an RFP and where the Contractor contends it is due a time extension, or (ii) where Contractor disagrees with the time extension included in the Change Order, and Contractor has not waived its Claim for a time extension by failing to comply with the requirements of Paragraph 10.03.A.2, be given within seven (7) days of receipt of the Change Order.

- B. *Owner's Written Determination in Response to Notice of Intent to Claim:* Owner will review each Notice of Intent to Claim given pursuant to Paragraph 12.05.A and, within 15 days after receipt of Contractor's Notice of Intent to Claim, shall issue its written determination with regard to the Notice of Intent to Claim. The Owner may consult with the Engineer as Owner deems necessary in the review of each Notice of Intent to Claim. The Owner's written determination shall either:
1. advise Contractor of its concurrence with the Contractor's position, as asserted in the Notice of Intent to Claim, and that the time extension requested by Contractor will be included in a Change Order issued pursuant to the Contract provisions; or
  2. advise Contractor that Owner does not concur with Contractor's position, as asserted in the Notice of Intent to Claim, or that Contractor did not satisfy the requirements for Notice of Intent to Claim as specified in Paragraph 12.05.A and that a time extension will not be included in a Change Order; or
  3. advise the Contractor that the Owner concurs in part and disagrees in part with the Contractor's position, as asserted in the Notice of Intent to Claim, and that Owner will issue a Change Order for adjustments to Contract Times that Owner determines, in Owner's sole discretion, are reasonable for performing the Authorized Change in the Work, and in so doing, may rely upon reports and schedules that record the Contractor's progress in the performance of the Authorized Change in the Work.
- C. *Contractor's Response to Owner's Written Determination.* Contractor shall promptly comply with the direction provided in the Owner's written determination issued pursuant to Paragraph 12.05.B.
1. For written determinations which the Owner agrees to issue a Change Order pursuant to Paragraph 12.05.B.1 (in whole) or 12.05.B.3 (in part), the Contractor shall give its Notice of Claim pursuant to Paragraphs 12.01.B and 12.01.C.
  2. For written determinations which the Owner does not agree to issue a Change Order pursuant to Paragraph 12.05.B.2 (in whole) or 12.05.B.3 (in part), if, upon review of the Owner's written determination, Contractor demands issuance of a Change Order, Contractor shall give its Notice of Claim pursuant to Paragraphs 12.01.B and 12.01.C within fifteen (15) days of the Owner's written determination.
- D. *Owner's Final Decision.* Within 30 days of receipt of Contractor's Notice of Claim given pursuant to Paragraph 12.05.C, Owner will issue its Final Decision related to Contractor's Claim.

## 12.06 *Delays*

- A. Delays beyond the control of Contractor shall include, but not be limited to, acts or omissions by Owner and due to causes reasonably within the Owner's control (exclusive of the issuance of Work Change Directives and RFPs), acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, acts of God, and any of the conditions or events described in Article 4 for which the Contractor is required to provide Notice to Owner pursuant to Article 12, provided that the Contractor has satisfactorily fulfilled all applicable conditions precedent.

- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal or unusually severe weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.06.C.
- D. If abnormal and unusually severe weather is the basis for any Claim for an adjustment to Contract Time, such request shall be documented by data substantiating that the weather conditions at issue were abnormal and unusually severe for the period of time in question and that such could not reasonably have been anticipated, as well as that those weather conditions actually had an adverse effect or impact upon the Contractor's ability to complete the Work within Contract Time for the Project Schedule in effect at the time of the asserted delay.
- E. For purposes of documenting the actual weather conditions encountered by the Contractor at the Site, the Contractor shall record on a daily, workday basis the actual weather conditions encountered at the Site, and submit to Owner monthly a comparison between the "Monthly Anticipated Adverse Weather Workdays," as established below, and the "actual adverse weather workdays." For purposes of establishing the number of workdays per calendar month upon which the parties agree the Monthly Anticipated Adverse Weather Workdays set forth below shall be incorporated into the Contractor's schedule for performance of all weather affected activities.

MONTHLY ANTICIPATED ADVERSE WEATHER WORKDAYS											
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
7	7	7	7	9	7	7	7	6	6	6	7

- F. Contractor shall not be entitled to any time extension based upon adverse weather unless the number of actual adverse weather workdays, which shall be calculated chronologically from the last workday in each month, exceeds the number of Monthly Anticipated Adverse Weather Workdays. Contractor's time extension shall be limited to the number of days that Contractor claims delay as a result of adverse weather in excess of the Monthly Anticipated Adverse Weather Workdays given under this Article.
- G. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

