

**Construction At Loudoun County Parkway And
Center Street Intersection Improvements**

ATTACHMENT 6 TO IFB RFQ-433

**LOUDOUN COUNTY REVISIONS TO THE 2007 VDOT ROAD & BRIDGE SPECIFICATIONS
DIVISION I GENERAL PROVISIONS**

- A. The Loudoun County Revisions to the 2007 VDOT Road and Bridge Specifications revise only the specification sections identified herein. The unedited specifications remain as is and are incorporated into the IFB as well. Other than Section 101.02 Terms, if a specification sections is included in these revisions, it is to be deleted in its entirety from the 2007 VDOT Road & Bridge Specifications Division 1 General Provisions and replaced with the revisions provided herein.
- B. This is a **LUMP SUM CONTRACT** with the bidders' unit prices provided in the Schedule of Bid Items used to establish a bidder's lump sum total. The quantities and items provided on the Schedule of Bid Items form are estimates only and may be modified by bidders. The unit prices provided by bidders in the Schedule of Bid Items are to pre-establish costs in the event of Owner Directed changes. Actual quantities and items needed to complete the work in accordance with the Contract Documents shall be inclusive in each pay item or incidental to other pay items and included in the Lump Sum amount.
- C. Any reference in the Contract Documents as defined herein to payment by unit price shall be disregarded. Bidders shall disregard all references in the 2007 VDOT Road and Bridge Specifications and the 2008 VDOT Road and Bridge Road Standards to actual quantities, contract unit prices and measurement or payment method other than inclusion in the Lump Sum Price. **This is a LUMP SUM CONTRACT.**
- D. In the event of conflict between the County's Contract Terms and Conditions and Specifications and 2007 VDOT Road & Bridge Specifications, the County's Terms and Conditions and Specifications shall prevail, unless Contractor is directed otherwise by the County.
- E. Reference in this document as well as the 2007 VDOT Road & Bridge Specifications to "Department" shall be construed to refer to the Loudoun County Department of Transportation and Capital Infrastructure or the County generally, except in references to approvals and certifications provided by VDOT, VDOT as author of the 2007 VDOT Road & Bridge Specifications, or where related to matters of VDOT final approval and acceptance the Work.
- F. Reference in this document as well as in the 2007 VDOT Road & Bridge Specifications to "Engineer" shall be construed to refer to the Project Manager/Contract Administrator from the Loudoun County Department of Transportation and Capital Infrastructure.
- G. The Owner requires the Contractor to use e-Builder for the administration of this project. The County will provide the Contractor no more than two licenses for Contractor's use. Basic training will be required and provided by the County at no cost to the Contractor. This level of training is at the recommendation of e-Builder and should provide proficiency. If the Contractor does not demonstrate proficiency with the software following this training, additional training required for complete proficiency will be at the Contractor's cost. Additional licenses may also be purchased at the Contractor's cost. Contact e-Builder for further information at www.e-builder.net or 1-800-580-9322.

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SECTION 101—DEFINITIONS OF ABBREVIATIONS, ACRONYMS, AND TERMS

101.02—Terms.

It is understood that reference in this document as well as the 2007 VDOT Road & Bridge Specifications to "Department" shall be construed to refer to the Loudoun County Department of Transportation and Capital Infrastructure or the County generally, except in references to approvals and certifications provided by VDOT, VDOT as author of the 2007 VDOT Road & Bridge Specifications, or where related to matters of VDOT final approval and acceptance the Work.

It is understood that reference in this document as well as the 2007 VDOT Road & Bridge Specifications, to "District Engineer", it shall be replaced by the term "Engineer" or "County Project Manager". The County reserves the right to enter into a separate contract with a consultant who shall serve as the County's Architect/Engineer. The consultant shall be identified in the final Owner-Contractor Agreement.

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

Revisions herein include only those that vary from those in the 2007 VDOT Road & Bridge Specifications Division I, Section 101.

-A-

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

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

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

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

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

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-B-

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

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

Bids, Invitation for. See **Proposal**

Board. Loudoun County Board of Supervisors.

-C-

Commissioner. Chairman, Loudoun County Board of Supervisors.

Contract Documents - The Contract Documents are complimentary, and what is required by one shall be as binding as if required by all. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work, including without limitation, all labor, materials, equipment and furnishings required in connection therewith. Such incorporated documents customarily include but are not limited to; the Invitation for Bid (Proposal) including any and all addendums and attachments, , Loudoun County Revisions to 2007 VDOT Road & Bridge Specifications Division 1 General Provisions, Plans, , Bidder Response/ Proposal, Owner – Contractor Agreement and all attachments and exhibits thereto, Supplemental General Conditions, 2007 VDOT Road and Bridge Specifications, Insurance coverage/policies, bonds, Specifications, and all Modifications, including addenda and subsequent change orders. The edition of the Road and Bridge Specifications cited in the Invitation for Bid (Proposal) and Contract, which include addenda or Revisions issued prior to the Bid Date, the Supplemental Specifications, Special Provisions, Special Provision Copied Notes, the Plans, the Edition of the Road and Bridge Standard Drawings cited on the title sheet of the plans which include Addendum's or Revisions issued prior to the Bid Date. Oral representations or promises will not be considered a part of the Contract. Any soils, geotechnical or other reports, surveys and analyses which may be made available to the Contractor for review or information under this Contract, are not adopted by reference into, nor are they part of the Contract Documents.

Contracting Officer. Contracting Officer from the Procurement Division of the Loudoun County Department of Management & Financial Services assigned to manage the Contract.

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

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

-D-

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

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-E-

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

Engineer, Contract. County Contracting Officer.

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

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

-F-

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

-L-

Lump Sum. Aggregate or total price to construct the project per the Contract Documents. See definition of Contract Documents.

-M-

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

-N-

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

Owner:	Loudoun County Department of Transportation and Capital Infrastructure 801 Sycolin Road Leesburg, VA 20175
Purchasing Agent:	Loudoun County Department of Management & Financial Services Division of procurement 1 Harrison Street, S.E., MSC#41C Leesburg, VA 20175

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County Attorney: Loudoun County
1 Harrison Street S.E., MSC#06
Leesburg, VA 20175

Contractor: Address in the Owner – Contractor Agreement

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

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

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

-O-

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

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

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

-P-Q-

Pay item. Deleted, this is a Lump Sum Contract.

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

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

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

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-R-

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

Resident Engineer. Deleted.

-S-

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

-V-

Vouchered. Deleted.

SECTION 102—BIDDING REQUIREMENTS AND CONDITIONS

102.02 - Content of Invitation for Bid (Proposal)

Upon request, the County will furnish a proposal (Invitation for Bid) to any interested party. The proposal (Invitation for Bid) will specify the location and description of the contemplated construction, the estimate of the various quantities and kinds of work to be performed or materials to be furnished, and a Schedule of Items for which unit prices are invited. The proposal (Invitation for Bid) will specify the time in which the work shall be completed and the date and time by which bids must be filed. The proposal (Invitation for Bid) will also include a Loudoun County Revisions to the 2007 VDOT Road and Bridge Specifications, Division I – with supplemental specifications, special provisions, or special provision copied notes governing the proposed work. Attachments to the proposal (Invitation for Bid) will be considered a part of the bid. The plans, Specifications, and other documents specified in the proposal (Invitation for Bid) will be considered a part of the proposal (Invitation for Bid) and contain required supplemental specifications, special provisions, and special provision copied notes governing the proposed work not included in Division I.

102.03 - Interpretation of Quantities in Proposal

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The quantities appearing in the proposal are approximate only, and provide a basis for cost analysis. Quantities of work to be performed and materials to be furnished may be increased, diminished, or omitted as provided within these Specifications.

In general, the bid proposal will indicate the various utility items known to exist, will indicate items to be adjusted or improvements proposed by the respective owners and will designate any items that are to be adjusted by the Contractor.

Information contained in the bid proposal regarding utility locations is advisory only and shall not be construed as being a representation of completeness or accuracy. The bidder shall contact the owners of the various utilities to determine the exact location of the utilities and the owner's schedule of work. Unless otherwise noted, all utility adjustments will be performed by the Utility or its representative. The Contractor shall cooperate with the owners of any utilities in their adjustment operations. Prior to preparing a bid, the bidder shall contact known utility owners to determine the nature, extent, and location of existing, adjusted, or proposed new utility facilities within the areas of construction. It is understood and agreed that the Contractor has considered in his bid all of the permanent and temporary utility appurtenances in their present and relocated positions, any proposed utility capital improvements, and the Contractor has contacted the utility owner with regard to their proposed schedule of work. The Contractor shall include in his proposed schedule the amount of time to make utility adjustments, from time estimates furnished by the utility owners. Any costs associated with contacting and coordinating with the utilities shall be reflected in the Lump Sum Bid Price.

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

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

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

(b) Subsurface Data

Subsurface data may be available for review by the bidder in the form of a geotechnical report. Such data are accurate with regard to test holes and are made available to the bidder in good faith in order to apprise him of information in possession of the Department. The Department does not warrant these conclusions to be correct, either expressly or by implication. Further, the Department does not warrant the condition, amount, or nature of the material that may be encountered or the sufficiency of the data, either expressly or by implication. The bidder shall make his own interpretation of the subsurface data that may be available and satisfy himself with regard to the nature, condition, and extent of the material to be excavated, graded, or driven through. The submission of a bid will be considered conclusive evidence that the bidder is satisfied with regard to the subsurface conditions to be encountered in the work and has taken such conditions into consideration when submitting the bid.

A Geotechnical/Geophysical release form signed by an authorized individual per Invitation for Bid Section 18.7 – Authority to Bind Firm in Contract must be provided with your request for a plans and specifications CD. This form must also be submitted with the Bidder's bid submission.