- H. Contractor shall be entitled to an extension of time for such causes only for the number of days of delay which the Owner may determine to be due solely to such causes and then only to the extent that such occurrences actually delay the Substantial Completion or Final Completion of the Project, or defined portions thereof. If the delay is not solely due to such causes but also is due concurrently to causes for which the Contractor is not entitled to an extension of time, the Contractor shall not be entitled to an extension of time for such period of concurrent delay.
- I. No extension of time will be granted to the Contractor for delays occurring to parts of the Work if such delays have no measurable impact on the completion of the total Work under the Contract; nor will an extension of time be granted for delays to parts of the Work that are not located on the Project's critical path.
- J. Delays in the delivery of Equipment or material purchased by the Contractor or its Subcontractors, or in the submission of required Shop Drawings or Submittals by the Contractor's or its Subcontractor's materialmen, manufacturers, or suppliers, or in the performance of any of the Contractor's Subcontractors or caused by the performance of any of the Contractor's Subcontractors, shall not be considered as a just cause for an extension of time. Except for Owner-furnished Equipment, the Contractor shall be fully responsible for the timely submission, ordering, scheduling, expediting, fabrication, delivery, and installation of all Equipment, materials, and Shop Drawings or Submittals.

## **ARTICLE 13 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

### *13.01 Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. All cost Submittals from the Contractor requesting a change to Contract Price, including Submittals in response to Work Change Directives, proposals, or Notices of Claim, shall be submitted using the Change Order Pricing Template including as Attachment 4 to the Supplementary Conditions. Any Claim by Contractor for an adjustment in the Contract Price shall be based on a Notice of Claim submitted in accordance with the provisions of Article 12.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
  - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
  - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include a fixed fee for overhead and profit not necessarily in accordance with Paragraph 13.01.C.1); or
  - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 13.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 13.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be considered full compensation, covering all costs specified above, plus interruptions of schedules, extended overhead, delays or any other impact claim or ripple effect, or any other general expense. The Contractor's fixed fee shall be determined as follows:

1. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
2. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
3. where one or more tiers of subcontracts are on the basis of Cost of the Work, the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
4. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
5. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a fixed fee of 8 percent of the actual net decrease in cost; and
6. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 13.01.C.1 through 13.01.C.5, inclusive.

#### 13.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim by Contractor for an adjustment in the Contract Times shall be based on Notice of Claim in accordance with the provisions of Articles 12 and 13.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of Articles 12 and 13.

### **ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

#### 14.01 *Notice of Defects*

- A. Defective Work may be rejected, corrected, or accepted as provided in this Article 14. Failure by Owner to provide Notice of defective work to Contractor shall not waive Contractor's obligations under this Agreement or Owner's right to demand correction of defective Work.

#### 14.02 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor

shall provide them proper and safe conditions, and all reasonable assistance required by them, for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

#### 14.03 *Tests and Inspections*

- A. Contractor shall give Owner (and Engineer if Engineer is designated as an Owner's representative) five days advance Notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
  - 1. for inspections, tests, or approvals covered by Paragraphs 14.03.C and 14.03.D below;
  - 2. for inspections, tests, or observations covered by Paragraph 14.04.B below; and
  - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner the required certificates of inspection or approval. Contractor's completion of this requirement is a condition precedent to Owner's obligations to pay Contractor for the Work at issue.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's acceptance of materials or Equipment to be incorporated in the Work; or acceptance of materials, mix designs, or Equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner, and may require signature or seal by a professional engineer licensed in the Commonwealth of Virginia.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Owner, Contractor shall, if requested by Owner, uncover such Work for such inspection, testing, or approval.
- F. Uncovering Work as provided in Paragraph 14.03.E shall be at Contractor's sole expense unless Contractor has given Owner timely Notice of Contractor's intention to cover the same and Owner has not acted with reasonable promptness in response to such Notice.
- G. In general, the Work elements listed below are not anticipated to require inspection by the Owner or Engineer outside of regular working hours. These Work elements are provided as examples only.
  - 1. Surveying;
  - 2. Clearing;
  - 3. Establishment and maintenance of erosion and sediment control measures;
  - 4. Site cleanup and restoration;

5. Excavation (exclusive of confirmations of subgrade suitability); and
6. Rough and final grading operations.

#### 14.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Owner, it shall, if requested by Owner, be uncovered for Owner's observation and replaced at Contractor's sole expense.
- B. If Owner had not requested an opportunity to observe covered Work, and subsequently considers it necessary or advisable that covered Work be observed by Owner or inspected or tested by others, Contractor, at Owner's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Owner may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
  1. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may issue a UCO in the amount determined by Owner, in Owner's sole discretion, to be reasonable.
  2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Article 12.
- C. Notwithstanding the foregoing, the construction and installation of all subsurface utilities, which includes waterline, sanitary sewer, and sanitary force mains, shall be inspected by Owner during construction and backfilling operations. If Contractor constructs or installs subsurface utilities without coordinating with Owner to allow Owner to inspect the subsurface utilities, Contractor shall uncover, excavate, remove and reinstall the subsurface utilities at no additional cost to Owner, even if the Contractor's Work was found to comply with the Contract requirements.