(c) Notice of Alleged Ambiguities

If a word, phrase, clause, or any other portion of the proposal is alleged to be ambiguous, the Bidder shall submit to the Contract Engineer a written notice of the alleged ambiguity

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not later than the date specified in IFB Section 18.2 – Questions and Inquiries and request an interpretation thereof. This written notice shall be submitted in accordance with the instructions in IFB Section 18.2.

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

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

(d) Required Attendance of Project Showing

Two (2) Mandatory Pre-Bid Conferences will be held for clarification of any questions on the on the drawings, specifications and site conditions. Attendance at one of the Pre-Bid Conferences is mandatory for all Bidders. Bidders must be present prior to the beginning of the conference. Bidders must sign in with the Procurement Representative as record of attendance. Late entry to the Pre-Bid Conferences will not be permitted. Failure to attend one of these conferences will result in your bid being deemed non-responsive and rejected.

Date, time, and location of the Mandatory Pre-Bid Conference is specified on the cover of the Proposal (Invitation for Bid).

102.05 - Preparation of Bid.

(a) Instruction to Bidders.

Detailed instructions on the preparation and submissions of bids is contained in IFB Section 18.0 – Instruction to Bidders

(b) General

(1) As stated in Invitation for Bid, This is a **LUMP SUM CONTRACT** with unit prices provided by the bidder on the Schedule of Bid Items used to establish the lump sum total. The quantities and items provided on the schedule of bid items are estimates only and may be modified by bidders. The unit prices provided by bidders in the Schedule of Items are to pre-establish costs in the event of Owner Directed changes only. Actual quantities and items needed to complete the work in accordance with the Contract Documents shall be inclusive in each pay item or incidental to other pay items and included in the Lump Sum amount. Any reference in the Contract Documents to payment by unit price shall be disregarded.

(2) Required Certifications

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

A sworn statement shall be executed by the bidder or his agent on behalf of each person, firm, association, or corporation submitting a bid. The statement shall certify that the person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise

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taken any action to restrain free competitive bidding in connection with the proposal. The sworn statement shall be part of the bid or in the form of an affidavit and shall be sworn to before a person who is authorized by the laws of the State to administer oaths. The bids shall contain the identical sworn statement. For the purpose of this Section, affixing digital ID to the bid will be considered by the Department conditional evidence of signing before a person who is authorized by the laws of the Commonwealth to administer oaths. The original of the sworn statement shall be filed with the Department when the bid is submitted.

- (3) If the bidder's Lump Sum Price is omitted, the bid may be rejected. If a unit price is omitted, the bid may be rejected. If there is a discrepancy between the unit price and its extension, the unit price will govern.
- (4) Acknowledgement of Receipt of Revisions (Addendums)
It is the responsibility of all bidders to ensure that they have received all Addendums and to include signed copies of the Addendums with their bid. Addendums can be downloaded from www.loudoun.gov/procurement. Failure to include signed addendums may lead to a bidder being deemed nonresponsive and/or non responsible.
- (5) Bids shall be signed by individuals authorized to do so. Refer to IFB Section 18.7 – Authority to Bind Firm in Contract

102.06 - Irregular Bids.

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

- (a) If the bidder fails to comply with the requirements of IFB Sections 18.0 and 20.0
- (b) If the bidder fails to comply with the requirements of Sections 102.05 and 102.07
- (c) If the bidder fails to provide Certification of Prequalification with VDOT
- (d) If the bid is not properly signed
- (e) If the bidder fails to acknowledge Addendum(s) by including the signed Addendum(s)
- (f) If there are unauthorized additions, conditional or alternate bids, or irregularities of any kind that may make the bid incomplete, indefinite, or ambiguous
- (g) If the unit prices in the bid are obviously unbalanced, either in excess or below the cost analysis values as determined by the Department
- (h) If the bidder fails to submit a statement concerning collusion
- (i) If bids are submitted showing a designation for a project other than the project for which the bid is made
- (j) If a bid is not totaled
- (k) If erasures or alterations in the bidder's entries on paper bids, when allowed, are not initialed by the bidder
- (l) If any attachments included in the bid are altered when the bid is submitted except as otherwise provided for herein
- (m) If the bidder adds any provisions reserving the right to accept or reject an award or enter into a contract pursuant to an award except as otherwise permitted in these Specifications

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102.07 – Invitation for Bid (Proposal) Guarantee

Bid will not be accepted or considered unless accompanied by a proposal guarantee in the form of a bid bond. Refer to IFB Section 19.18 – Construction Contract Bid Security

102.09 - Submission of Bids

Refer to IFB Section 19.0 – Instruction to Bidders

102.10 - Withdrawal of Bid.

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

102.11 – eVA Business-To-Government Vendor Registration

Delete this section in its entirety.

102.12—Public Opening of Bids.

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

SECTION 103—AWARD AND EXECUTION OF CONTRACTS

103.01—Consideration of Bids.

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

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

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

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

103.02—Award of Contract

- (a) See Invitation for Bid, Section 19.12 – Vendor Preference in Tie Bids
- (b) See Invitation for Bid, Section 19.14 – Basis for Award.

103.03—Cancellation of Award

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

103.04—Forfeiture of Proposal (Invitation for Bid) Guarantee

When the bidder withdraws his bid prior to award, after being determined the apparent low bidder, the bid bond will be forfeited in accordance with the requirements of the *Code of Virginia* as amended and Invitation for Bid, Section 18.8 – Withdrawal of Construction Contract Bid Due to Error.

103.05—Requirements of Contract Bond

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

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

103.06—Contract Documents.

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

- (a) **Contract:** The Contract shall include all Contract Documents, including but not limited to the Invitation for Bid (Proposal); all attachments to the Invitation for Bid; all addendums issued; Schedule of Bid Items submitted by the bidder, bidder's proposal, plans, standard drawings, specifications, supplemental specifications, special provisions, special provision copied notes, and the Owner – Contractor Agreement.
- (b) **Contract Bonds:** Contract bonds shall conform to the requirements of Section 103.05.
- (c) **Affidavits and Documents:** Affidavits and documents shall include those required to be made a part of the Contract by any federal or state law in effect on the date of the Notice of Advertisement.
- (d) **Progress Schedule:** The Contractor shall submit a progress schedule in accordance with the requirements of Section 108.03 or as specified in the Contract Documents.
- (e) **Insurance:**
 - A. The Contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract.
 - B. The Contractor shall, during the continuance of all work under the Contract provide, and require that its subcontractors provide, the following:

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1. Maintain Workers' Compensation and Employer's Liability to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
 2. The Contractor agrees to maintain Comprehensive General Liability insurance to protect the Contractor, its subcontractors, and the interest of the County, its officers, employees, and agents against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverage for explosion, collapse, and underground hazards, where required.
 3. The Contractor agrees to maintain owned, non-owned, and hired Automobile Liability insurance, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Comprehensive General Liability policy.
 4. Professional Liability against any and all wrongful acts, errors, or omissions on the part of the Contractor resulting from any action or operation under the Contract or in connection with the contracted work.
 5. The Contractor shall purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents. This insurance shall include the interests of the County, the Contractor and subcontractors.
- C. The Contractor agrees to provide the above referenced policies with the following limits. Liability insurance limits may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
1. Workers' Compensation:

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

Per Occurrence:	\$1,000,000
Personal/Advertising Injury:	\$1,000,000
General Aggregate:	\$2,000,000
Products/Completed Operations:	\$2,000,000
Fire Damage Legal Liability:	\$100,000
 3. Automobile Liability:

GL Coverage, excluding Products and Completed Operations, should be on a Per Project Basis

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- | | | |
|----|-------------------------------------|-------------|
| | Combined Single Limit: | \$1,000,000 |
| 4. | Professional Liability | |
| | Per Occurrence: | \$1,000,000 |
| | General Aggregate: | \$1,000,000 |
| 5. | Boiler & Machinery: (If applicable) | \$1,000,000 |
- D. The following provisions shall be agreed to by the Contractor:
1. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five (45) day written notice to the County. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
 2. Liability Insurance "Claims Made" basis: If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:
 - a. Agree to provide, prior to commencing work under the Contract, certificates of insurance evidencing the above coverage for a period of two (2) years after final payment for the Contract for General Liability policies and five (5) years for Professional Liability policies. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's work under this Contract, or
 - b. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
 3. The Contractor must disclose the amount of deductible/self-insured retention applicable to the General Liability, Automobile Liability and Professional Liability policies, if any. The County reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible/self-insured plan. If this provision is utilized, the Contractor will be permitted to provide evidence of its ability to fund the deductible/self-insured retention. In addition, the Contractor agrees to provide insurance issued by:
 - a. Companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VII.
 - b. European markets including those based in London, and the domestic surplus lines market that operate on a non-admitted basis are exempt from this requirement provided that the Contractor's broker can provide financial data to establish that a market's policyholder surpluses are equal to or exceed the surpluses that correspond to Best's A:VII Rating.

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4.
 - a. The Contractor will provide an original signed Certificate of Insurance and such endorsements as prescribed herein.
 - b. The Contractor will secure and maintain all insurance certificates of its subcontractors which shall be made available to the County on demand.
 - c. The Contractor will provide on request certified copies of all insurance coverage related to the Contract within ten (10) business days of demand by the County. These certified copies will be sent to the County from the Contractor's insurance agent or representative. Any request made under this provision will be deemed confidential and proprietary.
 - d. Any certificates provided shall indicate the Contract name and number.
5. The County, its officers and employees shall be Endorsed to the Contractor's Automobile and General Liability policies as an "additional insured" with the provision that this coverage "is primary to all other coverage the County may possess." (Use "loss payee" where there is an insurable interest). A Certificate of Insurance evidencing the additional insured status must be presented to the County along with a copy of the Endorsement.
6. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities provisions of the Contract.
- E. Contractual and other Liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
- F. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the County. The Contractor shall be as fully responsible to the County for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
- G. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
- H. The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.
- I. Any loss insured under subparagraph 5.6.B.4 is to be adjusted with the County and made payable to the County as trustee for the requirements of any applicable mortgagee clause. The Contractor shall pay each subcontractor a just share of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each subcontractor to make payments to his sub-subcontractors in similar manner.
- J. When the County finds it necessary to occupy or use a portion or portions of the work prior to substantial completion thereof, such occupancy shall commence with a mutual agreement between the County and Contractor. The insurance company or companies providing the property insurance recognize this

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contingency and shall provide evidence of such endorsement prior to commencement of work. This insurance shall not be canceled or lapsed for the unoccupied part of the building on account of such partial occupancy. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

- K. If an "ACORD" Insurance Certificate form is used by the Contractor's insurance, the words "endeavor to" and "... but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted.
- L. The Contractor agrees to waive all rights of subrogation against the County, its officers, employees, and agents.

103.07 - Failure to Furnish Bonds or Certificate of Insurance

Failure by the successful bidder to furnish the County acceptable payment and performance bonds and proof of the insurance requirements in Sections 103.05 and 103.06 within 15 calendar days after being notified of the award of the Contract shall be considered just cause for cancellation of award and forfeiture of the proposal guarantee (bid bond). This does not include any Bonds associated with the VDOT Land Use Permit. In such event, the proposal guarantee (bid bond) shall become the property of the County, not as a penalty but in liquidation of damages sustained. The Contract may then be awarded to the next lowest responsive and responsible bidder, or the work may be re-advertised or constructed otherwise, as determined by the County.

103.09 - Execution of Contract

The bid as submitted, including the documents specified in Section 103.06(a), shall be a part of the Contract upon submittal of the Loudoun County payment and performance bonds and proof of the insurance requirements in 103.06(e) and the final execution by the County. After the County has recommended the bid for award the apparent low bidder shall be required to sign and return the Owner – Contractor Agreement to the County Purchasing Agent. Failure to sign and return the Owner – Contractor Agreement will result in forfeiture of the proposal guarantee (bid bond). If the Contract is not awarded within the time limit specified in IFB Section 18.5, the bidder may withdraw his bid without penalty or prejudice unless the time limit is extended by mutual consent. No Contract shall be considered effective until it has been fully executed by all parties.

SECTION 104—SCOPE OF WORK

104.01 - Intent of Contract

The intent of the Contract is to provide for completion of the work specified therein within the Contract Sum and time limit stated in the Contract. Further it is understood that the Contractor execute the Work under the Contract as an independent contractor and not as an agent of the County.

104.02 - Alteration of Work

(a) General

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

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

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

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

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

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

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SECTION 105—CONTROL OF WORK

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

- a) Unless otherwise provided, the Contract Time is the period of time specified in the Owner-Contractor Agreement for Final Completion of the Work as defined herein, including authorized adjustments thereto. The Contractor shall complete the Work within the Contract Time.
- (b) The date of commencement of the Work is the date established in the Notice of Proceed.
- (c) The Contractor shall commence work no later than ten (10) days after the date established in the Notice to Proceed
- (d) The Contractor shall not commence work or store materials or equipment on site until written Notice to Proceed is issued or until the Contractor otherwise receives the Owner's written consent.
- (e) The date of Substantial Completion of the Work or designated portion thereof is the date determined by Owner when: (a) construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the Work or designated portion thereof for the use for which it is intended; and (b) the Contractor has satisfied all other requirements for Substantial Completion which may be set forth in the Contract Documents.
- (f) The date of Final Completion of the Work is the date determined by the Owner when the Work is totally complete, to include punch list work, in accordance with the Contract Documents and the Owner may fully occupy and utilize the Work for the use for which it is intended.
- (g) The effective date of the Owner – Contractor Agreement shall be the date of contract execution. The Contract Time will begin upon the date of the Notice to Proceed. The County Purchasing Agent or his designated representative, the Contracting Officer, will contact the Contractor on the date of contract execution to inform Contractor of such action.
- (h) The County plans to issue the Notice to Proceed thirty (30) calendar days after the execution of the Owner – Contractor Agreement. The thirty (30) calendar days between the execution of the Owner Contractor Agreement and the date of the Notice to Proceed is to provide reasonable time for the Contractor to complete the following pre-construction requirements:
 - i. e-Builder Training
 - ii. Construction Schedule per Section 108.03
 - iii. Detailed Schedule of Values (AIA form or similar) based on Schedule of Bid Items
 - iv. Environmental Protection Plan
 - v. Project Organizational Diagram (Org Chart)
 - vi. Qualifications and Resumes for the Contractor's Project Management Personnel
 - vii. Qualifications of Quality Assurance Firms/Individuals

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- viii. Submittal Register (in e-Builder format provided) and Identification of Critical Technical Submittals with Long Lead Time Requiring Early Submittal
- ix. Any Technical Questions or Recommendations
- x. Copy of Responsible Land Disturber Certificate
- xi. Contractor's Safety Plan
- xii. Insurance Certificate(s)
- xiii. Performance Bond
- xiv. Payment Bond

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

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

105.03 – Authorities of Project Personnel

(a) Authority of the Owner

(1) Owner's Right To Stop Work

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

(2) Owner's Right to Carry Out the Work

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

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Order"). If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

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

(3) **Suspension of Work**

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

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

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

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

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

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

(b) Authority of Engineer

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

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

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

(c) Authority of Inspector.

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

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

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

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

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

- (a) Loudoun County Owner – Contractor Agreement
- (b) Loudoun County Invitation for Bid, including all attachments and addendums
- (c) Loudoun County Revisions to 2007 VDOT Road & Bridge Specifications Division 1 General Provisions
- (d) Special provision copied notes
- (e) Special provisions
- (f) Plans

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- (g) Supplemental Specifications.
- (h) Specifications
- (i) Standard Drawings with calculated dimensions, unless obviously incorrect, will govern over scaled dimensions.

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

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

105.13—State Force Construction Surveying

This specification section is deleted and replaced with:

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

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

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

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

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

The Contractor shall provide and protect temporary construction benchmarks within the construction limits. Temporary construction benchmarks shall be located not farther than 500 feet apart for the total length of the project or as indicated on the plans. Temporary construction benchmarks that are disturbed

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during construction operations shall be reestablished by the Contractor at no additional cost to the Department.

105.17 - Inspection of Work

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

Prior to the beginning of operations, the Engineer will meet with the Contractor to establish an understanding of the critical stages of work that shall be performed in the presence of the Inspector. In order for the Department to schedule inspection of the work, the Contractor shall keep the Engineer informed of planned operations in accordance with the requirements of Section 108.03

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

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

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

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

(a) Inspection, Examination and Testing by the County

- (1) All material and workmanship shall be subject to inspection, examination and testing by the County, the Engineer, the Project Inspector, authorized inspectors and authorized independent testing entities at any and all times during manufacture and/or construction. The Engineer and the County shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefore, and the Contractor shall promptly segregate and remove the rejected material from the Site. If the Contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the County may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed. As a result, the Contractor and its Surety may be held liable for any damages to the same extent as provided in Contract for termination hereunder.

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- (2) Site inspections, tests conducted on site or tests of materials gathered on site, which the Contract requires to be performed by independent testing entities, shall be contracted and paid for by the County. Examples of such tests are the testing of cast-in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings and steel framing connections. The Contractor shall promptly furnish, without additional charge, all reasonable facilities, labor and materials necessary and convenient for making such tests. Except as provided in this specification section, whenever such examination and testing finds defective materials, equipment or workmanship, the Contractor shall reimburse the County for the cost of re-examination and retesting. Although conducted by independent testing entities, the County will not contract and pay for tests or certifications of materials, manufactured products or assemblies which the Contract, codes, standards, etc., require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual or ASTM. If fees are charged for such tests and certifications, they shall be paid by the Contractor. The Contractor shall also pay for all inspections, tests, and certifications which the Contract specifically requires him to perform or to pay, together with any inspections and tests which he chooses to perform for his own purposes, but are not required by the Contract.
- (3) Where Work is related to or dependent upon work that is subsequently found to be defective, the Contractor shall stop such related or dependent Work until the Defective Work or deficiency is corrected or an alternative solution is presented that is satisfactory to the County. Where Work is rejected because of defective material or workmanship, the Contractor shall stop like Work in other areas or locations on the Project until the matter is resolved and the County has approved corrective measures.

105.19 - Submission and Disposition of Claims

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

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

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

The complete written claim, with all supporting documentation, shall be submitted to the County Purchasing Agent no later than sixty (60) days after final payment. If the claim is not disposed of by

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agreement, the Purchasing Agent shall reduce his decision to writing and mail or otherwise forward a copy thereof to the Contractor within thirty (30) days of receipt of the claim.

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

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

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

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

Pursuant to *Code of Virginia*, I hereby certify that this contract claim submission for the County of Loudoun Project Construction of the Russell Branch Parkway (RFQ-88) is a true and accurate representation of additional costs and/or delays incurred by (name of Contractor) in the performance of the required contract work. Any statements made, and known to be false, shall be considered a violation of the Virginia Governmental Frauds Act, punishable as allowed by the Virginia Code for a Class 6 Felony.

(Company)

By:

As officer or duly appointed agent of (Company)

Title:

Date:

State Of:

City/County of _____, To-Wit:

I, the undersigned, a Notary Public in and for the City/ County and State aforesaid, do hereby certify that _____, whose name is signed to the foregoing instrument, bearing date of the _____ day of _____, 20____, has this day acknowledged the same before me in my City/ County and State aforesaid.