#### 14.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or Equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.



#### 14.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of Notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 14.06 or Paragraph 14.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

#### 14.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.12.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. repair such defective land or areas; or
  - 2. correct such defective Work; or
  - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. Contractor shall bear all costs of such correction, replacement, repair or restoration and all losses resulting from such defective Work, including but not limited to additional testing, inspections, and compensation for Owner's services and expenses related thereto. Contractor shall perform such corrective Work at times that are acceptable to the Owner and in such manner as to avoid, to the extent possible, disruption to the Owner's activities.
- C. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) shall be paid by Contractor.

- D. In special circumstances where a particular item of Equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 14.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. Contractor's obligations under this Paragraph 14.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 14.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

#### 14.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner elects to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may issue a UCO therefor as provided in Paragraph 10.04.C. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

#### 14.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after Notice from Owner to correct defective Work, or to remove and replace rejected Work as required by Owner in accordance with Paragraph 14.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Article, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and Equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Article.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute

resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may, in Owner's sole discretion, issue a UCO therefor as provided in Paragraph 10.04.C. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Article.
- E. Notwithstanding the foregoing, if Owner, in its sole discretion, determines that the correction of defective Work is an emergency or otherwise vital to Owner's operations, security, or safety of Owner personnel or others, Owner may have the correction performed by whatever means Owner determines to be most expeditious and without giving Notice to Contractor. Contractor shall be responsible for all costs incurred by Owner to correct the defective Work. When exercising any rights and remedies under this Paragraph, Owner shall not be required to obtain the lowest price for repairing the defective Work.

#### 14.10 *Latent Defects*

- A. No failure on the part of Owner or Engineer to discover and either to condemn or reject defective Work shall be construed to imply acceptance thereof. The Owner reserves and retains all of its rights and remedies at law or in equity against the Contractor for correction of any and all defective Work whenever discovered, whether before, during or after the warranty period.
- B. No tests or inspections conducted by the Owner or others shall relieve the Contractor of its obligations to execute the Work in strict compliance with the requirements of the Contract Documents and to correct defective Work not initially identified by the Owner or others at the time of tests or inspections but discovered subsequently.

### **ARTICLE 15 – PAYMENTS TO CONTRACTOR AND COMPLETION**

#### 15.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Owner. The Application for Payment shall include Owner's purchase order number. Progress payments on account of Unit Price Work will be based on the number of units completed.

## 15.02 *Progress Payments*

### A. *Applications for Payments:*

1. *Payment for Bonds and Insurance.* Payment for bonds and insurance shall be substantiated by invoices from Contractor's surety and insurance company, and other such supporting documentation as may be required by Owner.
2. With the exception of the payment for bonds and insurance, Contractor shall, within five days after the last day of each month, submit to Owner, or Engineer if directed by Owner, for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the last day of the month and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and Equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and Equipment free and clear of all Liens and evidence that the materials and Equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner. Owner shall be provided access to, and control over, all materials and Equipment for which the Owner has made payment under this Paragraph.
3. Beginning with the second Application for Payment, each Application shall include a partial lien waiver and release, signed by Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment. Owner shall furnish the partial lien waiver and release form to Contractor for Contractor's use. The Contractor shall also provide with its Application for Payment, releases of liens and claims from its Subcontractors, and where said Subcontractor performed Work during the prior Application for Payment period, in a form acceptable to Owner.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
5. Contractor's Application for Payment shall constitute Contractor's warranty and representation that there are no demands, sums of money, or other entitlements due to Contractor from Owner other than the amount stated in the Application for Payment plus any retainage that has been withheld, and any Claims for which the Contractor has previously submitted a timely and proper Notice of Claim. Contractor's submission of an Application for Payment shall constitute a waiver of any demand, sum of money, or other entitlement due, or potentially due, through the date of the Application for Payment, to Contractor excluding the amount stated in the Application for Payment, plus retainage, plus any amount stated in a Claim that has been timely and properly given in a Notice of Claim.
6. Effective starting with the second Application for Payment, acceptance of the Project Schedule, Schedule Updates, and revisions, as may be required by Contract shall be a condition precedent to the obligation of the Owner to consider any Application for Payment submitted by

Contractor. Contractor shall submit its Project Schedule or Schedule Updates with its Application for Payment.

7. The Contractor shall submit its Application for Payment using the form included as an appendix to the Supplementary Conditions. The Contractor shall provide an itemization of its Application for Payment based on its Schedule of Values.
8. With the exception of the draft Applications for Payment, which are reviewed by Owner as described below, Contractor shall submit its Applications for Payment to Owner electronically. Owner shall make payment to Contractor within 21 days of Contractor's electronic submission, subject to Owner's rights under Paragraph 15.02.E.