Given under my hand this _____ day of _____, 20____.

Notary Public:

My commission expires:

Claims submitted during the statutory period for submitting contract claims and submitted without the certification described above shall not have standing as a claim and shall not be considered by the Department

SECTION 106—CONTROL OF MATERIAL

106.02—Material Delivery.

The Contractor shall advise the Engineer at least 2 weeks prior to the delivery of any material from a commercial source. The Contractor shall provide the Engineer with one copy of all invoices (prices are not required) for materials delivered to the project with the following exceptions: asphalt concrete; dense

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graded aggregate, to include aggregate base, sub base, and select material; fine aggregate; open graded coarse aggregate; crusher run aggregate; and road stabilization aggregate. The printed weights of each load of these materials, shall accompany the delivery, and such information shall be made available to the Engineer or his designated representative at the Project.

106.05 - Rights for and Use of Materials Found on Project

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

SECTION 107—LEGAL RESPONSIBILITIES

107.01 - Laws to Be Observed

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

(a) Hold Harmless Clause

- (1) It is hereby mutually covenanted and agreed that the relation of the Contractor the Work to be performed by him under this Contract shall be that of an independent contractor and that as such he will be responsible for all damages, loss or injury, including death, to persons or property that may arise or be incurred in or during the conduct and progress of said Work as the result of any action, omission or operation under the Contract or in connection with the Work, whether such action, omission or operation is attributable to the Contractor, subcontractor, any material supplier, or anyone directly or indirectly employed by any of them. The Contractor shall make good any damages that may occur in consequence of the Work or any part of it. The Contractor shall assume all liability, loss and responsibility of whatsoever nature by reason of his neglect or violation of any Federal, State, County or local laws, regulations or ordinances.
- (2) The Contractor shall indemnify, hold harmless and defend the Owner, its employees, agents, servants and representatives from and against any and all claims, suits, demands, actions (regardless of the merits thereof) and damages of whatever nature arising out of or resulting from the performance of the Work or the failure to perform the Work, including jurisdictional labor disputes or other labor troubles that may occur during the performance of the Work.

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

(b) Payments to Subcontractors

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

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

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

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

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

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

(c) Provisions Required By Law Deemed Inserted

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

(d) Severability

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

(e) Rights and Remedies

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

(f) Successors and Assigns

- (1) The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder, without the previous written consent of the Owner and the Contractor's Surety.
- (2) In the event the Contractor desires to make an assignment of all or part of the Contract or any monies due or to become due hereunder, the Contractor shall file a copy of consent of surety, together with a copy of the assignment to the Owner and A/E. In the event the Contractor assigns all or any part of the monies due or to become due under this Contract, the instrument of assignment shall state that the right of assignees in and to any monies due to or to become due to Contractor shall be subject to prior liens and claims of all persons, firms and corporations that provided labor services or furnished material and equipment during the performance of the Work. The rights of assignees shall further be subject to the payment of any liens, claims, or amounts due to Federal, State, or Local governments.

(g) Applicable Laws/Forum

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

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to waiver of service of process in an action pending in the Loudoun County Circuit Court pursuant to Virginia Code Section 8.01-286.1.

107.06 - Personal Liability of Public Officials

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

SECTION 108—PROSECUTION AND PROGRESS OF WORK

108.02 – Limitaiton of Operations

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

If any of these holidays occurs on a Sunday, the following Monday shall be considered the holiday.

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

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

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

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7. Christmas Day: From Noon on the preceding day until Noon on the following day, except as indicated below.

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

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

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

108.03 - Progress Schedule General Requirements

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

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

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

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Engineer. The cost of the CPM and Biweekly Progress Construction Schedules, meetings and all monthly updates shall be included in the bidders Lump Sum Price.

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

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

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

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

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

The CPM Construction Schedule shall be updated monthly reflecting actual progress of the Project. If the monthly Progress Schedule indicates the Contractor will not meet the Contract Completion date, the Contractor shall at no cost to the Owner attempt to recover any lost time due to ineffective planning and organization, lack of timely material acquisition inefficiencies, errors, or other causes due to no fault by the Owner. In such a case, the Contractor shall provide the necessary resources to regain lost time, provide remedies and solutions to meet the Project Completion Date. Two copies of the CPM

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Project Schedule update will be provided in original and an electronic format compatible with the Owner's and Engineer's software. The Contractor's Superintendent shall maintain at the job site, a current Construction Schedule, indicating actual monthly progress for those portions of the project on which work has been or is being performed.

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

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

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

Contractor covenants and guarantees that Contractor will not:

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

Should Contractor fail to substantially comply with the provisions of the Contract Documents relating to scheduling and execution of the Work by the overall project schedule, Owner shall have the right, at its option, to retain the services of scheduling consultants or experts (including attorneys if necessary in the opinion of the Owner) to prepare schedules, reports, updates and revisions of the schedule in accordance with the Contract Documents and to review and analyze same, in order to allow Engineer to evaluate the program of the Work by Contractor, to determine whether Contractor is substantially complying with the Contract Documents, and to direct such action of the part of the Contractor, as permitted by the Contract Documents, as required to ensure, under the Owner's schedule prepared hereunder, that Contractor will complete the Work

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within the Contract Time. All costs and expenses and fees incurred by Owner in preparing the schedule hereunder shall be charged to Contractor's account. If Contractor fails to substantially comply with the scheduling and execution of the work requirements of the Contract Documents, Contractor hereby agrees, in such instance, to comply with such Owner-prepared schedules, if any, or directions, and activity sequences and durations as Owner may reasonably require, without additional cost to the Owner (subject only to cost adjustments for such changes in the Work as Owner may direct), to ensure completion within the Contract Time.

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

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

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

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

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

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

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

- (d). Monitoring the Work and Assessing Progress
- (1) Monitoring the Work: –The Engineer will monitor the work regularly to identify any deviations from the Contractor's scheduled performance relative to the currently accepted Baseline or Revised Progress Schedule. The Engineer may request a meeting with the Contractor to discuss the Contractor's current progress or to

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establish the approximate date for starting each critical inspection stage. At least once a week, the Contractor shall advise the Engineer of the approximate timing for anticipated critical stages for the subsequent week. The Engineer shall be advised at least 24 hours in advance of any changes in planned operations or critical path. The cost of the Two Week Look Ahead schedules and Progress Meetings shall be included in the Contractor's bid.

- (2) Progress Evaluation – The Contractor shall prepare, distribute and be responsible for an Activities and Two Week Look Ahead Schedule updated biweekly to include:
- a. The sequences, relationships and type of activities,
 - b. The duration of activities,
 - c. The responsibility for activities,
 - d. Resource availability,
 - e. Labor availability or efficiency,
 - f. Expected weather conditions,
 - g. Updates

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

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

- a. Review, correction or approve minutes of previous progress meeting.
- b. Review Contractor's Activity Schedule and Two week "Look Ahead Schedule". Determine status of the activities in relation to the previous or base line schedule. Determine how construction items behind schedule will be expedited and commitments to do so.
- c. Problem Resolution
- d. Discuss other topics appropriate to current status of project.
- e. Review the present and future needs of each entity present, including:
- f. Interface requirements
- g. Safety
- h. Time Schedules
- i. Sequencing of work
- j. Deliveries and Material Acquisition
- k. Access
- l. Site utilization
- m. Hours of work
- n. Quality of Work
- o. Housekeeping
- p. Change Orders
- q. Inspection and Communication

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

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

- (e) Progress Deficiency and Schedule Slippage: When the Contractor's actual progress is deemed to be unsatisfactory, the Engineer will issue a written notice of unsatisfactory performance to indicate that further actions may be taken. Within 10 calendar days of the date of the Engineer's notice of unsatisfactory progress, the Contractor may submit to the Engineer, a recovery or mitigation plan to reflect a proposed plan to correct the progress deficiency or schedule slippage, or submit to the Engineer a written explanation and supporting documentation to establish that such delinquency is due to conditions beyond the Contractor's control. Any schedule revisions resulting from a recovery plan shall not replace the SOR.

108.04 - Determination and Extension of Contract Time Limit

The Contract time limit for completion will be determined by the County – Contractor Agreement. No request for an extension of time will be considered that is based on any claim that the contract time limit as originally established was inadequate. Contract time shall be determined in calendar days and all requests for time extensions shall be in calendar days.

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

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

(a) Claims for Time Extensions

1. The time during which the Contractor is delayed in the performance of the Work by the acts or omissions of the County, the Architect or Engineer or their employees or agents, acts of God, unusually severe and abnormal climatic conditions, fires, floods, epidemics, quarantine restrictions, strikes (not to exceed the actual duration of the strike), riots, civil commotion or freight embargoes, or other conditions beyond the Contractor's control and which the Contractor could not reasonably have foreseen and provided against, shall be added to the time for completion of the Work (i.e., the Contract Time) stated in the County – Contractor Agreement; however, no claim by the Contractor for an extension of time for delays will be considered unless made in compliance with the requirements of 108.04 and other provisions of the Contract Documents.
2. The County shall not be obligated or liable to the Contractor for, and the Contractor hereby expressly waives any claims against the County on account of

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any indirect or direct damages, costs or expenses of any nature which the Contractor, its subcontractors, or sub-subcontractor's or any other person may incur as a result of (a) any delays, reasonable or unreasonable, foreseeable or unforeseeable which are either not caused by the acts or omissions of the County, its agents or employees or which arise from or out of (or due to) causes not within the control of the County, its agents or employees, or (b) any reasonable delay regardless of its cause, it being understood and agreed that the Contractor's sole and exclusive remedy in any such events shall be an extension of the Contract Time, but only as determined in accordance with the provisions of the Contract Documents.