**B. Review of Applications; Processing for Payment**

1. Owner, and Engineer if so chosen by Owner, will, within 10 days after receipt of each draft Application for Payment, review the draft Application for Payment and all documentation required to be submitted therewith to ensure:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 8.13, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled, and the Owner has not advised the Contractor that Owner is withholding the Contractor's progress payment or a portion thereof pursuant to Paragraph 15.02.E.
2. If Owner or Engineer determines Contractor's draft Application for Payment:
  - a. does not meet the requirements set forth in Paragraph 15.02.B.1, Owner will return the draft Application for Payment to Contractor, indicating in writing its reasons for refusing to process the draft Application for Payment. Contractor shall make the necessary revisions and submit its revised Application for Payment to the Owner electronically. Owner will make payment to the Contractor within 21 days of receipt of the electronic submission of the revised Application for Payment.
  - b. meets the requirements set forth in Paragraph 15.02.B.1, Owner will advise Contractor accordingly, and Contractor shall submit its Application for Payment to the Owner electronically. Owner will make payment to Contractor within 21 days of receipt of the electronic submission of Contractor's Application for Payment.

**C. Payment of Subcontractors; Subcontract Provisions**

1. Contractor shall be liable for the entire amount owed to any Subcontractor with which it contracts. Contractor shall not be liable for amounts otherwise reducible due to the Subcontractor's noncompliance with the terms of their contract. However, in the event that the Contractor withholds all or a part of the amount promised to the Subcontractor under their contract, the Contractor shall notify the Subcontractor, in writing, of its intention to withhold

all or a part of the Subcontractor's payment with the reason for nonpayment. Payment by the Owner shall not be a condition precedent to Contractor's payment to any Subcontractor of any tier, regardless of Contractor receiving payment for amounts owed to Contractor. Any provision in any of the Contract Documents contrary to this Paragraph 15.02.C.1 shall be unenforceable.

2. After the Owner has paid the Contractor, the Contractor shall take one of the following actions within seven (7) days after receipt of payment:
    - a. Pay the Subcontractor or Supplier for the proportionate share of the total payment received from the Owner attributable to the Work performed by the Subcontractor or Supplier.
    - b. Notify the Owner and Subcontractor, in writing, that the Contractor will withhold all or a part of the Subcontractor's payment with the reason for nonpayment.
  3. Contractor shall pay interest of 1 percent per month to Subcontractors on any amounts owed by Contractor that remain unpaid after seven (7) days following receipt by Contractor of payment from Owner, except for amounts which Owner has notified Contractor are being withheld.
  4. Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to include these same payment and interest provisions in its subcontracts.
- D. Owner shall not be required to make any payment until Contractor has provided to Owner its social security number (if an individual) or federal employer identification number (if a proprietorship, partnership, or corporation).
- E. Right to Withhold Progress Payment or a Portion Thereof:
1. Owner reserves the right to withhold progress payments or a portion thereof if:
    - a. the Work is not proceeding according to the requirements of the Contract Documents;
    - b. the Project Schedule, Schedule of Values, and Schedule of Submittals have not been accepted by Owner;
    - c. the Contractor has not received approval for its monthly Project Schedule update or recovery Schedule as may be required under the Contract;
    - d. the Contractor has not satisfied the conditions precedent to payment;
    - e. claims have been made or threatened against Owner on account of Contractor's performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
    - f. Liens have been threatened or filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

- g. there are other items entitling Owner to a set-off against the amount included in the Application for Payment;
  - h. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
  - i. Owner has been required to correct defective Work or complete Work in accordance with Article 14.09;
  - j. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraph 16.02.A.;
  - k. Owner has determined, in Owner's sole discretion, that the remaining balance will not cover the cost to perform the remaining Work;
  - l. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - m. Contractor has failed to provide and maintain required bonds and insurance; or
  - n. Owner has incurred extra charges or engineering costs related to Submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities.
2. The Owner will deduct from the progress payment amount liquidated damages which have been assessed and any other charge chargeable to the Contractor, including but not limited to fees, charges, fines, and cost reimbursements.
  3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due and subject to interest as provided in the Agreement.
  4. With respect to paragraph 15.02.E.1.h, when Owner has previously paid for Work performed by Contractor, and that Work is subsequently damaged, requires correction, or is otherwise determined to be defective, Owner reserves the right to nullify the amount previously paid from the Contractor's Application for Payment. The amount nullified will be reinstated after the Contractor has corrected, repaired, or replaced the Work.

#### 15.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, Equipment, patents, licensing, copyrights, and royalty obligations covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens and other title defects.

#### 15.04 *Substantial Completion*

- A. When Contractor considers the entire Work, or defined portion thereof, ready for its intended use Contractor shall notify Owner in writing that the entire Work, or defined portion thereof, is substantially complete (except for items specifically listed by Contractor as incomplete) and

request that Owner issue a Notice of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer a list of items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner and Contractor shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work, or defined portion thereof, substantially complete, Owner will notify Contractor in writing giving the reasons therefor. If the Owner determines that the Work, or defined portion thereof, is not substantially complete after a second inspection of the Work following Contractor notification, then the Contractor shall pay all costs and expenses of the Owner incurred in connection with the third and any subsequent inspections made to determine Substantial Completion.
- C. If Owner considers the Work, or defined portion thereof, substantially complete, Owner will deliver to Contractor a Notice of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the Notice a list of items to be completed or corrected before final payment. Contractor's completion of the list of items to be completed or corrected, to the Owner's satisfaction, is a condition precedent to the Owner's obligation to make final payment. The Owner will endeavor to provide a comprehensive list of items to be completed or corrected, but makes no guarantees that the Owner will not add items to the list that are discovered after the Notice of Substantial Completion is issued to Contractor.
- D. After Substantial Completion, the Contractor shall promptly begin on the Work to be completed or corrected prior to final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on list of items to be completed or corrected.

#### 15.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor and Owner will follow the procedures of Paragraph 15.04.A through 15.04.E for that part of the Work.
  - 2. Contractor at any time may notify Owner in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a Notice of Substantial Completion for that part of the Work. However, Owner shall not be required to inspect pursuant to Paragraph 15.05.A.3 any such part of the Work that is identified by the Contractor unless the Owner first determines, in Owner's sole discretion, that the part of the Work identified by the Contractor constitutes a separately functioning and usable part of



the Work that can be used by the Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work.

3. Within a reasonable time after either such request, Owner and Contractor shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Contractor in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 15.04 will apply with respect to Notice of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.08 regarding property insurance.

#### 15.06 *Final Inspection*

- A. Upon Notice from Contractor that the entire Work or defined portion thereof is Finally Complete, including the list of items to be completed or corrected pursuant to Paragraph 15.04.C, Owner will promptly make a final inspection with Contractor and will notify Contractor in writing of Work that is incomplete or defective based on the final inspection. Contractor shall immediately take such measures as are necessary to complete such Work or to correct defective Work. If Owner determines that the Work is not Finally Complete after a second inspection of the Work following Contractor notification, then the Contractor shall pay all costs and expenses of the Owner incurred in connection with the third and any subsequent inspections made to determine Final Completion.
- B. Within five days of the Owner's determination that the Work is Finally Complete, the Owner will issue a Notice of Final Completion to Contractor.

#### 15.07 *Final Payment*

- A. Application for Payment:
  1. Within 20 days of the Notice of Final Completion, Contractor shall submit its final Application for Payment.
  2. The final Application for Payment shall be accompanied (except as previously delivered) by:
    - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.03.B.16;
    - b. consent of the surety, if any, to final payment;
    - c. a list of all Claims against Owner that Contractor believes are unsettled;
    - d. complete and legally effective final Lien waiver and release on a form furnished by Owner, which releases or waives all Lien rights arising out of, or Liens filed in connection with, the Work.
    - e. written evidence that any lands or access obtained by Contractor under Paragraph 4.01.C have been returned to their owner in accordance with the terms under which Contractor

obtained the right to use such lands or access and indemnification of the Owner against any claims, losses, or damages related thereto; and

- f. written, signed releases, in a form acceptable to the Owner, from all owners of each and every part of the Site as provided by Owner.
3. By not including a list of all unsettled Claims with the final Application for Payment, Contractor affirms that it has no unsettled Claims for additional compensation or additional Contract Time.
- B. *Owner's Review of Application and Acceptance:* If Owner determines the Contractor's final Application for Payment and accompanying documentation are in conformance with the Contract Documents, and Contractor's other obligations under the Contract Documents have been fulfilled, Owner will make final payment to Contractor. Otherwise, Owner will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
  - C. *Payment Becomes Due:* Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount included in the Application for Payment, less any sum Owner is entitled to, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.
  - D. *Engineer.* Owner, in its discretion, may consult with Engineer in the observation of the Work and review of the final Application for Payment as the Owner deems necessary, or may delegate the observation and review responsibilities as described in Paragraph 15.07 entirely to Engineer.

#### 15.08 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute a waiver of all Claims by Contractor against Owner other than those properly and timely given in accordance with Article 12, and included in the list of unsettled Claims required under Paragraph 15.07.A.2.c.