3. The burden of proof to substantiate a claim for an extension of the Contract Time shall rest with the Contractor, including evidence that the cause was beyond his control. It shall be deemed that the Contractor has control over the supply of labor, materials, equipment, methods and techniques of construction and over the subcontractors and suppliers, unless otherwise specified in the Contract Documents.
4. In the event of Changes in the Work, the Contractor must identify any additional time required in the Proposed Change Order. The County need not consider any time extensions for Changes in the Work not included in the Proposed Change Order.
5. No time extensions will be granted as a result of the Contractor's improper or unreasonable scheduling or for the Contractor's failure to have Shop Drawings, Product Data, Samples or Manuals submitted in ample time for review under a reasonable and agreed upon schedule.
6. Delays by subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated herein.
7. The Contractor acknowledges and agrees that actual delays due to changes, suspension of work or excusable delays, in activities which according to the schedule do not affect the Contract Time will not be considered to have any effect upon the Contract Time and therefore will not be the basis for a time extension.
8. The Contractor acknowledges and agrees that time extensions will be granted only to the extent that: (a) excusable delays exceed the available flexibility in the Contractor's schedule; and (b) Contractor can demonstrate that such excusable delay actually caused, or will cause, delay to the Contractor's schedule that will extend the Contract Time.
9. With respect to Suspensions of Work under 108.05 Suspension of Work by the Engineer herein, the Contractor may be entitled to an extension of the Contract Time not to exceed the length of time that the Work was suspended (unless as determined under this Section and the other requirements of the Contract Documents that a further extension is justified and warranted) if the claim is submitted in accordance with the requirements of this Section, and if the suspension is not due to any act or omission of the Contractor, any subcontractor or sub-subcontractor or any other person or organization for whose acts or

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omission the Contractor may be liable. The Contractor's claim will be evaluated in accordance with the terms of this Section.

10. The Contractor shall not be entitled to any extension of time for delays resulting from any conditions or other causes unless it shall have given written Notice to the County, within seven (7) calendar days following the commencement of each such condition or cause, describing the occurrence, the activities impacted and the probable duration of the delay. The Contractor's complete claim submittal for a time extension shall be submitted no later than twenty (20) calendar days after cessation of the delay or within such other longer period as the County may agree in writing to allow.
11. No such extension of time shall be deemed a waiver by the County of his right to terminate the Contract for abandonment or delay by the Contractor as herein provided or to relieve the Contractor from full responsibility for performance of his obligations hereunder.

(b) Time Extensions for Weather

1. The Contract Time will not be extended due to inclement weather conditions that are normal to the general locality of the Work site. The time for performance of this Contract is in calendar days and all requests for time extension due to inclement weather shall be made in calendar days.
2. The following is the schedule of monthly anticipated normal inclement weather days for the project location and will constitute the base line for monthly weather time extension evaluations. The anticipated normal inclement weather calendar days have been included in the designated contract time for completion.

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

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

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relief is a time extension granted in accordance with 108.04(a), Time Extensions for Weather.

108.06 - Failure to Complete on Time/Liquidated Damages

The damages incurred by the Owner due to the Contractor's failure to complete the Work within required Milestone dates and the Contract Time, including any extensions thereof, shall be in the amount set forth in the Owner-Contractor Agreement, for each consecutive day beyond the Milestone dates or the Contract Time (Sundays and all holidays included) for which the Contractor shall fail to complete the Work.

The amount of liquidated damages provided in this Contract is neither a penalty nor a forfeiture and shall compensate the Owner solely for the Owner's inability to use the Work for its fully intended purpose, and is not intended to, nor does said amount include: (a) any damages, additional or extended costs, incurred by the Owner for extended administration of this Contract, or by the Owner's agents, consultants or independent contractors for extended administration of this Contract, or (b) any additional services, relating to or arising as a result of the delay in the completion of the Work. Owner shall be entitled to claim against Contractor for its actual damages and any amounts not specifically included within the liquidated damages as set forth herein. Such costs shall be computed separately and together with liquidated damages, either deducted from the Contract Sum or billed to the Contractor, at the option of the Owner.

108.07 – Default of Contract

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

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

If any one or more of these conditions exists, the Engineer will give notice in writing to the Contractor and his surety of the delay, neglect, or default. If within 10 days after the date of such notice the Contractor or his surety has not taken measures that will, in the judgment of the Engineer, ensure satisfactory progress

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of the work or give assurances satisfactory to the Engineer that the provisions of the Contract will be fully carried out and instructions complied with, the County may then, or at any time thereafter, declare the Contractor in default. Without violating the Contract, the County may call upon the Contractor's surety for the satisfactory and expeditious completion of all work under the Contract or may otherwise terminate the Contract in accordance with the provisions of Section 108.08.

If the Contractor's surety fails or refuses to proceed with the work in accordance with the instructions of the surety documents, the County will appropriate and use any or all materials and equipment on the project site that are suitable and acceptable and will enter into an agreement with others for the completion of the work, or he will use such other methods as he deems necessary to ensure the completion of the work.

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

108.08 - Termination of Contract

- (a) Owner's Right to Terminate Contract for Cause
 - (1) If the Contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, the Owner may terminate the Contract. If the Contractor should refuse or should repeatedly fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials and equipment, or if he should fail to make prompt payment to subcontractors or suppliers of material of labor, or refuse to prosecute the Work or any part thereof with such diligence as will ensure the Substantial Completion of the Work within the Contract Time or fails to substantially complete the work within such period, or if he should disregard laws, ordinances or the written instructions of the Architect/Engineer or the Owner, or otherwise be in substantial violation of any provision of the Contract, then the Owner may terminate the Contract.
 - (2) Prior to termination of the Contract, the Owner shall give the Contractor and his surety ten (10) calendar days written Notice during which the Contractor and/or his surety may rectify the basis for the Notice. If rectified to the satisfaction of the Owner within said ten (10) days, the Owner may rescind its Notice of Termination. If not, the termination for cause shall become effective at the end of the ten (10) day notice period. In the alternative, the Owner may, in writing, postpone the effective date of the termination for cause, at its sole discretion, if it should receive reassurances from the Contractor and/or its surety that the basis for the termination will be remedied in a time and manner which the Owner finds acceptable. If at any time after such postponement, the Owner determines that Contractor and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the Owner may immediately terminate the Contract for cause, without the necessity of further ten (10) day notice, by notifying the Contractor and his surety in writing of the termination. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.

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- (3) Upon termination of the Contract, the Contractor shall immediately cease work and the Owner shall take possession of the Site and of all materials, tools and equipment thereon and finish the Work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Owner has finally completed the project through its own resources or those of a subsequent contractor. If the expense of finishing the Work, including compensation for additional design, managerial and administrative services, shall exceed the unpaid balance of the Contract Price, the Contractor shall pay the difference to the Owner, together with any other expenses of terminating the Contract and having it completed by others. If the unpaid balance of the Contract Price exceeds the costs of finishing the Work, including compensation or expenses incurred for additional design, managerial and administrative services, such excess shall be paid to the Contractor.
 - (4) If it should be judicially determined that the Owner improperly terminated this Contract for cause, then the termination shall be deemed to be a termination for the convenience of the Owner.
 - (5) Termination of the Contract under this Section is without prejudice to any other right or remedy of the Owner.
- (b) Owner's Right to Terminate Contract for Convenience
- (1) Owner may terminate this Contract, in whole or in part, at any time without cause upon giving the Contractor written Notice of such termination. Upon such termination, the Contractor shall immediately cease Work and remove from the Site all of its labor forces and such of its materials as Owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as Owner may require to assign to the Owner the Contractor's interest in all subcontracts and purchase orders designated by Owner. After all such steps have been taken to Owner's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:
 - a. Amounts due for Work performed in accordance with the Contract through the date of termination.
 - b. Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination. The Contractor shall not be entitled to any compensation or damages for lost profits or for any other type of contractual compensation or damages other than those provided by the preceding sentence. Upon payment of the foregoing, Owner shall have no further obligations to Contractor of any nature.
 - c. In no event shall termination for the convenience of the Owner terminate the obligations of the Contractor's surety on its payment and performance bonds.
 - d. After receipt of a Notice of Termination, the Contractor shall submit to the Owner his termination claim. Such claim shall be submitted promptly but in no event later than forty-five (45) days from the effective date of termination. Upon failure of the Contractor to submit his termination claim within the time allowed, the Owner may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination.

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(c) Contractor's Responsibilities upon Termination

- (1) After receipt of a Notice of Termination pursuant to 108.08(b) Owner's Right to Terminate Contract for Convenience the Contractor shall mitigate any damages to the extent reasonably possible.
- (2) In addition to the provisions of 108.08(c) (1), the Contractor shall:
 - a. At the option of the Owner, assign to the Owner, in the manner, at the time, and to the extent directed by the Owner, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - b. Transfer title and deliver to the Owner in the manner, at the times, and to he extent, if any, directed by the Owner:
 1. The fabricated or unfabricated parts, work in process, completed Work, supplies, and other material procured as a part of, or acquired in connection with the performance of the Work terminated by the Notice of Termination, and.
 2. The completed or partially completed drawings, releases, information, manuals and other property which, if the Contract had been completed, would have been required to be furnished to the Owner;
 - c. Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination; and
 - d. Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest.
 - e. Disturbed areas shall be promptly placed in an acceptable condition as directed by the Engineer. Payment for such work will be made at the contract unit prices.
 - f. At the option of the Engineer, materials the Contractor obtains for the work that have been inspected, tested, and accepted by the Engineer and that have not been incorporated in the work may be purchased from the Contractor at actual costs as shown by receipted bills, purchase orders, bills of lading or other similar actual cost records at such points of delivery as may be designated by the Engineer.
 - g. Perform site cleanup pursuant to the provisions of Section 105.16.

(d) Disputes upon Termination

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

108.10 Termination of Contractor's Responsibilities.

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

SECTION 109—MEASUREMENT AND PAYMENT

109.01 - Measurement of Quantities

Specification Section Deleted

109.02 - Plan Quantities

Specification Section Deleted

109.03 - Scope of Payment

- (a) Contract Sum: The Contract Sum is a Lump Sum and is stated in the Owner-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents. The Contract Sum includes, but is not limited to, the Contractor's profit and general overhead and all costs and expenses of any nature whatsoever (including without limitation taxes, labor and materials), foreseen or unforeseen, and any increases in said costs and expenses, foreseen or unforeseen, incurred by the Contractor in connection with the performance of the Work, all of which costs and expenses shall be borne solely by the Contractor. The Contractor agrees to assume all increases in costs of any nature whatsoever that may develop during the performance of the Work.
- (b) The Contractor shall be paid ninety-five percent (95%) of the earned sum when payment is due, with not more than five percent (5%) being retained to assure faithful performance of the Contract. All amounts withheld may be included in the final payment. Any subcontract which provides for similar progress payments shall be subject to the same limitations.
- (c) **Schedule of Bid Items**
 - (1) For Lump Sum Price Type Contracts, as a part of the Bid, the Contractor shall submit a Schedule of Bid Items allocated to the various portions of the Work, prepared on forms provided by the Owner and supported by such data to substantiate its accuracy as the Owner may require. This Schedule of Items, unless rejected by the Owner, shall be used as a basis for the Contractor's Applications for Payment.
 - (2) Contractor may include in the Schedule of Bid Items a line item for "mobilization" which shall include a reasonable amount for mobilization for the Contractor and his subcontractors. The Contractor shall not front-end load the Schedule of Bid Items.
- (d) **No unit price adjustments are offered on this Project.** This includes, but are not limited to fuel, asphalt, and steel.

109.04 - Compensation for Altered Quantities

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When the accepted quantities of work vary from the estimated quantities set forth in the Contract but such variance is within the percentage limits set forth in Section 104.02 whether or not there have been any changes in the plans, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract unit prices for the accepted quantities of work performed. No allowance or other adjustment except as provided for in Section 104.02 will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor resulting directly from either such alterations or unbalanced allocation among the contract items of overhead expense on the part of the Contractor and subsequent loss of expected reimbursements therefor or from any other cause except the payment for the actual quantity performed at the original contract unit price.

Alterations of plans or character of work involving authorized work orders as provided for in Section 104.02 will be paid for in accordance with the requirements of Section 104.02.

When unilateral or bilateral change order work is to be performed that is not covered by a contract unit price, the Contractor shall provide a detailed written estimate that includes the Contractor's labor, materials and equipment costs only. Overhead and profit shall not be included in this estimate. Labor costs will be based on the rate of wage or scale as set forth in his most recent payroll for each classification of laborers, forepersons, and superintendent(s) who are in direct charge of the specific operation. The Contractor will be paid a maximum of 10 percent of the total cost of the change order work to cover the Contractor's profit and administrative costs.

109.05—Extra and Force Account Work (Unilateral Change Order)

The Department may add any new, unforeseen or unanticipated work that in the judgment of the Engineer is necessary for the satisfactory fulfillment of the Contract within its intended scope. This extra work may be accomplished by work order if the scope is defined, or on a force account basis if the scope is not defined. Extra work or force account work may be necessitated in accordance with the provisions of Sections 104.02 or 104.03 as applicable. The Engineer will advise the Contractor in writing of the necessity for such extra work at the time of discovery or determination of need. Where possible, the Department and Contractor will each proceed to secure any information, documentation or plans to assist in detailing the extent and character of such work, if known, in sufficient detail to define, analyze and estimate the cost and time required to perform the work.

A. Work Orders

When the Contractor believes extra work is warranted he shall promptly notify the Engineer in writing within 2 days of such a determination. Should the Engineer agree with the Contractor's assessment of extra work then within 7 days or as mutually decided with the Engineer, the Contractor shall determine the extent of such work and detail in his request what additional compensation and/or time he seeks, if any, relative to his determination. The Contractor's submittal shall be in sufficient detail to enable the Engineer to determine the basis for entitlement. Failure on the part of the Contractor to furnish sufficient documentation or to qualify his reason for failure to do so will delay the determination of entitlement for such work. If such delay occurs, it will in no way relieve the Contractor of his obligation to meet the time limits or other requirements established for the contract or constitute basis for a delay claim on the part of the Contractor.

Prior to the actual execution of a work order the Engineer will require the Contractor to provide unit prices for the proposed work that shall be based on the unit prices submitted with the Contractor's bid (Schedule of Bid items) , and any requested Contract Time extension.

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If the Contractor requests a time extension, the proposed time extension will only be considered if the work is a controlling work item or affects the critical path for a project milestone or project completion. Any justifiable time extension given must be included at the time the work order is developed. For projects without a critical path method scheduling specification, the Contractor shall include detailed information on how the controlling item of work was affected in accordance with the requirements detailed in that specification. Any time extension given on a Fixed Date contract, including time extensions in accordance with the requirements of Section 108.04 of the Specifications, must be added to the contract by work order.

Upon receipt and review of the Contractor's costs for the proposed work, if it is found that the Contractor's prices and/or the time differ considerably from the Department's estimate, the Engineer may request the Contractor to provide support for his unit prices and/or his requested time extension. Where the Department and the Contractor can determine and agree upon an accurate cost and time estimation for the proposed work the Engineer will issue a bilateral work order to authorize the work. When the Contractor and the Department cannot agree upon the cost and/or the time estimation for the extra work after the Engineer's analysis and subsequent discussion with the Contractor, or where due to issues of emergency, safety, environmental damage, other similar critical factors as determined by the Department, the Engineer will act unilaterally and issue a unilateral work order to authorize the work. The issuance of a unilateral work by the Engineer shall in no way invalidate or relinquish the Contractor's rights under the provisions of Section 105.19.

B. Force Account

The Department will require the Contractor to proceed with additional work on a force account basis when neither the Department nor the Contractor can firmly establish an applicable estimate for the cost of the work because the scope of the work is not known; that is, the level of effort required to perform and complete the work is unknown or not quantifiable at the time of discovery or start of the extra work, and will be determined as work progresses. The rates for labor, equipment and materials to be used in cases of work performed on a force account basis will be compensated in the following manner:

- (a) Labor:** Unless otherwise approved, the Contractor will receive the rate of wage or scale as set forth in his most recent payroll for each classification of laborers, forepersons, and superintendent(s) who are in direct charge of the specific operation. The time allowed for payment will be the number of hours such workers are actually engaged in the work. If overtime work is authorized, payment will be at the normal overtime rate set forth in the Contractor's most recent payroll. If workers performing the class of labor needed have not been employed on the project, mutually agreed on rates will be established. However, the rates shall be not less than those predetermined for the project, if applicable. An amount equal to 45 percent of the approved force account payroll will be included in the payment for labor to cover administrative costs, profit, and benefits and/or deductions normally paid by the Contractor.
- (b) Insurance and Tax:** The Contractor will receive an amount equal to 25 percent of the approved force account payroll exclusive of additives of administrative cost as full compensation for property damage and liability, workers' compensation insurance premiums, unemployment insurance contributions, and social security taxes of force account work.
- (c) Materials:** The Contractor will receive the actual cost of materials accepted by the Engineer that are delivered and used for the work including taxes, transportation, and handling charges paid by the Contractor, not including labor

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and equipment rentals as herein set forth, to which 15 percent of the cost will be added for administration and profit. The Contractor shall make every reasonable effort to take advantage of trade discounts offered by material suppliers. Any discount received shall pass through to the Department. Salvageable temporary construction materials will be retained by the Department, or their appropriate salvage value shall be credited to the Commonwealth, as agreed on by the Department.

- (d) Equipment:** The Contractor shall provide the Engineer a list of all equipment to be used in the work. For each piece of equipment, the list shall include the serial number; date of manufacture; location from which equipment will be transported; and, for rental equipment, the rental rate and name of the company from which it is rented. The Contractor will be paid rental rates for pieces of machinery, equipment, and attachments necessary for prosecution of the work that are approved for use by the Engineer. Equipment rental will be measured by time in hours of actual time engaged in the performance of the work and necessary traveling time of the equipment within the limits of the project or source of supply and the project. Hourly rates will not exceed 1/176 of the monthly rates of the schedule shown in the Rental Rate Blue Book modified in accordance with the Rental Rate Blue Book rate adjustment tables that are current at the time the force account is authorized. Adjustment factors or rate modifications indicated in the Rental Rate Blue Book will not be considered when acceptable rates are determined. Hourly rates for equipment on standby, will be at 50 percent of the rate paid for equipment performing work. Operating costs shall not be included in the standby rate. For the purposes herein "standby time" is defined as the period of time equipment ordered to the jobsite by the Engineer is available on-site for the work but is idle for reasons not the fault of the Contractor or normally associated with the efficient and necessary use of that equipment in the overall operation of the work at hand.

Payment will be made for the total hours the equipment is performing work. When equipment is performing work less than 40 hours for any given week and is on standby, payment for standby time will be allowed for up to 40 hours, minus hours performing work. Payment will not be made for the time that equipment is on the project in excess of 24 hours prior to its actual performance in the force account work. An amount equal to the Rental Rate Blue Book estimated operating cost per hour will be paid for all hours the equipment is performing work. This operating cost shall be full compensation for fuel, lubricants, repairs, greasing, fueling, oiling, small tools, and other incidentals. No compensation will be paid for the use of machinery or equipment not authorized by the Engineer.