### **ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION**

#### 16.01 *Owner May Suspend Work*

- A. At any time, the Owner has the right to suspend performance of the Work, or a defined portion thereof, if the Owner determines, in the Owner's sole discretion, that it is in the Owner's best interests to do so. Such suspension shall be accomplished by Notice to Contractor specifying the extent of suspension and the effective date. If determined necessary by Owner, the Notice of suspension shall advise Contractor why the Work, or defined portion thereof, is being suspended.
- B. If the Notice of suspension was issued because of circumstances beyond the Contractor's control, and through no act or fault of the Contractor, the term of the suspension shall be no more than 90 consecutive days unless agreed to by the Parties.
- C. Upon receipt of such Notice of suspension, the Contractor shall immediately, to the extent of the suspension:

1. stop Work;
  2. place no further subcontracts or other orders for materials or services related to the suspended Work; and
  3. issue Notice of suspension of Work to all affected Subcontractors to the extent of such suspension.
- D. During the term of such suspension of Work described in Article 16.01.C, the Contractor shall remain ready to resume performance of the Work upon receipt of written Notice from the Owner to do so. Should the Owner deem it appropriate for the Contractor to demobilize and remove all or any portion of its operations from the Site during the period of such suspension, the Owner shall issue specific written directions to do so to the Contractor, and the Contractor shall comply promptly therewith. In such even, the Contractor shall issue Notices similar in scope and content to all affected Subcontractors.
- E. If the suspension was issued because of an act or fault of the Contractor, which may include any of the events listed in Article 16.02.A, Contractor shall immediately remedy such events and advise Owner how the event(s) will be remedied, including a schedule for remedying the event.
- F. Upon receipt of Notice from the Owner that the Contractor is to return to work, the Contractor shall do so in accordance with the requirements set forth in such Notice from the Owner. Any claim for additional compensation or an extension of Contract Time arising from or in any way related to such suspension of Work shall be submitted and processed in accordance with GC Article 12. Provided, however, any such additional compensation shall be limited to the actual costs arising from or related to such suspension, and shall not include any amount for interest or profit. Provided further, there shall be no additional compensation nor any extension of the Contract Time arising from such suspension if the suspension:
1. did not affect the critical path as shown on the Project Schedule or to the extent that performance of the Work would have been delayed for any other cause;
  2. was issued because of an act or fault of the Contractor, which may include any of the events included under Article 16.02.A;
  3. was issued to ensure safety of the Owner's personnel, which Owner determines may be imperiled by the Contractor's Work or actions; or
  4. was issued to ensure proper operation of the Owner's facilities, which Owner determines may be jeopardized by Contractor's Work or actions.
- G. The Owner may, in its sole discretion, convert the suspension of the Work to a termination for convenience in accordance with GC Article 16.03.

#### 16.02 *Owner May Terminate for Cause*

- A. *Events of Default.* The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor's abandonment of the Work or defined portion thereof;

2. Contractor's failure to perform the Work, or defined portion thereof, in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or Equipment or failure to adhere to the Project Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.05);
  3. Contractor's failure to make prompt payment to Subcontractors or Suppliers pursuant to the Contract requirements;
  4. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  5. Contractor's disregard of the authority of Owner or the Engineer;
  6. Contractor's refusal to remove and replace at its own cost defective Work;
  7. Contractor's violation in any way of any provisions of the Contract Documents;
  8. Contractor's failure to comply with applicable safety requirements;
  9. Contractor's filing of any case in bankruptcy or receivership, or making of a general assignment for the benefit of creditors; or
  10. Contractor is otherwise in breach of the Contract.
- B. *Termination for Default with a Claim against the Performance Bond.* If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of this Article 16.02. In the event that the Contract is terminated in connection with a claim against the performance bond, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- C. *Termination for Default without a Claim against the Performance Bond*
1. *Notice of Cure and Opportunity.* If one or more of the events identified in Paragraph 16.02.A occur, Owner may issue a Notice of default to Contractor and surety.
    - a. Within seven days of the issuance of the Notice of default, Contractor shall provide Notice to Owner, which includes a plan and schedule of activities if necessary, advising how the Contractor intends to cure its default;
    - b. Within the same seven-day period, commence curing the Contractor's default; and
    - c. Within 30 days of the issuance of the Notice of default, fully cure the Contractor's default. This 30-day period shall be known as the "cure period".
    - d. If Contractor complies with Paragraph 16.02.C.1, a, b, and c, then Owner will not terminate the Contract for default.
  2. If Contractor does not comply with Paragraph 16.02.C.1, a, b and c, then the Owner may issue a Notice of termination for default to the Contractor. The Notice of termination for default will specify the date of the termination. The Owner may, after issuing the Notice of termination for default to the Contractor:

- a. Exclude Contractor from the Site or a part thereof, and take possession of the Work or defined portion thereof and of all Contractor's tools, appliances, construction equipment, and machinery at the Site or a part thereof, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
  - b. Incorporate in the Work all materials and Equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
  - c. Complete the Work as Owner may deem expedient.
3. *Payment Upon Termination for Default.* If Owner proceeds as provided in Paragraph 16.02.C.2, Contractor shall be entitled to receive payment due for any Work already completed as of the effective date of termination, subject to retainage. Contractor shall not be entitled to receive any further payment, and, if the claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professional and all dispute resolution costs) sustained by Owner arising out of or related to completing the Work exceed the unpaid balance of the Contract Price, Contractor shall pay the difference to Owner. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
4. *Contractor's Duty Upon Termination for Default.* Upon receipt of a Notice of termination for default, the Contractor shall immediately take all reasonable and appropriate steps necessary to protect the Work in place, assign to Owner all subcontracts as designated by Owner to be assigned, and thereafter discontinue all further operations on the Work or such part thereof, and shall immediately quit the Site or such part thereof, leaving in place all Equipment, materials, equipment, tools, and supplies.
5. *Owner's Right and Remedies.* Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
6. *Partial Default.* In the event the Owner provides a Notice of termination for default to Contractor that applies to only part of the Work, the Contractor shall immediately discontinue its performance of such part as described in this Paragraph 16.02.C, shall continue performing the remainder of the Work in strict conformity with the terms of the Contract, and shall in no way hinder or interfere with any other contractor or person who the Owner may engage to complete the Work from which Contractor was terminated.
- D. *Contractor's Cure not Sustained.* If the Contractor cures its performance in accordance with the requirements set forth in Paragraph 16.02.C.1 but does not sustain such performance or otherwise is determined to be in default for similar events to those included in the Owner's Notice of default, the Owner may, in its sole determination, issue a Notice of termination for default to the Contractor with respect to such repeated event of default, which shall have the effect of immediately terminating the Contract without providing an additional cure period to Contractor.
- E. *Default Termination Converted to Termination for Convenience.* In the event of termination by the Owner for default, in whole or in part, subsequently is determined to have been without sufficient cause or justification, such termination shall be deemed to have been a termination for

convenience and any Claim by the Contractor for damages of any sort arising from such termination shall be subject to the Claims provisions of Article 12.

#### 16.03 *Owner May Terminate for Convenience*

- A. Upon seven days Notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or Equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
  3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
  4. reasonable expenses directly attributable to termination, including demobilization of all manpower, equipment and facilities.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### 16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days Notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after Notice to Owner, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 16.04 are not intended to preclude Contractor from making a Claim under Article 12 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Article.

## ARTICLE 17 – DISPUTE RESOLUTION

### 17.01 *Litigation*

- A. Whenever the Contractor disagrees with the Owner’s Final Decision on a Claim under Article 12, Contractor’s sole right of appeal shall be by filing, within six (6) months of date of the Owner’s Final Decision, litigation in either the Circuit Court of Loudoun County, Virginia or the United States District Court for the Eastern District of Virginia, Alexandria Division. These two courts shall have exclusive and binding jurisdiction and venue over any and all Claims arising under the Contract for which the Owner’s Final Decision is appealed by the Contractor. The parties voluntarily waive any and all rights to trial by jury. The fact finder shall be the Court, sitting without a jury.
- B. *Prevailing Party.* For Claims that are litigated under the Contract, the prevailing party shall be compensated as set forth in the following Paragraphs.
  - 1. For Claims by the Contractor for additional compensation not related to delays to the Work, the Contractor shall indemnify and hold the Owner harmless from any and all reasonable attorneys’ fees, litigation costs of all types, and expert witness fees and costs, arising from or related to such Claim and litigation if the Owner substantially prevails in such litigation.
  - 2. For Claims by the Contractor for costs or damages related to unreasonable delay:
    - a. The Contractor shall be liable to the Owner and shall pay the Owner for a percentage of all costs incurred by the Owner in investigating, analyzing, negotiating, and litigating the Claim, including but not limited to attorneys’ fees, which percentage shall be equal to the percentage of the Contractor’s total delay Claim for which it is determined through litigation that Contractor is not entitled to additional time or costs or damages for the claimed delay for any reason.
    - b. The Owner shall be liable to and shall pay the Contractor a percentage of all costs incurred by the Contractor to investigate, analyze, negotiate, and litigate the Claim, which percentage shall be equal to the percentage of the Contractor’s total delay claim for which the Owner’s denial is determined through litigation to have been made in bad faith.