The Contractor will be paid freight cost covering the moving of equipment to and from the specific force account operation provided such cost is supported by an invoice showing the actual cost to the Contractor. However, such payment will be limited to transportation from the nearest source of available equipment. If equipment is not returned to the nearest equipment storage lot but is moved to another location, the freight cost paid will not exceed the cost of return to the nearest storage lot.

The rates for equipment not listed in the Rental Rate Blue Book schedule shall not exceed the hourly rate being paid for such equipment by the Contractor at the time of the force account authorization. In the absence of such rates, prevailing rates being paid in the area where the authorized work is to be performed shall be used.

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If the Contractor does not possess or have readily available equipment necessary for performing the force account work and such equipment is rented from a source other than a company that is an affiliate of the Contractor, payment will be based on actual invoice rates, to which 15 percent of the invoice cost will be added for administrative cost and profit. If the invoice rate does not include the furnishing of fuel, lubricants, repairs, and servicing, the invoice rate will be converted to an hourly rate, and an amount equal to the Rental Rate Blue Book estimated operating cost per hour will be added for each hour the equipment is performing work.

- (e) **Miscellaneous:** No additional allowance will be made for attachments that are common accessories for equipment as defined in the Rental Rate Blue Book, general superintendents, timekeepers, secretaries, the use of small hand held tools or other costs for which no specific allowance is herein provided. The Contractor will receive compensation equal to the cost of the bond, special railroad insurance premiums, and other additional costs necessary for the specific force account work as determined by the Department. The Contractor shall supply documented evidence of such costs.
- (f) **Compensation:** The compensation as set forth in this Section shall be accepted by the Contractor as payment in full for work performed on a force account basis. At the end of each day, the Contractor's representative and the Inspector shall compare and reconcile records of the hours of work and equipment, labor and materials used in the work as ordered on a force account basis. Such accounting may not include actual costs or labor rates where these are not available but shall be used to verify quantities, types of materials or labor, and number and types of equipment.

If all or a portion of the force account work is performed by an approved subcontractor, the Contractor will be paid 10 percent of the subcontract net force account costs to cover the Contractor's profit and administrative cost. The amount resulting will not be subject to any further additives. The itemized statements of costs as required below shall be submitted on a form that separates the subcontracted portions of the force account labor, materials, and equipment from the other force account costs.

- (g) **Statements:** Payments will not be made for work performed on a force account basis until the Contractor has furnished the Engineer duplicate itemized statements of the cost of such work detailed as follows:
1. payroll indicating name, classification, date, daily hours, total hours, rate, and extension of each laborer, foreperson, and superintendent
 2. designation, dates, daily hours, total hours, rental rate, and extension for each unit of equipment
 3. quantities of materials, prices, and extensions
 4. transportation of materials

Statements shall be accompanied and supported by invoices for all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices, the Contractor shall furnish an affidavit certifying that such materials were taken from his stock; that the quantity claimed was actually used; and that the price, transportation, and handling claimed represented his actual cost.

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C. Field Order

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

109.07 - Eliminated Items

If any item in the Contract is determined to be unnecessary for the proper completion of the work contracted, the Department may, upon written notice to the Contractor, eliminate such item from the Contract. Payment will not be made for such item except that the Contractor will be compensated for the actual cost of any work performed for the installation of such item and the net cost of materials purchased, including freight and tax costs, as evidenced by invoice. No additional compensation will be made for overhead or anticipated profit.

- (a) Should it be deemed expedient by the Owner to decrease the dimensions, quantity of material or work, or vary in any other way the work herein contracted for, the Owner may direct by written Change Order, such decreases to be made or performed without in any way affecting the validity of the Contract. The Contractor shall, comply with the Change Order from the Owner. The difference in expense occasioned by such decrease shall be deducted from the amount payable under this Contract.
- (b) When work is deleted from the Contract by Owner, the amounts to be credited to the Owner shall reflect the same current pricing as if the work were being added to the Contract at the time the deletion is ordered, and documentation will be required for a credit. If such deleted materials and equipment shall have already been purchased and stored on site and cannot be used in other projects, returned for credit or cannot be returned for credit at the price paid by the Contractor at the time of purchase, the Contractor shall be entitled, upon proper documentation and certification, to an adjustment in the pricing of the credit to avoid hardship to the Contractor. If necessary in order to establish such reasonable value, the Contractor may be required to submit a detailed breakdown of his original bid for the items or work involved.
- (c) If work is not performed, and such deletion of work was not directed or approved by the Owner, the Owner shall ascertain the amount of the credit due.

109.08 - Partial Payments

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

- (a) Application for Payment
 - (1) The Contractor shall submit to the A/E three (3) originally executed, itemized Applications for Payment (and one (1) copy to the Owner) on or about the first day of each month as designated in Article 4 of the Owner-Contractor Agreement. The Application for Payment shall be notarized, indicate in complete detail all labor and material incorporated in the Work during the month

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prior to submission, and supported by such data substantiating the Contractor's payment request as the Owner may require. The Application for Payment shall also contain Contractor's certification that due and payable amounts and bills have been paid by the Contractor for work for which previous Certificates of Payment were issued and payments received from the Owner. The Application for payment shall also include an updated Progress Schedule.

- (2) Payment may be made for the value of materials, which are to be incorporated into the finished Work, and which are delivered to and suitably stored and protected on the Work site. The Contractor shall provide releases or paid invoices from the Seller to establish, to the Owner's satisfaction, that the Owner has title to said material. Stored materials shall be in addition to the Work completed and shall be subject to the same retainage provisions as the completed Work. Material once paid for by the Owner becomes the property of the Owner and may not be removed from the Work site without the Owner's written permission.
- (3) The requirements for the payment of materials stored on-site shall remain unchanged. The requirements for payment for materials stored off-site shall include, but is not limited to, those specified in Section 109.09 and the additional requirements hereinafter specified. Material stored off-site under this provision shall be included in the definition of Work.
- a. For purposes of administering this provision, the following definitions are provided.
1. Material stored NEAR the Work Site: A storage location shall be considered near the work site if it is not more than fifty (50) miles (approximately a one-hours drive) from the Work Site.
 2. Material stored DISTANT from the Work Site: Locations beyond the limit of fifty (50) miles shall be considered distant.
- b. All proposed off-site locations, regardless of whether they are near or distant, shall be approved by the Owner prior to any payment under this Article. The approval process will include an inspection of the proposed storage site, which may or may not coincide with any inspection of materials stored.
- c. Prior to payment for any material stored off-site, said material shall be inspected to verify that it is properly stored; i.e., segregated, inventoried, identified as the property of the Owner and Contractor. This material shall be clearly identified and physically segregated from any other material or stock, in such a manner that it is clear, from casual observation, that said material is not a part of any other stock or stored material.
- d. For materials stored distant to the Work site, the Contractor shall reimburse the Owner for all reasonable costs incurred by the Owner, to include but not limited to salary, transportation, lodging and per diem, for the Owner's or the A/E's employees to travel to and from the storage locations for the purpose of verifying the material is properly stored. It is anticipated that such trips would occur whenever additional material is claimed for payment and/or at least every six (6) months until the material is delivered to the work site.

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- e. Except for unusual circumstances, the Contractor will not be required to reimburse the Owner's costs for visits to storage locations near the work site.
 - f. The Contractor shall hold the Owner harmless from any and all losses, additional costs, direct or indirect damages and/or delays, whatsoever, which may occur as a result of a failure of the Contractor to deliver (or have delivered), in a timely manner, materials (for which payment has been made) to the work site for installation and incorporation into the Work.
 - g. The Contractor shall provide to the Owner, a Release of Lien or other suitable certification by the Seller, in addition to paid invoices, verifying that the Contractor has valid title to all materials for which payment is requested. The Seller, however, shall not be required to waive his rights for recovery, if his Contract is breached.
- (4) The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens". The Contractor further warrants that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor or by any other person performing Work at the site or furnishing materials and equipment for the Project that is subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.
- (5) The Contractor's Application for Payment shall provide that the payment request attests that all Work for which the request is made has been completed in full according to the drawings, specifications and other terms of the Contract Documents. By submitting his Application for Payment, the Contractor also represents that he has no knowledge that any subcontractor or suppliers have not been fully and timely paid and that, insofar as he knows, the only outstanding items for payment with respect to the Contract are those to be paid from the funds for which Application is being made.
- (b) Certificates for Payment
- (1) The A/E will, within seven (7) calendar days after the receipt of the Contractor's Application for Payment, recommend a Certificate for Payment to the Owner, for such amount as the A/E determines is properly due, with his reasons for withholding or adjusting a Certificate as provided in Section 109.08(d) Payments Withheld, if any.
 - (2) After the Certificate for Payment is recommended by the A/E, the Owner will review it and make any changes deemed necessary by the Owner's Representative. The recommendation of the Certificate for Payment by the A/E does not waive or limit the Owners right to reduce the amount of the payment due to the Contractor as determined to be appropriate by the Owner.
 - (3) The recommendation of a Certificate for Payment will constitute a representation by the A/E to the Owner, based on his observations at the site hereof and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief: (a) the quality of the Work is in accordance with the Contract Documents (subject to

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an evaluation of the Work for conformance with the Contract Documents upon Substantial or Final Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that (b) the Contractor is entitled to payment in the amount certified. However, by recommending a Certificate for Payment, the A/E shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