### 17.02 *Optional Non-Binding Mediation*

- A. Prior to filing litigation, the Contractor may request by Notice to the Owner that the parties undertake optional non-binding mediation in an attempt to resolve a dispute. If the Owner agrees to attempt mediation, then within 30 days of receipt of the Contractor’s Notice requesting mediation, the Contractor and Owner shall attend a formal mediation conducted by a single, impartial mediator appointed by and under the rules of The McCammon Group. The mediation shall take place at the McLean, Virginia office of McGuireWoods, LLP.
- B. Contractor and Owner may each bring the following to the mediation:
  - 1. one person closely involved with the daily activities of the Project and with knowledge of the dispute;

2. one member of its senior management team not involved with the daily activities of the Project but with overall responsibility for the Project, and
  3. one expert in the field for the purposes of providing information related to the Claim at issue. The Owner may request the Engineer serve in this capacity on behalf of the Owner.
- C. If Owner and Contractor agree to attempt mediation to resolve a dispute, Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 45 days of filing of the Notice requesting mediation.
  - D. All communications and submissions concerning and during the mediation will be strictly confidential and inadmissible in any court proceeding.
  - E. The Owner and Contractor shall share in the cost of mediator 50/50. Each party shall bear all other costs resulting from mediation, including but not limited to, its legal and consultant costs.
  - F. Mediation shall not extend the time in which the Contractor is required to file litigation.
  - G. If the Claim is not resolved by mediation and it has not been more than six (6) months after the Owner issued its Final Decision on the Claim, then the Contractor may pursue litigation in accordance with Paragraph 17.01.

## **ARTICLE 18 – MISCELLANEOUS**

### **18.01 *Giving Notice***

- A. Whenever any provision of the Contract Documents requires the giving of Notice, it will be deemed to have been validly given if delivered in person; sent by registered or certified mail, postage prepaid; or through Electronic Means to the individual or to a member of the firm or to an officer of the corporation for whom it is intended at the last business address for the recipient known to the giver of the Notice. Until changed by a party (by giving Notice of the change), the addresses for Notices to the Owner and Contractor are as set forth in the Agreement.

### **18.02 *Computation of Times***

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

### **18.03 *Cumulative Remedies***

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.



18.04 *Survival of Obligations; No Waiver of Provisions*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.
- B. Neither inspection by Owner, nor any payment for, nor acceptance of, or action or failure to act regarding the whole or any part of the Work by Owner, nor any extension of time, nor any possession taken by Owner, shall operate as a waiver of any provision of the Contract Documents, or of any power herein reserved to Owner, or of any right to damages herein provided, nor shall any waiver, actual or implied, of any breach of the Contract Documents be held to be a waiver of any other or subsequent breach. Issuance of final payment shall not be binding and conclusive upon Owner with regard to latent defects, fraud or bad faith, or such gross mistakes as may amount to fraud, or as regards to Owner's rights under any warranty. Failure of Owner to require strict compliance with any term or condition of the Contract Documents in any specific instance shall not be deemed a waiver of the right to subsequent enforcement thereof.

18.05 *Controlling Law*

- A. This Contract is to be governed by the laws of the Commonwealth of Virginia, including the Virginia Public Procurement Act (VPPA), Title 2.2, Chapter 43, Code of Virginia 1950 as amended. Paragraph references in the VPPA are specified with the symbol "§".
- B. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- C. The Contractor shall determine the contents and applicability to the Project of all other governing statutes, ordinances, codes, and regulations and comply with their provisions throughout the performance of the Contract.

18.06 *Federal, State, County, and Local Standard Specifications*

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

18.07 *Owner an Agency of the Government*

- A. Contractor acknowledges that Owner is an agency of the Government and as such its property is immune from mechanic's liens. The Contractor hereby waives any and all mechanic's lien rights it may purport to have, and agrees that it shall neither file nor assert any such lien claim.

- B. The Contractor shall indemnify and hold Owner harmless in the event of the filing of a mechanic's lien by any third party related to the performance of the Work, including but not limited to all attorneys' fees and costs incurred by the Owner in the defense or removal of such lien. Promptly upon recordation of any such lien, Contractor, at its sole expense, shall obtain the release of such lien of record pursuant to the provisions of Section 43-70 and 71, Va. Code Ann., as amended.
- C. If any third party lien or claim remains unsatisfied after all payments to Contractor are made, or if satisfied by Owner prior to the payment to Contractor of all sums otherwise due Contractor, Contractor or surety shall pay to Owner all monies expended by Owner in defending and/or satisfying such claim, including but not limited to all costs and attorneys' fees, and also shall pay to Owner all costs and attorneys' fees incurred in collecting such amounts from Contractor or surety.

18.08 *Fines and Penalties*

- A. Contractor shall be solely liable for, and shall reimburse the Owner for, any and all fines which may be levied by any governmental authority against the Owner and/or the Contractor which are resulting from Contractor's operations. The Contractor consents to deduction of any fines and penalties, which are resulting from the Contractor's operations and levied against the Owner, from the Contractor's Application for Payment.

18.09 *Headings; References*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.
- B. When a paragraph, article or exhibit is cited in these General Conditions, it shall be deemed to be a reference to such paragraph, article or exhibit in or to these General Conditions unless specific reference is made to another Contract Document.

18.10 *Time is of the Essence*

- A. Contractor agrees that time is of the essence in the performance of its obligations under this Agreement.

**END OF GENERAL CONDITIONS**