(c) Progress Payments

- (1) The Owner shall make payment in the manner and within twenty-three (23) calendar days after receipt of the Certificate of Payment from the A/E based upon the Owner's approval or adjustment of said Certificate. The Contractor shall be paid the amount approved or adjusted by the Owner, less five percent (5%) retainage which is being held to assure faithful performance; provided however, that said retainage is not applicable to Time and Material Change Orders.
- (2) In relation to punch list or other uncompleted work and in lieu of a portion of the above-specified five percent (5%) retainage, the Owner may, at its sole discretion, elect to retain fixed amounts directly relating to the various items of uncompleted Work. All amounts withheld shall be included in the Final Payment.
- (3) The Contractor shall, within seven (7) days after receiving payment from the Owner, do one of the following:
 - a) Pay all subcontractors for the proportionate share of the total payment received from the Owner for work performed by each subcontractor under the Contract; or
 - b) Notify the Owner and subcontractor(s), in writing, of his intention to withhold all or part of the subcontractor's payment with the reason for nonpayment.
- (4) The Contractor shall make payment to subcontractors as heretofore specified. Each payment shall reflect the percentage actually retained, if any, from payments to the Contractor on account of such subcontractor's Work.
- (5) The Contractor shall provide the Owner with his social security number, if an individual, and their federal identification number if a corporation, partnership, or proprietorship.
- (6) The Contractor shall be obligated to pay unpaid subcontractors interest on payments that are not made in accordance with this Section 109.06(e) Progress Payments. The rate of interest shall be in compliance with the Prompt Payment section of the Virginia Public Procurement Act of the Code of Virginia. The Contractor shall, by an appropriate agreement with each subcontractor require each subcontractor to make payments to his sub-subcontractors according to all the same requirements as provided in this Section 109.06(e) Progress Payments.
- (7) The Owner may, upon written request, furnish to any subcontractor, if practicable, information regarding the percentages of completion or the amounts

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applied for by the Contractor and the action taken thereon by the Owner on account of Work done by such subcontractor.

- (8) Neither the Owner nor the A/E shall have any obligation to pay or to see to the payment of any monies to any subcontractor except as may otherwise be required by law.
 - (9) No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.
- (d) Payments Withheld
- (1) The Owner may withhold the payment in whole or in part, if necessary, to reasonably protect the Owner. If the A/E is unable to make representations as provided in Section 109.08(b) and to recommend payment in the amount of the application, he will notify the Owner as provided in Section 109.06(d)(1). If the Contractor and the Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which he is able to make representations with respect to payment due for work performed. The Owner may also decline to certify or make payment or, because of subsequently discovered evidence or subsequent observations, the Owner may nullify the whole or any part of any Certificate for Payment previously issued.
 - (2) The Owner may withhold from the Contractor so much of any payment approved by the A/E, as may in the judgment of the Owner be necessary:
 - a. To protect the Owner from loss due to defective work not remedied;
 - b. To protect the Owner upon receipt of Notice of the filing in court or in an arbitration proceeding as may be required in any third party contract, of verified claims of any persons supplying labor or materials for the Work, or other verified third party claims;
 - c. To protect the Owner upon reasonable evidence that the Work will not be completed for the unpaid balance of the Contract Sum;
 - d. To protect the Owner upon reasonable evidence that the Work will not be completed within the Contract Time, or any Contract Milestones as established by this Contract; or
 - e. To protect the Owner upon the Contractor's failure to properly schedule and coordinate the work in accordance with or as required by the Contract Documents, or failure to provide progress charts, revisions, updates or other scheduling data as required by the Contract Documents, or upon the Contractor's failure to provide as-built drawings as required herein, or upon Contractor's failure to otherwise substantially or materially comply with the Contract Documents.
 - (3) If required by the Owner-Contractor Agreement, the Contractor shall, concurrent with his submission of the Construction Schedule, submit a practicable and realistic payment schedule showing the dates on which the Contractor will submit each and every Application for Payment and the amount he expects to receive for each and every monthly progress payment. If during the performance of the Work, the Contractor expects to receive an amount for a monthly progress payment larger than that indicated on the payment schedule; the Contractor shall notify the Owner at least thirty (30) days in advance of that payment so that the necessary allocation of funds can be processed. In the event the Contractor fails

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to submit a practicable and realistic payment schedule, the Contractor's Application for Payment shall be honored only to the extent that the Work is actually performed and that the proportion of payments made to the Contract Sum does not exceed the proportion of the Contract Time expired as of the time of the request.

(e) Failure of Payment

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

(f) Substantial Completion and Warranty Bond

- (1) Unless otherwise specified in Section 109.10 Final Completion and Final Payment, when the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete, the Contractor shall request in writing that the A/E and the Owner perform a Substantial Completion inspection. Prior to such inspection the Contractor shall:
 - a. If applicable, secure a Certificate of Occupancy for the Project or a designated portion thereof; and
 - b. Submit five (5) copies each of the Operations and Maintenance Manuals to the A/E as specified and one (1) copy to the Owner.
- (2) The Owner shall determine whether the project is substantially complete and shall compile a punch list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.
- (3) When the Owner on the basis of his inspection determines that the Work or a designated portion thereof is substantially complete, the A/E will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion and shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.
- (4) The Contractor shall have the thirty days from the Date of Substantial Completion to complete all items on the punch list to the satisfaction of the Owner. If the Contractor fails to complete all punch list items within the designated time, the Owner shall have the option to correct or conclude any remaining items by utilizing its own forces or by hiring others. The cost of such correction of remaining punch list items by the Owner or others shall be deducted from the final payment to the Contractor.
- (5) Guarantees and warranties required by the Contract Documents shall commence on the Date of Final Completion of the Work, unless otherwise provided in the Certificate of Substantial or Final Completion, or the Contract Documents. Provided, however, that if Contractor does not complete certain punch list items within this time period, specified in Section 109.08(f)(4), all warranties and

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guarantees for such incomplete Punch List items shall become effective upon issuance of final payment for the project.

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

109.10 - Final Payment

Final Completion and Final Payment

- (a) A Certificate of Final Completion shall be issued by the A/E prior to final payment. At the Owner's sole option, this Final Completion Certificate may be issued without a Certificate of Substantial Completion. The Contractor, prior to application for Final Payment and within the time specified for completion of the Work, shall complete all Work, to include punch list items and provide operating manuals and as-built data, for the Work, as

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completed and in place. Said Certificate of Final Completion shall be issued, even if a Certificate of Substantial Completion has been issued previously and temporary authority to operate the Work has been granted.

- a. The Certificate of Final Completion shall certify that all Work has been completed in accordance with Contract Documents and is ready for use by the Owner.
- (b) For all projects where Substantial Completion Certificates have been issued for various portions of the Work, at differing times, the Contractor shall request and the Owner shall, prior to final payment, issue a Certificate of Final Completion which certifies that all required Work, including punch list items, have been completed in accordance with the Contract Documents.
- (c) Neither the final payment nor any remaining retainage shall become due until the Contractor submits to the A/E the following:
 - (1) An Application for Payment for all remaining monies due under the Contract.
 - (2) Consent of surety, if any, to final payment and the guarantee bond;
 - (3) If required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any subcontractor refuses to furnish waiver of claims satisfactory to the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such claim. If any such claim remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such claim, including all costs and reasonable attorneys' fees;
 - (4) As-built drawings, operation and maintenance manuals and other project closeout submittals, as required by the Contract Documents;
 - (5) Construction releases as required by the Contract Documents from each property owner on whose property an easement for construction of this project has been obtained by the Owner, such release to be in the forms to be provided by the Owner. This release is for the purpose of releasing the Owner and the Contractor from liability, claims, and damages arising from construction operations on or adjacent to the easement and includes proper restoration of the property after construction. It shall be the Contractor's sole responsibility to obtain all such releases and furnish them to the Owner; and
 - (6) A written certification that:
 - a. The Contractor has reviewed the requirements of the Contract Documents,
 - b. The Work has been inspected by the Contractor for compliance with all requirements of the Contract Documents,
 - c. Pursuant to this inspection, the Contractor certifies and represents that the Work complies in all respects with the requirements of the Contract Documents,
 - d. The Contractor further certifies and represents that all equipment and systems have been installed in accordance with the Contract Documents and have been tested in accordance with specification requirements and are operational, and

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- e. The Contractor hereby certifies and represents that the Work is complete in all respects and ready for final inspection.
- (d) Upon receipt of the documents required in Section 109.10 (c) and upon receipt of a final Application for Payment, the A/E and Owner will promptly make a final inspection. When the A/E finds the Work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue a final Certificate for Payment and a Final Certificate of Completion. The Certificate of Completion will state that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance designated in the final certificate for payment is due and payable. The final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Section 109.10 (c) have been fulfilled. The Owner shall review the Certificate of Payment and shall accept it and issue final acceptance, or reject it and notify the Contractor, within ten (10) days. Final payment to the Contractor shall be made within thirty (30) days after final acceptance. All prior estimates and payments, including those relating to change order work shall be subject to correction by this final payment.
- (e) The making of Final Payment shall constitute a waiver of all claims by the Owner, except those arising from:
 - (1) Unsettled claims;
 - (2) Faulty, defective, or non-conforming Work discovered or appearing after Substantial or Final Completion;
 - (3) Failure of the Work to comply with the requirements of the Contract Documents;
 - (4) Terms of any warranties or guarantees required by the Contract Documents; or
 - (5) Fraud or bad faith committed by the Contractor or any subcontractor or supplier during performance of work but discovered by Owner after Final Payment.
- (f) The acceptance of Final Payment shall constitute a waiver of all claims by the Contractor, except those previously made in writing and so identified by the Contractor, as unsettled at the time of the final Application for Payment. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this Contract or the Performance or the Warranty Bonds.